

CLIENT ALERT:

OFAC ISSUES NEW CUBAN ASSETS CONTROL REGULATIONS

January 20, 2015

Over 50 years after the U.S. trade embargo against Cuba went into effect, President Obama announced on December 17, 2014 that the U.S. would proceed to normalize diplomatic relations with Cuba and that there would be an easing of certain economic sanctions, some of which he detailed. However, it should be noted that the U.S. trade embargo against Cuba is the product of laws passed by Congress and the President does not have the authority to unilaterally repeal the trade embargo.

Immediately after the President's announcement, the Office of Foreign Asset Control ("OFAC") issued a single FAQ, advising that none of the changes outlined by the President would take effect until the Cuban Asset Control Regulations ("CACR") had been amended. The CACR were amended on January 16, 2015 and, therefore, a limited easing of the Cuban sanctions is now in effect. The OFAC FAQs on the amendment to the CACR can be found at:

<http://www.treasury.gov/resource-center/sanctions/Programs/Pages/cuba.aspx>

The Trade Embargo Remains in Effect

One of the first things that the OFAC FAQs point out is that the U.S. trade embargo against Cuba remains in place and that most transactions between U.S. persons¹ and Cuba continue to be prohibited. In addition, the 180 day rule remains in effect, providing that no vessel, U.S. or foreign flagged, that calls at Cuba to engage in the trade of goods or services may thereafter call at a U.S. port for 180 days, except pursuant to a license issued by the Secretary of the Treasury. Similarly, vessels carrying goods or passengers to or from Cuba, or carrying goods in which Cuba or a Cuban national has an interest, may not enter any U.S. port, unless specifically authorized by the Secretary of the Treasury.

What Sanctions Against Cuba Have Been Eased?

While there has been a good deal of speculation that the easing of U.S. sanctions against Cuba will create significant trade and business opportunities for American entities, any such developments may be off in the future. Most of the easing of U.S. regulations accomplished by

¹ A "U.S. person" is defined in the CACR as "...any United State citizen or national; permanent resident alien; entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches); or any person in the United States."

the amendment of the CARC relate to personal travel to and financial dealings with Cuba. Those changes are as follows:

Travel

Previously, travel to Cuba by U.S. persons was permitted in 12 categories of authorized travel, but only subject to specific licenses, which were determined on a case by case basis after an application. Now, OFAC has issued general licenses for travel to Cuba related to the following activities:

- Family visits
- Official business of the U.S. Government, foreign governments and certain intergovernmental organizations
- Journalistic activity
- Professional research and professional meetings
- Educational activities
- Religious activities
- Public performances, clinics, workshops, athletic and other competitions, and exhibitions
- Support for the Cuban people
- Humanitarian projects
- Activities of private foundations or research or educational institutes
- Exportation, importation or transmission of information or information materials
- Certain expert transactions

For travel relating to activities within the above categories, no specific license is required, as long as the transactions fall within the scope of the general license. If they do not, then a specific license is required. **Note, however, that travel to Cuba by U.S. persons for tourist related activities is still prohibited.** Persons returning to the U.S. from Cuba will be permitted to import to the U.S. as accompanied baggage \$400 worth of Cuban merchandise, provided that no more than \$100 consists of alcohol or tobacco products and that all merchandise is imported for personal use only.

Remittances

The limit on remittances that can be sent to Cuban nationals has been increased from \$500 to \$2,000. On a case by case basis, remittances for humanitarian projects may be approved without limitation. The amount of authorized remittances that a traveler to Cuba may carry has been increased to \$10,000 per authorized trip.

Financial Transactions

The CARC have been amended to permit the use of U.S. credit and debit cards in Cuba for travel-related and other transactions consistent with the CARC. U.S. financial institutions are permitted to process such transactions. In addition, OFAC has added a general license permitting U.S. depository institutions to open correspondent accounts at Cuban financial institutions to facilitate the processing of authorized transactions. OFAC will now also permit certain micro-financing activities, and entrepreneurial and business training, such as for private businesses and agricultural operations.

Telecommunications

Amendments to the CARC generally authorize transactions that establish mechanisms to provide commercial telecommunications services linking third countries and Cuba, and in Cuba. U.S. persons are now authorized to provide additional services related to internet-based communications and the exportation of certain communications items will be permitted.

Dealings with Cuban National Outside of Cuba

U.S. owned or controlled entities may provide goods and services to a Cuban national located outside of Cuba, as long as the transaction does not involve, directly or indirectly, a commercial exportation of goods or services to or from Cuba.

When Will the Trade Embargo Against Cuba End?

There is no timetable for ending the U.S. trade embargo against Cuba. While President Obama believes that increased economic opportunities for the Cuban people will do more to further U.S. policy regarding Cuba than will the continuation of the trade embargo, that view is not universally held. In the November 2014 national Congressional elections, the Republican Party increased their majority position in the House of Representative and also gained control of the Senate. With the opposition party now in control of Congress, the President may have difficulty fully implementing his new foreign policy regarding Cuba and it is at this point impossible to predict when or if the trade embargo will be repealed. On January 12, 2015 a Democratic Congressman introduced a bill to lift the Cuban Trade embargo, but it has been referred to five sub-committees for review and is given virtually no chance of passage by the House of Representatives.

Summary

The current easing of certain U.S. sanctions against Cuba does not have an immediate and significant effect on the U.S. trade embargo against Cuba. That embargo remains in place and U.S. persons are still generally prohibited from transacting business with Cuba. Except for specific and limited transactions, U.S. banks still cannot engage in financial transactions involving Cuba. Unless operating under a license, vessels calling at Cuban ports cannot call at a U.S. port for 180 days, and vessels carrying cargo or passengers to or from Cuba, or carrying Cuban cargo, cannot call at U.S. ports.

We will continue to monitor the U.S. Cuban trade embargo and will report further developments.

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