
United States Eases Cuban Embargo

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Today, the Obama Administration published regulatory changes, effective immediately, that will significantly ease the US embargo against Cuba, which has been in place since 1963. These changes give effect to the Obama Administration's new policy towards Cuba that was announced on December 17, 2014 to normalize US-Cuba relations.

The changes will create economic opportunities in Cuba for a wide range of industries, including travel and carrier services, insurance, telecommunications and consumer communications, financial services, agriculture, media, construction, shipping, and many others. For potential business opportunities not covered by the new general authorizations, licensing agencies will likely review more favorably specific license applications.

However, changes to the US trade embargo against Cuba remain incremental, and key elements of the embargo remain in place. Although the Executive Branch has discretion to alter certain aspects of the embargo, various statutes enacted over the past decades (such as the Cuban Liberty and Democratic Solidarity Act (LIBERTAD or the Helms-Burton Act)) have codified the basic architecture of the US sanctions regime, and several members of Congress have questioned the President's authority to implement the new changes. We expect legislative activity in the near future that will attempt to limit and clarify Executive Branch authority relating to Cuba sanctions and Cuba policy more broadly.

The US Department of the Treasury's Office of Foreign Assets Control (OFAC) has already published Frequently Asked Questions (FAQs) regarding its new regulations, but many questions about the operation of today's changes remain.¹ Over the next weeks and months, firms with potential business in Cuba should closely monitor further changes to the Cuba sanctions regulations and clarifying guidance, as well as congressional action to limit such changes.

Sectors Affected by the Regulatory Changes

This initial easing of the US embargo has been accomplished through the issuance of general licenses, the expansion of certain license exceptions, and other clarifications in the Cuban Assets Control Regulations,² administered by OFAC, and the Export Administration Regulations,³ administered by the US Department of Commerce's Bureau of Industry and Security (BIS).

The changes to the Cuban embargo include the following categories:⁴

Travel to Cuba

The changes significantly ease regulatory impediments to Cuba travel:

- New general licenses have been issued for travel falling into 12 categories previously authorized by specific license, including: journalistic activity; professional research and professional meetings; educational activities; religious activities; activities of private foundations or research or educational institutes; and exportation, importation, or transmission of information or information materials.
- The limit on expenditures during travel to Cuba has been lifted, and authorized travelers will be allowed to engage in transactions incident to travel within Cuba.
- Authorized travelers will be allowed to use US credit and debit cards in Cuba.⁵
- Authorized travelers may make arrangements through any service provider that complies with OFAC regulations governing travel services to Cuba.

The authorization does not cover travel to Cuba for tourist activities.⁶

Financial Services

OFAC regulations now permit US depository institutions to open correspondent accounts at Cuban financial institutions to facilitate the processing of authorized transactions, but Cuban banks are not permitted to open such accounts in the United States.⁷ Moreover, US financial institutions may enroll merchants and process credit and debit card transactions for travel-related and other transactions in Cuba. US financial institutions may also unblock the accounts of Cuban nationals (except government officials or Communist party members) who have taken up permanent residence outside Cuba and do not intend to return to Cuba. Such institutions may rely on a variety of evidence that the Cuban national qualifies for such unblocking, including government-issued identification or sworn statements.⁸

Telecommunications and Consumer Communications

The changes significantly expand opportunities for communications with and within Cuba:

- An OFAC general license now facilitates the establishment of commercial telecommunications facilities (including fiber-optic cable and satellite facilities) linking the United States, third countries, and Cuba and within Cuba.
- A new BIS license exception now permits the commercial export of certain items that will contribute to the ability of the Cuban people to communicate within Cuba and around the world. This includes the commercial sale of certain consumer communications devices, related software, applications, hardware, and services, and items for the establishment and update of communications-related systems.
- An OFAC general license now authorizes additional services incident to Internet-based communications and related to exports of communications items.

