Do Proposed Changes in U.S.-Cuba Trade Policies Signal Opportunities for the Coatings Industry?

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Following the White House announcement of a significant change in longstanding U.S. policy on Cuba, the two primary agencies that govern trade and commercial relations with Cuba—the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC) and the U.S. Department of Commerce’s Bureau of Industry and Security (BIS)—are acting to broadly facilitate commerce with Cuba. This article explores those changes, and details what they might mean for coatings manufacturers interested in the Cuban market.

BACKGROUND

Cuba has been subject to trade sanctions since the Kennedy administration. These are unilateral and comprehensive, have prohibited most exports and imports, and have generally precluded most interaction with Cuba by persons subject to U.S. jurisdiction, including travel and financial transactions. This changed on December 17, 2014 when the White House announced a set of measures that it expects will put relations between the United States and Cuba on the track toward full normalization. There are a number of areas the administration addressed, including establishing diplomatic relations, removing some existing restrictions on travel, etc. A key element of the administration announcement includes the authorization of expanded commercial sales/exports from the United States of certain goods and services “to empower the nascent Cuban private sector.” This expansion specifically includes “certain building materials for private residential construction, goods for use by private sector Cuban entrepreneurs, and agricultural equipment for small farmers.”

The December announcement was followed by final rules issued by the Office of Foreign Assets Control, and the Bureau of Industry and Security on January 15, 2015. These rules are intended to implement the policy changes previously announced by the White House.

OFAC REGULATORY CHANGES

Exports to Cuba by U.S. firms and their branches and subsidiaries have long been governed by the Cuban Assets Control Regulations (OFAC) administered by BIS. These rules have generally prohibited trade with and travel to Cuba unless licensed or otherwise authorized by OFAC and/or BIS. Under the previous OFAC regulations, all persons subject to U.S. jurisdiction, including branches and subsidiaries of U.S. companies, are prohibited from exporting to or importing from Cuba, or otherwise engaging in transactions involving Cuban interests, unless they are licensed by OFAC or authorized by BIS.

The new OFAC regulations issued on January 16 facilitate travel to Cuba for authorized purposes, allow U.S. financial institutions to open correspondent accounts at Cuban financial institutions to facilitate the processing of authorized transactions, authorize certain transactions by Cuban owned or controlled entities located outside of Cuba, and allow a number of other activities related to, among other areas, the following.

ANTIMICROBIAL SUTURE COATINGS

Infections are a constant risk when any type of wound occurs. The use of suture materials with antimicrobial properties is designed to help reduce the risk of wound infections following closure. Triclosan has been used as an antibacterial agent for sutures, but cases of triclosan resistance have been reported. As a result, alternatives are being sought. Researchers at Technische Universität München have focused on the development of a slow-release antimicrobial coating for suture materials based on the antibacterial agent chlorhexidine, which is an established oral antiseptic. They anticipated that controlled release of the antibiotic could be achieved through interactions with the fatty acid groups in the surgical sutures.

Both chlorhexidine isocyanate and chlorhexidine palmitate were investigated as the chlorhexidine source. Sutures were coated with solutions of each compound by shaking in a closed flask to achieve drug loads of 11, 22, or 33 μg/cm. The chlorhexidine-coated sutures with a loading of 11 μg/cm were found to have high in vitro efficacy against Staphylococcus aureus over several days and to meet the ISO 10993-4 requirements for biocompatibility (cytotoxicity). Pre-clinical and clinical trials will be needed, however, to confirm the in vivo safety and efficacy of the chlorhexidine-coated sutures.

References

telecommunications, financial services, trade regulations, and more. Travel restrictions for Cuba under the OFAC regulatory prohibitions. The newly amended regulations will significantly ease regulatory impediments to Cuba travel:

- Cuba has issued new general licenses for travel falling into 12 categories that previously only permitted travel with a specific license.
- These changes include such things as professional research and professional meetings, along with special permission for education, importation, or transmission of information or information materials. This means in practice is that if your travel falls under one of these categories you do not need a license or other permission from OFAC. (Cuba does require a visa to travel there.)

- The limit on expenditures during travel to Cuba has been lifted, and authorized travelers will be allowed to engage in transactions ordinarily incidental to travel within Cuba. This includes the use of U.S. credit and debit cards in Cuba. The previously imposed per diem rate for authorized travelers will no longer apply, and individuals are allowed to pay for a dollar limit on authorized expenses.

- Authorized travelers may make $2,000 in cash or $1,000 in traveler checks in a single transaction. OFAC has been very clear that this new authority does not cover travel to Cuba for business purposes. Those traveling to Cuba to conduct business will still need to take care not to schedule clearly recreational activities, such as sightseeing, spending time at the beach. The rules also require that persons who use this general authorization retain specific records related to the authorized travel.

CUBA VISITORIAL CHANGES

Cuba has simultaneously issued regulations addressing the areas of Cuba trade normalization that fall under its purview.8 The amendments to the Export Administration Regulations (EAR) to the Export Administration Regulations (EAR) to the Export Control List (ECL) of Cuba for travel to Cuba have been lifted. Cuban entities are allowed to export or reexport certain items to Cuba. The new regulations also include a category of goods for use by private sector entrepreneurs such as auto mechanics, bars and hairstylists, and restaurants and tools and equipment for private sector agriculture. Items eligible for export and reexport to Cuba pursuant to this provision are limited to those items subject to the EAR but not specified in any Export Control Classification Number (ECCN) of the Export Administration Regulations (EAR) or the Commerce Control List (CCL) only for antiterrorism reasons. Most commodities produced in Cuba and listed in the EAR9 category, rather than the CCL, which tends to focus on high-technology.

