



**OCTOBER 26, 2021**

**CIRCULAR NO. 23/21**

**TO MEMBERS OF THE ASSOCIATION**

**Dear Member:**

**SANCTIONS REFRESHER: VENEZUELA AND CUBA**

### **Venezuela**

This Circular provides information and guidance in conjunction with General License 40 issued by the United States, which authorizes certain transactions involving the exportation or re-exportation of liquified petroleum gas (LPG) to Venezuela.

Under Executive Order (EO) 13850 (November 2018), as amended by EO 13857 (January 2019), and under the Determination Pursuant to Section 1(a)(i) of EO 13850 (January 2019), US persons are prohibited from engaging in any transaction involving any person who operates in the oil sector of the Venezuelan economy as determined by the Secretary of the Treasury, in consultation with the Secretary of State.

Since August 2019, under EO 13884, US persons are prohibited from engaging in any transaction involving the Government of Venezuela. The definition of the Government of Venezuela is broad, according to section 6(d) of the EO 13884, and includes Petróleos de Venezuela, S.A. (PdVSA) and “any person owned or controlled, directly or indirectly, by the Government of Venezuela, and any person who has acted or purported to act directly or indirectly for or on behalf of, any of the foregoing.” In addition, PdVSA is also listed as a Specially Designated National, and therefore, US persons or persons subject to U.S. jurisdiction are prohibited from dealing with it.

There are exceptions to the above-mentioned prohibitions, expressed through General Licenses (GL), the most relevant of which is GL 10A (August 2019). According to GL 10A, US persons in Venezuela are authorized to purchase refined petroleum products for personal, commercial, or humanitarian uses from PdVSA or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest. Nevertheless, this GL does not authorize any commercial resale, transfer, exportation or re-exportation of refined petroleum products.

In July 2021, the US Treasury Department issued GL 40 with effect through **July 8, 2022**. Under GL 40, all transactions and activities related to exportation or re-exportation, directly or indirectly, of LPG to Venezuela, involving the Government of Venezuela, PdVSA, or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, are now authorized. This GL does not authorize any payment-in-kind of petroleum or petroleum products, or any transaction or activity otherwise prohibited by the Venezuela Sanctions Regulation, prohibited by any other part of 31 CFR chapter V, or involving any blocked persons other than PdVSA, any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest, or any Government of Venezuela person that is blocked solely pursuant to EO 13884.

As has been clarified by the US Treasury Department, for purposes of GL 40, the term “liquefied petroleum gas” refers to the definition provided by the US Energy Information Administration, namely a group of hydrocarbon gases, primarily propane, normal butane, and isobutane, derived from crude

oil refining or natural gas processing. These gases may be marketed individually or mixed. They can be liquefied through pressurization (without requiring cryogenic refrigeration) for convenience of transportation or storage. The definition excludes ethane and olefins.

While General Licenses apply to US persons and activities with a US nexus, the US Treasury Department has previously confirmed that a non-US person does not engage in sanctionable conduct if it engages in conduct that would otherwise be authorized by a General License if engaged in by a US person or entity. We are advised that, as a matter of policy, GL 40 will apply to non-US persons by analogy.

US persons are not prohibited from engaging in transactions involving the country or people of Venezuela, i.e., Venezuela's private sector, provided blocked persons (including the Government of Venezuela as broadly defined above) or any conduct prohibited by any other Executive Order imposing sanctions on Venezuela, are not involved.

Additionally, through a separate general license issued by the US Treasury Department, transactions with the Government of Venezuela otherwise prohibited by Executive Order 13884 are authorized if the Venezuelan governmental entity or agency in question is controlled by the Venezuela opposition, i.e., the Interim President of Venezuela, Juan Gerardo Guaido Marquez (Guaido). However, in practice, these institutions remain very limited.

GL 30A authorizes all transactions and activities involving the Government of Venezuela that are ordinarily incident and necessary to operations or use of ports in the country. While there is no restriction on the cargo to and from Venezuela (provided that it does not emanate from a blocked or sanctioned person or is otherwise controlled for national security reasons, or relates to chemical and biological weapons, arms, etc.), insurance cover may not exist in the event that a Member's vessel is carrying cargo originating from Venezuelan government owned facilities.

## **Cuba**

The remainder of this Circular provides information and guidance on the current law and regulations governing the US embargo of Cuba to the extent they may affect a Members's 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) and of US vessels and shipowners (US Members of the Club).

### **I. Non-US vessels and shipowners<sup>1</sup>**

#### **a. General principle**

The trade (voyages) of non-US vessels and shipowners to Cuba from outside the United States is generally beyond the jurisdiction of the US embargo of Cuba. The prohibition 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 jurisdiction of the United States are prohibited from engaging in or facilitating trade with Cuba, except as outlined below.

