

# Cuba Sanctions Shift Puts Foreign Cos. In OFAC's Crosshairs

By **Jeremy Paner** (May 21, 2026)

On May 1, President Donald Trump issued an executive order that fundamentally changes the U.S. embargo on Cuba for the first time since President John F. Kennedy established it by proclamation in 1962.[1]

For the past 63 years, U.S. sanctions regulations have prohibited any person subject to the jurisdiction of the U.S. from transacting with Cuba, Cuban nationals or their property located anywhere in the world.[2] Those prohibitions objectively established and maintained the most restrictive U.S. sanctions program, irrespective of the current exemptions and 77 general licenses authorizing broad categories of otherwise prohibited transactions.[3]



Jeremy Paner

The U.S. Department of the Treasury's Office of Foreign Assets Control has frequently modified certain aspects of the Cuban embargo, particularly over the past decade or so. As a general matter, the Obama and Biden administrations issued certain general licenses to promote commerce, while Trump narrowed those authorizations.

Notwithstanding the regulatory changes, the Cuban embargo remained largely unchanged from the publication of the sanctions regulations in 1963 until the May 1 executive order.

With this new order, the Cuba sanctions program is no longer limited to prohibitions applicable to U.S. individuals, companies and their subsidiaries. OFAC and the U.S. Department of State are now authorized to impose sanctions against non-U.S. individuals, companies and banks for their dealings with Cuba.

In sum, the executive order shifts the focus to foreign companies whose Cuban dealings have no connections to the U.S. and are entirely lawful under the laws of their home jurisdictions.

For non-U.S. companies outside OFAC's Cuba-related jurisdictional reach, that is the most significant development in the Cold War-Era embargo. Financial institutions and companies that have carefully segregated their Cuba operations from the U.S. to mitigate their sanctions risk exposure are no longer protected by those ring-fence protocols.

Companies and banks operating in or trading with Cuba should consider how to mitigate this new risk in anticipation of the probable continued escalation of sanctions in the coming months.

## **Secondary, Derivative and Sectoral Sanctions**

Historically, the Cuba sanctions program was best described as an embargo, because the sanctions were not generally list based. As a starting point, anything in Cuba, as well as Cuban nationals anywhere in the world, have been blocked as a matter of U.S. law since 1963.

Over the years, OFAC has identified certain Cuban entities on its Specially Designated Nationals and Blocked Persons list as meeting the definition of a "Cuban national." The vast

majority of those actions identified Cuban entities located outside of Cuba, but those entities would be blocked whether or not they appeared on the list.[4]

Further, the 1963-era sanctions regulations did not expose non-U.S. companies or banks to being sanctioned for their arm's-length commercial transactions with Cuba.

That is no longer the case following Executive Order No. 14404's transformation of the embargo into a comprehensive sanctions program akin to Iran.

OFAC and the State Department are now authorized to impose sanctions against non-U.S. individuals, companies and banks upon determining that they meet certain designation criteria far broader than the prior "Cuban national" identification.

Like many similar orders, some bases for designation are redundant of existing authorities, including identification of Cuban government enterprises, as well as human rights abusers and corruption related to Cuba.[5]

Several designation criteria in the new order are entirely new and modernize the Cuba sanctions program from its 1960s roots.

First, the order authorizes "secondary sanctions" as OFAC uses that term. This means OFAC may impose blocking or less-than-blocking sanctions on any non-U.S. financial institution determined to have conducted or facilitated any "significant transaction or transactions" for any person blocked under the new authority.

On May 7, the State Department announced the first designations under the executive order.[6] Of the three designees, Grupo de Administración Empresarial S.A., or GAESA, is the most consequential.

According to the State Department press statement, GAESA controls about 40% of the Cuban economy. This means that non-U.S. banks transacting with Cuba face significant risk exposure, even if the threat of accompanying the first action, of additional "designations ... in the following days and weeks," does not immediately materialize.

Second, for the first time, the U.S. government may impose sanctions on those determined to have provided goods or services to the Cuban government or that otherwise operated in the following sectors of the Cuban economy: energy, defense and related materiel, metals and mining, financial services, or security.

As of mid-May, OFAC had not defined these Cuban economic sectors. Of the nine other sanctions programs with sectoral sanctions designation criteria, the Russia and Belarus programs provide instructive definitions.

The following abbreviated sector definitions are specific to the Russia or Belarus programs and may not represent OFAC's Cuba definitions. However, the Russia and Belarus definitions are instructive in the absence of Cuba guidance or regulations because they are the most recent descriptions of those sectors.

