

# Preparing for Trade with Cuba

## *Sofitel Hotel*

### October 9<sup>th</sup>, 2015

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The screenshot shows the homepage of the Gray Robinson Customs & International Trade Law Blog. The header features the firm's name in a red banner. Navigation links for Home, About Us, and Sobre Nosotros are provided. The date is Tuesday, June 12, 2012. The main article is titled 'New CBP Regulation for Suspected Counterfeit Merchandise' and includes a photo of Peter Quinter. To the right, there is a 'SUBSCRIBE VIA EMAIL' form and a 'SEARCH THIS BLOG' section. At the bottom right, there are links to Peter Quinter's and Melissa Groisman's LinkedIn profiles.

## GrayRobinson Customs & International Trade Law Blog

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TUESDAY, JUNE 12, 2012

### New CBP Regulation for Suspected Counterfeit Merchandise



Peter Quinter

Finally, after years of debate, on April 24, 2012, CBP amended its regulations regarding the detention and seizure of suspected imported counterfeit merchandise. In my opinion, it provides a good balance between the rights of legitimate importers, and the need for CBP to examine, detain, and seize merchandise that violates the trademark rights of companies that have registered their trademarks with the U.S. Patent and Trademark Office and then recorded those trademarks with CBP. The interim rule is entitled "Disclosure of Information for Certain Intellectual Property Rights Enforced at the Border," and amends 19 CFR Parts 133 and 151.

In summary, here are the important changes:

1. Merchandise may be detained by CBP for up to 30 days from the date the merchandise is presented for examination to CBP.
2. The U.S. importer will receive written notification from CBP within 5 days of the detention of the merchandise by CBP.
3. The U.S. importer then has 7 days to establish to CBP's satisfaction that the detained merchandise is not counterfeit.
4. CBP may provide to the trademark owner, at any time, written notice of the date

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## Trading With the Enemy Act of 1917

50 U.S.C. App. section 5 and 16

- by President Woodrow Wilson
- \$1,000,000 criminal fine or 10 years in prison, or both
- \$50,000 civil penalty

## Cuban Assets Control Regulations

31 CFR Part 515  
July 8, 1963

# Pre-January 2015

## 31 CFR § 515.204

(a) Except as specifically authorized by the Secretary of the Treasury no person subject to the jurisdiction of the United States may purchase, transport, import, or otherwise deal in or engage in any transaction with respect to any merchandise outside the United States if such merchandise:

- (1) Is of Cuban origin; or
- (2) Is or has been located in or transported from or through Cuba; or
- (3) Is made or derived in whole or in part of any article which is the growth, produce or manufacture of Cuba.

# U.S. Company Pays OFAC \$434,000

- Ameron International Corporation, Pasadena, California paid to settle embargo violations.
- **The Colombian branch** office of Ameron's U.S. subsidiary, American Pipe & Construction International, on 2 occasions sold concrete pipe to a consortium in which a Cuban company was a partner.

## **CUBAN ECONOMIC HISTORY: BEFORE THE SOCIALIST REGIME**

- Before 1959 the U.S. was Cuba's main trading partner. Florida was Cuba's largest U.S. state trade partner.
- 40 percent of all cargo being routed through Miami's customs district was transported to Cuba.
- 85 percent of Cuba's exports were transported to the United States.

# Pre-January 2015 Prohibitions on Cuban Cigars

- There is a total ban on the importation into the United States of Cuban-origin cigars and other Cuban-origin tobacco products. This prohibition extends to such products acquired in Cuba, irrespective of whether a traveler is licensed by the Office of Foreign Asset Controls (OFAC) to engage in Cuba travel related transactions, and to such products acquired in third countries by any U.S. Traveler, including purchases at duty-free shops. Contrary to what many people may believe, it is illegal for travelers to bring into the United States Cuban cigars acquired in third countries, such as Canada, United Kingdom, or Mexico.



