



OFAC and BIS Issue Revised Cuba Regulations

On December 17, 2014, U.S. President Barack Obama announced a historic shift in U.S. policy toward Cuba and pledged that in the coming months, the United States would reestablish diplomatic relations and ease certain aspects of its long-standing trade embargo against Cuba. Last week, the United States took its first steps toward a greater degree of engagement with Cuba.

On January 16, 2015, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") and the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") amended their regulations to ease certain travel restrictions and economic sanctions against Cuba. Although these amended regulations represent a significant step toward relaxing the U.S. sanctions regime, they nevertheless leave in place much of the comprehensive embargo against trading with Cuba.

OFAC's Cuban Assets Control Regulations

OFAC's [recent amendments to the Cuban Assets Control Regulations](#) ("CACR"), 31 C.F.R. Part 515, arguably represent the most significant changes to the CACR since their promulgation in 1963. The highlights

of the recent amendments to the CACR include the following.

Relaxed Limitations on Authorized Travel and Related Activities.

U.S. persons who are authorized to travel to Cuba are no longer required to obtain a specific license from OFAC prior to traveling. Instead, U.S. persons now may travel to Cuba under a general license, provided that the purpose of their travel falls within one of the 12 existing categories of travel for which a license could have been issued in the past, namely: family visits; professional research and meetings; educational activities; journalistic activities; religious activities; humanitarian projects; public performances, exhibitions, and athletic competitions; official business of the U.S. government, foreign governments, and certain intergovernmental organizations; activities of private foundations or research institutions; support for the Cuban people; export, import, or transmission of informational materials; and certain authorized export transactions. Notably, travel to Cuba for general tourist activities remains prohibited under the revised CACR.

U.S. travel service providers may provide travel and carrier services for authorized travel to Cuba. However, U.S. carriers will require authorization from

the U.S. Department of Transportation (“DOT”) before establishing travel connections to Cuba. The DOT has, at present, deferred activating any new travel links until further notice.

Authorized U.S. travelers may use U.S.-issued credit and debit cards in Cuba, and U.S. financial institutions are permitted to enroll merchants and process travel-related and other transactions, consistent with Part 515.560 of the CACR.

Authorized U.S. travelers are permitted to import up to US\$400 worth of goods acquired in Cuba for personal use, including up to US\$100 in alcohol or tobacco products. The previous *per diem* spending restriction for authorized travelers while in Cuba has now been eliminated.

Expansion of Authorized Financial and Import Transactions and Services. U.S. depository institutions are allowed to open and maintain correspondent accounts at Cuban financial institutions to process certain funds transfer transactions. Cuban banks are not, however, licensed to open such accounts at U.S. banks.

The revised CACR amend the interpretation of “cash in advance” from payment before shipment to “payment before transfer of title to, and control of, the exported items to the Cuban purchaser.” The amended interpretation of “cash in advance” provides greater financing flexibility for authorized exports to Cuba.

Certain micro-financing and entrepreneurial training activities, as well as the import of specified goods from “independent Cuban entrepreneurs,” are now authorized. The U.S. State Department will identify those who qualify as independent Cuban entrepreneurs and publish their names in a [Section 515.582 List](#).

U.S. persons may now send up to US\$2,000 in remittances per quarter to Cuban nationals, provided that the recipient is not a prohibited government official and does not use the money for emigration purposes. Further, the amount of remittances that an authorized traveler may carry to Cuba has increased to US\$10,000.

Promotion of Telecommunications Services. Transactions that facilitate telecommunications services, including the installation of fiber-optic cables or satellite facilities between Cuba and the United States or a third country, are now generally authorized under the revised CACR, as are transactions incidental to providing telecommunications services involving Cuba, such as payments for calling cards or telephone bills.

Expansion of Other Authorized Transactions and Activities. Foreign vessels are now permitted to enter U.S. ports after engaging in certain trading with Cuba.

U.S.-owned or controlled entities located in third countries are authorized to provide certain goods and services to Cuban nationals located outside of Cuba, provided the transaction does not involve a commercial exportation of goods or services to Cuba. Further, the financial accounts of Cuban nationals who have relocated permanently outside of Cuba will be unblocked, provided certain requirements are met.

OFAC has also published [Frequently Asked Questions](#) on the amended CACR, which provide further interpretative guidance on these changes.

BIS’s Export Administration Regulations

To further implement these regulatory policy changes, BIS has [amended sections of the Export Administration Regulations](#) (“EAR”). Specifically, BIS has added a new licensing exception, “Support for Cuban People,” which allows for the export or re-export of certain items without first obtaining a license. BIS has also expanded the scope of certain existing licensing exceptions.

Support for Cuban People License Exception. The License Exception Support for Cuban People (“SCP”) creates a licensing exception for certain products in order to: (i) improve the living conditions and support independent economic activity in Cuba; (ii) strengthen Cuban civil society; and (iii) improve the free flow of information to, from, and among the Cuban population.

Under the newly created SCP, the following goods may be sold or donated without first needing to obtain a license:

- Building materials, equipment, and tools for the private sector that are used to construct or renovate buildings that are privately owned, including residences, businesses, places of worship, or buildings used for private-sector recreational use;
- Tools and equipment for private-sector agricultural activity;
- Tools, equipment, supplies, and instruments for use by private-sector entrepreneurs, such as mechanics, restaurateurs, and barbers;
- Certain items for human rights organizations, individuals, or nongovernmental organizations whose purpose is to strengthen Cuban civil society; and
- Certain items for telecommunications, such as access to the internet, and infrastructure creation and upgrades.

The SCP also authorizes the export of certain *donated* items for use in certain scientific, archeological, cultural, ecological, educational, historic preservation, or sporting activities.

The items eligible for License Exception SCP are, however, limited to those classified as EAR99 or controlled on the Commerce Control List only for anti-terrorism reasons.

Expansion of Existing Licensing Exceptions. BIS has expanded the scope of two existing license exceptions.

First, BIS has expanded License Exception Consumer Communications Devices (“CCD”) to authorize the export or reexport of certain communications devices regardless of whether they are donated or commercially sold. Prior to last week’s amendments, the CCD applied only to eligible devices that had been donated. BIS has also made revisions to the list of items eligible under the CCD to reflect more recent technological advancements.

Second, License Exception Gift Parcels and Humanitarian Donations no longer excludes consolidated shipments of multiple parcels for delivery to individuals residing in Cuba. Specifically, parties exporting multiple gift parcels in a single shipment no longer need to obtain individual validated licenses and instead can export or reexport multiple gift parcels in a single shipment.

BIS has also published [Frequently Asked Questions](#) on the EAR amendments, which provide further interpretive guidance on the changes.

Limitations of the Revised Regulations

These revisions to OFAC’s and BIS’s regulations do not lift the comprehensive U.S. trading embargo against Cuba, which would require congressional action. They do, however, reflect a marked thaw in U.S. policy toward Cuba. Moreover, in his State of the Union Address on January 20, 2015, President Obama asked Congress to take action to end the embargo against Cuba, and a group of U.S. legislators has already introduced a bill in the House that would do exactly that. It remains to be seen, however, when, or if, this bill will be brought to a vote. Regardless, in light of recent changes to the OFAC and BIS regulations, as well as President Obama’s commitment to renewing U.S. relations with Cuba, it is likely that trade and sanctions policy toward Cuba will remain an active subject of debate over the next several months.

OFAC’s and BIS’s regulations and their recent amendments are obviously more comprehensive than this summary, which only highlights some key points. Please feel to contact us with any further questions. Jones Day will continue to review significant developments.

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