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President Obama Announces Normalization of Relations with Cuba: How Will the Cuban Embargo Change?

Following a year and a half of secret negotiations and a Cold War-style prisoner swap, President Obama announced yesterday that he will begin to normalize several aspects of relations with Cuba. Before you light up a few Cuban cigars to celebrate the opening of a new market only 90 miles from Miami, however, it is essential to monitor the implications for international trade, finance, and travel. The President's speech yesterday was a statement of intent; his ability to alter existing law regarding relations with Cuba is limited, and it will likely take weeks and months to clarify the new rules of engagement.

EMBARGO RESTRICTIONS WILL BE EASED

The President announced that the U.S. will open an embassy in Havana and will ease -- but not eliminate -- certain restrictions in place under the Cuban embargo. The Cuban embargo is based on a patchwork of statutes and regulations. The most important of these is the Cuban Assets Control Regulations (31 CFR Part 515), issued in 1963 under the Trading with the Enemy Act (12 USC §§ 95a-95b, and 50 USC App. §§ 1-44). The Trading with the Enemy Act confers certain powers on the President to restrict trade with designated countries; the President generally administers those powers through the Treasury Department's Office of Foreign Assets Control ("OFAC"). Specifically, President Obama announced that the U.S. will ease restrictions on family remittances and permit authorized travelers to Cuba to return with goods totaling less than $400, including alcohol and tobacco. In addition, certain banking restrictions will be eased; travelers to Cuba will be permitted to use debit and credit cards in Cuba, and U.S. financial institutions will be permitted to open accounts with Cuban banks. Exports to Cuba's private sector will be permitted, including telecommunications equipment and infrastructure services, household goods, agricultural commodities, and equipment for small businesses and agriculture. Finally, U.S.-owned or controlled entities in third world countries will generally be granted licenses to provide services to, and engage in, financial transactions with Cuban individuals in third world countries. None of these changes, however, will take effect until OFAC issues new regulations in the coming weeks. In addition, the Commerce Department will also update the Export Administration Regulations to take into account the policy changes. Questions for certain industries, however, remain unanswered. Will the U.S. oil and gas industry be able to participate in Cuba's offshore oil industry? As travel restrictions to Cuba are eased, what will be the ability of the U.S. hospitality industry to participate in developing Cuba's tourist infrastructure?

EMBARGO TO REMAIN IN PLACE

President Obama acknowledged that the Cuban embargo will remain in place and called for discussions with Congress about lifting the embargo. As a result, significant restrictions on trade with Cuba will likely remain, such as the general prohibition on the export of military-related defense articles and services, even as the President

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directed the State Department to review Cuba's status as a designated state sponsor of terrorism. Similarly, restrictions on the ability to engage in transactions with the government of Cuba will likely remain and could be a major impediment to any large-scale transaction or infrastructure improvement in a country with a very limited private sector. Finally, there will be questions about the ability of a Republican-controlled Congress to derail the President's initiatives after Congress returns in January.

As events unfold and the Cuban embargo changes in the coming weeks, companies and individuals seeking to broaden their footprint in Cuba should consult with counsel before proceeding.