## Timeline

- 1960 - Eisenhower puts into effect a partial economic embargo on Cuba.
- 1961 – The Foreign Assistance Act prohibits all aid to Cuba and allows for a total embargo.
- Kennedy bans all trade and amends The Foreign Assistance Act to prohibit any country to provide aid to Cuba.
- Carter lifts travel ban in 1977, but Reagan reinstates it in 1981. Inspired by the Mariel boatlift incident in 1980.
- Cuban Democracy act of 1992
- Cuban Liberty and Democratic Solidarity (Helms-Burton) Act of 1996
- Bush II tightened travel restrictions and Cuba is placed on the States Sponsors of Terrorism List.
- Obama implemented measures in April 2009 to relieve restrictions, but relations have worsened since the imprisonment of contractor Alan Gross in late 2009.



# The Cuban Missile Crisis

- JULY 1962. Raul Castro, brother of Cuban Premier Fidel Castro, visits Moscow. The Soviet Union begins large-scale shipments of technicians and military aid to Cuba.
- AUGUST 1962. Soviet shipments continue. U.S. intelligence establishes the presence of air defense missiles in Cuba. Rumors of offensive missiles in Cuba spark Republican attacks on the Kennedy administration.
- SEPTEMBER 1962. The U.S. and the U.S.S.R. trade warnings of a nuclear confrontation if Cuba becomes a base for Soviet offensive weapons or if the United States should invade Cuba.
- SUNDAY, OCTOBER 14. Major Richard Heyser completes a U-2 photo reconnaissance flight over Cuba, the first without cloud cover in nearly two weeks.
- MONDAY, OCTOBER 15. Intelligence analysts at the National Photographic Interpretation Center "read out" the U-2 film and identify a medium range ballistic missile site near San Cristobal.

## Reasons for Sanctions

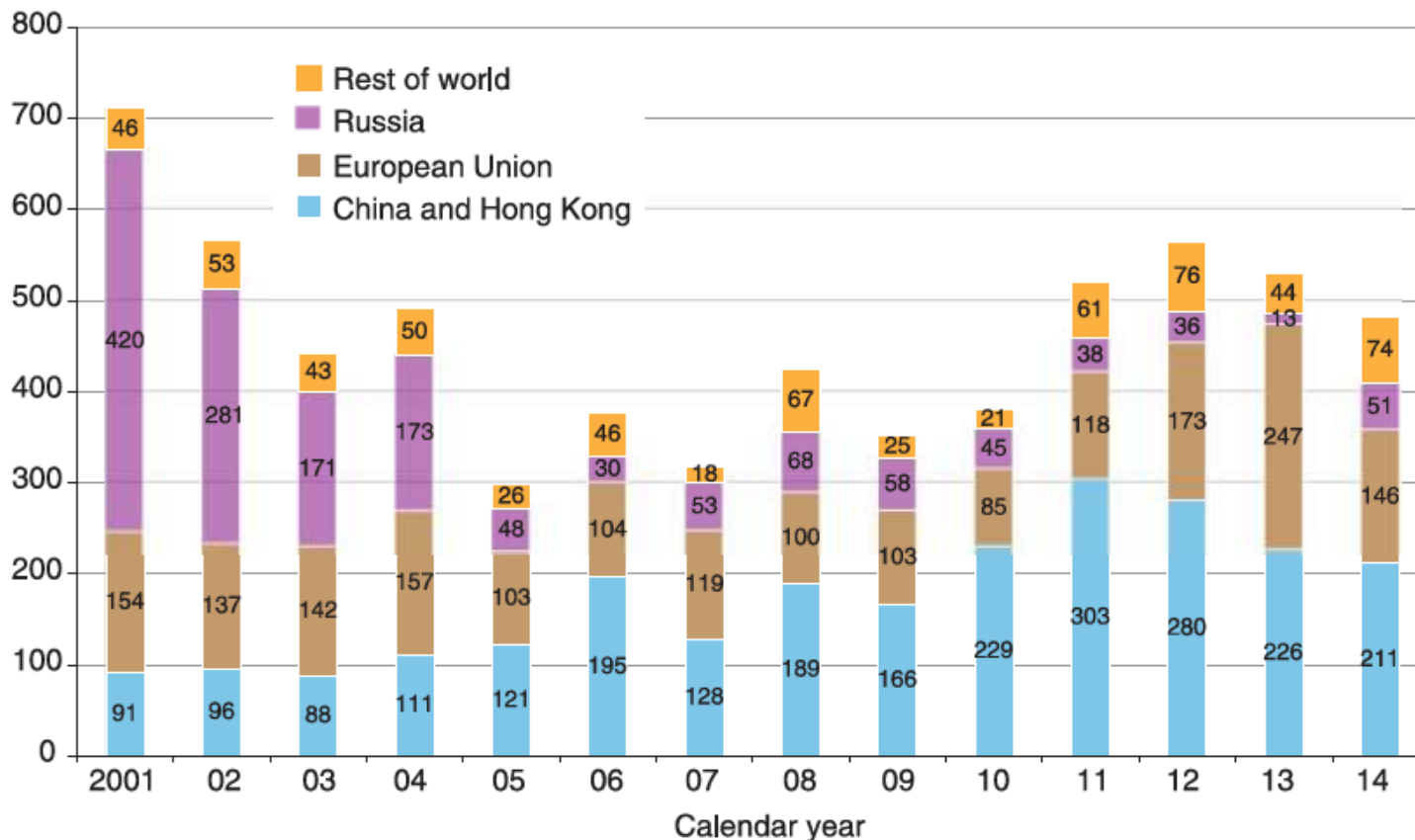
- Prevailing view that isolating Cuba economically will destroy it politically.
- Sanctions were implemented for national security reasons given Cuba's ties with the USSR during the Cold War.
- A change of focus with the Cuban Democracy Act for regime change and human rights.
- Bush II argued Cuba was supporting terrorism abroad.