### ***Energy Sector***

Upstream, midstream and downstream activities involving oil, gas and other products capable of producing energy involving Cuba; generation and transmission of power involving Cuba; and the provision or receipt of any goods, services or technology involving the

same.[7]

### ***Defense and Related Materiel Sector***

Activities involving the military, armed forces or security forces of Cuba.[8]

### ***Metals and Mining Sector***

Extracting minerals or geological materials in Cuba, or any act of procuring, processing, manufacturing, or refining such materials, or transporting them to, from, or within Cuba.[9]

### ***Financial Services Sector***

Economic or financial services involving Cuba by banks or nonbank financial institutions, and the provision or receipt of any goods, services or technology involving the same.[10]

### ***Security Sector***

Nonmilitary persons engaged in state security, law enforcement, surveillance or cybersecurity, and the provision or receipt of goods, services or technology involving the same.[11]

### **What's Next?**

Executive Order No. 14404 represents the beginning of a maximum pressure campaign against Cuba to increase the island's economic isolation. OFAC will likely focus consistently on the banking sector to accomplish that goal.

The non-U.S. financial institutions that continue unauthorized or nonexempt banking activities face the highest risk exposure.

The current Cuba secondary sanctions are limited to non-U.S. financial institutions that conduct transactions for parties blocked under the new authority. Banks should expect that limitation to change in the coming months if Cuba remains connected to the international financial system.

The Russia-related program provides a template for expanding secondary sanctions. Under that program, OFAC may impose sanctions against foreign banks it determines have engaged in transactions "involving Russia's military-industrial base," which covers designated companies (on the specially designated nationals list) as well as companies that operate in certain sectors but are not subject to U.S. sanctions.[12]

Non-U.S. banks should expect an expansion of the Cuban secondary sanctions authority to include companies that operate in the targeted economic sectors but are not designated. Mitigation of that expanded designation criteria will require enhanced due diligence on all Cuba-connected entities.

### **Sanctions Risk Exposure Mitigation**

Non-U.S. banks should review their customers to identify those that operate in the targeted sectors and respond commensurate with their risk tolerance. Depending on their findings, some banks should consider approaching OFAC for guidance.

Banks should not delay their Cuba reviews or potential outreach to OFAC. Notably, the existing designation criteria does not require OFAC to demonstrate that banks "knowingly" provided services. It is also worth considering that as a matter of law, OFAC is not required to provide pre-notification of any designation.

Companies and banks should also thoroughly investigate potential direct and indirect connections to GAESA, with particular attention to the 16 GAESA subentities identified on the State Department's Cuba Restricted List,[13] even though they are not currently on the specially designated nationals list. OFAC is likely to aggressively target banks and companies that transact with those GAESA subentities after June 5, when OFAC's GAESA-specific nontargeting posture expires.[14]

Concurrent with economic sector and GAESA-related due diligence reviews, companies and banks should have candid discussions with relevant partners and counterparties about their historical and prospective Cuban activities.

Understanding historical transactions is critical because an OFAC general license transfers preexisting authorizations to the new Cuba sanctions authority.[15] OFAC will not use transactions authorized or exempt under the Cuban Assets Control Regulations to impose sanctions. Therefore, the involvement of U.S. partners or counterparties who are authorized to engage in Cuba-related transactions and dealings significantly reduces the risk exposure of non-U.S. entities.

---

*Jeremy Paner is a partner at Hughes Hubbard & Reed LLP. He previously served as a lead sanctions investigator and analyst at OFAC's Office of Global Targeting.*

*The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*

[1] Proclamation 3447 - Embargo on All Trade with Cuba, February 3, 1962, available at <https://www.presidency.ucsb.edu/documents/proclamation-3447-embargo-all-trade-with-cuba>.

[2] 31 C.F.R. § 515.201. The Cuba Assets Control Regulations defines "person subject to the jurisdiction of the United States" to mean (1) individuals who are citizens or residents of the United States, or physically located in the United States, or (2) entities formed under U.S. law, and their owned or controlled non-U.S. entities. 31 CFR § 515.329.

[3] 31 C.F.R. Part 515 Subpart E (Licenses, Authorizations and Statements of Licensing Policy) and CACR General License No. 1, available at <https://ofac.treasury.gov/media/935571/download?inline>.

[4] 60 of the 74 designees currently on the specially designated nationals list identified as Cuban nationals are located outside Cuba.

[5] In 2021, OFAC imposed human rights abuse and corruption sanctions against 13 individuals and entities located in Cuba, pursuant to Executive Order 13818.

[6] State Department Press Statement, U.S. Sanctions Target Cuba's Military Regime,

Elites, (May 7, 2026), available at <https://www.state.gov/releases/office-of-the-spokesperson/2026/05/u-s-sanctions-target-cubas-military-regime-elites/>.

[7] OFAC Frequently Asked Question #1126, available at <https://ofac.treasury.gov/faqs/1126>.

[8] Id.

[9] OFAC Frequently Asked Question # 1115, available at <https://ofac.treasury.gov/faqs/1115>.

[10] Supra, note 8.

[11] 31 C.F.R. § 548.317.

[12] Executive Order 14114, Sec. 1.

[13] Cuba Restricted List, available at <https://www.state.gov/division-for-counter-threat-finance-and-sanctions/cuba-restricted-list>.

[14] OFAC Frequently Asked Question #1254, available at <https://ofac.treasury.gov/faqs/1254>.

[15] Cuba General License 1, available at <https://ofac.treasury.gov/media/935571/download?inline>.