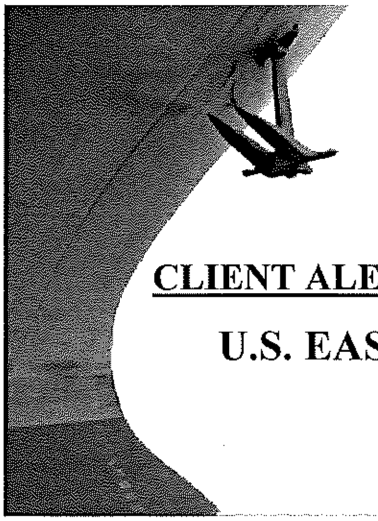

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CLIENT ALERT:

U.S. EASES "180 DAY RULE" ON TRADE WITH CUBA

October 19, 2016

INTRODUCTION

On October 14, 2016, the U.S. Departments of the Treasury and Commerce announced further amendments to the Cuban Asset Control Regulations ("CACR"), one of which will directly impact international shipping. The announcement by the Treasury and Commerce Departments can be found at:
https://www.treasury.gov/resource-center/sanctions/Programs/Documents/cuba_fact_sheet_10142016.pdf

THE AMENDMENT

The CACR, in 31 CFR 515.207(a), sets forth the what has become known as the "180 Day Rule", which provides that no vessel which has called at Cuba to engage in trade or to take on provisions or services may enter a U.S. port for the purpose of loading or unloading cargo for 180 days after it departs Cuba. An exception to the 180 Day Rule has always been contained in 31 CFR 515.550, which excepted certain authorized shipments, as well as agricultural commodities, medicine and medical devices that would be designated as EAR 99 under the U.S. Export Administration Regulations, if they were located in the U.S. A further limited exception was introduced in March 2016 via an amendment to the License Exception AVS.

31 CFR 515.550 is now being amended by the addition of a general license that will considerably expand the types of cargoes exempted from the 180 Day Rule. 31 CFR 515.550(b) now provides that the 180 Day Rule will not apply to "...a foreign vessel that has engaged in the exportation to Cuba from a third country only of items that, were they subject to the EAR, would be designated as EAR99 or would be controlled on the Commerce Control List only for anti-terrorism reasons."

Therefore, if a foreign vessel calls at Cuba with only cargo from a third country, which cargo, if it were subject to the U.S. Export Administration Regulations, would be designated as EAR99, or would be controlled on the Commerce Control List only for anti-terrorism reasons, that vessel is not prohibited from thereafter calling at a U.S. port.

WHAT IS THE EAR?

The U.S. Department of Commerce administers the Export Administration Regulations ("EAR"), which are found at 15 CFR §§ 730-774. The EAR regulate the export of "dual-use" items from the U.S., that is, items designed for commercial purposes, but which could also have military uses. Controlled items under the EAR, which require an export license, are listed on the Commerce Control List ("CCL"), which is published at 15 CFR 774, Supplement 1. An alphabetical list of CCL items can be found at: http://www.access.gpo.gov/bis/ear/pdf/indexccl.pdf, under the heading "Commerce Control List Index" on the left side of the page.

The regulations include an additional "basket" category, EAR99, which covers any goods or technology that are subject to the EAR as defined in 15 CFR §734.3(a), but that are not on the CCL. Items on the CCL are assigned an Export Control Classification Number ("ECCN"). If a cargo is not listed on the CCL with an ECCN, then it falls into the "basket" of EAR99. 15 CFR §732 sets forth detailed steps for examining the classification of goods under the EAR. However, the process of determining whether or not a cargo is classified as EAR99 is not uncomplicated, and shipowners intending to call at a U.S. port immediately after discharging cargo in Cuba, should carefully examine whether the cargo to be discharged in Cuba would be designated as EAR99.

SUMMARY

The CACR have been amended to except from the 180 Day Rule vessels carrying a wide range of cargoes from third countries to Cuba. If a foreign vessel only discharges in Cuba goods from a third country which would be classified EAR99 under the U.S. Export Administration Regulations, that vessel is not subject to the 180 Day Rule and may immediately thereafter call at a U.S. port.

Disclaimer: This Client Alert provides only a general summary of the current easing of certain U.S. regulations relating to Cuba, and is not intended to constitute comprehensive legal advice. Specific legal advice should be taken with respect to each individual inquiry regarding trade with Cuba. For additional clarification, please feel free to contact Bill Juska (juska@freehill.com), Gina Venezia (venezia@freehill.com) or Bill Pallas (pallas@freehill.com).

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