

U.S. Treasury and Commerce Departments Further Ease Restrictions on Trade with Cuba

January 28, 2016

International Trade Controls

The U.S. Treasury and Commerce Departments have issued amended regulations that further expand the scope of permissible trade with and travel to Cuba. The changes, which went into effect yesterday (January 27, 2016), build on previous steps taken by the Obama Administration (most recently in [September 2015](#)) to implement the policy shift toward Cuba that it announced in [December 2014](#).

The U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") [amended](#) the Cuban Assets Control Regulations ("CACR") to remove payment and financing restrictions for most authorized exports and reexports to Cuba and expanded and/or clarified the scope of certain categories of authorized travel and other permissible activities, including as relates to informational materials, professional meetings, and disaster preparedness and response.

Concurrently, the U.S. Department of Commerce, Bureau of Industry and Security ("BIS") [amended](#) the Export Administration Regulations ("EAR") to adopt a general policy of approval for license applications to export and reexport certain categories of items to Cuba. BIS also adopted a case-by-case licensing policy for exports and reexports of other items to meet the needs of the Cuban people, including, notably, some exports to Cuban state-owned enterprises, agencies, and other Cuban government organizations that provide goods and services for the Cuban people.

[OFAC](#) and [BIS](#) have published new FAQs and the agencies have issued a [Joint Fact Sheet](#) to provide more guidance on these changes.

The changes continue to leave intact major elements of the U.S. embargo against Cuba, which has been in place for more than 50 years and applies to the activities of "persons subject to U.S. jurisdiction." This includes individual U.S. citizens and lawful permanent residents (so-called "green-card holders"), wherever located or employed; legal entities organized under U.S. law and their non-U.S. branches or offices; non-U.S. persons when present in the United States; and non-U.S. companies owned or controlled by U.S. persons. Further, the EAR continue to broadly restrict exports and reexports to Cuba, except where authorized by a license or license exception. The Administration has acknowledged that various statutes limit the Executive Branch's authority to lift certain elements of the embargo, including the prohibition on tourism travel to Cuba, which remains in place.

Below, we detail these regulatory changes as they apply to the following areas: financing; trade/business by persons subject to U.S. jurisdiction, travel, and air carrier and vessel services.

Financing

The revised CACR significantly ease the restrictions on payment and financing terms for exports from the United States to Cuba, and reexports of 100 percent U.S.-origin items from a third country to Cuba, that are authorized through a license issued by BIS or license exception contained in the EAR, *other* than exports/reexports of agricultural items or commodities.

Payment and financing terms for authorized export transactions previously were limited to payment of cash in advance or financing by a banking institution located in a third country (i.e., not the United States or Cuba). With yesterday's change, OFAC has amended the CACR to remove these restrictions and to make other payment and financing terms available. OFAC also has amended the CACR to authorize U.S. depository institutions to provide financing for authorized export transactions. Now-permissible financing terms include, among other things, letters of credit, including letters of credit issued by a financial institution that is a national of Cuba.

As noted, however, the expanded payment terms are not available for sales of agricultural commodities or items. OFAC is required by statute to maintain limitations on payment and financing terms for the export and reexport of these items, and thus the payment terms for such sales remain unchanged.

Trade

BIS has adopted a general policy of approval for licensing to carry out the following types of exports and reexports of items subject to the jurisdiction of the EAR because they are of U.S. origin, are exported or reexported from the United States, or contain more than *de minimis* controlled U.S.-origin content:

- Telecommunications items that would improve communications to, from, and among the Cuban people (where not already covered by applicable license exceptions);
- Items necessary to ensure the safety of civil aviation and the safe operation of commercial aircraft engaged in international air transportation, including exports or reexports of aircraft leased to Cuban state-owned enterprises;
- Commodities and software to human rights organizations or individuals and non-governmental 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; and
- Agricultural items that do not qualify for export/reexport to Cuba under EAR License Exception Agricultural Commodities ("AGR") because they do not meet the definition of "agricultural commodities" in Part 772 of the EAR (such as insecticides, pesticides and herbicides), or are identified on the EAR's Commerce Control List rather than classified as EAR99.

Items necessary for environmental protection of U.S. and international air quality, waters, or coastlines, including items related to renewable energy or energy efficiency, also are generally approved for export/reexport to Cuba, in accordance with existing policy established in January 2015.

BIS also identified additional types of exports and reexports that it will consider licensing on a case-by-case basis, and which are therefore no longer subject to the general policy of denial in the EAR for exports and reexports to Cuba. Notably, this includes exports and reexports to state-owned enterprises, agencies, and other organizations of the Cuban government that provide goods and services for the use and benefit of the Cuban people. In particular, case-by-case review is established for license applications to export or reexport items subject to the EAR for:

- Agricultural production; artistic endeavors (including the creation of public content, historic and cultural works and preservation); education; food processing; disaster preparedness, relief, and response; public health and sanitation; residential construction and renovation; and public transportation;
- Wholesale and retail distribution for domestic consumption by the Cuban people; and
- 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.

