



JANUARY 08, 2016

CIRCULAR NO. 02/16

TO MEMBERS OF THE ASSOCIATION

Dear Member:

THE US EMBARGO IN REGARD TO CUBA: FURTHER GUIDANCE

Reference is made to **Circular No. 05/15** of January 19, 2015 which discussed certain regulatory changes which had recently taken place in regard to the US embargo on Cuba.

This Circular provides further guidance for Members regarding the laws and regulations governing the US embargo on Cuba to the extent they may affect Members' trade with Cuba. Relevant prohibitions (and exceptions) are discussed in the context of their applicability to the activities of:

- Non-US vessels and shipowners (non-US Members of the Club);
- US vessels and shipowners (US Members of the Club); and
- the legal ability of the Club to provide coverage for the trade of both its non-US and US Members involving Cuba.

Where vessel trade prohibitions apply, it should be noted that relevant exceptions to the embargo apply to the following main elements of trade with Cuba:

- *goods* being exported to Cuba;
- *vessels* transporting goods to Cuba; and
- *entities* (carriers) providing transportation services to/from Cuba.

Non-US vessels and shipowners¹

Trade with Cuba – voyages to Cuba from points outside the United States

The trade (voyages) of non-US vessels and shipowners with Cuba from outside the United States is generally beyond the jurisdiction of the US embargo of Cuba. For example, a Marshall Islands-flagged vessel owned and operated/controlled by an entity organized under Marshall Islands or Greek law and located in Greece which trades with Cuba would not implicate the prohibitions of the US Cuban embargo as long as such trade had no US involvement and the exports to Cuba were authorized by the state from which the exportation to Cuba occurred.

The prohibitions of the US embargo would generally not apply in such cases, irrespective of whether cargo is being transported to or from Cuba. However, US persons or persons subject to the general

¹ Vessels flying a non-US flag, vessels not owned or controlled by US persons; non-US entity shipowners; non-US entity shipowners not owned or controlled by US persons (US entities, US citizens, US residents, persons in the US).



jurisdiction of the United States are prohibited from engaging in trade with Cuba, except as outlined below.

Insurance coverage

The American Club, as a US entity, is subject to the prohibitions of the US embargo of Cuba. It can provide coverage with respect to voyages to and from Cuba, or to its Members and covered vessels trading with Cuba, only if a relevant authorization or exception applies.

Generally, the Club enjoys authorization from the US government enabling it to provide insurance coverage for its non-US vessels/non-US Members under global P&I policies as long as vessels (from points outside the United States) transport purely civilian, non-lethal and non-military (benign) cargoes to and from Cuba; the voyage/trade is outside the scope of US Cuba embargo prohibitions; and the voyage is otherwise consistent with the conditions governing Club cover. Certain large claims payments and other large transactions involving Cuban entities may require additional authorization.

Prohibition on calling at US ports after calling in Cuba/the entry of vessels into the United States engaging in trade with Cuba

Currently:

- (a) No vessel that enters a port or place in Cuba to engage in the trade of goods or the purchase or provision of services, may enter a US port for the purpose of loading or unloading cargo for a period of 180 days from the date the vessel departed from a port or place in Cuba; and
- (b) No vessel carrying goods or passengers to or from Cuba or carrying goods in which Cuba or a Cuban national has an interest may enter a US port with such goods or passengers on board.

Exceptions

Exceptions to the foregoing prohibition dealing with entry of vessels into the United States apply in cases where:

- the exportation or reexportation of the cargo in question is licensed or otherwise authorized by the US Department of Commerce. This includes exportations from the United States to Cuba; and reexportations of 100% US-origin items to Cuba;
- the trade is specifically licensed by the US Treasury Department or pursuant to relevant regulations, i.e., certain export and import transactions by US-owned or -controlled foreign firms and Cuba;
- the trade is for the importation from Cuba and the exportation to Cuba of information or informational materials, whether commercial or otherwise;
- the vessel is engaging, or has engaged, in the exportation or re-exportation to Cuba from a third country of agricultural commodities, medicine, or medical devices that would be designated as EAR99 under the US Export Administration Regulations, if they were located in the United States; or
- a foreign vessel entered a port or place in Cuba while carrying students, faculty, and staff that are authorized to travel to Cuba pursuant to the US Cuba embargo regulations.



