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SPECIAL REPORT-- U.S.-LIBYA TRADE AND INVESTMENT

LIBYA'S DUAL TRANSITIONS PROMISE TO OPEN TRADE, INVESTMENT

As Libya emerges from 30 years of state-controlled socialism and 11 years of global trade sanctions, U.S. and foreign companies are racing to renew trade and investment ties with the oil-rich nation but are frustrated by Libyan bureaucratic indecision and U.S. export controls that remain in place. Although foreign firms have gotten a head start on U.S. companies, Libyan officials indicate that they are willing to wait for the Americans to catch up because they want U.S. products and technology and like the way Americans do business.

> [EDITOR'S NOTE: This issue of WTTL provides a special report based on our coverage of the U.S.-Libya Economic Summit in Tripoli, Libya, Dec. 6-7. Our affiliated publication, ***The Export Practitioner***, was a media partner for this private-sector conference which featured key Libyan economic officials, American industry representatives and international trade and investment experts. A more detailed report will appear in the December issue of ***The Export Practitioner,*** which will be sent free to WTTL subscribers on request.]

The major driver of Libya's future economic development clearly will be oil, which accounts for 30% of the country's GDP, 95% of its exports and 75% of government receipts. U.S. oil firms, which were forced to leave the country after the U.S. imposed sanctions on Tripoli in 1986, are poised to return. Foreign presence in Libya is expected to increase with the opening of investment opportunities and the privatization of state-owned enterprises. But the slow process for this economic activity is producing a "hurry-up-and-wait" situation for many firms.

IMPROVEMENT EXPECTED FOR VISA, EXPORT CONTROLS

For American firms trying to do business in Libya, two of the main problems -- U.S. export controls and getting visas for travel to Libya -- could see major improvement during the first half of 2005. Both problems are tied to Libya's continued presence on the list of state sponsors of terrorism. U.S. and Libyan officials "at the senior level" are discussing the issue, and U.S. concerns could be resolved during the first quarter of next year, says Gregory Berry, chief of the U.S. liaison office in Tripoli. The Libyans are providing U.S. officials with evidence to demonstrate they are no longer supporting terrorism and are not continuing their vendetta against the Saudi Arabian royal family. "They have offered credible evidence," Berry told WTTL. "We need to work through the facts," he added. "When the president decides to

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send a letter to Congress notifying Congress that he is removing Libya from the list and asking for congressional concurrence, he naturally wants to be absolutely sure he is in command of all the facts," he explained. The removal of Libya from the list will lead to the lifting of the U.S. arms embargo and the resumption of Munitions List exports. It is also likely to ease licensing delays for Commerce Control List (CCL) items in the Bureau of Industry and Security (BIS).

> One U.S. executive whose firm has already returned to Libya told WTTL that it has taken over four months to get approvals for some CCL licenses it has submitted to BIS. Another executive, James LeJeune, president of ChevronTexaco's Middle East and North Africa operations, said import and export license hurdles have delayed the opening of the company's office in Tripoli.

The end of terrorism controls will allow Washington to establish formal diplomatic relations with Libya and open of a U.S. embassy in Tripoli. The opening of an embassy is "a political issue," Berry said. An announcement on the terrorism issue will probably wait until Condoleezza Rice is confirmed as the new secretary of State, Berry said. "I'm optimistic that some time during the first quarter of next year we'll be able to announce a decision," he added.

Even before the appointment of an ambassador to Libya, the U.S. is likely to open a chancery, which will allow the staff in Tripoli to begin processing visa applications. Libyans now have to go to Tunisia or Malta to apply for U.S. visas, and tougher post 9/11 visa procedures have delayed the processing of applications. A Libyan employee of one U.S. firm told WTTL he has been waiting two months for a visa. "We need offices we can secure," Berry explained. "When we have our properly secured procedures in place, then we can begin issuing visas."

Speaking to the conference, Berry said he is getting 200 inquiries a week from U.S. companies wanting to do business in Libya. He noted steps Libya has taken liberalize its economy. "Libya's leaders have taken important strides in many of these fronts," he said. In July, Libya filed its application for membership in the World Trade Organization (WTO). Despite this progress, "much remains to be done," he cautioned. Despite the past tensions between the U.S. and Libya, Berry said Americans have been welcomed since the lifting of sanctions. "We have been pleased by the warm reception we have been given by the people we have met in the shops and in the street," he said. Berry can be reached in Tripoli at 218-21-335-1844.