- A separate, revised BIS license exception, “Consumer Communications Devices” (CCD), expands the existing authorization for exports to Cuba of certain consumer computers, disk drives, monitors, printers, modems, network access equipment, mobile phones, and certain other commodities and software.⁹

Other Opportunities for US Exports

BIS has also created a new license exception, “Support for the Cuban People” (SCP), that authorizes exports in three areas: improving living conditions and supporting independent economic activity; strengthening civil society; and improving communications:

- To improve living conditions and support independent economic activity, SCP authorizes exports of building materials, equipment, tools and other supplies for use in certain private sector construction and renovation activities. SCP also authorizes exports of tools, equipment, supplies, and instruments for use by private sector entrepreneurs, and exports of tools and equipment for private sector agricultural activity.
- To strengthen civil society, SCP authorizes exports of donated items and temporary export by travelers to Cuba of items for use in scientific, archaeological, cultural, ecological, educational, historic preservation, or sporting activities, as well as exports to human rights organizations, individuals, or non-governmental organizations that promote independent activity intended to strengthen civil society. Travelers are also able to export temporarily items for use in professional research in the traveler’s profession or full-time field of study.
- To improve communications, SCP authorizes exports of items for telecommunications, including Internet access, use of Internet services, and the creation and upgrading of telecommunication infrastructure. SCP also provides new authorizations for exports to Cuba of items used by the news media.¹⁰

OFAC regulations also reinterpret “cash in advance” from “cash before shipment” to “cash before transfer of title to, and control of,” which will allow authorized exports to receive expanded financing.

Insurance

US insurers are now authorized to provide coverage for global health, life or travel insurance policies for individuals residing in a third country who travel to or within Cuba. Furthermore, health, life and travel insurance-related services will continue to be permitted for authorized US travelers to Cuba.

Importation of Cuban Goods

Authorized US travelers may import up to \$400 worth of goods acquired in Cuba for personal use, including no more than \$100 of alcohol or tobacco products.

Remittances

Remittance levels have also been substantially raised:

- General remittances have been raised from \$500 to \$2,000 per quarter (except to certain officials of the government or the Communist party) and other types of remittances will no longer require specific licensing.
- Certain other remittances for humanitarian projects and development of private businesses and farms are permitted without limitation.
- Authorized travelers are now allowed to carry \$10,000 in total family remittances, periodic remittances, and remittances to religious organizations in Cuba.
- OFAC has also issued a general license for banking institutions (including US-registered brokers or dealers) in securities and US-registered money transmitters to process authorized remittances to Cuba.

Third-Country Services to Cubans

US-owned or US-controlled entities in third countries (including banks) that are currently prohibited from dealing with Cuban individuals are now generally licensed to do so (but this license does not cover any export of goods or services to Cuba itself). In addition, new general licenses unblock the accounts at US banks of Cuban nationals who have relocated outside of Cuba; permit US persons to participate in third-country professional meetings and conferences related to Cuba; and allow foreign vessels to enter the United States after engaging in certain humanitarian trade with Cuba.

Small Business Growth

OFAC regulations now authorize certain micro-financing projects and entrepreneurial and business training in Cuba, such as for private business and agricultural operations. Moreover, commercial imports of certain independent Cuban entrepreneur-produced goods and services (as determined by the State Department at a future date) are authorized.

Supporting Diplomatic Relations and Official Business

An OFAC general license has been issued to authorize transactions with Cuban official missions and their employees in the United States, as well as transactions with Cuba by employees, grantees, and contractors of the US government, foreign governments, and certain international organizations in their official capacities.

Review of Cuba's Designation as a State Sponsor of Terrorism

The President has also instructed the Secretary of State to review Cuba's designation as a state sponsor of terrorism, which has been in place since 1982. The removal of this designation would result in the easing of a variety of additional sanctions and export restrictions against Cuba.

¹See US Department of the Treasury, *Frequently Asked Questions Related to Cuba*, Jan. 15, 2015,

accessed at http://www.treasury.gov/resource-center/sanctions/Programs/Documents/cuba_faqs_new.pdf.

² 31 C.F.R. Part 515.

³ 15 C.F.R. Parts 730-774.

⁴ US Department of the Treasury, *Fact Sheet: Treasury and Commerce Announce Regulatory Amendments to the Cuba Sanctions*, Jan. 15, 2015, accessed at <http://www.treasury.gov/press-center/press-releases/Pages/jl9740.aspx>.

⁵ However, the regulations do not require financial institutions or credit card companies to accept or facilitate such authorized transactions.

⁶ See OFAC FAQ #7.

⁷ See OFAC FAQ #33.

⁸ See 31 C.F.R. § 515.505.

⁹ Previously, CCD required that items be donated to Cuba; the newly expanded CCD removes the donation requirement and expands the list of eligible items.

¹⁰ The authorizations generally cover only EAR99 items (low-technology consumer goods) and those items listed on the Commerce Control List controlled *only* for anti-terrorism purposes. They do not authorize the export of items on the Commerce Control List for sensitive reasons such as national security, nuclear proliferation, regional stability, missile technology, and other reasons of similar sensitivity.

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