While these new rules to relax some existing regulatory burdens to trade normalization with Cuba, some longstanding restrictions imposed by Helms-Burton, the Trading with the Enemy Act of 1917, along with restrictions on trade with state sponsors of terrorism, etc., still remain in place.10 Only Congress has authority to lift the trade embargo provisions codified in legislation; for example, by making significant changes to the Helms-Burton Act. Helms-Burton itself requires a showing of “demonstrable progress” in returning property expropriated by the Cuban government as a prerequisite for lifting the U.S. embargo. The announcement of trade normalization did not suggest any agreement by the Cuban government to address the expropriation issue, nor does that appear likely to occur.

POTENTIAL OPPORTUNITIES FOR THE COATINGS INDUSTRY

The intent of the new regulations from OFAC and BIS to remove as many barriers as possible to trade and commercial opportunities is the elimination of a licensing requirement: The Export: The Foreign Commercial Sales Act, the Foreign Trade Division of the Bureau of the Census (Commerce), the Bureau of Industry and Security (BIS), and the Directorate of Defense Trade Controls (State), and other federal agencies. The BIS export point through which export shipment data is required by multiple agencies is filed electronically to Customs, using an Electronic Data Interchange (EDI) platform. AEO has incorporated some changes to accommodate the change in trade policies with Cuba. AEO has created a new license type (C)<0210000000> for the reporting of new items imported and re-exported to Cuba are not intended to improve the living conditions of the Cuban people, i.e., products falling under the new BIS category, United States Principal Parties in Interest (USPPs) and their authorized agents (AES fers) must follow the new reporting requirements regardless of value using ESO. Regardless of the requirements, users must report the country of destination and ultimate consignee country must show Cuba. As noted, products exported under License Exception ESO must be either EARS or be controlled for AT reasons only.

Other Agencies

A Destination Control Statement is required on an invoice, purchase order, or export control data that accompany shipments (unless classified as EAR99). This requires a statement that these commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Division 80 foreign is a consigner.

The Commerce Department has also put a fact sheet on this issue, which can be found at https://www.export.gov/news/ fact-sheets/20150205-fact-sheet-us-department-commerce-treasury-annunciation.

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In a recent public teleconference, BIS relayed to the participants that they had received an inquiry concerning the “exportation of raw materials to manufacture paints.” The question asked: “Will I receive licenses under section 585.561(c) of the Export Administration Regulations (EAR)?” 8 A reader has queried OFAC has published a list of “frequently asked questions” and an FAQ on its website at http://www.export.gov/resource-center/ faqs/index.aspx?

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CUBA

Telecommunications, financial services, trade, and shipping. Travel restrictions for Cuba fall under the OFAC regulatory provisions. The regulations imposed on Cuba significantly contribute to the U.S. government’s efforts to isolate Cuba from other nations. Cuba is the United States’ sixteenth largest trading partner among foreign countries, and U.S. exports to Cuba are subject to the same strict regulations as all other countries. The United States has imposed strict sanctions on Cuba since 1995, which has severely impacted the country’s economy and trade relations. These sanctions include the complete embargo of Cuba, prohibiting U.S. citizens from traveling to Cuba, and prohibiting U.S. companies from doing business with Cuba. However, recent changes in U.S. policy have allowed for some relaxation of these sanctions. The new administration of President Joe Biden has announced a plan to engage Cuba and restored diplomatic relations. Additionally, the U.S. government has lifted some travel restrictions and allowed for the importation of certain Cuban goods.

The new regulations on Cuba are intended to further penalize the Cuban government for their suppression of human rights and their continued support of the Cuban regime. The new regulations will prohibit all travel to Cuba, prohibit all financial transactions with Cuban entities, and prohibit all trade relations with Cuba.

**Travel Restrictions**

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**Potential Opportunities for the Coating Industry**

The potential for new regulations on Cuba and OFAC to remove as many barriers as possible to trade and commercial relations is significant. The U.S. government has taken steps to ease restrictions on Cuba and has lifted some travel restrictions and allowed for the importation of certain Cuban goods. These changes have opened up new opportunities for U.S. companies to engage with Cuba and expand their business operations.

**Other Agencies**

- **The Automated Export System (AES) is a joint undertaking of Customs and Border Protection (CBP), the Foreign Trade Division of the Bureau of the Census (Commerce), the Bureau of Industry and Security (BIS), the National Counterintelligence and Security Center, the Directorate of Defense Trade Controls (State), and other federal agencies. It is the central point through which export data processing is required by multiple agencies.**

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- **The President has instructed the Secretary of State to review Cuba’s selection as a state sponsor of terrorism, which has been in place since 1995. The President’s decision to remove Cuba from this list would result in the easing of various anti-embargo sanctions and export restrictions against Cuba.**

**International Update**

On February 17, the State Department posted a new “Section 515.580” which amends the existing ban on the importation of certain Cuban products in order to promote and with newly revised Cuban laws and regulations designed to increase the flow of information and resources to Cuba’s private sector. This regulation now allows imports of certain goods and services produced by independent Cuban enterprises. The United States is imposing new or revised Cuban laws and regulations on Cuba. The new regulations will be effective immediately, as can be seen at www.state.gov/e/els/pa/pt515580/index.html.