

# US Further Liberalizes Cuba Sanctions and Export Controls

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On October 14, 2016, the United States announced additional measures to liberalize Cuba sanctions and export controls, effective October 17, 2016.

The new measures, which are summarized below, authorize additional transactions and clarify existing authorizations. New authorizations have been implemented in connection with contingent contracts; imports of items previously exported to Cuba; transactions involving Cuban infrastructure; aviation and vessel transactions; medical and pharmaceutical transactions; travel; grants, scholarships, and awards; and the export of consumer products to Cuba. The measures are implemented as amendments to the Cuban Assets Control Regulations (“CACR”) of the US Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) and the Export Administration Regulations (“EAR”) of the US Department of Commerce’s Bureau of Industry and Security (“BIS”) and expand the scope of permissible Cuba-related activities announced in January 2015<sup>1</sup> and March 2016.<sup>2</sup> However, the Cuba embargo remains in place under statutory authority and most transactions between the United States or persons subject to US jurisdiction<sup>3</sup> and Cuba remain prohibited.

## OFAC Sanctions Amendments to the CACR

### Contingent Contracts

- **Contingent contracts relating to Cuba transactions.** Persons subject to US jurisdiction are authorized to enter into certain contingent contracts for transactions currently prohibited by the regulations and to engage in transactions ordinarily incident to negotiating and entering into such contracts. Contract performance (e.g., making deposits, receiving payments, and providing certain services or goods) is made expressly contingent on obtaining authorization from OFAC and any other relevant federal agency, or authorization no longer being required.

### Imports into US of Certain Items for Service/Repair

- **Imports of previously exported/reexported items to Cuba for servicing and repair.** Imports into the United States or a third country of items that were previously exported or reexported to Cuba pursuant to a BIS or OFAC authorization are now authorized, provided the importation is done either to return such

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<sup>1</sup> See January 2015 White & Case Alert [here](#).

<sup>2</sup> See March 2016 White & Case Alert [here](#).

<sup>3</sup> A “person subject to US jurisdiction” is defined to include any citizen or resident of the United States, wherever located, any entity organized under US law, any person within the United States, and any entity owned or controlled by any citizen or resident of the United States or by any entity organized under US law.

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items to the United States or a third country, or to service or repair such items and return them to Cuba. This will permit recipients of authorized exports or reexports to Cuba to return items to the United States or a third country for service and repair. OFAC and BIS must provide separate authorization for the export or reexport of serviced, repaired, or replacement items.

### Infrastructure Development Services

- **Services related to Cuban infrastructure.** Persons subject to US jurisdiction are authorized to provide services to Cuba or Cuban nationals related to developing, repairing, maintaining, and enhancing certain Cuban infrastructure in order to directly benefit the Cuban people, consistent with the BIS licensing policy in connection with infrastructure exports or reexports.<sup>4</sup>

### Civil Aviation Services and Vessel Transactions

- **Civil aviation safety-related services.** Persons subject to US jurisdiction are authorized to provide civil aviation safety-related services aimed at promoting safety in civil aviation and the safe operation of commercial aircrafts to Cuba and Cuban nationals, irrespective of location.
- **Certain vessel transactions.** Foreign vessels that have carried items from a third country to Cuba are no longer prohibited from entering US ports for the purposes of loading or unloading freight for 180 days after the date they depart Cuba. In order to take advantage of this authorization, items carried on the vessel, were they subject to the EAR, would be designated EAR99 or controlled only for anti-terrorism reasons on the Commerce Control List.

### Agricultural Transactions

- **Financing.** The regulations clarify that “agricultural items” (e.g., pesticides and tractors) are not subject to restrictions on payment and financing terms as determined by the Trade Sanctions Reform and Export Enhancement Act (“TSRA”). “Agricultural commodities” (e.g., poultry and corn) remain subject to limits on payment and financing terms under the TSRA.

### Medical Research/Pharmaceutical Transactions

- **Cuban-origin pharmaceuticals.** Transactions incident to obtaining US Food and Drug Administration (“FDA”) approval of Cuban-origin pharmaceuticals are authorized. The general license includes discovery and development, pre-clinical research, clinical research, regulatory review, regulatory approval and licensing, regulatory post-market activities, and imports into the United States of Cuban-origin pharmaceuticals. The regulations also authorize the marketing, sale, or other distribution in the United States of the FDA-approved Cuban-origin pharmaceuticals.
- **Joint medical research.** Persons subject to US jurisdiction may now engage in both non-commercial and commercial joint medical research projects with Cuban nationals.
- **Bank accounts for medical research/pharmaceutical transactions.** Persons subject to US jurisdiction engaging in joint medical research and transactions related to Cuban-origin pharmaceuticals may open, maintain, and close bank accounts at Cuban financial institutions in connection with such authorized transactions.

### Travel

- **Professional meetings or conferences related to the promotion of tourism.** Persons subject to US jurisdiction may travel to Cuba to attend or organize professional meetings or conferences in Cuba for the promotion of tourism in Cuba, which was previously prohibited.

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<sup>4</sup> “Infrastructure” means systems and assets used to provide the Cuban people with goods and services produced by the public transportation, water management, waste management, non-nuclear electricity generation, and electricity distribution sectors, as well as hospitals, public housing, and primary and secondary schools. 31 C.F.R. § 515.591.

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- **Importation of Cuban-origin merchandise.** The monetary limitation on accompanied baggage for persons subject to US jurisdiction returning to the United States from authorized travel to Cuba (\$400, with no more than \$100 consisting of alcohol or tobacco products) has been eliminated. Merchandise imported as accompanied baggage must be for personal use.

Persons subject to US jurisdiction also may now import Cuban-origin merchandise acquired in third countries into the United States as accompanied baggage without value limitations, provided that it remains for personal use only.

For foreign passengers entering the United States, the requirement that Cuban-origin goods in accompanied baggage exclude Cuban-origin alcohol and tobacco products has been eliminated. Cuban-origin goods must not be in commercial quantities and must not be imported for resale.

- **Remittances for third-country national travel.** Persons subject to US jurisdiction are authorized to send remittances to third-country nationals for travel by third-country nationals to, from, or within Cuba, provided that such travel would be authorized under a general license for a person subject to US jurisdiction.

## Grants, Scholarships, and Awards

- **Grants, scholarships, and awards.** Grants, scholarships and awards may be provided to Cuba or Cuban nationals in connection with scientific research and religious activities.

## BIS Export Control Amendments to the EAR

### Consumer Products

- **Consumer products for personal use.** Certain consumer products may be sold and exported or reexported directly to eligible individuals in Cuba for personal use (or the personal use of immediate family). To be eligible, the items must be designated as EAR99 or controlled on the Commerce Control List only for anti-terrorism reasons. This authorization complements the terms of License Exception Support for the Cuban People (SCP) and BIS licensing policy authorizing the export or reexport of certain items for use by the Cuban private sector.

### Air Cargo

- **Transit of cargo.** Air cargo may transit through Cuba, complementing an existing general authorization for cargo transiting Cuba aboard vessels. The cargo must remain on the aircraft, it cannot be transferred to another aircraft, it must leave on the same aircraft when it departs, and it cannot be used in Cuba.

As noted, the amended regulations expand existing authorizations and implement new authorizations. Because the Cuba trade embargo remains in effect, companies considering activities or other business in Cuba must continue to undertake rigorous review of potential transactions to ensure compliance with BIS and OFAC's amended regulations.

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