



Obama Administration Further Relaxes Sanctions in Support of Cuba Policy

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Specifically, the new amendments open up opportunities for U.S. financial institutions to finance authorized exports and reexports to Cuba of items other than agricultural items or commodities. The amendments create a more favorable licensing policy for exports and reexports to Cuba by identifying additional types of exports and reexports that are now subject to a general policy of approval or review on a case-by-case basis, rather than a general policy of denial. Significantly, exports for the construction of infrastructure and energy facilities that directly benefit the Cuban people, as well as items used for disaster preparedness, relief and response, are now subject to a case-by-case licensing policy. The amendments also further facilitate travel to Cuba for authorized purposes, authorizing additional travel-related and other transactions directly incident to the temporary sojourn of aircraft and vessels, and authorizing additional transactions related to professional meetings, disaster preparedness and response projects, and transactions incident to professional media or artistic productions (e.g., movies) in Cuba, among other activities.

The latest amendments demonstrate the administration's continued commitment to its policy of engagement with Cuba and to creating opportunities for U.S. companies in a range of business sectors to return to Cuba in ways that have been blocked by U.S. sanctions for more than half a century. Importantly, the longstanding U.S. embargo on Cuba continues to generally restrict trade, transactions and travel between the United States and Cuba, absent general or specific authorization by OFAC.

Overview of Amended Regulations

Non-Agricultural Export Trade Financing

Except in the case of exports of agricultural commodities and agricultural items, which are regulated by statute, OFAC has removed restrictions on payment and financing terms for authorized exports and reexports to Cuba. Previously, the regulations limited payment terms to cash-in-advance and third-country financing. Under the revised regulations, permissible payment and financing terms for authorized non-agricultural exports and reexports also include sales on an open account and financing by U.S. financial institutions (e.g., by issuing a letter of credit).

General Policy of Approval for Certain Export and Reexport License Applications

For the following types of exports and reexports, BIS has revised its licensing policy from possible approval on a case-by-case basis to a general policy of approval:

- telecommunications items that would improve communications to, from and among the Cuban people
- commodities and software to human rights organizations or to individuals and nongovernmental organizations that promote independent activity intended to strengthen civil society in Cuba
- commodities and software to U.S. news bureaus in Cuba whose primary purpose is the gathering and dissemination of news to the general public
- agricultural items that are outside the scope of agricultural commodities as defined in part 772 of the EAR, such as insecticides, pesticides and herbicides, and agricultural commodities not eligible for License Exception AGR (e.g., items listed on the Department of Commerce's Commerce Control List)
- items necessary to ensure the safety of civil aviation and the safe operation of commercial aircraft engaged in international air transportation, including the export or reexport of such aircraft leased to state-owned enterprises (SOEs)
- items necessary for the environmental protection of U.S. and international air quality, waters or coastlines (including items related to renewable energy or energy efficiency).

Case-by-Case Review for Certain Export and Reexport License Applications

BIS has also revised its licensing policy to allow for case-by-case approvals on license applications for the export or reexport of certain items to meet the needs of the Cuban people. This includes exports and reexports of such items to SOEs, agencies and other organizations of the Cuban government that provide goods and services for the use and

benefit of the Cuban people. This policy of case-by-case review includes applications for licenses to export or reexport items for:

- agricultural production
- artistic endeavors (including the creation of public content and historic and cultural works and preservation)
- education
- food processing
- disaster preparedness, relief and response
- public health and sanitation
- residential construction and renovation
- public transportation
- wholesale and retail distribution for domestic consumption by the Cuban people
- construction of facilities for treating public water supplies, facilities for supplying electricity or other energy to the Cuban people, sports and recreation facilities, and other infrastructure that directly benefits the Cuban people
- delivery of humanitarian goods or services, including the temporary sojourn of aircraft or vessels.

This case-by-case licensing policy is intended to facilitate exports and reexports to meet the needs of the Cuban people. Accordingly, BIS will still generally deny applications to export or reexport items for use by SOEs, agencies and other organizations that primarily generate revenue for the state, including those engaged in tourism and the extraction or production of minerals or other raw materials. Applications for export or reexport of items destined to the Cuban military, police, intelligence or security services also generally will be denied.

Travel and Related Services

OFAC has expanded authorizations within the existing travel categories of part 515 of the CACR to facilitate travel to Cuba for the following additional purposes:

- *Carrier services by air.* In parallel with BIS amendments relating to safety of civil aviation, OFAC has authorized entry into blocked space, code sharing and leasing arrangements to facilitate the provision of authorized carrier services by air, including the entry into such arrangements with Cuban nationals.
- *Temporary sojourn.* OFAC has authorized travel-related and other transactions directly incident to the facilitation of the temporary sojourn of aircraft and vessels, as

authorized for travel between the United States and Cuba, including by certain personnel required for normal operation and service on board a vessel or aircraft, or to provide services to a vessel in port or aircraft on the ground.

- *Transactions related to information and informational materials.* OFAC has authorized travel-related and other transactions directly incident to professional media or artistic productions of information or informational materials for exportation, importation or transmission, including the filming or production of media programs (such as movies and television programs), music recordings and the creation of artworks in Cuba by persons who are regularly employed , or have demonstrated professional experience, in a field relevant to such professional media or artistic productions. OFAC also has expanded an existing general license to authorize transactions relating to the creation, dissemination or artistic or other substantive alteration or enhancement of informational materials, including employment of Cuban nationals and the remittance of royalties or other payments.
- *Professional meetings, public performances, clinics, workshops, athletic and other competitions, and exhibitions.* OFAC has authorized by general license travel-related and other transactions to organize these types of events in Cuba. The preexisting general license had authorized only attendance at such events. OFAC also removed requirements that U.S. profits from certain events must be donated to specific types of organizations, and that certain events be run at least in part by U.S. travelers.
- *Humanitarian projects.* OFAC expanded the list of authorized humanitarian projects to include disaster preparedness and response.

Significance of the Latest Changes

Building upon previous measures, the new regulatory amendments further ease sanctions related to travel and expand the scope of favorable licensing treatment for exports and reexports intended to meet the needs of the Cuban people. The latest amendments also take a step forward in granting authorization to U.S. financial institutions to finance authorized, non-agricultural exports and reexports. These new measures help make it more practical and achievable for U.S. companies to pursue certain trade and investment opportunities on-the-ground in Cuba. These changes also provide further indication that the Obama administration is committed to its policy of engagement with Cuba and seeks to consolidate its new approach to Cuba as a hallmark of the president's legacy.

These new measures notwithstanding, the comprehensive U.S. embargo against Cuba remains codified in statutory law that can be reversed only by an act of Congress, as evidenced by the specific limitation on U.S. financial institutions' involvement in agricultural-related projects. 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 and legislatively achieved. 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.

Separately, as noted in prior alerts, it is unclear whether and when Cuba will permit U.S. companies to enter the Cuban market to engage in the growing areas of commercial activity authorized by changes in U.S. law. While the administration has taken substantial steps to pursue engagement with Cuba, there is no guarantee that the Cuban government will have the resources or inclination to welcome U.S. business interests. However, while these challenges remain, it is clear that U.S. and Cuban officials are committed to continue their ongoing diplomatic negotiations to address these and other challenges and concerns.

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

*This blog post was originally on AG Trade Law.

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