

International Trade Alert

March 17, 2016

If you read one thing...

- The latest relaxation of sanctions provides greater opportunities for certain U.S. businesses to engage with Cuba. U.S. exporters of authorized or exempt goods, entities providing mail or parcel transmission services or cargo transportation services, and providers of carrier and travel services are now able to establish a business presence, such as a joint venture, in Cuba to facilitate authorized transactions.
- The changes also ease restrictions on cargo shipping by allowing cargo vessels from the United States to transit through Cuban territory en route to other countries without obtaining a specific license.
- The changes expand Cuban access to U.S. financial institutions by authorizing U.S. banks to process “U-turn” payments and U.S. dollar monetary instruments for transactions involving Cuban persons.
- In addition, U.S. persons may now travel to Cuba independently for authorized “people-to-people” educational trips that are intended to enhance contact with the Cuban people.



Obama Administration Further Eases Sanctions in Advance of Cuba Visit

On Wednesday, March 16, 2016, the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) and the U.S. Department of Commerce’s Bureau of Industry and Security (BIS) implemented amendments to the [Cuban Assets Control Regulations \(CACR\)](#) and [Export Administration Regulations \(EAR\)](#) that further ease the U.S. sanctions and export controls targeting Cuba, particularly related to financial transactions, travel and certain trade-related activities. These changes immediately precede President Obama’s visit to Cuba next week, building upon the previous lifting of sanctions that occurred in [January 2015](#), [September 2015](#) and [January 2016](#), and supplementing the upcoming resumption of commercial air services between the United States and Cuba.

Notwithstanding these latest changes, however, the U.S. embargo against Cuba continues to broadly restrict trade, transactions and travel between the two countries, absent general or specific authorization by OFAC and/or BIS. Moreover, OFAC continues to penalize companies for violating these rules.

Overview of Amendments

Banking and Financial Services

OFAC now generally authorizes U.S. banking institutions to process “U-turn” transactions in which Cuba or a Cuban national has an interest. This important change allows Cuban funds originating from a non-U.S. bank to be cleared through U.S. banks and transferred back to a non-U.S. bank. Under this new authorization, neither the originator nor the beneficiary of the transaction can be a person subject to U.S. jurisdiction, unless otherwise authorized or exempt under the regulations.

Additionally, U.S. banks can now process U.S. dollar monetary instruments (e.g., cash and traveler’s checks) that are presented indirectly by Cuban financial institutions. OFAC has also authorized U.S. banks to open correspondent accounts denominated in U.S. dollars at Cuban financial institutions to facilitate these authorized transactions. However, Cuban banks are not generally authorized to open correspondent accounts with banks subject to U.S. jurisdiction.

Finally, U.S. banks can also now open and maintain accounts in the United States for Cuban nationals located in Cuba for the purposes of receiving payments in the United States for authorized or exempt transactions under the CACR and to remit such payments back to Cuba.

Business Presence in Cuba

OFAC has expanded its authorization for certain types of companies subject to U.S. jurisdiction to establish and maintain a business presence in Cuba. Now, in addition to establishing and maintaining a physical presence in Cuba, exporters of authorized or exempt goods, entities providing mail or parcel transmission services or cargo transportation services, and providers of carrier and travel services are able to establish a business presence (such as a joint venture or franchise with a Cuban individual or entity) in Cuba to facilitate authorized transactions. This authorization expands upon that previously granted for providers of telecommunications and Internet-based services in September 2015. Furthermore, exporters and re-exporters of authorized or exempt goods may now also assemble such goods in Cuba.

Physical Presence in Cuba

OFAC has authorized entities that engage in authorized humanitarian projects, entities that engage in noncommercial activities intended to provide support for the Cuban people, and private foundations or research educational institutes that engage in certain authorized activities to establish a “physical presence” (such as an office, retail outlet or warehouse) in Cuba. In a related action, BIS revised License Exception SCP to authorize the export or re-export to Cuba of EAR99 items and items controlled for antiterrorism reasons for use by persons authorized by OFAC to establish and maintain a physical or business presence in Cuba.