## Effects and Contradictions

- Cuba does not pose a threat to the U.S.
- Rather than weaken Castro's regime, the embargo has strengthened it.
- Castro uses the embargo as a scapegoat for Cuba's economic woes and his regime has not fallen like many thought it would.
- Bush II stated free trade promotes democracy and opposed sanctions on China due to its human rights record.
- Venezuela is the Latin American threat, but the U.S. buys oil and allows for investments in the U.S. energy sector.
- The Helms-Burton Act hurts U.S. relations with our allies.
- The U.S. is virtually alone in its sanctions against Cuba, and the UN has been in favor of ending them since 1992.
- The U.S. policies prevent Cuban as well as American private sector growth.

## China and the European Union are the leading destinations for Cuba's agricultural exports

Millions of dollars



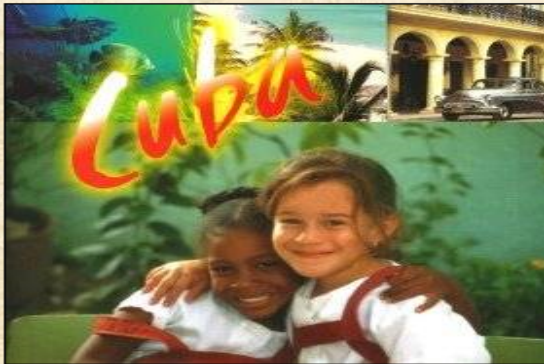
Sources: USDA/FAS (2015a), and import data of various national governments, as cited by Global Trade Information Services (2015).

## U.S. Options

- 1. Maintain the status quo by keeping the embargo in place and limiting growth in Cuba in hopes that the Castro regime will fall.
- 2. Loosen restrictions such as travel, remittances, and allow for more U.S. investment; taking smaller steps to reach the same goal.
- 3. Eliminate the economic embargo and the Helms-Burton Act entirely.



**Welcome to  
USA CUBA TRAVEL!**



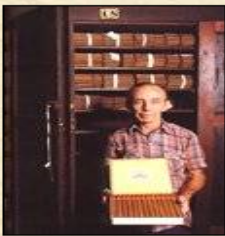
If you are an American who is planning a trip to Cuba, you've just found the right travel agency.

*USA CUBA TRAVEL* will help you travel to Cuba!

More than 100,000 Americans visited Cuba last year. Cuba is among the world's fastest growing travel destinations.

Its beaches are the best in the Caribbean, its culture is unique in Latin America, and its history is fascinating. All this, and an exceptionally warm welcome from the Cuban people, make the island so attractive to millions of tourists from around the world.

