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Despite policy changes, many opportunities remain for US businesses in Cuba

By Anya Landau French

Late last year, the Trump administration issued long-awaited regulations that impact U.S. companies seeking to do business in Cuba. Among other things, the new regulations block business with certain Cuban entities owned or controlled by Cuban military, intelligence or security services that are specifically included on a new Cuba Restricted List published by the U.S. State Department, and restrict individual people to people travel to the island.

The impact of the new rules is expected to be mostly on the tourism sector in Cuba, and on projects contemplated for Cuba's new Special Economic Development Zone at the port of Mariel, two areas in which the Cuban Armed Forces' holding company, GAESA, has significant investments.

The rules do not unwind existing business engagements in Cuba, including those involving entities on the New Cuba Restricted List. Notwithstanding the president's tougher posture on Cuba, and the need for increased due diligence around compliance with the new regulations, the U.S. legal and regulatory landscape shaping potential opportunities for American companies interested in Cuba remains largely the same as it was at the end of Obama administration, provided that U.S. companies are careful to comply with applicable U.S. trade regulations for Cuba and avoid doing business with entities on the State Department's new restricted list.

Three factors unaffected by the U.S. political climate provide a basis for the U.S. business community to remain engaged in Cuba in 2018: First, Cuba is a still little explored and alluring market for American companies that is strategically positioned in the Caribbean basin; Second, the United States has a natural geographic and cultural competitive advantage over European and Asian competitors; and Third, Cuban counterparts may be able to concentrate their attention on the more focused group of committed U.S. companies that have the foresight and confidence, grounded in an understanding of both the regulatory landscape and business opportunities, to pursue opportunities in Cuba in the Trump era.

While the Trump administration's new rules limit U.S. economic engagements with certain entities, largely in the tourism sector, they do not close off opportunities in many other sectors. Among the 450 projects included in Cuba's Portfolio of Opportunities for Foreign Investment published in November, several dozen tourism or Mariel zone projects may be prohibited by the new U.S. restrictions, but the majority of projects are in other areas, including opportunities with non-restricted entities for food production, biotechnology, construction, energy and waste management, and more.

The United States has clear competitive advantages that come with geographic and cultural proximity. Nowhere is this advantage more clear and proven than in agricultural trade, where shipping time and logistics can make an enormous difference. According to a recent report published by Cuba Trade Magazine with the U.S. Agriculture Coalition for Cuba, increased demand from even a smaller market like Cuba, worth about $2 billion, can have "ripple" effects on pricing across a commodity market more broadly. And despite the decades-long economic embargo on Cuba, cultural ties around music, fashion, sports and consumer electronics and other consumer products have always remained strong between the two nations, in large part to enduring and growing ties with the Cuban-American community.

U.S. companies that continue to engage in the Cuban market in 2018 will build an advantage that many struggled to gain during the Obama détente when Cuban business representatives were inundated with American companies' visits. In that over-heated environment, it could at times be difficult for newcomers to gain the attention and trust of Cuban counterparts, who value relationships built on trust over time. In the current climate, U.S. companies that persist and show their commitment in Cuba have a unique opportunity to build and leverage goodwill that can pay real dividends in the country over time.

In April, Cuban President Raul Castro is expected to make good on his previously-announced plans to step down as President of the Council of State and Council of Ministers of Cuba. Whomever the National Assembly elects to replace him, his successor is anticipated to be the first non-Castro to lead the country since Fidel Castro came to power in 1959. The new president also is not expected to be part of the older generation in Cuba who fought in the Cuban Revolution sixty years ago, but a new leader focused on Cuba's future who must bridge the country's past and future, and above all, who must improve Cuba's economic fortunes.

In this historically momentous time, U.S. businesses that keep open lines of communication with their Cuban counterparts, continue to conduct exploratory business missions to the island and to pursue legal business opportunities in Cuba will gain the greatest advantages in Cuba over their competitors who show up later. Just as Cuba welcomed those that flooded in during the Obama détente, in the months and years ahead its leaders will remember who came to visit and stayed at the table during the Trump era that followed. Those who stay will have the opportunity to build and leverage substantial goodwill into the country's future.

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