State Department Issues Nuts and Bolts Guidance on Libya

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On May 10, 2013, the U.S. State Department issued unusually practical guidance (the Guidance) on exporting to Libya. The Guidance, which even has a practical name – "Direct Commercial Sales of Defense Articles and Services to Libya" – is available here.

For many years, the United States has imposed extensive restrictions on exports of defense articles to Libya. Since February 2011, unilateral U.S. restrictions on such exports have been buttressed by an arms embargo imposed on the country by the United Nations. Under part 126 of the U.S. International Traffic in Arms Regulations (ITAR), UN arms embargoes essentially have direct effect under U.S. law. With respect to Libya, this means that section 126.1(k) of the ITAR tracks the restrictions that the United Nations has imposed on Libya.

The Guidance seems to be something of a response to, and an effort to help exporters comply with, a recent UN Security Council Resolution related to Libya (UNSCR 2095). According to the Guidance, UNSCR 2095, which was adopted in March 2013, "modified the UNSC notification requirements for some types of exports." The Guidance continues that the UN embargo "has a number of exceptions which allows for some types of defense sales to the Government of Libya …."

The nature of those exceptions is notable; arms related to security and disarmament are excepted, as are small arms and other light weapons intended for the use of UN or media personnel. What is more notable in our view, however, is that the State Department then continues with practical instructions for submitting an application for export to Libya. For example, the Guidance states that license applications "must provide specific justification on how the proposed export meets the UNSC exception criteria." The Guidance also explains that for "approved sales that require UNSC notification, the U.S. Government will notify the proposed sale on behalf of the exporter using the justification provided in the license application."

The impetus for the release of the Guidance is unclear. Perhaps the government is getting inquiries about defense exports to Libya, or maybe there is a surplus of questions from U.S. defense contractors that set up operations in Libya after the United States eased economic sanctions on the country in 2004. Whatever the reason, we commend the Guidance to anyone considering exporting to Libya; we likewise commend the State Department for developing this sort of granular level guidance on complex export transactions.

National Law Review, Volume III, Number 162