LIBYAN INVESTMENT LAWS OFFER PROTECTION FOR FOREIGN FIRMS

On paper, at least, Libyan laws and regulations for foreign investment include many of the protections international corporations demand when they invest in a country. Law No. 5 and its implementing regulations were enacted in 1997, with additional regulatory changes added in 2002. So far there has been little experience demonstrating how these rules really are enforced, so foreign investors coming into Libya will operate on faith that the law will be applied as it is written and not changed after they arrive.

> "The law aims to encourage direct foreign investment in such sectors as industry, agriculture and services," said Libyan Foreign Investment Board President Rajab Shiglabu.. "It has become obvious to most countries of the world that investment is not any more a colonial instrument used to expropriate a nation's wealth as it used to be in the past," he said.

Law No. 5 covers such sectors as transportation, health, education, and maritime services. The oil, gas and banking sectors are covered by separate laws and rules. The law provides incentives for investors including exemption from some tariffs and import fees as well as income taxes for five years. It allows export of production and repatriation of profits and provides for arbitration of disputes in Libyan courts. Foreign investors need to be registered and have their investments approved by the Investment Board. The board has already approved 91 investments, including 41 in 2004. Investment in tourism, which is expected to be a major target in the coming years, is handled by the Libyan Secretary for Tourism. Top officials of the

Marriott Corp. reportedly have already visited Libya to discuss investment plans. To date, no American company has applied to invest in Libya outside of the oil and gas sector. Foreign investors have come from Malta, Tunisia, Egypt, Britain, France and Germany. New foreign investment that has already come into Libya includes a Pepsi plant and a Swiss medical clinic, Shiglabu told WTTL after his presentation. [**Editor's Note**: A copy of Libya's Law No. 5 and executive regulations will be sent free to WTTL subscribers on request.]

> Foreign investment won't be permitted for now in the banking sector. Libya plans to privatize two publically-owned banks, but ownership will be restricted to Libyans, Shiglabu reported. The banks are under the control of the Libya Central Bank. "The Central Bank is going after the upgrading of the Libyan banks to introduce modern technologies and upgrade to international standards so that when the time is suitable to permit foreign banks to come to Libya then the Libyan banks will be in a position to compete with the foreign banks," he said.

LIBYA'S PRIVATIZATION PROGRAM MAY OFFER FEW OPPORTUNITES

Of the 361 government-owned enterprises that Libya has said it plans to privatize, only 69 will be available to foreign investors to buy, Libyan officials explained at the Dec. 6-7 U.S.-Libyan Economic Summit in Tripoli. Most of the businesses being put on the block for sale are small to medium size operations with $50,000 to $1 million in sales. Several companies, however, that will be opened to foreign investors are valued at $1 billion to $3 billion dollars, the Libyans claim. These include Libyan glass, cement, steel and airline companies.

> Libya nationalized most of its industries, including the banks, in the early 1970s. The failure of its socialist business model, combined with the United Nations embargo, has left many of these companies uncompetitive with old equipment and technology. "The performance of the public sector always has problems and shortcomings," conceded Mahamud Ahmed Al-Frise, secretary general of the General Board of Ownership Transfer (GBOT), the Libyan body responsible for overseeing the privatization program.

The privatization program is divided into three stages. The first, which involves 260 entities, started in 2004 and should be completed in 2005. The second stage will privatize an additional 46 entities and will stretch into 2007. The last stage will cover 54 entities and will continue into 2008. The program requires each company's workers to be given the opportunity to buy up to 30% of the enterprise. The remaining 70% is open to private investors, with foreigners allowed to own a majority of the business in which they are permitted to invest.

So far, Tripoli has privatized 41 firms; has 55 more deals close to completion and is evaluating 80. None of these involve foreign investors. The first sector likely to open to foreign bids is cement production. The implementation of the privatization program has raised many questions, and the end result is still uncertain. "There is still internal dialogue and with external partners as far as the best structure for going forward with the implementation," Ahmed Ali Attiga, a representative of the World Bank's International Finance Corporation (IFC), told the conference. "This can create a sense of uncertainty," he added. From the discussions IFC has had with Libyan officials, the process "is going on a steady path," Attiga observed.