Canada offers you the easiest and safest way to reach Cuba!



Canadians were the first to reopen the Cuban tourist industry in the early 1970s. Canada has a strong tradition of promoting tourism in Cuba. We would like to share our experience with you.

As travel agents specializing in Cuba, we sell all products available from the Canadian and Cuban tourist industries.

U.S. Department of State  
[http://havana.usembassy.gov/warden\\_message\\_.html](http://havana.usembassy.gov/warden_message_.html)

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- Voting

### MESSAGES FOR U.S CITIZENS

#### Hurricane Preparedness

The American Citizen Services unit strongly recommends that all U.S. citizens traveling to or residing in Cuba begin hurricane preparations and enroll in the State Department's Smart Traveler Enrollment Program (STEP) at <http://travel.state.gov/content/passports/english/go/step.html>

#### U.S. ATM and Credit Cards

The American Citizen Services unit would like to remind all U.S. citizens traveling to Cuba ATM and credit cards issued by U.S. banks do not work in Cuba yet. You have to arrive with enough cash to last you through the end of your trip.

#### ADOBE READER



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## **What are the travel authorizations in the Cuba program?**

OFAC has issued general licenses within the 12 categories of authorized travel for many travel-related transactions to, from, or within Cuba that previously required a specific license (i.e., an application and a case-by-case determination).

Travel-related transactions are permitted by general license for certain travel related to the following activities:

- 1) family visits;
- 2) official business of the U.S. government, foreign governments, and certain intergovernmental organizations
- 3) journalistic activity;
- 4) professional research and professional meetings
- 5) educational activities;
- 6) religious activities
- 7) public performances, clinics, workshops, athletic and other competitions, and exhibitions
- 8 support for the Cuban people
- 9) humanitarian projects
- 10) activities of private foundations or research or educational institutes
- 11) exportation, importation, or transmission of information or information materials
- 12) and certain authorized export transactions.

The White House  
Office of the Press Secretary  
For Immediate Release  
December 17, 2014

Statement by the President on Cuba Policy Changes Cabinet Room

12:01 P.M. EST

THE PRESIDENT: Good afternoon. Today, the United States of America is changing its relationship with the people of Cuba.

In the most significant changes in our policy in more than fifty years, we will end an outdated approach that, for decades, has failed to advance our interests, and instead we will begin to normalize relations between our two countries. Through these changes, we intend to create more opportunities for the American and Cuban people, and begin a new chapter among the nations of the Americas.

First, I've instructed Secretary Kerry to immediately begin discussions with Cuba to reestablish diplomatic relations that have been severed since January of 1961. Going forward, the United States will reestablish an embassy in Havana, and high-ranking officials will visit Cuba.

Second, I've instructed Secretary Kerry to review Cuba's designation as a State Sponsor of Terrorism. This review will be guided by the facts and the law. Terrorism has changed in the last several decades. At a time when we are focused on threats from al Qaeda to ISIL, a nation that meets our conditions and renounces the use of terrorism should not face this sanction.

Third, we are taking steps to increase travel, commerce, and the flow of information to and from Cuba. This is fundamentally about freedom and openness, and also expresses my belief in the power of people-to-people engagement. With the changes I'm announcing today, it will be easier for Americans to travel to Cuba, and Americans will be able to use American credit and debit cards on the island. Nobody represents America's values better than the American people, and I believe this contact will ultimately do more to empower the Cuban people.

**H.R. 403**

January 16, 2015

This Act may be cited as the “Free Trade With Cuba Act”.

**SEC. 2. FINDINGS.**

The Congress finds that—

- (1) with the end of the Cold War and the collapse of the Soviet Union, Cuba is no longer a threat to the United States or the Western Hemisphere;
- (2) the continuation of the embargo on trade between the United States and Cuba that was declared in February of 1962 is counterproductive, adding to the hardships of the Cuban people while making the United States the scapegoat for the failures of the communist system;
- (3) in the countries of the former Soviet Union and the former Eastern bloc, China, and Vietnam, the United States is using economic, cultural, academic, and scientific engagement to support its policy of promoting democratic and human rights reforms;
- (4) the United States can best support democratic change in Cuba by promoting trade and commerce, travel, communications, and cultural, academic, and scientific exchanges; and
- (5) on December 17, 2014, the President announced new steps to increase travel, commerce, and the free flow of information to Cuba, and maintained that he looked forward to engaging Congress about lifting the embargo.

