6. Libya (Section 746.4)

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Export Control Program Description And Licensing Policy

On August 5, 1996, the President signed into law the Iran and Libya Sanctions Act in an effort to deny Iran and Libya the ability to support acts of international terrorism and to develop and acquire weapons of mass destruction. The Act requires the President to sanction a person who made an investment of $40 million or more that directly and significantly contributed to Libya's ability to develop its petroleum resources, and to sanction persons who provide Libya with certain goods and services proscribed under United Nations Security Council Resolutions 748 and 883 that significantly and materially contribute to Libya's military, aviation, or certain petroleum development capabilities. ILSA requires the imposition of at least two sanctions from six available sanctions categories (one of which is an export sanction) against an entity determined to have engaged in sanctionable activity described in ILSA.

ILSA is one action in a long history of action the United States has taken against Libya. Libya is one of the countries designated by the Secretary of State as a repeated state sponsor of acts of international terrorism. In January 1986, the President imposed a comprehensive embargo against Libya under the authority of the International Emergency Economic Powers Act (IEEPA). The Department of the Treasury is responsible for licensing exports under the Libyan Sanctions Regulations (31 CFR Part 550). Since February 1, 1986, exports from the United States and transshipments via third countries to Libya require authorization in the form of a general or specific license from Treasury.[1] All direct trade with Libya is prohibited and certain Libyan Government-owned or -controlled assets subject to U.S. jurisdiction--estimated at $1 billion--are frozen by the Department of the Treasury.

On November 14, 1991, a grand jury in the U.S. District Court for the District of Columbia returned an indictment against two Libyan nationals accused of bombing Pan Am Flight 103 en route from London to New York. On the same day, Scottish authorities obtained a petition warrant for the two Libyans on similar charges.

On January 21, 1992, the United Nations Security Council (UNSC) adopted Resolution 731, which condemned the Pan Am bombing, as well as the bombing of a French UTA flight, and urged Libya to fully and effectively respond to requests that the United States, the United Kingdom, and France had made upon it in connection with the investigation, apprehension, and prosecution of those responsible for the bombings. On March 31, 1992, after concluding that Libya had not made satisfactory responses to such requests, the UNSC adopted Resolution 748, which imposed mandatory sanctions on Libya, effective April 15, 1992, until such time as the Security Council determined that Libya had complied with the requests made by the United States, the United Kingdom, and France, and renounced terrorism. Resolution 748 requires U.N. member states to prohibit, by their nationals or from their territory, *inter alia,* the supply of any aircraft or aircraft components to Libya or the provision of engineering and maintenance servicing of Libyan aircraft. Resolution 748 also requires member states to prohibit, by their nationals or from their territory, the provision of arms and related material of all types, including the sale or transfer of weapons and ammunition, military vehicles and equipment, paramilitary police equipment and spare parts for such equipment. Finally, Resolution 748 requires member states to deny any flight in their airspace, or landing or taking off in their territory, by aircraft which are flying to or from Libya, to prevent operation of Libyan Arab Airlines and to reduce significantly Libyan diplomatic representation abroad.

Continued Libyan non-compliance with UNSC demands resulted in the adoption by the UNSC of Resolution 883 on November 11, 1993, which imposed additional sanctions, including a limited assets freeze, and provisions closing certain gaps in the civil aviation sanctions provided for in Resolution 748. Resolution 883 requires States to freeze any funds or financial resources owned or controlled by the Government of Libya or a Libyan undertaking and ensure that such funds, or any other funds or financial resources, are not made available to the Government of Libya or any Libyan undertaking. Also, Resolution 883 requires member states to prohibit the provision to Libya, by their nationals or from their territory of materials destined for the construction, improvement or maintenance of Libyan civilian or military airfields and associated facilities and equipment, of any engineering or other services or components destined for the maintenance of any Libyan civil or military airfields, with certain exceptions, and of certain oil terminal and refining equipment, as listed in Appendix III. Furthermore, Resolution 883 required that States immediately close all Libyan Arab Airlines offices, and prohibit any commercial transactions with Libyan Arab Airlines, and prohibit, by their nationals or from their territory, the entering into or renewal of arrangements for the making available for operation within Libya of any aircraft or aircraft components.

In December 1993, the President instructed the Commerce Department to reinforce the trade embargo on the reexport to Libya of U.S.-origin items. The Commerce Department thereupon tightened licensing policy on the reexport of items covered by UNSC Resolutions 748 and 883. Furthermore, in 1995, the U.S. Government adopted a general policy of denial for all exports and reexports to Libya, except for those with a humanitarian purpose.

There were no major changes to the licensing policy toward Libya in 1998; however, the Commerce Department has maintained foreign policy controls on exports and reexports to Libya from third countries of items subject to the Export Administration Regulations (EAR) since 1979. Although the controls on exports to Libya under the EAR remain in effect, the Department has determined, to avoid duplicate licensing requirements, that licenses issued by the Treasury Department for direct exports and transshipments to Libya constitute authorization under the EAR. However, exports or reexports to Libya not covered by Treasury regulations continue to require Commerce authorization. Requests for such authorization are reviewed under the policies set forth in sections A through E below.

