Opportunities for Trade and Investment Involving Cuban Agriculture Under U.S. Regulations

Agribusiness Challenges and Opportunities for the U.S. & Cuba
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Introduction

• Brief Background
  • How Reneo Consulting Became Involved in Cuba
  • U.S. Treasury and Commerce Regulations

• Opportunities for Trade and Investment in Cuba under U.S. Regulations
  • Imports
  • Exports
  • Investment

• Upcoming Changes the Regulations

• Concluding Observations

• The content of this presentation is intended to provide a general guide to the subject matter and is not intended to constitute legal advice. In particular, the U.S. embargo regulations contain many detailed terms, conditions, and exceptions that this general discussion does not address. Personalized advice should be sought regarding any questions you may have as to specific circumstances.
Reneo Consulting’s Work Involving Cuba

• Gilbert LLP and the Alan Gross Matter

• December 17th 2014 and Amendments to U.S. Regulations

• Assisting Clients with Trade and Investment in Cuba

• January 2017 Importation of Cuban Marabu Charcoal
Background on U.S. Regulations

- Cuban Assets Control Regulations
  - U.S. Department of the Treasury Office of Foreign Assets Control (OFAC)

- Export Administration Regulations
  - U.S. Department of Commerce Bureau of Industry and Security (BIS)

- General Prohibition on Cuba Transactions Unless Exception Applies

- General Licenses vs. Specific Licenses

- Broad Strokes, Consult a Lawyer for Specific Projects
Import Opportunities: Cuban Assets Control Regulations §515.582

• U.S. persons may “engage in all transactions ... necessary to import certain goods and services produced by independent Cuban entrepreneurs ... as set forth on the State Department's Section 515.582 List ... .”

• “Certain goods and services”: All goods permitted except those on the list
  • Based on Harmonized Tariff Schedule of the United States
  • Section I and II Animal and Vegetable Products Prohibited
    • Exception for coffee
    • Non-animal and plant agricultural products?
  • List subject to revision (in theory)
Import Opportunities: Cuban Assets Control Regulations §515.582 (cont.)

• “Independent Cuban entrepreneurs”: “[M]ust obtain documentary evidence that demonstrates the entrepreneur’s independent status . . . or, in the case of an entity, evidence that demonstrates that the entrepreneur is a private entity that is not owned or controlled by the Cuban government.”
  • Includes cuentapropistas and private cooperatives

• Practical Considerations: Banks, Shippers, Customs, and Tariffs

• Potential for specific license applications?

• Example: Cuban Marabu charcoal
Export Opportunities: Export Administration Regulations §740.18 and §740.21

• §740.18 Agricultural commodities (AGR)
  • Permits the export of “agricultural commodities”
  • Cuban Assets Control Regulations §515.533 requires “cash in advance”
  • BIS notification requirements

• §740.21 Support for the Cuban People (SCP)
  • Permits export of:
    • Building materials, equipment, and tools for use by the private sector to construct or renovate privately owned buildings
    • Tools and equipment for private sector agricultural activity
    • Tools, equipment, and supplies for private sector entrepreneurs
    • Items for personal or family use
Investment Opportunities: Business Presences and Infrastructure to Benefit the Cuban People

• Cuban Assets Control Regulations §515.573: Physical and Business Presences
  • Exporters of goods under the commerce regulations permitted to:
    • Establish office, warehouse, or retail outlets
    • Deliver, assemble, install, and repair exported items in Cuba
    • Employ U.S. or Cuban nationals in Cuba
    • Enter into joint ventures with Cuban individuals or entities
  • This presents potential opportunities for agricultural investment projects in Cuba

• Export Administration Regulations §746.2: Infrastructure Projects
  • Case-by-case review for exports, even exports to the Cuban Government, that will provide benefits to the Cuban people, including agricultural production, food processing, public health, and energy production
Upcoming Changes to U.S. Regulations

• New Trump Administration policy announced on June 16, 2017
• Precise effects unknown until new OFAC and BIS regulations promulgated
• Reports indicate blocking transactions with Cuban military affiliated companies
• Not expected to directly impact agricultural trade or investment, but impossible to be certain without seeing new regulations
• Main factors to consider:
  • Breadth of prohibition on transactions involving military
  • Projects in Mariel Special Development Zone
A Few Concluding Observations

• U.S. Regulations only one side of the coin

• Don’t forget third parties such as banks and shippers

• Craft projects with regulations and other stakeholders in mind

• The obstacles present opportunities