**SEC. 3. REMOVAL OF PROVISIONS RESTRICTING TRADE AND OTHER RELATIONS WITH CUBA.**

- (b) Trading With the Enemy Act.—The authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act, which were being exercised with respect to Cuba on July 1, 1977, as a result of a national emergency declared by the President before that date, and are being exercised on the day before the effective date of this Act, may not be exercised on or after such effective date with respect to Cuba. Any regulations in effect on the day before such effective date pursuant to the exercise of such authorities shall cease to be effective on such date.

## The U.N. Resolution Condemning the US Trade Embargo on Cuba

On Monday, September 28<sup>th</sup>, Cuban President Raul Castro is scheduled to address the UN General Assembly in New York. He is expected to call on the representatives of member states to support a motion to lift the U.S. trade embargo against his country that has been in place since 1962. Two days ahead of his scheduled address, Castro held a plenary meeting at UN headquarters where he claimed that the embargo has caused an estimated \$1.1 trillion in damages and identified it as the primary obstacle to the development of the Cuban economy.



The visit by Raul Castro to New York also marks his first time speaking at the U.S. General Assembly, and his first visit to the United States since 1959.

The U.N. General Assembly is expected to vote for the 24th time to condemn the U.S. embargo against Cuba. Of the 193-nation assembly, last year 188 countries voted for the nonbinding resolution, with only the United States and Israel voting against it.

## What is OFAC?

Office of Terrorism and Financial Intelligence  
U.S. Department of the Treasury

### MISSION STATEMENT:

The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under US jurisdiction.



## 2011 CACR Amendments

to promote democracy and human rights in Cuba by easing travel restrictions to facilitate greater contact between separated family members in the United States and Cuba and by increasing the flow of remittances and information to the Cuban people.

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Economic Policy

Financial Markets, Financial Institutions, and Fiscal Service

**Financial Sanctions**

Specially Designated Nationals List (SDN List)

Consolidated Sanctions List

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### OFAC License Application Page

A license is an authorization from OFAC to engage in a transaction that otherwise would be prohibited. To apply for a License, click the link below or scroll down for more information on the different Licensing categories.

**IMPORTANT NOTE: December 1, 2014 - OFAC has disabled support for a certain encryption protocol that was supported by older Internet browsers (SSLv3 protocol) in response to a recently published vulnerability. Users with older browsers may find that if they connect to the Licensing Application they will get a blank page due to the fact that the SSLv3 protocol is no longer supported. In order to correct this problem users should upgrade their browser or enable TLS 1.0 by following these instructions.**

**APPLY FOR A LICENSE HERE**

Licensing Information by Category

Release of Blocked Funds

[Licensing Frequently Asked Questions](#)

Transactional

[Licensing Frequently Asked Questions](#)

Agricultural and Medical (TSRA)

[About TSRA](#)

[TSRA Frequently Asked Questions](#)

[TSRA Legal References](#)

[TSRA Applications Guidelines](#)

### OFAC QUICK LINKS

- Specially Designated Nationals (SDN) and Blocked Persons List
- Search OFAC's Sanctions Lists
- OFAC News and Recent Actions
- Frequently Asked Questions on Sanctions
- Apply for an OFAC License
- Report a Transaction to OFAC
- Contact OFAC
- Foreign Sanctions Evaders List

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#### Daily Press Guidance

09/30/2015

Daily Treasury Guidance for Wednesday, September 30, 2015

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**§ 515.560 Travel-related transactions to, from, and within Cuba  
by persons subject to U.S. jurisdiction.**

(c) \* \* \*

(4) Carrying remittances to Cuba. The carrying to Cuba of any remittances that the licensed traveler is authorized to remit pursuant to § 515.570 is authorized, provided that no emigration-related remittances authorized by § 515.570(e) are carried to Cuba unless a U.S. immigration visa has been issued for each payee and the licensed traveler can produce the visa recipients' full names, dates of birth, visa numbers, and visa dates of issuance.



