



## President to Remove Cuba's Terrorism Designation: Most Sanctions Remain in Effect

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SSOTs are countries that the secretary of State has determined to have repeatedly provided support for acts of international terrorism. Such designations are pursuant to three laws: (i) Section 6(j) of the lapsed Export Administration Act (EAA); (ii) Section 40 of the Arms Export Control Act; and (iii) Section 620A of the Foreign Assistance Act. Aside from the diplomatic stigma attached to the SSOT designation, four main categories of sanctions result from designation under these authorities: a ban on defense exports and sales; certain controls over exports of dual-use items; restrictions on U.S. foreign assistance; and miscellaneous financial and other restrictions.

Importantly, while Cuba's removal from the SSOT list may ease certain sanctions, as discussed below, most components of the U.S. embargo are not based upon an SSOT designation and will remain in place (e.g., the Helms-Burton Act specifically identifies Cuba and is not linked to Cuba's designation as an SSOT). The president has not yet announced amendments to U.S. regulations governing dealings with Cuba as a result of its removal from the list of SSOTs, but any regulatory changes should be carefully reviewed with counsel before engaging in any transactions with Cuba.

With that in mind, the removal of Cuba as an SSOT may affect trade with Cuba in several limited ways:

- *Potential Eligibility for Expanded Licensing of Dual-Use Items to Cuba:* The EAA required the U.S. Department of Commerce ("Commerce") to notify certain congressional committees before issuing any license for exports above a certain value of items controlled on the Commerce Control List (CCL) to countries identified as an

SSOT. Commerce implemented this policy via their Export Administration Regulations (EAR), which prohibit most exports and reexports to Cuba of goods, technology and software controlled pursuant to the CCL unless the export is authorized pursuant to a specific license or license exception. Commerce reviews such license applications under a presumption of denial unless the export meets certain conditions (e.g., medicines and medical devices, telecommunications equipment, etc.). While the original statutory authority for the EAR (the EAA) lapsed in 2001, the EAR have been maintained under authority granted to the president by the International Emergency Economic Powers Act of 1977 (IEEPA). Once Cuba is removed from the SSOT list, Commerce would have the option to amend the EAR to license a wider range of dual-use items for export to Cuba. However, given the statutory constraints in laws such as Helms-Burton that generally limit exports to those in support of the Cuban people, licensing changes will be relatively modest and will not ease restrictions on highly controlled dual-use or military items.

- *Fewer Prohibitions on Financial Transactions Involving Cuba:* Under 31 C.F.R. Part 596.201, U.S. persons are prohibited from engaging in a financial transaction with the government of a designated SSOT, absent authorization from the Office of Foreign Assets Control (OFAC). Again, however, other sanctions relating to Cuba and administered by OFAC that may involve financial transactions should remain unaffected.
- *Greater Eligibility for Foreign Aid to Cuba:* Once Cuba is removed as an SSOT, the statutory restrictions on foreign aid under the Foreign Assistance Act will no longer apply, provided the assistance is not in violation of other aspects of the Cuba embargo. However, other laws may continue to restrict the likelihood of such aid. For instance, Helms-Burton will still mandate that the U.S. government oppose Cuba's induction into international financial institutions such as the International Monetary Fund and the World Bank. If Cuba is admitted as a member to such organizations over the opposition of the United States, the president must reduce U.S. funding for such institutions.
- *Fewer Allowances for Private Rights of Action for Terrorism:* The Foreign Sovereign Immunities Act (FSIA) of 1976 was amended in 2008 to allow victims of state-sponsored terrorism to file private rights of action in U.S. courts against SSOTs. These rights of action are tied to the SSOT designation and once Cuba is removed, private rights of action allowed under the FSIA against Cuba may be unavailable to claimants.

Other federal and state government agencies, including the SEC's Office of Global Security Risk and state banking regulators or agencies administering state divestment laws, may also be affected by the removal of Cuba as an SSOT. At this point, however, it does not appear that this removal of the SSOT status will result in significant changes to U.S. sanctions and export controls targeting Cuba.

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