

US votes against lifting CUBA embargo

On 1 November, the United Nations General Assembly adopted (as it does each year) its resolution on ending the US embargo against Cuba. The US (with Israel) voted against the resolution, and published regulations implementing President Trump's new approach to the Caribbean island – narrowing or closing down his predecessor's rapprochement.

In its resolution, on the 'Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba,' the General Assembly reiterated its 'call upon all States to refrain from promulgating and applying laws and measures, in line with their obligations under the United Nations Charter and international law, which, among other things, reaffirmed the freedom of trade and navigation' while urging '...states that have and continue to apply such laws and measures to take the steps necessary to repeal or invalidate them as soon as possible.'

The vote has become an annual fixture – with the United States and Israel traditionally the only countries voting against the resolution. That was the case this year; however, in 2016 for the first time, those countries chose to abstain – a decision seen as reflecting the Obama presidency's attempt at détente with the Caribbean nation.



President Trump has said that he will not be continuing President Obama's efforts to open dialogue and trade with Cuba.

Addressing delegates, Cuba's Foreign Minister Bruno Eduardo Rodriguez Parrilla said the new US administration's policy on Cuba was intended to take relations back to a confrontational past. Two-thirds of the United States population, including Cuban immigrants living in the United States, he said, were in favour of lifting the blockade.

But US representative to the United Nations, Nikki Haley, said: 'The American people have spoken. They have chosen a new President, and he has chosen a new Ambassador to the United Nations... As long as the Cuban people continued to be deprived of their rights by their dictator regime, the United States would not fear isolation in the Assembly or anywhere else.'

In early summer, President Trump announced that he would not be continuing his predecessor's

efforts to open dialogue and trade with Cuba: 'We will not lift sanctions on the Cuban regime until all political prisoners are freed, freedoms of assembly and expression are respected, all political parties are legalized, and free and internationally supervised elections are scheduled. We will very strongly restrict American dollars flowing to the military, security and intelligence services that are the core of the Castro regime. They will be restricted. We will enforce the ban on tourism. We will enforce the embargo. We will take concrete steps to ensure that investments flow directly to the people, so they can open private businesses and begin to build their country's great, great future – a country of great potential,' he told an audience of Cuban-Americans in Miami on 16 June.

On 8 November, US agencies announced the publication of regulations which implement the 'National Security Memorandum Strengthening the Policy of the United States Toward Cuba,' ('NSPM') of June this year, in which President Trump articulated his tougher

approach to relations with the country. *Inter alia*:

- The US State Department is publishing 'a list of entities and subentities that are under the control of, or act for or on behalf of, the Cuban military, intelligence, or security services or personnel and with which direct financial transactions would disproportionately benefit the Cuban military, intelligence, or security services or personnel at the expense of the Cuban people or private enterprise in Cuba – the State Department's List of Restricted Entities and Subentities Associated with Cuba ('Cuba Restricted List' – FAQs have been published).'
- Persons subject to US jurisdiction will now be prohibited from engaging in certain direct financial transactions with entities and subentities identified by the State Department on the Cuba Restricted List, and
- In accordance with the NSPM, the Bureau of Industry and Security is establishing a general policy of denial for licence applications to export items for use by entities and subentities on the Cuba Restricted List unless the transaction is otherwise consistent with the NSPM.

Observers say many will, at least, welcome the clarity brought by publication of the regulations.

Meredith Rathbone, sanctions lawyer and partner at law firm Steptoe, told *WorldECR* that the 16 June policy announcement had placed companies interested

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Links and notes

<https://www.whitehouse.gov/the-press-office/2017/06/16/national-security-presidential-memorandum-strengthening-policy-united>

<https://www.state.gov/e/eb/tfs/spi/cuba/cubarestrictedlist/index.htm>

<http://www.un.org/apps/news/story.asp?NewsID=58011#.WgBPJ2iOPIV>

<https://www.treasury.gov/resource-center/sanctions/Documents/libertad.pdf>

Rohingya persecution: US considers re-imposing sanctions on Myanmar

The US State Department said in a statement on 23 October that it had already responded to the crisis in Myanmar regarding the treatment of the country's Rohingya population, and that it was considering further steps, including possible sanctions.

Press spokeswoman, Heather Nauert said that the government was gravely concerned by the 'violent, traumatic abuses Rohingya and other communities had endured,' and that state and non-state actors should be held accountable.



Refugees of the Rohingya minority have been fleeing persecution in Burma/Myanmar.

Steps taken thus far, she said, included having 'ceased consideration of JADE Act

travel waivers for current and former senior leadership of the Burmese

military,' and rescinding invitations for senior Burmese security forces to attend US-sponsored events.

Nauert also hinted at the possibility of further multilateral and unilateral measures, saying:

'We are consulting with allies and partners on accountability options at the UN, the UN Human Rights Council, and other appropriate venues; and... exploring accountability mechanisms available under US law, including Global Magnitsky targeted sanctions.'

EAR clarifications on licence exceptions

The US Bureau of Industry and Security ('BIS') has published clarifications to the Export Administration Regulations ('EAR') 'to provide guidance based on existing agency understanding and practice on the use of two license exceptions.'

Specifically, the final rule

'makes three clarifications to License Exception Governments, International Organizations, International Inspections under the Chemical Weapons Convention, and the International Space Station (GOV) and adds five notes, along with making other minor clarifications, to

License Exception Strategic Trade Authorization (STA).'

BIS says the clarifications come in response to a number of questions it has received about the use of

these two EAR licence exceptions 'and provide the general public answers to frequently asked questions based on existing agency interpretive practice.'

Visit:

<https://www.bis.doc.gov/index.php/documents/regulations-docs/federal-register-notices/federal-register-2017/2163-82-fr-50511/file>

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in Cuba in a state of limbo. 'What we had seen is that for some clients [the policy announcement] had elicited something of an internal debate – especially where they've had a potential deal on the horizon,' she said. 'Should they hurry up and get on with their plans before the regulations are published, or wait and see what happens? Clients planning to engage in long-term, licensable activity were in general tending to hold off, not wanting to go

through complex early manoeuvres only to have the regulations change on them.'

Non-US companies, she said, had also been carefully assessing their potential US exposure.

Title III uncertainties

A related issue which is not resolved by the publication of the regulations, says Rathbone, is as regards Title III of the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, which holds that '...[A]ny person that...traffics in property

which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages...'

While this section has been subject to presidential waiver since its adoption, '... that could change. And that's something that could affect non-US companies,' she added.

EU extends Burundi sanctions

The Council of the European Union has extended for one year a travel ban and asset freeze against 'four persons [in Burundi] whose 'activities are deemed to be undermining democratic governance and obstructing the search for a peaceful political solution in Burundi.'

<http://www.consilium.europa.eu/en/press/press-releases/2017/10/23/burundi-eu-renews-sanctions-until-31-october-2018/>