6. Libya (Section 746.4)

Export Control Program Description And Licensing Policy

On August 5, 1996, the President signed into law the Iran and Libya Sanctions Act (ILSA). The Department of State implements this law. ILSA aims to induce Iran and Libya to change their behavior by limiting their ability to develop their petroleum resources, thus restricting their access to the finances they need to develop and acquire weapons of mass destruction and to support terrorism. 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 be engaged in sanctionable activity described in ILSA.

ILSA is the most recent action in a long history of difficult U.S. relations with 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 sanctions against Libya under the authority of the International Emergency Economic Powers Act (IEEPA). The Department of the Treasury administers the export restrictions 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 that Department.[1]

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 103. 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 bombings 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, the Resolution 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 the Addendum to this chapter. 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.

There were no major changes to the licensing policy toward Libya in 1997; 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. While 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.

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.

A. Reexport authorization is required for foreign policy purposes for export from third countries to Libya of all U.S.-origin goods, technology or software, <u>except</u> 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, <u>except</u> 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 on a case-by-case basis 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 approved, subject to any other licensing policies applicable to a particular transaction and subject to U.N. Resolutions.

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

<u>A. The Purpose of the Control</u>

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. Most recently, reexport prohibitions were reinforced for certain oil terminal and refining equipment, plus items used to service or maintain Libyan aircraft and airfields. 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 bulk of U.S. controls were imposed 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. The European Union and the Group of Seven in 1986 approved unanimous steps against Libya including restrictions on Libyan officials in Europe and a ban on new arms sales. There has generally been effective implementation by the international community of 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 FY1997 Commerce did not approve any applications for exports or reexports to Libya. In fact, there were no applications for exports submitted to the Bureau of Export Administration (BXA) for consideration. However, Commerce denied applications for 13 reexport authorizations for commodities valued at $12.5 million. One other reexport application worth $3.5 million was returned without action. Consequently, U.S.-origin products comprised a negligible percentage of Libyan imports in FY 1997; as opposed to FY 1985 when U.S. exports to Libya totaled about $310.2 million.

U.S. exports to Libya have declined steadily since 1979, when export controls were first tightened. Since then, export authorizations have, for the most part, been issued 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.

The Libyan economy depends primarily upon revenues from the oil sector, which contributes practically all export earnings and about one-third of GDP.[3] Windfall revenues from the rise in world oil prices in late 1990 improved Libya's foreign payments position and resulted in a current account surplus. The non-oil manufacturing and construction sectors, which account for about 20 percent of GDP, have expanded from processing mostly agricultural products to include petrochemicals, iron, steel, and aluminum. Although agriculture accounts for only five percent of GDP, it employs about 18 percent of the labor force. Climatic conditions and poor soils severely limit farm output, and Libya imports about 75 percent of its food requirements.

UN sanctions imposed in April 1992 have not yet had a major impact on the economy because Libya's oil revenues generate sufficient foreign exchange that, along with Libya's large currency reserves, sustain food and consumer goods imports as well as equipment for the oil industry and ongoing development projects. In 1994, Libyan imports totaled $6.9 billion (f.o.b., estimated), compared to exports of $7.2 billion (f.o.b., estimated). The sanctions have, however, had an effect in painting Libya as a rogue nation.

Libya's leading trading partners in 1995 were Italy and Germany, which were Libya's largest suppliers of imported goods as well as Libya's leading export markets. Nearly all of Libya's exports to these two countries are crude oil. Germany and Italy in turn have invested heavily in Libyan oil production, and German firms plan major new investment. Germany's exports to Libya consist mainly of machinery (30 percent of total export value) and agriculture-related goods (19 percent). The remainder are largely vehicles, electrical and electronic equipment, metal stock, and chemical processing equipment. Italy primarily exports refined petroleum products, cereal products, and animal feed.

Libya's principal imports, in dollar value, from all major industrialized nations include: cereals and cereal products (France, Canada), iron and steel (Japan, France, Italy), road vehicles (Germany, Japan), general industrial machinery and equipment (Germany, U.K.), specialized machinery (Germany, Italy), power generating machinery (Germany), chemical materials and products (U.K.), and animal feed (Italy).

Table 1. Libyan Imports from Selected Countries, 1990-95 (million U.S. $)

Country	1990	1991	1992	1993	1994	1995**
Leading Industrialized Nations						
Canada	45.43	49.60	66.85	69.70	48.61	n.a.
France	378.18	334.01	322.28	362.26	255.70	214
Germany*	751.18	691.43	609.22	761.85	638.48	466
Italy	1,060.54	1,363.76	1,074.23	1,189.30	n.a.	719
Japan	137.05	138.53	140.15	152.06	n.a.	n.a.
U.K.	438.22	451.47	400.72	411.42	295.44	n.a.

