

## CLIENT MEMORANDUM

# Agencies Issue Regulatory Amendments to Further Liberalize Trade with Cuba

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## AUTHORS

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On October 14, 2016, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") and the Department of Commerce's Bureau of Industry and Security ("BIS") announced amendments to the Cuban Assets Control Regulations and the Export Administration Regulations ("EAR"), respectively, to further liberalize trade with Cuba. These changes took effect on October 17, 2016.

The changes further expand opportunities for U.S. engagement with Cuba. The newly released amendments allow for increased commercial activity that will benefit the Cuban people, such as scientific collaboration, infrastructure and safety-related services, and facilitate authorized travel. However, the Cuba embargo generally remains in place, and most transactions with Cuba remain prohibited for U.S. companies and their foreign subsidiaries. Unless an activity is covered by an exemption, general license, and/or license exception, all persons subject to U.S. jurisdiction will continue to require authorization from OFAC and/or BIS before doing business or investing in Cuba.

### *Infrastructure and Aviation*

OFAC has authorized expanded services related to Cuban infrastructure allowing persons subject to U.S. jurisdiction to provide services to Cuba or Cuban nationals related to developing, repairing, maintaining, and enhancing certain Cuban infrastructure to benefit the Cuban people. OFAC also has provided a new general license to allow U.S. companies to

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perform services aimed at ensuring safety in civil aviation and the safe operation of commercial aircraft for Cuba and Cuban nationals, wherever located.

### *Trade and Shipping*

OFAC amended the general license that authorizes transactions ordinarily incident to BIS-authorized exports and re-exports to clarify that both exports of U.S.-origin items from the United States, and re-exportations of such items from a third country, to Cuba are authorized. The reference to “100% U.S.-origin items” was eliminated as potentially confusing. Nonetheless, transactions between a U.S.-owned or -controlled firm in a third country and Cuba for the exportation to Cuba of commodities produced in a country other than the United States or Cuba is not covered by the general license and requires a specific license.

The BIS changes also authorize exports of certain consumer goods that are sold online or through other means directly to eligible individuals in Cuba for their personal use.

Previous regulations prohibited any foreign vessel from entering a U.S. port to load or unload freight for 180 days after calling on a Cuban port for trade purposes. OFAC has now issued a general license to do away with this restriction if the items that the foreign vessel carried to Cuba would, if subject to the EAR, be classified as EAR99 or controlled on the Commerce Control List of the EAR for anti-terrorism purposes only. Additionally, BIS has generally authorized all U.S.-origin air cargo to transit Cuba. The authorization for air cargo is now consistent with an existing general authorization for cargo transiting Cuba aboard vessels.

### *Imports into the United States*

OFAC also eliminated the monetary limitations on what authorized travelers may import from Cuba into the United States for personal use. The amendments include authorization to import Cuban-origin merchandise as accompanied baggage for personal use, including alcohol and tobacco products. Persons subject to U.S. jurisdiction may also purchase Cuban-origin alcohol and tobacco products in third countries and import the items into the United States, without monetary restrictions. In all cases, the items must be for personal use, and the normal limits on duty and tax exemptions apply.

### *Additional Amendments*

In addition to the amendments discussed above, OFAC and BIS issued authorizations for the following activities:

- Persons subject to U.S. jurisdiction may now engage in the following activities related to health:
  - Joint medical research projects with Cuban nationals; and
  - Transactions incident to obtaining U.S. Food and Drug Administration approval of Cuban-origin pharmaceuticals.

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- Persons engaged in health-related activities are now authorized to open and maintain bank accounts in Cuba for conducting authorized business.
- Authorizations for making grants, scholarships, and awards to Cuba or Cuban nationals have been expanded to include awards related to scientific research and religious activities.
- The regulations now permit additional activities to support travel and business in Cuba, including:
  - Remittances to third-country nationals for travel to, from, or within Cuba, provided the travel would be authorized by general license for a person subject to U.S. jurisdiction;
  - Importation into the United States of items that were previously exported or re-exported to Cuba pursuant to a BIS or OFAC authorization, which will allow for the service or repair of such items; and
  - Entering into certain contingent contracts for transactions requiring authorization by OFAC or any relevant federal agency or where authorization is no longer required.
- The regulations also clarify that agricultural items, such as pesticides and tractors, that are authorized by BIS for export and re-export are not subject to restrictions on payment terms.

### *Conclusion*

These changes are another step in President Obama's efforts to normalize relations with Cuba and increase opportunities for trade and travel, and offer additional opportunities for U.S. companies and their foreign subsidiaries. However, it is important that companies remain aware of the continuing restrictions against Cuba and obtain all necessary authorizations from OFAC or BIS for any activity related to Cuba or Cuban nationals.

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