

## President Obama's Announcement on U.S.-Cuban Relations Could Create Strategic Opportunities for American Companies

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On December 17, 2014, the **United States announced its intention to normalize diplomatic relations with Cuba**. President Obama stated that, **after nearly 54 years of economic and political isolation, his administration will be "taking steps to increase travel, commerce, and the flow of information to and from Cuba."** He further remarked that "American businesses should not be put at a disadvantage....So we will facilitate authorized transactions between the United States and Cuba." This foreign policy directive could have significant effects on U.S. companies, particularly those in the hospitality and leisure sector, and their ability to conduct business with the Cuban government and Cuban nationals.

Before yesterday's announcement, several laws and regulations have worked together to severely restrict commercial interaction between the United States and Cuba. In 1961, President Eisenhower severed diplomatic ties with Cuba under the Trading with the Enemy Act of 1917 (TWEA) and Congress passed the Foreign Assistance Act of 1961.

Pursuant to the authority of these laws, President Kennedy issued a proclamation prohibiting all trade with Cuba on February 3, 1962. In 1992 and 1996, respectively, Congress passed two additional laws: the Cuban Democracy Act and Cuban Liberty and Democratic Solidarity (Libertad) Act. These laws contain additional restrictions on not only U.S. interactions with Cuba, but all nations' contact with Cuba.

Today, the embargo is largely regulated by the Cuban Assets Control Regulations issued and enforced by the Treasury Department's Office of Foreign Assets Control (OFAC). Under these rules, the circumstances in which a U.S. citizen or company may interact with Cuba or Cuban nationals are extremely limited. For example, the broad definitions of "interest," "transfer," and "transaction" under the Regulations prohibits a U.S. company from purchasing, or even conducting business with, any non-U.S. company that has, or has ever had, any commercial contact with a Cuban national. These restrictions have had a chilling effect on U.S. companies who wish to transact business with Canadian or Mexican companies who openly trade with Cuba despite the existence of U.S. laws that could result in sanctions for such activity. Further, many countries are unwilling to risk U.S. sanctions, leading to the embargo's broad extraterritorial effects on both Cuba and these third-party nations.

Although it would take an act of Congress to completely overturn the embargo authorized by the Trading with the Enemy Act and subsequent legislation, President Obama's recent remarks indicate that he intends to exercise executive authority to lessen the current impact of those laws by changes to existing regulations. Such changes could open the door for U.S. trade with both Cuban nationals and other non-U.S. companies with Cuban relationships.

This development has the potential to impact hospitality and leisure businesses, such as hotels, resorts and cruise lines, who may view this as an attractive opportunity to enter or re-enter a new market, given Cuba's \$64 billion economy. Neal Gerber Eisenberg's newly launched Hospitality & Leisure group has worked with clients in the hospitality and leisure industry since the firm's inception in 1986, including routinely advising clients on how to operate within the constraints of the current regulations.



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Neal Gerber Eisenberg will continue to monitor these developments and update clients as to new laws and regulations that may impact commercial interaction with Cuba and Cuban nationals.

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