Country	1990	1991	1992	1993	1994	1995**
Leading Industrialized Nations						
U.S.	n.a.	1.2	1.2	1.1	2.5	n.a.
Other Nations						
Belgium/Luxemburg	148.25	153.05	96.58	151.68	n.a.	n.a.
China	n.a.	n.a.	86.62	45.24	29.51	23
Denmark	36.15	24.44	17.89	20.72	n.a.	n.a.
Greece	67.02	68.49	62.11	64.87	n.a.	n.a.
Ireland	49.19	17.62	18.52	30.31	n.a.	n.a.
Netherlands	228.07	188.37	171.36	236.60	n.a.	n.a.
Portugal	18.19	1.05	4.16	2.53	n.a.	n.a.
Spain	65.63	68.41	38.87	76.51	118.80	n.a.

* 1990 figures are for West Germany.
** First three quarters of 1995 only.

Source: Figures for 1990 to 1994 are from United Nations Trade Statistics, as reported by exporting countries. 1995 figures were reported by the U.S. Embassy in Bonn.

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 Iran's or 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. Effective August 6, 1997, the $40 million threshold dropped to $20 million for investments in Iran (but not Libya).

5. Enforcement of Control. It is not possible to monitor all trade with Libya in non-strategic items. However, it appears that 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 subsidiaries of U.S. multinational companies. The controls on aircraft traditionally have posed enforcement problems because in reality they have resulted in a complete embargo of all reexports of U.S.-origin aircraft parts, components and avionics, including the servicing of U.S.-origin aircraft, or foreign-manufactured aircraft with any U.S. content. The 1992 and 1993 UNSC Resolutions, which imposed an international embargo on civil aviation items to Libya, assist U.S. efforts to maintain these controls. The reexport controls on aircraft parts to Libya require significant enforcement and diplomatic resources. Commerce will continue to aggressively enforce all controls concerning Libya.

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

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

These controls complement diplomatic measures that have been, and will continue to be used, to influence Libyan behavior. In January 1986, the United States implemented a comprehensive trade embargo against Libya which remains in force. 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.

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.[4] 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.

ADDENDUM

Restricted Reexports to Libya

Effective December 1, 1993

A. Oil Terminal and Refining Equipment

1. Pumps of medium or large capacity whose capacity is equal to or larger than 3500 cubic meters per hour and drivers (gas turbines and electric motors) designed for use in the transportation of crude oil and natural gas.

2. Equipment designed for use in crude oil export terminals, as follows:

- o Loading buoys or single point moorings;
- o Flexible hoses for connection between underwater manifolds (plem) and single point mooring and floating loading hoses of large sizes (from 12-16 inches);
- o Anchor chains.

3. Equipment not specially designed for use in crude oil export terminals, but which because of its large capacity can be used for this purpose, as follows:

- o Loading pumps of large capacity (greater than 4000 m3/h) and small head (10 bars);
- o Boosting pumps within the same range of flow rates;
- o In line pipeline inspection tools and cleaning devices (i.e. pigging tools) (16 inches and above);
- o Metering equipment of large capacity (1000 m3/h and above).

4. Refinery equipment, as follows:

- o Boilers meeting American Society of Mechanical Engineers 1 standards;
- o Furnaces meeting American Society of Mechanical Engineers 8 standards;
- o Fractation columns meeting American Society of Mechanical Engineers 8 standards;
- o Pumps meeting American Petroleum Institute 610 standards;
- o Catalytic reactors meeting American Society of Mechanical Engineers 8 standards; and
- o Prepared catalysts including catalysts containing platinum and catalysts containing molybdenum.

5. Spare parts for any item above.

B. Items Used to Service or Maintain Aircraft and Airfields

1. Any aircraft or aircraft components.

2. Engineering or maintenance servicing of any aircraft or aircraft components.

3. Any materials destined for the construction, improvement or maintenance of Libyan civilian or military airfields and associated facilities and equipment. **Note:** Emergency equipment and equipment and services directly related to civilian air traffic control are exempt from this control and reexport applications for such will continue to be reviewed on a case-by-case basis.

4. Any engineering or other services or components destined for the maintenance of any Libyan civil or military airfields and associated facilities and equipment. **Note**: Emergency equipment and equipment and services directly related to civilian air traffic control are exempt from this control and reexport applications for such will continue to be reviewed on a case-by-case basis.

5. Any advice, assistance or training to Libyan pilots, flight engineers, or aircraft and ground maintenance personnel associated with the operation of aircraft and airfields within Libya.

ENDNOTES

1. *Though the Libyan Sanctions Regulations encompass 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 IEEPA authorities are revoked.*

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

3. *The World Factbook, 1995, Central Intelligence Agency.*

4. *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.*