

International Trade Alert

December 19, 2014

President Obama Announces Relaxation of Sanctions on Cuba

On Wednesday, President Obama [announced](#) that the United States will initiate discussions with Cuba to re-establish diplomatic relations for the first time in more than 50 years, and relax other established sanctions restrictions on Cuba. These changes come in conjunction with a number of high-profile developments, including an hour-long call between President Obama and Cuban President Raúl Castro, the first such call between leaders of the two countries since the 1959 Cuban Revolution. Cuba also released detained U.S. Agency for International Development contractor Alan Gross, an unnamed American intelligence agent and other political prisoners held in Cuba.

The White House has indicated that the Administration intends to take a number of actions to move forward toward “normalization” of U.S.-Cuba relations in the weeks and months ahead. However, until concrete actions are taken to amend and implement these changes as a matter of U.S. law, it is important to understand that established U.S. sanctions on Cuba remain unchanged and fully in effect. Provided below is an overview of how the White House has indicated it will proceed with easing U.S. sanctions on Cuba in the months ahead, along with the associated legal, political and policy considerations affecting the potential scope and pace of these changes.

What Changes Did the President Announce?

According to the [White House Fact Sheet](#) dated December 17, 2014, the United States plans to make the following regulatory and policy changes to the Cuba sanctions program:

- **Expansion of Telecommunication Services and Other Commercial Sales from the United States of Certain Goods and Services.** The relaxed regulations will allow U.S. companies to sell certain consumer communications devices, related software, applications, hardware, and services, and items for the establishment and update of communications-related systems in Cuba. Telecommunications providers will be allowed to establish the necessary mechanisms, including infrastructure, in Cuba to provide commercial telecommunications and internet services.

The regulations will also authorize certain items for export, including certain building materials for private residential construction, goods for use by private sector Cuban entrepreneurs, and agricultural equipment for small farmers.

- **Updating the Application of Cuba Sanctions in Third Countries.** Among other measures, the revised regulations will also provide general licenses for U.S.-owned or -controlled entities in third countries to:
 - provide services to, and engage in financial transactions with, Cuban individuals in third countries

- unblock the U.S. bank accounts of Cuban nationals who have relocated outside of Cuba
 - permit U.S. persons to participate in third-country professional meetings and conferences related to Cuba
 - allow foreign vessels to enter the United States after engaging in certain humanitarian trade with Cuba.
- **Facilitating Authorized Financial Transactions between the United States and Cuba.** The changes are also intended to simplify financial transactions by (i) allowing U.S. institutions to open correspondent accounts at Cuban financial institutions to facilitate the processing of authorized transactions; (ii) re-defining the statutory term “cash in advance” to mean “cash before transfer of title”; and (iii) allowing travelers to Cuba to use U.S. credit and debit cards in Cuba.
 - **Expanded Travel and Remittance Policies.** The changes will facilitate an expansion of travel to Cuba by providing general licenses for the 12 existing categories of authorized travel to Cuba. Additionally, the changes will facilitate remittances to Cuba by U.S. persons and licensed U.S. travelers will be authorized to import up to \$400 worth of total goods from Cuba, including up to \$100 worth of cigars, tobacco or alcohol.
 - **Establishing Diplomatic Relations with Cuba.** As mentioned above, the U.S. Department of State will initiate discussions to re-establish diplomatic relations with Cuba, which were severed in January 1961. The U.S. will also initiate a review of Cuba’s designation as a State Sponsor of Terrorism.

When Will the Changes Take Effect?

The majority of these expected changes will take effect when the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury issues revised regulations. OFAC has stated that it will implement Treasury-specific changes via amendments to the Cuba Assets Control Regulations, and that it expects to issue its regulatory amendments in the coming weeks.

The Department of Commerce must implement the remainder of the regulatory changes announced by President Obama through amendments to its Export Administration Regulations (EAR). The timing for implementation of these regulatory changes is currently unclear.

Until regulations implementing modifications to U.S. sanctions and export controls are issued by OFAC and the Department of Commerce, current U.S. legal restrictions on Cuba-related activities remain fully in force. OFAC was quick to issue [cautionary guidance](#) underscoring this point following the President’s announcement.

Does This Mean the Embargo is Lifted?

No. Much of the Cuban sanctions program is codified in statutory law, which requires congressional action to amend or repeal unless the statute includes a provision for automatic termination. For example, pursuant to Cuban Liberty and Democratic Solidarity (“LIBERTAD”) Act of 1996 (“Helms-Burton Act”), the

embargo may be terminated in the event of certain political changes in Cuba (i.e., a transition to a democratically elected Cuban government).

The relevant legislation includes:

- Helms-Burton Act
- Foreign Assistance Act of 1961 (FAA)
- Cuban Democracy Act of 1992 (CDA)
- The Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA)
- Food Security Act of 1985
- Omnibus Appropriations Act of 1999.

The administration's discretion and ability to implement easing of the current U.S. sanctions framework for Cuba will be limited to a significant degree by these statutory authorities until congressional action provides a basis to move forward further.

What Happens Next?

OFAC and the Department of Commerce must amend their regulations to implement the President's changes, and the Department of State will begin working with the Cuban government to re-establish diplomatic relations. Absent major political changes in Cuba, the embargo cannot be completely suspended unless Congress acts to repeal or amend the various embargo-related statutes that codify the U.S. sanctions framework.

As noted, the U.S. Congress will need to play a direct supporting role in order for a more substantial lifting of the U.S. embargo to occur. Consequently, it is important to note that the President's announcement drew [mixed reactions](#) across the political spectrum this week, including support from certain [prominent Republican](#) members of Congress, but also strong condemnation from other [leading Republicans](#) and at least one top [Senate Democrat](#). With a stronger and more conservative Republican majority expected in the next session of Congress convening in January, it remains to be seen to what extent the White House may be able to move further ahead with larger-scale changes to the Cuba sanctions regime in the remaining two years that the Obama Administration is in office. This may depend to a great extent on the way in which key constituencies and the U.S. business community weigh in and take a position in this foreign policy debate on Cuba in the months ahead.

In addition, it remains to be seen how Cuba moves forward and reacts to the developments in the United States and in bilateral relations over time. While the current mood and tone in Havana is very positive, it is foreseeable that frustration with the pace of U.S. action to ease sanctions could lead to some bumps in the road for the dialog between Washington and Havana that unfolds in the months ahead. Moreover, Cuban law currently imposes restrictions on potential expansion of U.S. commercial relations that will

need to be addressed to facilitate meaningful opening of trade relations and economic ties. At this point, it is unclear whether and how Cuba may modify these limitations in conjunction with progress towards normalization of relations with the United States.

Contact Information

If you have any questions regarding this alert, please contact:

Jonathan C. Poling

jpoling@akingump.com

202.887.4029

Washington, D.C.

Wynn H. Segall

wsegall@akingump.com

202.887.4573

Washington, D.C.

Nicole M. D'Avanzo

ndavanzo@akingump.com

202.887.4557

Washington, D.C.

Christian C. Davis

chdavis@akingump.com

202.887.4529

Washington, D.C.

Jared T. Cail

jcail@akingump.com

202.887.4303

Washington, D.C.