

5.0 Limitations of the Program

Money required by the U.S. Military Departments for operations and procurement of materiel is voted for each fiscal year by the United States Congress. The money is provided by enactment of a law each year called the Defense Appropriations Act. At various times, special conditions have been introduced into the Defense Appropriations Act, which restrict the freedom of the Military Departments to spend the authorized funds in certain ways. These legislative restrictions tend to become perpetuated in subsequent annual Defense Appropriations Acts, and sometimes they permanently restrict the scope of Canadian participation in U.S. defence programs. These restrictions are outlined below, as well as those restrictions that arise from other U.S. laws or regulations.

Inasmuch as the U.S. Defense Appropriations Act changes annually the restrictive legislation described below may well vary from year to year. It is advisable to confirm the status with the Defence Programs Bureau/U.S. Division.

5.1 The Berry Amendment

The Defense Appropriation Act customarily contains a restriction known as the "Berry Amendment" regarding the use of appropriated funds for the procurement of articles of food, clothing or certain textile materials, and specialty metals.

This restriction generally prohibits the U.S. Armed Services from procuring supplies consisting in whole or in part of any food, clothing, cotton, wool, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or coated synthetic fabric not grown, reprocessed, reused or produced in the United States or its possessions.

Currently the above restrictions of 6-302 do not apply to the following:

- a) *Acquisitions outside the United States in support of combat operations;*
- b) *Acquisitions by vessels in foreign waters;*
- c) *emergency, acquisition or acquisitions of perishable foods by establishments located outside the United States for the personnel attached thereto;*
- d) *acquisitions of those supplies listed in DAR6-105 as to which the list does not make this part expressly applicable;*
- e) *small purchases for the purposes of this exception, a small purchase shall mean an acquisition action as distinguished from a single line item involving a total dollar amount not in excess of \$10,000;*
- f) *acquisition of end items incidentally incorporating cotton, or wool, of which the estimated value is not more than 10 per cent of the total price of the end item---provided, that the estimated value does not exceed \$10,000 or 3 per cent of the total price of the end item, whichever is greater;*

- g) *any articles of food or clothing of any form of cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool as to which the Secretary concerned has determined that a satisfactory quality and sufficient quantity grown or produced in the United States or its possessions cannot be procured as and when needed at United States market prices; and*
- h) *supplies purchased specifically for commissary resale (see DAR6-103.7).*
- i) *purchases of specialty metals or any item incorporating specialty metals, as to which the Secretary concerned or his authorized designee has determined that a satisfactory quality and sufficient quantity melted in the United States or its possessions cannot be acquired as and when needed at U.S. market prices;*
- j) *purchases of specialty metals below the prime contract level for programs other than those for aircraft, missile and space systems, ships, tank-automotive, weapons and ammunition (see 7-104.93 (a)); and*
- k) *purchases of specialty metals (see 7-104.93 (b)), or chemical warfare protective clothing (see 7-104.13) when such purchases are necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements or where such acquisition is in furtherance of an agreement with a qualifying country (see e.g., 6-001).*

Recent decisions by the U.S. Government have allowed:

- a) the fabrication of parachutes in Canada provided the fabric used was of U.S. origin;
- b) the packaging of foodstuffs provided they were of U.S. origin and were processed in the U.S.

5.2 Specialty Metals

Commencing with the Defense Appropriations Act for Fiscal Year 1973 (which ended on June 30, 1973) the United States Congress has added a "Specialty Metals" rider to the Berry Amendment (see 5.1) which has affected Canadian defence industry in the past. Currently this constraint has been waived (see 5.1(ix) above). This restriction prohibits the acquisition of supplies consisting in whole or in part, of specialty metals including stainless steel flatware which have not been melted in steel manufacturing facilities located within the U.S. or its possessions.

It can be reinstated at anytime with subsequent ill effects on Canadian manufacturers supplying the U.S. military market. The term "Specialty Metal" includes:

- a) steels, where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 per cent; silicon, 0.60 per cent; copper, 0.60 per cent; or which contains more than 0.25 per cent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium.