

Fried Frank International Trade and Investment *Alert*TM



U.S. Eases Cuba Sanctions; Modestly Expands Opportunities for Travel and Trade

On January 16, 2015, the Treasury Department's Office of Foreign Assets Control (OFAC) and the Commerce Department's Bureau of Industry and Security (BIS) took coordinated steps to implement [policy changes announced by the President on December 17, 2014](#), to ease restrictions on the flow of people, goods, and services between the United States and Cuba. While the changes to the Cuba sanctions program are generally modest, and the economic embargo largely remains in place, these are the most significant changes to the U.S. Cuban sanctions regime in decades. The sanctions liberalization may be particularly important for certain industry sectors and may presage future changes in U.S.-Cuba policy.

We have summarized below the key provisions of OFAC's and BIS's rules easing the Cuba sanctions program.

OFAC Regulations

The [OFAC announced regulatory changes](#) deal with, among other things, certain travel to Cuba, payments of remittances, facilitation of financial transactions and encouragement of entrepreneurial activity, telecommunications, and transactions with Cuban nationals living outside Cuba

Travel to Cuba

The amendments ease restrictions on travel to Cuba in a number of ways. Prior to these changes, persons subject to U.S. jurisdiction wishing to travel to Cuba could do so only if the proposed travel fit into one of twelve categories set forth in the OFAC regulations and only after obtaining a specific license from OFAC authorizing such travel. These twelve categories include, among other things, educational activities, journalistic and religious activities, professional meetings, and humanitarian projects. Now, while persons subject to U.S. jurisdiction may still only travel to Cuba if the proposed travel fits into one of the twelve categories, they may do so without first obtaining a specific license. Notably, Cuba travel for tourist activities remains prohibited.

OFAC has also authorized persons subject to U.S. jurisdiction to provide certain travel and carrier services to Cuba without a specific license, and to use U.S. credit and debit cards in Cuba for certain transactions. While authorized travelers to Cuba may potentially use U.S. credit and debit cards in the future, U.S. financial institutions are not required to accept the transactions or work with Cuban merchants. Further, as a result of the changes, travelers will no longer be subject to a per diem limitation on spending in Cuba. They will also be permitted to import up to \$400 worth of goods from Cuba, \$100 of which may be in alcohol or tobacco products.

Remittances

The changes ease restrictions on individuals wishing to send remittances to Cuban nationals by removing the requirement for a specific license. They also increase the amount of money that may be sent to Cuban nationals per quarter from \$500 to \$2,000 and increase the amount that may be carried to Cuba to \$10,000 during authorized travel.

Facilitating Financial Transactions and Entrepreneurial Activities

To facilitate the processing of newly authorized transactions, OFAC has added a general license that authorizes depository institutions to open correspondent accounts at Cuban financial institutions. OFAC has also revised the regulatory interpretation of certain terms (i.e., “cash in advance”) in order to expand financing options for authorized exports to Cuba.

OFAC’s amendments also allow certain business to be conducted with independent Cuban entrepreneurs, authorizing imports of certain goods and services by such enterprises and authorizing certain micro-financing activities and entrepreneurial and business training.

Telecommunications

In an effort to improve the flow of information within Cuba and between Cuba and the rest of the world, OFAC amended its regulations to authorize certain transactions that establish mechanisms to provide commercial telecommunications services with and within Cuba and to allow the export and reexport of certain communications items. Specifically, the regulations: (i) authorize payments to telecommunications service providers for services, including roaming services, within Cuba or between Cuba and third countries; (ii) allow persons subject to U.S. jurisdiction to enter into contracts with telecommunications providers for services provided to individuals in Cuba; and (iii) authorize transactions relating to the establishment of telecommunications facilities that will provide telecommunications service in Cuba. In addition, persons subject to U.S. jurisdiction will now be permitted to provide services relating to internet-based communications in Cuba.

Transactions with Cuban Nationals Located Outside of Cuba

OFAC’s amendments allow persons subject to U.S. jurisdiction to conduct certain business with Cuban nationals located outside Cuba that was previously prohibited. For example, subject to certain limitations, U.S.-owned or controlled entities in third countries are now permitted to provide goods and services to Cuban nationals located outside Cuba, and Cuban nationals permanently residing abroad will be considered unblocked. Further, persons subject to U.S. jurisdiction may now be involved in professional meetings and conferences that are attended by Cuban nationals outside Cuba.

In addition, the OFAC amendments: (i) expand existing authorizations for Cuba-related transactions by employees, grantees, and contractors of the U.S. Government, foreign governments, and certain international organizations in their official capacities; (ii) authorize transactions with Cuban official missions and their employees in the United States; (iii) authorize insurance companies to offer global insurance policies that cover third-country nationals traveling to Cuba and (iv) authorize foreign vessels to enter the United States after engaging in certain trade with Cuba.

BIS Regulations

While the United States continues to maintain a comprehensive embargo on trade with Cuba, the Obama Administration took significant steps last week to enable the export and reexport of certain goods to Cuba.

The embargo continues to require that a license be obtained for the export or reexport to Cuba of all items subject to the Export Administration Regulations unless an applicable license exception exists. The rule announced by BIS last week expands the items for which a license exception applies by creating License Exception Support for the Cuban People (SCP) and amending existing License Exception Consumer Communications Devices (CCD). These changes are aimed principally at improving the living conditions of the Cuban people, supporting independent economic activity, strengthening civil society in Cuba, and improving the free flow of information to, from, and among the Cuban people.

With a focus on improving living standards and allowing the Cuban people to gain greater economic independence from the Cuban government, the BIS amendments authorize the export and reexport to Cuba of certain classes of items to be used by the private sector, including: (i) materials used for construction and renovation of privately-owned buildings (private residences, businesses, places of worship and buildings for private sector social or recreational use); (ii) goods used by entrepreneurs such as auto mechanics, barbers and hairstylists and restaurateurs; and (iii) agricultural tools and equipment.

In addition, the newly created license exception, in an effort to strengthen Cuban civil society, allows certain donated items to be exported or reexported (and in some cases temporarily exported) to Cuba. Such items must be for scientific, archaeological, cultural, ecological, educational, historic preservation, or sporting purposes or must be exported to human rights organizations, individuals, or non-governmental organizations.

In order to enhance the free flow of information to and from people inside Cuba, BIS has expanded the authorization for export to Cuba of certain consumer communications devices, related software, applications, hardware items and items designed to help establish or improve communications infrastructure. These items no longer need to be donated, and now may be paid for. The rule also further enables the export of items for use by the news media.

The changes announced by BIS also simplify the process for sending gifts to Cuba by authorizing exports of multiple gift parcels in a single shipment. Finally, BIS established a general policy of approval for exports and reexports to Cuba for items for the environmental protection of U.S. and international air quality, waters, and coastlines.

Key Takeaways

The coordinated actions taken last week by OFAC and BIS represent the first steps to implement the significant policy changes announced by the President on December 17, 2014, aimed at supporting and engaging the Cuban people. While the President's ability to enact some of the announced policy changes may run into political opposition, the Administration has moved quickly to take unilateral measures that are permitted without legislative action. The sanctions amendments themselves are notable – for symbolic if not practical reasons – for easing many aspects of the long-running Cuba sanctions program.

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