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Cuba: Congress Begins To Push Open The Door

The signing of the Omnibus Appropriations Act (“Omnibus Act”) (Public Law 111-8) carried special significance for the future of U.S.-Cuba relations. Signed on March 11, 2009, the Omnibus Act included three separate provisions targeting U.S. restrictions imposed against Cuba. Although not the sweeping reversal of policy anticipated by some, the provisions could mark the beginning of a shift in the U.S. policy of sanctions toward Cuba. The United States imposes comprehensive economic sanctions against Cuba, pursuant to the Cuban Assets Control Regulations (the “Cuban Regulations”), 31 C.F.R. Part 515 (2009), administered by the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC).

TSRA-Related Travel

Section 620 of the Omnibus Act amends the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) (22 U.S.C. 7209(a)) to provide for a “general license” to travel to Cuba in connection with marketing and sale of agricultural and medical goods. Currently, parties wishing to travel to Cuba for purposes of commercial sales of agricultural and medical products are required to obtain a specific license from OFAC authorizing the travel to Cuba. Under the new regulations, OFAC will instead issue a general license for travel to, from, or within Cuba for selling agricultural and medical products. The new general license would mean, in effect, that applicants would no longer need to apply for OFAC licenses for such travel. According to Guidance issued on March 11, 2009, OFAC will issue the general license implementing the TSRA provision in the forthcoming weeks.

Family Travel

Additionally, Section 621 of the Omnibus Act *prohibits* the expenditure of funds to enforce the 2004 amendments made to Sections 515.560 and 515.561 of the Cuban Regulations, which restrict travel to visit relatives in Cuba. In effect, Section 621 prohibits the U.S. government from spending money to enforce these travel restrictions. In response, OFAC issued a general license for visits to close relatives in Cuba. This general license effectively lessens the restrictions placed upon U.S. residents visiting family members who are Cuban nationals. Specifically, the OFAC general license allows U.S. travelers to visit family members in Cuba once every 12 months for an unlimited duration. Further, the general license increases the amount that the travelers are permitted to spend while in Cuba to the maximum per diem rate established by the U.S. Department of State (currently USD \$179 for Havana, Cuba).

The OFAC general license also extends authorized visitation beyond the immediate family to include “close relatives.” A close relative is defined as an individual related by blood, marriage or adoption who is no more than three generations

removed from the traveler or from a common ancestor with the traveler. Previously, OFAC issued specific licenses for travel to Cuba only to visit immediate family members, with trips limited in duration to 14 days and restricted to once every three years.

Methods of Payment

In addition, the Omnibus Act attempts to ease the strict interpretation of permissible methods of payments. Specifically, Section 622 prohibits the use of government funds to administer the “cash in advance” method of payment. In 2005, OFAC narrowly interpreted “cash in advance” to mean that payment must be received by the U.S. seller or seller’s agent prior to shipment of the goods from the port at which they are loaded. Under Section 622, OFAC is now prohibited from using any government funds to administer, implement or enforce its cash in advance rule. While the underlying regulation remains unchanged, the U.S. Government is effectively prohibited from enforcing it.

While not necessarily sweeping changes, these provisions indicate the beginning of a shift in the U.S. policy toward Cuba. This trend was continued by House Ways and Means Committee Chairman Charles Rangel (D-N.Y.), who introduced a bill to lift the embargo on Cuba (H.R. 1530) on March 16, 2009.

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