U.S. OIL INDUSTRY EAGER TO GET BACK INTO LIBYA

American oil firms that were forced to leave Libya when the U.S. imposed trade and investment sanctions on Tripoli in 1986 are poised to resume their old role in the country's oil and gas sector. Some will pick up where they left off as partners in the Oasis-Waha oil consortium, while others will be bidding on new fields Libya is opening to foreign oil firms for the first time. While members of the Oasis group, Ameralda Hess, ConocoPhillips and Marathon have a preferential arrangement with the Libyans, other U.S. firms will be bidding against foreign oil companies from China, Japan, Ukraine, Russia and China. U.S. and European oil executives say they are concerned that some of these foreign firms, which don't have to answer to stockholders, could outbid them for the nine land and six offshore sites being opened.

> The winning bidders will become partners with Libya's National Oil Corporation (NOC) in an exploration and production sharing arrangement known as EPSA IV. The awarding of these contracts is seen as a test of Libya's new economic reforms and commitment to a transparent and corruption-free oil sector. After EPSA-IV is completed, Libya plans to open 89 additional sites

In the pre-qualification stage, 123 foreign firms submitted documentation to demonstrate their ability to explore and develop the areas open for bid. Of these, only 65 were deemed qualified to submit bids. The bids, which are due to be submitted around Jan. 19, will essentially be one piece of paper stating the split the bidder is willing to offer NOC as part of the deal. It will state what percent of the oil that is produced will go to the private firm and what percent will go to NOC. "It's a real Dutch auction," one industry executive told WTTL.

Although the bidding process has received praise for its fairness, transparency and speed, oil industry consultants have noted some shortcomings in the process. Selecting winners based only on their bids doesn't take into account the technology, know-how and experience some firms could bring to a project. But oil industry executives also point to the problems Libya has had with an earlier effort, EPSA-III, which also sought foreign partners for exploring and developing new areas in Libya. EPSA-III was a negotiated process which has still not been completed because of the difficulty the Libyans have had reaching deals with participants.

Initially, U.S. oil firms will work with local Libyan suppliers or use equipment left over from the days before they pulled out of the country. "We're trying to see what's available and what's not available," ChevronTexaco's James LeJeune told WTTL. "As we get in we will help establish the linkages" with U.S. suppliers, he noted.

* * * BRIEFS * * *

BIS: Under Secretary Ken Juster will leave BIS post Jan. 7 to become executive VP for legal affairs and corporate development at Salesforce.com in San Francisco. Separately, Assistant U.S. Attorney Wendy Wysong has been named BIS Deputy Assistant Secretary for Export Enforcement. She will be acting assistant secretary as well. Wyong, who starts at BIS Dec. 13, has participated in several major export enforcement prosecutions in Justice's major crimes section.

ENCRYPTION: BIS in Dec. 9 Federal Register issued final rule revising encryption export controls. Among changes are new criteria for determining if foreign-made item incorporat-ing U.S. origin encryption is subject to EAR; notification requirements for beta tests and "publicly available" encryption software; and revisions to License Exception ENC.

EXPORT ENFORCEMENT: In settlement with BIS, Criticare Systems of Waukesha, Wis., agreed to pay $45,000 civil fine to resolve charges related to unlicensed exports of medical equipment to Iran. In separate deals related to exports to Indian organizations on Entity List, Terra Universal of Anaheim, Calif., agreed to $6.000 fine and E.A. Fischione Instruments of Export, Pa., agreed to pay $6,300 penalty.

WTO: As previously reported by WTTL, EU will nominate former Trade Commissioner Pascal Lamy to be next WTO director general (see **WTTL**, Nov. 22, page 4).

US.-EU: USTR Robert Zoellick and new EU Trade Commissioner Peter Mandelson met Dec. 6 in Paris for first formal talks since Mandelson took new post. After 3 1/2 hours no progress reported on key disputes.

BEDROOM FURNITURE: ITC Dec. 10 made final determination that dumped wooden bedroom furniture from China is injuring U.S. industry. Vote was 6-0.

ITC: Commissioners Charlotte Lane and Daniel Pearson Dec. 7 were sworn in for full terms ending December 2009 and June 2011, respectively, following Senate confirmations Nov. 21

STATE: DDTC posted new guidance on Munitions List licensing requirements for foreign nationals.