Shipping

BIS amended License Exception Aircraft, Vessels, and Spacecraft (AVS) to generally authorize the transit through Cuban territory of cargo laden aboard a vessel on temporary sojourn to Cuba that is destined for other countries. Previously, exporters that wanted to ship authorized cargo bound for Cuba along with

cargo bound for other destinations had to obtain a specific license from BIS to authorize the non-Cuba cargo to transit Cuba. For shippers to make use of this change, the cargo must depart with the vessel at the end of its temporary sojourn, and it cannot enter the Cuban economy or be transferred to another vessel while in Cuba. In addition, BIS notes that Coast Guard regulations may continue to impose restrictions on entry into Cuban territorial waters.

Cuban Employees in the United States

OFAC now authorizes all transactions related to the sponsorship or hiring of a Cuban national to work in the United States, provided that employers do not make additional payments to the Cuban government in relation to such sponsorship or hiring. Cuban nationals in the United States may now receive any salary or other compensation consistent with the individual's nonimmigrant status or other nonimmigrant travel authorization. OFAC also removed restrictions that limited Cuban nationals hired legally in the United States from earning salaries or stipends in excess of basic living and personal consumption expenses.

Travel

Expanding on the travel authorizations that have been issued over the past year, OFAC has amended the "people-to-people" General License to authorize U.S. persons to travel to Cuba independently for educational exchanges without having to travel under the auspices of a sponsoring organization. U.S. persons traveling under this General License must maintain a full-time schedule of activities intended to enhance contact with the Cuban people and may not travel to Cuba for tourism purposes. U.S. persons traveling pursuant to this General License must also retain related records for five years that demonstrate a full-time schedule of authorized activities.

Related to the expanded travel authorizations, persons who are subject to U.S. jurisdiction and are located in a third country may now purchase or acquire Cuban-origin goods for personal consumption while in the third country, as well as receive or obtain any services from Cuba or a Cuban national that are ordinarily incident to travel within a third country. However, this provision does not authorize the importation of such merchandise into the United States, including as accompanied baggage.

Significance of Changes

The latest amendments lift significant sanctions restrictions, advancing the Obama administration's efforts to normalize relations with Cuba while expanding opportunities for U.S. individuals and companies to engage with Cuba. OFAC has broadened the scope of companies that may establish a business presence in Cuba, making it more practical and achievable for certain U.S. companies to pursue business opportunities in Cuba. These changes will also significantly expand Cuban nationals' access to U.S. financial institutions by permitting "U-turn" transactions through the U.S. financial system and allowing U.S. banking institutions to process U.S. dollar monetary instruments that are presented indirectly by Cuban financial institutions. Furthermore, the expansion of License Exception AVS to authorize cargo to transit Cuba to reach third-country destinations allows companies to make more efficient use of their vessels for cargo delivery and allows exporters to select more efficient shipping routes. Finally, the expansion of the General License for individual people-to-people educational travel will make it less

cumbersome and expensive for U.S. persons to engage in authorized travel to Cuba to engage with the Cuban people for nontourism purposes.

Notwithstanding these changes, OFAC continues to actively enforce the CACR, as evidenced by recent enforcement actions against **CGG Services S.A.** on February 22, 2016, and **Halliburton Atlantic Limited** on February 25, 2016. Likewise, the comprehensive U.S. embargo against Cuba remains codified in statute and can be reversed by only an act of Congress. Specific limitations that are codified in statute, such as provisions restricting U.S. financial institutions' financing of U.S. agricultural exports to Cuba, will also remain in effect absent legislative action. While there appears to be growing consensus on Capitol Hill to consider legislation to address the established legal framework of U.S. sanctions on Cuba, it remains unclear when such action will be politically feasible. Accordingly, U.S. persons and foreign companies owned or controlled by U.S. persons remain subject to core provisions of the U.S. sanctions regime that generally bar investment in, or trade with, Cuba, except as authorized by OFAC and/or BIS.

We will continue to monitor developments as they unfold, and we encourage clients to contact us to learn more about how these changes impact specific business operations and opportunities.

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