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OFAC and BIS Pave the Way for Additional Trade with Cuba

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On January 27, 2016, both the U.S. Treasury Department's Office of Foreign Assets Control (OFAC)[1] and the U.S. Commerce Department's Bureau of Industry and Security (BIS)[2] announced new amendments to the Cuban Assets Control Regulations (CACR) and the Export Administration Regulations (EAR), respectively, which further liberalize U.S. trade relations with Cuba. These new amendments implement the President's policy to significantly ease restrictions on U.S. trade and investment with Cuba, announced in December 2014, and supplement amendments previously made to OFAC's and BIS's regulations on January 16, 2015[3] and September 21, 2015.[4]

Changes to OFAC's Cuba Sanctions Program

To facilitate authorized exports and reexports to Cuba, and expand travel to Cuba, OFAC announced the following changes to the CACR:

- Payment and Financing of Exports/Reexports: Prior to the issuance of OFAC's new rule, payment and financing terms for all authorized exports/reexports were limited to cash-in-advance or third-country financing. As of January 27, restrictions on payment and financing terms for authorized exports/reexports, except for agricultural commodities/items, have been removed and U.S. banks will be able to provide financing, including issuing a letter of credit for these exports/reexports. OFAC provided the following examples of permissible payment and financing terms for authorized, non-agricultural exports/reexports: payment of cash in advance; sales on an open account; and financing by third-country financial institutions or U.S. financial institutions.

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Practice Areas

International Trade

- **Air Carrier Services:** To facilitate the provision of air carrier services, OFAC is permitting U.S. persons to enter into blocked space, commence code-sharing, and undertake leasing arrangements. These arrangements can be made with Cuban nationals.
- **Travel:** OFAC has expanded authorizations within 12 existing travel categories to facilitate travel to Cuba, as follows.
 - **Temporary sojourn:** Certain personnel who are operating/servicing vessels or aircraft in Cuba are now authorized to engage in travel-related and other transactions to facilitate the temporary sojourn of the vessels or aircraft.
 - **Information and informational materials:** U.S. persons are now permitted to engage in travel-related and other transactions directly incident to professional media or artistic productions of information or informational materials for exportation, importation, or transmission. OFAC has also expanded its existing general license to authorize transactions relating to the creation, dissemination, or artistic alteration or enhancement of informational materials.
 - **Professional meetings:** No longer limited to attending professional meetings or conferences in Cuba, U.S. persons can now engage in travel-related and other transactions to organize these meetings and conferences.
 - **Public performances, clinics, workshops, athletic and other competitions, and exhibitions:** As with professional meetings, U.S. persons can now organize these events. OFAC has also removed requirements that U.S. profits from these events be donated to certain organizations and that certain events be run by U.S. persons.
 - **Humanitarian projects:** OFAC's list of authorized humanitarian projects has been expanded to include disaster preparedness and response.

Amendments to BIS's Cuba Licensing Policies

Issued in conjunction with the changes made to OFAC's Cuba sanctions program, BIS's rule adds new categories of activities that the agency will license and is intended to engage and empower the Cuban people, while also maintaining stringent restrictions on and limiting the benefits to the Cuban government-run economy and Cuban military, police, security, and intelligence entities.

Under the EAR, nearly all exports of U.S. items to Cuba require a BIS license, and with few exceptions, license applications are subject to a policy of denial.[5] BIS's rule explicitly states that the following categories of licenses are now subject to a general policy of approval:

- Items that are necessary to ensure the safety of civil aviation and the safe operation of commercial aircraft engaging in international air transportation;
- Telecommunications items that would improve communications to, from, and among the Cuban people;

- Items to human rights organizations or to individuals and non-governmental organizations that promote independent activities designed to strengthen civil society in Cuba;
- Commodities and software for use by U.S. news bureaus in Cuba whose primary purpose is gathering and disseminating news to the general public; and
- Agricultural items and agricultural commodities that are not eligible for a license exception (e.g., insecticides, pesticides, herbicides, and agricultural commodities classified above the EAR99 level).

Additionally, BIS's rule permits a case-by-case review, rather than the general policy of denial, of license applications for items intended to meet the needs of the Cuban people, providing several new avenues for companies to do business in Cuba. Notably, the case-by-case review policy applies to commodities exported or reexported to state-owned enterprises and Cuban government organizations that ultimately provide the goods for the use and benefit of the Cuban people. The new case-by-case licensing policy covers items for agricultural production; artistic endeavors; education; food processing; disaster preparedness, relief, and response; public health and sanitation; residential construction and renovation; and public transportation. Further, the new policy includes exports and reexports of items for construction of water treatment, electricity/energy, sports and recreation, and other facilities that directly benefit the Cuban people. Finally, the new policy applies to exports and reexports to wholesalers and retailers of items for domestic consumption by the Cuban people.

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Although the Cuba embargo remains in place, it is clear that the U.S. government is making strides to significantly ease trade restrictions on Cuba and build a stronger and more open relationship with the Cuban people. Should you have any questions about U.S. sanctions and export controls applicable to Cuba, please do not hesitate to contact us.

[1] Cuban Assets Control Regulations, 81 Fed. Reg. 4583 (Jan. 27, 2016) (amending 31 C.F.R. pt. 515), <https://www.gpo.gov/fdsys/pkg/FR-2016-01-27/pdf/2016-01559.pdf>.

[2] Cuba Licensing Policy Revisions, 81 Fed. Reg. 4580 (Jan. 27, 2016) (amending 15 C.F.R. pt. 746), <https://www.gpo.gov/fdsys/pkg/FR-2016-01-27/pdf/2016-01557.pdf>.

[3] "OFAC Amends Its Cuba Regulations to Open Up Trade and Investment," <http://www.wileyrein.com/newsroom-articles-3442.html>; "BIS Publishes Sweeping Amendments Easing Trade Restrictions on Cuba," <http://www.wileyrein.com/newsroom-articles-3441.html>.

[4] "U.S. Further Eases Trade Restrictions on Cuba," <http://www.wileyrein.com/newsroom-articles-US-Further-Eases-Trade-Restrictions-on-Cuba.html>.

[5] 15 C.F.R. § 746.2.