

Middle East Export Controls: Libya, Syria and Shifting Sands

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On April 23, 2004, the Department of the Treasury's Office of Foreign Assets Control ("OFAC") rolled back the embargo controls prohibiting exports and reexports of products and technical data to Libya and transferred licensing jurisdiction for items subject to the Export Administration Regulations ("EAR") to the Department of Commerce's Bureau of Information and Security ("BIS"). The termination of the 1986 Libya Sanctions Regulations reflects the satisfaction of the Bush administration with Libya's continuing efforts to dismantle its weapons of mass destruction and missile programs and adhere to its renunciation of terrorism.

On May 14, 2004, the Bureau of Information and Security issued General Order No. 2 (amendment to the EAR) implementing the Syria Accountability and Lebanese Sovereignty Act ("SAA") signed into law by President Bush on December 12, 2003. The SAA was passed by Congress to sanction Syria for its perceived support for terrorism and weapons of mass destruction programs and its occupation of Lebanon. Recent negotiations conducted between the State Department and the Syrian government to address these issues failed to yield concrete results. Accordingly, the issuance of General Order No. 2 reflects President Bush's decision to proceed with the SAA's (i) general embargo prohibiting the exportation of all EAR items to Syria, and (ii) implementation of two of the specific sanctions outlined in the SAA.

This Alert discusses key provisions of the revised export controls and their impact on the export or reexport of dual use items to Libya and Syria.

Relaxed Export Controls and New Opportunities in Libya.

Libya remains in country groups E:1, D:2, D:3 and D:4 but has been removed from County Group E:2 ("Unilateral Embargo"). As a result, certain license exceptions such as TMP, GOV, TSU, BAG, RPL, and AVS may now be available in whole or in part.

Items subject to the EAR but not listed on the Commerce Control List ("CCL") – so-called EAR99 items – may now be shipped to Libya without a license (subject to general restrictions regarding end-user and end-use controls referenced in Part 744 of the EAR).

Libya remains on the list of designated state sponsors of terrorism. Most items controlled for anti-terrorism reasons will continue to require a license for export or reexport to Libya. It should be noted that some CCL items, such as those controlled under ECCN 3A999, will not require a license. (See generally Supplement No. 2 to Part 742).

ECCN items controlled for national security (NS), missile technology (MT – *general policy of denial*), chemical and biological weapons (CB – *general policy of denial*),

encryption (EI), short supply (SS), chemical weapons (CW – general policy of denial), nuclear nonproliferation (NP), crime control (CC), regional stability (RS), computers (XP) and Significant Items (SI) will require a license for export or reexport to Libya in substantially all cases.

The “de minimus” rules applicable to Libya remain unchanged. Reexports of items to Libya from abroad (e.g., foreign manufactured items) are subject to the EAR when the U.S.-origin content of such items exceeds 10% and would require a license if exported or reexported to Libya as an individual component.

Tightening Noose Restricts Opportunities in Syria

General Order No. 2 revokes all licenses and other authorizations for export or reexport of EAR items (except food and medicine discussed below). However, exporters may submit new license applications for any transaction that is eligible for case-by-case review.

Items that are on the dock for loading, laden aboard an exporting carrier, or en route aboard a carrier to a port of export on May 14, 2004 remain subject to the preexisting licensing rules. However, any such items that are not exported or reexported by midnight on May 28, 2004 will be subject to the revised export license standards set forth in General Order No. 2.

Food and medicines classified as EAR99 may continue to be shipped without a license. However, all medical devices require a license – subject to case-by-case review. (See Part 772 of the EAR which defines “medicine” and “medical device”).

Limited license exceptions (or portions thereof) will be available: (i) TSU – for operation technology and software, sales technology and software updates (ii) TMP - items for use by the news media; (iii) GOV – items for personal or official use by U.S. Government agencies and personnel; (iv) BAG – personal baggage of individuals leaving the United States; and (v) AVS – reexport of civil aircraft on temporary sojourn in Syria.

Recommended Actions.

Reassess Middle East business strategies with the Libya and Syria export control revisions in mind. Train and educate all export sales personnel and international distributors on the essential provisions of the revised export controls. *Export control violations in the Middle East tend to be treated with greater severity than other destinations.*

Review and confirm the ECCN classifications applicable to exported technology and products. Wherever practicable, written classification opinions should be obtained by BIS, including confirmation for EAR99 items. *While not legally required, BIS classification opinions can play an important role (e.g., transition of internal export administration personnel, government audits and customs detentions).*