O F A C

Office of Foreign Assets Control

**Submitting a New License Application:**

Applicants must first select the type of application that will be submitted from the following choices:

- Application to travel to Cuba
- Application for the release of a wire transfer blocked at a U.S. financial institution
- Application for a license or interpretive guidance in all other circumstances ("Transactional")
- Application to export agricultural commodities, medicine, or medical devices to Sudan or Iran pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000

**Detailed instructions will be provided for each of the different application types.**

**Additional Information:**

- All required fields are marked by a red asterisk: \*
- Help is available on each page by selecting the link in the bottom left corner.
- If you close your web browser before you have submitted your application, your changes will not be saved when you return.

**Terms of Agreement:**

- ATTACH COPIES OF ANY DOCUMENTS RELATED TO THE UNDERLYING TRANSACTION (E.G., TECHNICAL SPECIFICATIONS; OFFICIAL COMMODITY CLASSIFICATION FROM THE U.S. DEPARTMENT OF COMMERCE; INVOICES; BILLS OF LADING; COPY OF THE ORIGINAL PAYMENT OR TRANSFER INSTRUCTIONS; OR COPIES OF GOVERNMENT-ISSUED IDENTIFICATION SUCH AS PASSPORT,

Bank accounts for authorized travelers

OFAC is amending section 515.560 to allow all authorized travelers to open and maintain bank accounts in Cuba in order to access funds while located in Cuba for authorized transactions, and to close such accounts.

Physical presence in Cuba for certain persons.

OFAC is amending section 515.573 to authorize certain persons subject to U.S. jurisdiction to establish a physical presence, such as an office or other facility, in Cuba, to facilitate authorized transactions. This authorization covers the following: news bureaus; exporters of goods authorized for export pursuant to sections 515.533 or 515.559; providers of authorized mail and parcel transmission services and cargo transportation services; providers of telecommunications or internet-based services; entities organizing or conducting certain educational activities; religious organizations; and providers of travel and carrier services.

## Telecommunications and Internet-based Services

Subsidiaries, joint ventures, and other business relationships with Cuban individuals and entities.

In order to further enhance the free flow of information to, from, and among the Cuban people and to better provide efficient and adequate telecommunications services between the United States and Cuba, OFAC is amending sections 515.542 and 515.578 to authorize persons subject to U.S. jurisdiction to establish and maintain a business presence in Cuba, including through subsidiaries, branches, offices, joint ventures, franchises, and agency or other business relationships with any Cuban individual or entity, to provide authorized telecommunications and 5 internet-based services. OFAC is also authorizing persons subject to U.S. jurisdiction to enter into licensing agreements related to services authorized by section 515.542(b) through (d) and section 515.578(a), and to market such services. OFAC is amending section 515.505 to unblock any entity, office, or other sub-unit established pursuant to sections 515.542 and 515.578.

**§ 515.533 Exportations from the United States to Cuba;  
reexportations of 100% U.S.- origin items to Cuba;  
negotiation of executory contracts.**

\* \* \* \* \*

(d) General license for travel-related transactions incident to exportation or reexportation of certain items. The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to the conduct of market research, commercial marketing, sales negotiation, accompanied delivery, installation, or servicing in Cuba of items consistent with the export or reexport licensing policy of the Department of Commerce are authorized, provided that the traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule.



# WHAT TO DO IN AN OFAC INVESTIGATION?

- OFAC Requirement to Furnish Information
- OFAC Administrative Subpoena

Penalty of \$20,000 to \$50,000 for no response

## 31 CFR § 501.602

# Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required by the Director, Office of Foreign Assets Control, complete information relative to any transaction [within the jurisdiction of the embargoes and sanctions regulated by OFAC.]

The Director may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

# Enforcement Guidelines OFAC Economic Sanctions

- Final Rule issued November 9, 2009
- Appendix “A” to 31 CFR Part 501



## CUBA AND FOREIGN DIRECT INVESTMENT



# Preparing for Trade with Cuba

## *Sofitel Hotel*

### October 9<sup>th</sup>, 2015

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