



CLIENT ALERT:

**NEW STATEMENT OF U.S. POLICY ON CUBA DOES
NOT IMMEDIATELY AFFECT INTERNATIONAL SHIPPING**

June 20, 2017

Introduction

On June 16, 2017 President Trump issued a Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba. In a speech on that date to Cuban-Americans in Miami, President Trump stated that he was immediately canceling the Obama Administration's "one-sided deal with Cuba." The question is whether this new policy will impact international shipping.

The Prior Administration's Policy

On December 2014 President Obama announced an intention to normalize U.S. relations with Cuba. President Obama did not have the authority to end the U.S. trade embargo with Cuba, which generally prohibits U.S. persons from transacting any business with Cuba, because that embargo is contained in an Act of Congress. What the President did do, by means of amending the Cuban Asset Control Regulations ("CACR"), was, among other things, relax travel restrictions on U.S. persons who wished to travel to Cuba, permit airlines and passenger carriers to establish regularly scheduled flights and voyages to Cuba, and permit certain categories of U.S. businesses to establish a presence in Cuba.

For the international shipping community, the significant impact of the Obama policy was the creation of an exception to the so-called 180 Day Rule. The CACR in 31 CFR §515.207 provide that no vessel, U.S. or foreign, which has called at a Cuban port to engage in the trade of goods can thereafter enter a U.S. port to load or unload cargo for a period of 180 days. In October 2016 the CACR were amended to create an exception to the 180 Day Rule for foreign vessels. Under the exception, a foreign vessel is exempt from the 180 Day Rule if it carries to Cuba from a third country only goods which, were they subject to the U.S. Export Administration Regulations, would be classified EAR99 or would be on the Commerce Control List only for anti-terrorism reasons. This amendment permits foreign vessels to carry a fairly wide range of cargoes to Cuba and then proceed directly to the U.S.

President Trump's Policy Toward Cuba

The Presidential Memorandum speaks in policy terms, not in specifics, and there is no mention of the 180 Day Rule. The principal policies set forth in the Memorandum are to maintain the U.S. trade embargo against Cuba, to tighten restrictions on individual travel to Cuba by U.S. citizens, and to end economic practices that disproportionately benefit the Cuban government, or its military, intelligence or security agencies, at the expense of the Cuban people. In particular, it appears that there will be

efforts to limit commerce with the commercial arm of the Cuban military, Grupa de Administracion Empresarial S.A. ("GAESA"). The Memorandum directs the Departments of Treasury and Commerce to begin work within 30 days drafting regulations to implement the new policies.

A Fact Sheet issued by the White House on June 16, 2017 states that the policy changes announced in the Memorandum will not take effect until new regulations have been finalized, which may take several months.

Summary

The changes in the U.S. policy toward Cuba announced by President Trump on June 16, 2017 will not take effect until new regulations have been finalized by the Departments of Treasury and Commerce. At this point there is no way to know if the October 2016 amendment to the 180 Day Rule will be affected. We will continue to closely monitor developments.

Disclaimer: This Client Alert provides only a general summary of the recent Presidential Memorandum on the U.S. policy toward Cuba, and it is not intended to constitute comprehensive legal advice. Specific legal advice should be taken with respect to each individual inquiry regarding the Presidential Memorandum and the U.S. policy toward Cuba. For additional clarification, please feel free to contact Bill Juska (juska@freehill.com), Gina Venezia (venezia@freehill.com), or Bill Pallas (pallas@freehill.com).

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