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<sup>1</sup> 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).

b. The 180-day rule and the goods/passengers-on-board rule

The 180-day rule is a US statutory restriction prohibiting any vessel that enters a port or place in Cuba to engage in the trade of goods or the purchase or provision of services from entering any US port for the purpose of loading or unloading freight for 180 days after leaving Cuba, unless authorized by the US Treasury Department. This restriction applies even if a vessel has stopped in Cuba solely to purchase services unrelated to the trade of goods, such as planned ship maintenance.

The 180-day rule is separate from a second statutory restriction – the goods/passengers-on-board rule – which prohibits any vessel carrying goods or passengers to or from Cuba or carrying goods in which Cuba or a Cuban national has an interest from entering a US port with such goods or passengers on board, unless authorized or exempt.

*(1) Exceptions to the 180-day rule and the goods/passengers-on-board rule*

The US Treasury Department has authorized by general license certain exceptions to these rules. If a vessel engages only in one or more of the following activities with Cuba, it will qualify for the general license and therefore will not be subject to the 180-day rule:

- \* Engaging or has engaged in trade with Cuba authorized under the Cuban Assets Control Regulation (CACR), such as a vessel carrying goods from the United States that are licensed or otherwise authorized for export or reexport to Cuba by the US Department of Commerce pursuant to the EAR;
- \* Engaging or has engaged in trade with Cuba that is exempt from the prohibitions of the CACR, such as a vessel carrying exclusively information materials;
- \* Engaging or has engaged in the export or reexport from a third country to Cuba of agricultural commodities, medicine, or medical devices that, were they subject to the EAR, would be designated as EAR99;
- \* Carrying or has carried persons between the United States and Cuba or within Cuba pursuant to the general license for the provision of carrier services under the CACR;
- \* A foreign vessel that has entered a port or place in Cuba while carrying students, faculty, and staff that are authorized to travel to Cuba pursuant to the general license for educational activities under the CACR;
- \* Additionally, if a vessel's only transactions with Cuba are the exportation to Cuba from a third country of items that, were they subject to the EAR, would be designated as EAR99 or controlled on the Commerce Control List only for anti-terrorism reasons, the vessel will not be subject to the 180-day rule.

*(2) Lifting of the exceptions*

Exceptions to the 180-day rule are not applicable to a vessel that:

- \* Carries for export to Cuba any additional goods that, were they subject to the EAR, would not be designated as EAR99 or controlled on the Commerce Control List only for anti-terrorism reasons;

- \* Picks up any goods in Cuba, unless the transactions involving those goods are authorized by the US Treasury Department or exempt from the prohibitions of the CACR;
- \* Purchases or provides services in Cuba, other than docking, unloading, or other services associated with normal shipping transactions.

The exceptions or exemptions to the 180-day rule only authorize certain vessels to enter a US port within 180 days after calling in Cuba but do not authorize shipments to or from Cuba that are not otherwise authorized by the CACR (and EAR).

## II. US vessels and shipowners

Since the Cuba embargo remains in place mainly through CACR enforcement, most transactions between the United States, or persons subject to US jurisdiction, and Cuba continue to be prohibited.

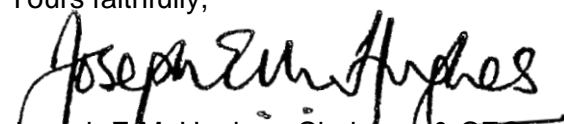
In addition, please note that following the reactivation of the Helms Burton Title III in May 2019, US citizens have a private right of action against any person who has “trafficked” in property confiscated by the Cuban government since 1959. While there are a few cases targeting cruise companies calling in Cuban ports, there are also at least four maritime related cases brought against certain operators for calling into the Mariel Special Development Zone, that includes a commercial port and containers terminal. These cases are still in an early stage, and we will keep monitoring developments.

### Questions and Guidance

Your Managers continue to keep abreast of developments regarding the interpretation and implementation of sanctions against Venezuela and will inform Members of developments of significance. Members are reminded that, pursuant to American Club rules, no cover exists for voyages where the extension of cover would violate or pose a risk of violating sanctions prohibitions, and that causing a violation could entail the imposition of sanctions or penalties. Accordingly, Members are reminded to exercise due diligence in ensuring their compliance with applicable sanctions prohibitions.

Should Members have any questions or need additional guidance regarding the above, sanctions in general, or for confirmation as to the availability of cover for voyages involving countries (Iran, Syria, Cuba, North Korea, Russia, the Crimea region of Ukraine, Venezuela or Russia), entities and individuals subject to US economic sanctions (designated entities and individuals appearing on the OFAC SDN List), please contact: Daniel A. Tadros, Executive Vice-President and Chief Legal & Compliance Officer, ph +1 212 847 4501, mob +1 504 460 7226, [daniel.tadros@american-club.com](mailto:daniel.tadros@american-club.com), or Charles J. Cuccia, Senior Vice President – Compliance, ph +1 212 847 4539, mob +1 917 215 2883m, [charles.cuccia@american-club.com](mailto:charles.cuccia@american-club.com).

Yours faithfully,



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