BIS will continue to generally deny applications for licenses to export or reexport items to Cuba for use by state-owned enterprises, agencies, and other organizations that primarily generate revenue for the state, including those engaged in tourism or in the extraction or production of minerals or other raw materials. A general policy of denial also continues to apply to applications for export or reexport of items destined to the Cuban military, police, intelligence, or security services. In addition, any license issued pursuant to the case-by-case review set forth in the new BIS rule generally will have a condition prohibiting both reexports from Cuba to any other destination and uses that enable or facilitate the export of goods or services from Cuba to third countries.

In addition, OFAC has amended Section 515.545 of the CACR to expand significantly the exemption relating to exports and imports of “information and informational materials” so that it is no longer limited to pre-existing informational materials. The amended CACR now permit transactions relating to the creation, dissemination, artistic or other substantive alteration, or enhancement of informational materials, including the employment of Cuban nationals and remittance of royalties or other payments in connection with such transactions. The new amendments also clarify that this general license authorizes professional media or artistic productions in Cuba, such as movies and television programs, musical recordings, and the creation of artworks. Travel in connection with the exportation, importation or transmission of informational materials is also licensed, as is marketing related to the dissemination of such informational materials.

Travel

The regulatory changes that went into effect yesterday also expand or clarify the scope of various general licenses in the CACR that authorize travel to Cuba:

First, OFAC has clarified that travel to Cuba is generally licensed for market research, commercial marketing, sales or contract negotiation, accompanied delivery, installation, leasing, or servicing in Cuba of items consistent with BIS licensing policy.

Second, OFAC has amended the CACR to authorize travel-related and other transactions that are directly incident to travel to Cuba to *organize* professional meetings or conferences in Cuba,

provided, among other things, that the professional meetings or conferences are related to the traveler's profession or the traveler is an employee or contractor of an entity that is organizing the professional meeting or conference. Previously, the CACR had only explicitly authorized travel to Cuba in order to attend, rather than organize, professional meetings or conferences.

Third, OFAC has amended the CACR to authorize travel-related and other transactions to organize amateur and semi-professional international sports federation competitions and public performances, clinics, workshops, other athletic or non-athletic competitions, and exhibitions in Cuba that are open for attendance, and in relevant situations participation, by the Cuban public. Previously, the general license only explicitly authorized travel to Cuba in order to participate in, rather than organize, such events. An example provided by OFAC is a U.S. concert promoter wishing to organize a musical event in Cuba: organization of the event by the U.S. concert promoter, as well as the participation by the U.S. musical groups, is authorized so long as the event is open to the public. In addition, OFAC removed the requirement that all U.S. profits from the event after costs be donated and that workshops and clinics be organized and run, at least in part, by the authorized traveler.

Fourth, OFAC has expanded the general license for humanitarian travel to include work on disaster preparedness and response.

A traveler to Cuba under these general licenses generally must maintain a full-time schedule of authorized activities.

Air Carrier and Vessel Services

Finally, yesterday's regulatory changes authorize the following types of transactions related to air carrier and vessel services:

- Code-sharing and other carrier agreements: Section 515.572 of the CACR, which already authorizes carrier services to, from, or within Cuba, has been amended to authorize entry into blocked space, code-sharing, and leasing arrangements to facilitate the provision of carrier services by air. The amendment specifically authorizes entry into such arrangements with a national of Cuba.
- Servicing vessels or aircraft: The CACR also has been amended to authorize transactions that are directly incident to the facilitation of the temporary sojourn of aircraft and vessels in Cuba, under authorization of BIS (e.g., License Exception Aircraft, Vessels, and Spacecraft ("AVS")), for travel between the United States and Cuba. In particular, this includes transactions by personnel required for normal operation and service on board the vessel or aircraft, or required to provide services to a vessel in port or aircraft on the ground, provided that (1) the vessel or aircraft is transporting individuals whose Cuba travel is authorized under the CACR, and (2) travel transactions by such personnel are limited to the duration and scope of their duties in connection with the temporary sojourn.

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We are following these developments closely and will provide further updates on Cuba trade controls as the situation develops.

International Trade Controls

If you have any questions concerning the material discussed in this client alert, please contact the following members of our International Trade Controls team:

Peter Flanagan	+1 202 662 5163	pflanagan@cov.com
Corinne Goldstein	+1 202 662 5534	cgoldstein@cov.com
Peter Lichtenbaum	+1 202 662 5557	plichtenbaum@cov.com
Kimberly Strosnider	+1 202 662 5816	kstrosnider@cov.com
David Addis	+1 202 662 5182	daddis@cov.com
Stephen Bartenstein	+1 202 662 5471	sbartenstein@cov.com
Charlene Wang	+1 202 662 5199	cwang@cov.com

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