A. Reexport authorization is required from Commerce for foreign policy purposes for export from third countries to Libya of all U.S.-origin goods, technology or software, except for the following:

1) medicine and medical supplies;
2) food and agricultural commodities;
3) items permitted under certain license exceptions; and
4) the foreign non-strategic products of U.S.-origin technology or software; or
5) the foreign strategic products of U.S.-origin technology or software exported from the United States before March 12, 1982.

B. Applications for reexport authorization will generally be denied for the following:

1) off-highway wheel tractors with carriage capacity of 10 tons or more, except for exports of such tractors in reasonable quantities for civil use, to the extent consistent with U.N. Resolution 883;
2) aircraft (including helicopters), and specified parts and accessories;
3) other commodities and related technology and software controlled for national security purposes, including controlled foreign-produced products of United States technology and software exported from the United States after March 12, 1982, and oil and gas equipment and related technology and software not readily available from non-United States sources;
4) commodities, software, and technology destined for the Ras Lanuf Petrochemical Processing Complex, except for (a) exports or reexports pursuant to a contractual arrangement in effect prior to December 20, 1983; and (b) the reexport of goods or technology already outside the United States on December 20, 1983, for which license applications will be reviewed on a case by case basis; and
5) items subject to UNSC Resolution 748 of March 30, 1992 (effective April 5, 1992) and Resolution 883 of November 11, 1993 (effective December 1, 1993);
6) those items listed in the Addendum to this chapter.[2]

C. Exceptions are considered for the following:

1) reexports of commodities or technology and software involving a contract in effect prior to March 12, 1982, where failure to obtain an authorization would not excuse performance of the contract;
2) the reexport of goods or technology subject to national security controls already outside the United States on March 12, 1982, or the export of foreign products incorporating such items as components; or
3) the use of U.S.-origin components incorporated in foreign origin equipment and constituting 20 percent or less by value of that equipment.

D. All other reexports will generally be denied.

Analysis Of Control As Required By Section 6(f) Of The Act

A. The Purpose of the Control

The purpose of export and reexport controls toward Libya is to demonstrate United States opposition to, and to distance the United States from, that nation's support for acts of international terrorism, international subversive activities, and intervention in the affairs of neighboring states. The controls also reinforce implementation of UNSC resolutions.

B. Considerations and/or Determinations of the Secretary of Commerce:

1. Probability of Achieving Intended Foreign Policy Purpose. The controls deny Libya U.S.-origin national security-controlled items, oil and gas equipment unavailable from outside sources, and items for the Ras Lanuf Petrochemical complex. The controls restrict Libyan capability to use U.S.-origin aircraft, aircraft components and accessories, and off-highway tractors in military ventures, or in its efforts to destabilize nations friendly to the United States. Consistent with UN resolutions 748 and 883, the United States reinforced the reexport prohibitions for certain oil terminal and refining equipment, plus items used to service or maintain Libyan aircraft and airfields, and all other items subject to the EAR. The combined effect of these controls has been to prevent a United States contribution to Libya's ability to engage in activities detrimental to United States foreign policy. Furthermore, they send a clear signal that the United States is unwilling to permit trade in light of Libya's behavior.

2. Compatibility with Foreign Policy Objectives. Because these controls are intended to prevent a U.S. contribution to Libyan economic activities, force Libya to abide by international law, and thereby diminish Libya's ability to undermine regional stability and support international terrorism, they are consistent with U.S. foreign policy goals and with policies on sales to Libya.

3. Reaction of Other Countries. As indicated by the adoption of UNSC Resolutions 731, 748 and 883, there is a general understanding by other countries of the threat posed by Libya's policies of subversion, terrorism, and military aggression. When the United States imposed the bulk of its controls in 1986, the United States explained its policies to other governments and urged them to adopt comparable policies. There was some favorable response, but no country has matched the extent of U.S. controls. In 1986, the European Union and the Group of Seven approved unanimous steps against Libya, including restrictions on Libyan officials in Europe and a ban on new arms sales. The international community has effectively implemented the sanctions imposed by the UN Security Council. The United States closely monitors all trade with Libya and swiftly brings any noncompliance with the most recent UN resolutions to the attention of appropriate foreign authorities.

4. Economic Impact on United States Industry. In FY1998, as in FY 1997, the Department of Commerce did not approve any applications for exports or reexports to Libya. Commerce received only one export license application, valued at $16,000, during FY 1998 and returned it to the applicant without action. Commerce received four reexport authorization requests, valued at $5.7 million, which were all rejected. Consequently, FY 1998 continued a pattern in which U.S.-origin products comprised a negligible percentage of Libyan imports. This pattern stands in stark contrast to the volume of U.S. exports to Libya in the mid-1980's, when the volume of U.S. exports reached as high as $310.2 million (FY 1985).

