

Cuba Sanctions

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Introduction

This briefing highlights the sanctions imposed by the US against Cuba. There are currently no sanctions imposed on Cuba by the EU.

While it is the case that dialogue recently opened up between the US and Cuba under the Obama administration and work began to try to normalise relations, on 16 June 2017 President Trump announced that changes will be made to reverse some of the steps taken under the Obama administration regarding the US embargo on Cuba. This briefing sets out the current position, i.e. the position of US embargo on Cuba following the Obama administration changes. The changes announced by President Trump will not come into force until the regulations to implement those changes have been finalised and issued. It is not known whether the changes to be made by President Trump will impact the easing of the “180 day rule” (see below), but it is expected at the least that there could be an impact upon the shipping industry due to a likely increase in the number of Cuban entities US persons will be prohibited from transacting with.

There are still sanctions and a trade embargo in place between the US and Cuba and, therefore, Members need to exercise caution when considering trade with Cuba.

This is a complex and fast moving area and Members are encouraged to seek advice on sanctions issues from the Club. We will update the briefing when the Trump administration changes come into force should these impact upon the shipping industry. The Club has a sanctions advice team which Members can contact through the usual contacts or by using the email address sanctions.advice@nepia.com.

The purpose of this briefing is to highlight key areas of the sanctions which impact on the shipping industry. It is not an overview of the entirety of sanctions which have been imposed.

Disclaimer

The purpose of this publication is to provide a source of information which is additional to that available to the maritime industry from regulatory, advisory, and consultative organisations. Whilst care is taken to ensure the accuracy of any information made available no warranty of accuracy is given and users of that information are to be responsible for satisfying themselves that the information is relevant and suitable for the purposes to which it is applied. In no circumstances whatsoever shall North be liable to any person whatsoever for any loss or damage whatsoever or howsoever arising out of or in connection with the supply (including negligent supply) or use of information.

Unless the contrary is indicated, all articles are written with reference to English Law. However it should be noted that the content of this publication does not constitute legal advice and should not be construed as such. Members should contact North for specific advice on particular matters

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US Embargo

Most transactions between the United States, or persons subject to US jurisdiction, and Cuba continue to be prohibited.

The Cuban Asset Control Regulations apply generally to persons subject to the jurisdiction of the United States and that term is defined to include any corporation, partnership, association, or other organization, wherever organized or doing business, that is owned or controlled by a US citizen or resident of the US, by any person within the US, or by any corporation, partnership, association, or other organization organized under the laws of the US or of any State in the US.

This is wider than the definition of US persons under most sanctions regimes.

The 180 Day Rule

The US sanctions also impact on all companies who are trading Cuba and the US, due to the “180 day rule”.

The “180 day rule” is a US statutory restriction, which affects all ship owners globally (i.e. not just US ship owners) prohibiting any vessel that enters Cuba to engage in the trade of goods or the purchase or provision of services there, from entering any US port for the purpose of loading or unloading freight for 180 days after leaving Cuba, unless authorised by OFAC.

The US has recently amended the Cuban Asset Controls Regulations and Export Administration Regulations (“EAR”) and provided limited exemptions from the “180 day rule”. Whether or not the voyage is exempt may not be straightforward to establish.

A vessel is exempt if it carries to Cuba, from a third country, only items that, were they subject to the EAR, would be classified as EAR99 or would be controlled on the US Commerce Control List (“CCL”) only for anti-terrorism reasons. The exemption does not apply to vessels loading at Cuba.

This extends the previous amendment which provided a waiver of the 180 day rule for vessels carrying foreign agricultural commodities, medicine, or medical devices to Cuba.

EAR99 items are those that are subject to the EAR but are not elsewhere specified in any category in the CCL,

i.e. are not listed on the CCL with an assigned Export Control Classification Number (“ECCN”). 15 CFR (Code of Federal Regulations) part 732 details the steps for determining the classification of goods under the EAR.

While for some cargoes the classification is clear, it is not so for others. If the classification of the cargo is unclear, then the only way to obtain a definitive classification is to submit a Commodity Classification Request to the Bureau of Industry & Security (“BIS”) of the US Department of Commerce. Such requests must be submitted via the “Simplified Network Application Process – Redesign (SNAP-R)” of the BIS: [here](#).

Note that the exemption to the 180 day rule can be waived if a vessel, while in Cuba, engages in the purchase of goods or services that are not “associated with normal shipping transactions.” So, while a vessel can engage a ship’s agent and stevedores, it might waive the 180 day rule exemption if, for example, it undertook deferred and non-emergency repairs while in Cuba. The exemption can also be lost if a vessel loads any cargo in Cuba, unless the transactions involving those goods are authorized by OFAC or exempt from the prohibitions of the Cuban Asset Control regulations.

The “180 day rule” is separate from a second statutory restriction – the goods/passengers-on-board rule – which prohibits any vessel carrying goods or passengers to or from Cuba, or carrying goods in which Cuba or a Cuban national has an interest, from entering a US port with such goods or passengers on board, unless authorised or exempt.

U Turn Transactions

US financial institutions are now, thanks to a general licence, able to process “U-turn” transactions. This means that transactions relating to a third-country commerce involving Cuba or Cuban nationals may be processed in US dollars through the US financial system. However, such transactions must originate and terminate outside the United States, and neither the originator nor the beneficiary can be a person subject to U.S. jurisdiction.

Further, there will be transactions US banks are prohibited from processing and other banks may not handle them as a matter of policy, which can lead to difficulties where Club assistance is required.

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Specially Designated Nationals

The US maintains a list of designated persons (so called Specially Designated Nationals ("SDNs") whose property is blocked). A search of the list can be conducted [here](#):

Even if a search of the list reveals no hits then that is not the end of the matter. Where any entity is owned in the aggregate, directly or indirectly, 50 percent or more by one or more blocked persons it is itself considered a blocked person regardless of whether that entity itself is listed. So further due diligence should also be conducted.

It is not generally the case that because an individual or entity is a Specially Designated National it prevents a non-US person from dealing with them. However, banks and third parties may not handle transactions with SDNs as a matter of policy, which can again lead to difficulties where Club assistance is required.

P&I Club Rules

A number of changes were made to North's rules in order to protect the Club itself from exposure to sanctions.

Cesser of insurance provisions have been introduced to rule 38 which will involve the termination of a vessel's entry, where the employment of that insured ship exposes the Club to the risk of being, or becoming subject to, any sanction, prohibition or adverse action.

A change was also made to Rule 19 which will ensure that North will not be exposed to any sanction, prohibition, adverse action, or risk thereof, arising from the handling or payment of a claim.