

CUBA: U.S. SANCTIONS

by The Swedish Club and Reed Smith LLP
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BACKGROUND

For several decades, the United States has imposed a near-comprehensive embargo on Cuba. These sanctions are generally implemented through the Cuban Assets Control Regulations, 31 C.F.R. Part 515. Subject to certain narrow exceptions, U.S. sanctions on Cuba prohibit nearly all direct or indirect investment, trade, commercial, or other activities involving Cuba, Cuban nationals, or Cuban property.

The CACR prohibit transactions by persons “subject to U.S. jurisdiction” which include U.S. citizens and permanent residents, entities organized under the laws of the United States and their foreign branches, and non-U.S. entities owned or controlled by the foregoing. Persons physically located in the United States, regardless of citizenship or residency, are also “subject to U.S. jurisdiction.”

While there are no secondary sanctions imposed against Cuba, non-U.S. persons must avoid the use of U.S. dollars or U.S. banks for transactions related to Cuba. Non-U.S. persons must also ensure they are not exporting or facilitating the export of U.S. origin goods to Cuba.

LEGAL FRAMEWORK

Executive Orders

- 12854 – Implementation of the Cuban Democracy Act (Effective Date – July 4, 1993).

Statutes

- Trade Sanctions Reform and Export Enhancement Act of 2020 (TSRA), 22 U.S.C. §§ 7201-7211
- Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 18 U.S.C. § 2332d
- Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, 22 U.S.C. §§ 6021-6091
- Cuban Democracy Act of 1992 (CDA), 22 U.S.C. §§ 6001-6010
- Sections 5 and 16 of the Trading With the Enemy Act (TWEA), 50 U.S.C. App. §§ 5, 16

Code of Federal Regulations

- 31 C.F.R. Part 515 – Cuban Assets Control Regulations

WHAT IS PROHIBITED FOR PERSONS SUBJECT TO U.S. JURISDICTION?

- Transactions involving Cuba or Cuban nationals.
- Exportation of goods and services to Cuba.
- Importation of and dealings in Cuban-origin goods or services.
- Restrictions on loans, credits and other financing.

- Restrictions on direct financial transactions with certain entities.

THE 180 DAY RULE

U.S. prohibitions on Cuba restrict numerous activities, one of which is the entry of vessels into any U.S. port if that vessel has engaged in trade with, or carried passengers to or from Cuba, within the last 180 days.

There is an exception to this rule for vessels carrying cargo that, if subject to the U.S. Export Administration Regulations (EAR), would be classified as EAR99 or controlled for anti-terrorism purposes only. Many products fall within this exception but ultimately, each voyage must be looked at on a case-by-case basis to avoid triggering the 180 day rule.

Blocking Statute

In 1996, in response to extra-territorial elements of U.S. sanctions in respect of Cuba, the EU introduced Council Regulation (EC) No 2271/96, the so-called EU “Blocking Statute”.

The intention of the Blocking Statute is to protect EU operators, regardless of their size and field of activity, by:

1. nullifying the effect in the EU of any foreign court ruling based on the foreign laws listed in its Annex;
2. allowing EU operators to recover in court damages caused by the extra-territorial application of the specified foreign laws.

The Blocking Statute prohibits compliance by EU operators with any requirement or prohibition based on the specified foreign laws. EU operators whose economic and financial interests are affected by the extra-territorial application of those laws are obligated to inform the European Commission. Compliance with U.S. extra-territorial sanctions on Cuba may give rise to damages claims and criminal liability as a matter of EU law.

A Guidance Note on the implementation of the Blocking Statute can be found on the European Commission’s website. Exemptions may be granted on application to the European Commission.

The UK equivalent of the Blocking Statute is the Protection of Trading Interests (retained Blocking Regulation), which has a similar effect but is applicable to UK persons.

If a UK person requests a licence from U.S. authorities to be exempt from legislation imposing the proscribed sanctions, that person would be complying with the U.S. sanctions and may have breached the retained Blocking Regulation.

Nevertheless, in exceptional circumstances, a UK person may be authorised by the Secretary of State to comply with legislation imposing the proscribed sanctions. In assessing authorisation applications, the Secretary of State will consider the criteria set out in the Implementing Regulation.

External legal advice should be contemplated when navigating these complex issues.

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