U.S. exports to Libya have declined steadily since 1979, when Commerce first began to tighten export controls on Libya. Since then, the United States has authorized exports, for the most part, only for shipments required to fulfill pre-1982 contractual obligations. Annual U.S. exports and reexports to Libya fell from $860 million in 1979 to less than $1 million annually from 1987 through 1994. According to U.S. Census data, total U.S. exports to Libya have been virtually zero for every year from 1992 through 1997.

It is difficult to determine the impact of U.N. sanctions imposed in April 1992 on the economy because Libya's oil revenues, combined with large currency reserves, generate sufficient foreign exchange to support imports of food and consumer goods, as well as equipment for use in the oil industry and in ongoing development projects. In 1995, Libyan imports totaled $7.3 billion, while exports reached $8.4 billion. Both of these figures were up slightly from 1994, when imports and exports totaled $6.9 billion and $7.2 billion, respectively.

Libya's principal imports from major industrialized nations during the period 1991 - 1996 included: cereals and cereal products, iron and steel, road vehicles, machinery and equipment (general industrial, specialized, electrical and power generating), chemical materials and products, animal feed, and medicinal and pharmaceutical products.

Table 1: Libyan Imports from Selected Countries, 1991-96 (thousands U.S. $)

Country	1991	1992	1993	1994	1995	1996	Total (91-96)
France	$334,010	$322,288	$362,263	$254,560	$287,063	$315,873	$1,876,057
Germany	$691,438	$609,229	$761,855	$647,828	$608,285	$646,749	$3,965,384
Italy	$1,363,762	$1,074,238	$1,189,302	$754,481	$956,544	$1,016,073	$6,354,400
Turkey	$237,467	$246,502	$246,267	$179,427	$238,245	$243,636	$1,391,544
United Kingdom	$451,472	$400,726	$411,429	$298,898	$358,857	$388,723	$2,310,105

Country	1991	1992	1993	1994	1995	1996	Total (91-96)
United States	$90	$0	$241	$7	$0	$0	$338

Source: The data in Table 1 are compiled from United Nations Trade Statistics, as reported by exporting countries.

5. Enforcement of Control. In light of the widespread perception of Libya as a supporter of international terrorism, along with UN sanctions, there is substantial voluntary compliance on the part of U.S. companies and their subsidiaries overseas. Nonetheless, the Department of Commerce remains concerned about the continuing potential for unauthorized re-export of goods controlled for national security/nonproliferation reasons. It is virtually impossible to monitor the full extent to which such transfers may occur, given the variety of goods involved, the opportunities created by differences in export laws between countries, and the ease of transhipment through free ports such as Malta. In particular, control of U.S. origin aircraft parts, components, and avionics or foreign-manufactured aircraft with any U.S. content requires a major commitment of enforcement resources. Commerce will continue to aggressively enforce these controls.

C. Consultation with Industry

The Department of Commerce published a notice in the *Federal Register* on October 8, 1997, requesting public comments on its foreign policy-based export controls. As of the date of publication of this report, Commerce had received no comments on its export controls on Libya.

D. Consultation with Other Countries

On October 13, 1998, the Department of Commerce, via the *Federal Register*, solicited comments from industry on the effectiveness of export policy. In general, the comments indicated that industry does not feel that unilateral sanctions are effective. A more detailed review of the comments is available in Appendix I.

Extensive consultation with other nations has taken place under UN auspices. The United States also intends to continue consulting friendly governments in order to achieve full compliance with UN sanctions.

E. Alternative Means

U.S. controls complement diplomatic measures that we have, and will continue to use, to influence Libyan behavior.

F. Foreign Availability

The foreign availability provision does not apply to items determined by the Secretary of State to require control under Section 6(j) of the Act.[3] Cognizant of the value of such controls in emphasizing the U.S. position toward countries supporting international terrorism, Congress specifically excluded them from foreign availability assessments otherwise required by the Act. The foreign availability of items controlled under Section 6(a) has been considered by the Department of Commerce. In general, numerous foreign sources of commodities similar to those subject to these controls are known, especially for items controlled by the United States.

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ENDNOTES

1. *Though Treasury's Libyan Sanctions Regulations duplicate the restrictions in the Export Administration Regulations (EAR) on exports from the United States to Libya, all the Department of Commerce controls are being extended. These controls can be reevaluated in the event the Treasury regulations issued under IEEPA authorities are revoked.*

2. *See 15 CFR 146(c)(2)(vii).*

3. *Provisions pertaining to foreign availability do not apply to export controls in effect before July 12, 1985, under Sections 6(i) (International Obligations), 6(j) (Countries Supporting International Terrorism), and 6(n) (Crime Control Instruments). See the Export Administration Amendments Act of 1985, Public Law No. 99-64, Section 108(g)(2), 99 Stat. 120, 134-35. Moreover, Sections 6(i), 6(j), and 6(n) require that controls be implemented under certain conditions without consideration of foreign availability.*