

## **BIS License Requirements**

### **BIS Licensing Policy**

On June 30, 2006, the Department of State officially rescinded Libya's designation as a state sponsor of terrorism. This rescission was made following the President's May 15, 2006 report to Congress certifying that Libya had not provided any support for international terrorism during the preceding six months and that Libya had provided assurances that it would not support future acts of international terrorism.

On August 31, 2006, BIS published an **amendment** to the Export Administration Regulations (EAR) in the *Federal Register*. This amendment updated BIS's license requirements for Libya under the EAR. The amendment implements the removal of Libya from the State Department's list of Designated State Sponsors of Terrorism and reflects the country's continuing good faith effort to dismantle completely its weapons of mass destruction and missile programs.

Under the new policy, BIS's licensing requirements and policies for Libya are as follows:

#### **License Requirements**

- Items subject to the EAR but not listed on the Commerce Control List (CCL) (15 CFR Part 744) (i.e., EAR99 items) and items controlled only for anti-terrorism (AT) reasons on the CCL are generally not subject to a license requirement, except as defined in the end-user and end-use controls set forth in Part 744 of the EAR.
- Items controlled by the multilateral export control regimes (i.e., items controlled for national security (NS), missile technology (MT), chemical and biological weapons (CB), and nuclear nonproliferation (NP) reasons on the CCL require a license for export or reexport to Libya, as do items controlled for crime control (CC) and regional stability (RS) reasons.
- Additionally, certain categories of items controlled for reasons not included on the Country Chart in Part 738 of the EAR (e.g., encryption (EI), short supply (SS), Chemical Weapons (CW), and Significant Items (SI)) require a license for export or reexport to Libya.

#### **Deemed Exports**

- As cited in Section 734.2(b)(ii) of the EAR, any release of technology or source code to a foreign national in the United States is deemed to be an export to the home country of that foreign national.
- Generally, such technology or source code must be controlled in order to be subject to the deemed export licensing requirements. Unless a license exception exists, a license application must be submitted before making such a release to a Libyan national.
- License applications for the deemed export of technology or source code to Libyan nationals in the United States will be reviewed on a case-by-case basis.

- The deemed export rule does not apply to Libyan nationals who have established permanent residency in the United States or to persons protected under the Immigration and Naturalization Act [8 USC 1324(b)(a)(3)].

#### De minimis

- Foreign made products incorporating U.S.-origin controlled commodities exported to Libya require a license from BIS if their U.S.-origin controlled content exceeds 25 percent.

#### License Exceptions

- Libya has been removed from Country Group E:1, and has been added to Country Group D:1. It remains in Country Groups D:2, D:3, and D:4.
- As a result of such changes in Libya's Country Group membership, the following License Exceptions may be available in whole or in part for exports and reexports to Libya: CIV, APP, TMP, RPL, GOV, GFT, TSU, BAG, AVS, ENC and KMI.
- License Exception USPL (Section 740.19) has been removed from the EAR as it has been rendered irrelevant by the August 31, 2006 regulation.
- A specific transaction is eligible for a License Exception only if it satisfies all of the terms and conditions of the relevant License Exception and is not subject any of the restrictions that apply to all License Exceptions, as set forth in section 740.2 of the EAR.
- Additional guidance on the use of License Exceptions is found in Part 740 of the EAR.

#### Licensing Policy

License applications for exports or reexports to Libya will be reviewed pursuant to all applicable licensing policies in the EAR, as follows:

#### Chemical/Biological

- Items controlled for chemical/biological (CB) reasons on the CCL will be reviewed on a case-by-case basis consistent with the licensing policy set forth in Section 742.2 of the EAR.

#### Nuclear Nonproliferation

- Items controlled for nuclear nonproliferation (NP) reasons on the CCL and destined to Libya will be reviewed on a case-by-case basis consistent with the licensing policy set forth in Section 742.3 of the EAR.
- License applications for civil end-users and end-uses will generally be approved.

#### National Security

- Items controlled for national security (NS) reasons on the CCL and destined to Libya will be reviewed on a case-by-case basis consistent with the licensing policy set forth in Section 742.4 of the EAR.
- License applications for civil end-users and end-uses will generally be approved.

### Missile Technology

- Items controlled for missile technology (MT) reasons on the CCL and destined to Libya will be reviewed on a case-by-case basis consistent with the licensing policy set forth in Section 742.5 of the EAR.

### Crime Control

- Items controlled for crime control (CC) reasons on the CCL and destined to Libya will generally be approved unless there is evidence of civil disorder in Libya or the region or evidence that the Libyan government has violated internationally recognized human rights.
- Additional guidance on the export and reexport of crime control items is found in Section 742.7 of the EAR.

### End-use/End-user Controls

- Existing license requirements in Part 744 of the EAR apply.
- These requirements apply to the export or reexport of any item subject to the EAR, if, at the time of export or reexport, you know, have reason to know, or are informed by BIS that the item will be used in the design, development, production or use of weapons of mass destruction.

### Treatment of “Installed Base” Items

Libya’s removal from the list of state sponsors of terrorism has not changed BIS policy toward “installed base” items in Libya. Section 764.2(e) of the EAR prohibits the ordering, buying, removing, concealing, storing, using, selling, loaning, disposing of, transferring, financing, forwarding, or otherwise servicing, in whole or part, any items subject to the EAR with knowledge that a violation has occurred or will occur in connection with such items. Section 764.7 applies the knowledge-based prohibition set forth in Section 764.2(e) to “installed base” items in Libya, items that may have been originally illegally exported or reexported to Libya by third parties (“installed base” items).

Pursuant to Section 764.7, activities involving installed base items in Libya are divided into two categories: those that require a report to BIS, but not a license, and those that require a license, in order to overcome the prohibition.

- Activities involving the following items will generally only require a report to BIS:
  - - Items subject to the EAR but not on the CCL;
  - - Items on the CCL that are now authorized for export or reexport to Libya under a License Exception; and
  - - Items on the CCL that are controlled only for NS and AT or AT reasons only and are not on the Wassenaar Arrangement's Sensitive List or Very Sensitive List.
- Activities involving all other installed base items listed on the CCL will require a BIS license to overcome the prohibition.

- Persons should consult Section 764.7 for further information regarding the reporting or, if applicable, licensing requirements pertaining to installed base items.