US vessels, US shipowners/vessels, US owned/controlled shipowners/other vessels departing the United States for Cuba

A. Exports to Cuba from the United States: Authorization for the transportation and exportation of certain goods to Cuba

Under an exception to otherwise applicable prohibitions, under the relevant regulations:

All transactions ordinarily incident to the exportation of items from the United States to any person within Cuba are authorized, provided that:

(1) The exportation or reexportation is licensed or otherwise authorized by the Department of Commerce under the provisions of the Export Administration Act of 1979, as amended and the Export Administration Regulations (EAR); and

(2) the payment for the exports to Cuba in question complies with certain payment and financing terms such as cash in advance and certain banking institutions located in a third countries finance the exports in question.

The transactions authorized by the above paragraph include, but are not limited to, all transactions that are directly incident to the shipping of specific exports or reexports (e.g., insurance and transportation of such exports or reexports to Cuba).

US vessels, US owned/controlled shipowners are prohibited from engaging in trade with Cuba, except as outlined above or pursuant to a specific license issued by the US government.

Persons subject to US jurisdiction (US entities and US owned or controlled entities, e.g., US Members of the American Club) are now generally authorized to provide carrier (transportation) services, to, from, or within Cuba in connection with travel or transportation between the United States and Cuba of cargo authorized to be exported to Cuba and imported into the United States from Cuba.

B. US flagged, US owned and operated vessels, or other vessels departing for Cuba from the United States

Sailing a vessel to Cuba, even temporarily, constitutes an export or reexport to Cuba from the United States. If the vessel is subject to the EAR (e.g., those departing from the United States), then US Department of Commerce authorization is required, either through a license or license exception, to sail to Cuba. Most vessels (sailing from the United States) on temporary sojourn to Cuba are eligible for License Exception Aircraft, Vessels, and Spacecraft (AVS) (Section 740.15 of the EAR). Members should note that all corresponding requirements and criteria must be met in order to be eligible.

When ineligible for the License Exception AVS, license applications for exports and reexports of vessels on temporary sojourn to Cuba are reviewed on a case-by-case basis when they are used to deliver humanitarian goods or services or when their use is consistent with the foreign policy interests of the United States.

C. Transportation of passengers from the United States to Cuba

The carrier providing the transportation of passengers from the United States to Cuba (and back) is authorized/allowed to provide such service if:



- the passengers themselves are authorized to travel to Cuba under relevant regulations, and
- the vessel in question is authorized to sail to Cuba under License Exception AVS.

So far as the bunkering of Cuban vessels outside the United States by American-owned or controlled foreign firms is concerned, it should be noted that foreign firms owned or controlled by US persons are authorized to engage in transactions ordinarily incident to the bunkering of vessels and to the fueling of aircraft owned or controlled by, or chartered to, Cuba or nationals thereof.

Insurance coverage

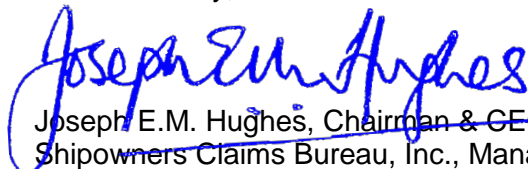
As stated above, because the American Club is a US entity, it is subject to the prohibitions of the US embargo of Cuba. It can thus only provide P&I coverage with respect to underlying voyages to and from Cuba if a relevant authorization or exception to a prohibition applies.

American Club P&I coverage is legally authorized and available for covered vessels and shipowners (carriers) transporting authorized cargo and passengers between the United States and Cuba and vessels enjoying License Exception AVS, as outlined under paragraphs A, B, and C above, and under additional authorization applicable to the American Club.

Questions and further guidance

For any questions regarding any aspect of the foregoing and other sanctions in general or for confirmations as to the availability of cover for voyages involving Cuba or other countries subject to US economic sanctions, please contact: Charles J. Cuccia, Senior Vice President - Compliance & Enterprise Risk Management, ph +1 212 847 4539, mob +1 917 215 2883, charles.cuccia@american-club.com.

Yours faithfully,


Joseph E.M. Hughes, Chairman & CEO
Shipowners Claims Bureau, Inc., Managers for
THE AMERICAN CLUB