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OFAC Settles Civil Enforcement Action with Dutch Company for Alleged Violations of US Trade Embargo on Cuba

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The US Treasury's Office of Foreign Assets Control (OFAC) and [Carlson Wagonlit Travel B.V. \(CWT\)](#), a Netherlands-based company, have agreed to settle violations of the Cuban Assets Control Regulations (CACRs) dating back to as early as August 2006. Under OFAC's Cuba Penalty Schedule, the voluntarily disclosed activity exposed CWT to a civil fine of up to \$11,093,500. The parties, however, agreed to settle the matter for \$5,990,490. This settlement shows that even with the EU Understanding and individual EU member states blocking statutes in place, European companies with US owners can be subject to an OFAC enforcement action.

What You Need to Know

- The EU-US Understanding on Cuba did not preclude OFAC from threatening an enforcement action or CWT B.V. from agreeing to settle apparent violations of the CACRs.
- Any company (including a foreign company) owned by US persons is subject to all the requirements of the CACRs.
- The fine is one of the largest ever assessed on a travel agency for violating US sanctions targeting Cuba and Cuban nationals.
- It is never too late to conduct an internal review of one's compliance controls, implement adequate procedures and policies, or make a voluntary disclosure.
- Although the US government has recently eased some of the Cuban travel restrictions, US persons are still expressly prohibited from traveling to Cuba without a license.

Summary of the Enforcement Action Settlement

Last week, OFAC announced that CWT B.V. of the Netherlands had agreed to settle potential civil liability for apparent violations of the CACRs. CWT, a global leader in business travel, serves companies, government institutions, and non-governmental organizations of all sizes in more than 150 countries and territories. In 2013, sales volume

for its wholly owned operations and joint ventures totaled \$26.9 billion.

According to the brief enforcement notice, from on or about August 8, 2006 through November 28, 2012, CWT violated U.S. economic sanctions targeting Cuba and Cuban nationals by dealing in property in which Cuba or its nationals had an interest when its mostly non-US business units provided travel services relating to Cuba. The enforcement notice indicates that CWT assisted approximately 44,430 persons to travel to or from Cuba. Notably, OFAC asserted jurisdiction over the Dutch company because in 2006 it became majority-owned by US persons and thus subject to the Trading with the Enemy Act.

The alleged basis for US jurisdiction calls into question to what extent OFAC considered the Helms-Burton Act (the Act), which, among other things, extended the territorial application of the US embargo of Cuba to foreign companies trading with Cuba and attempted to penalize foreign companies for dealing in property formerly owned by US citizens but confiscated by the Castro regime. Among other things, it created a private right of action and authorized US nationals with claims to confiscated Cuban property to file suit in US district courts against persons (including foreign companies) alleged to be trafficking in such property. The extraterritorial reach of the Act heightened tensions between the US and the EU, which led to the EU implementing regulation that no judgment of a court outside of the EU regarding effects of the Act would be recognized. To alleviate escalating tensions, the US and EU came to an “Understanding on Cuba.” Under the Understanding, among other things, the US agreed to respect current EU investment in Cuba and to limit the private right of action to only post-May 1998 confiscations. In exchange, the EU agreed not to pursue measures against the US in the World Trade Organization.

Skirting around the applicability of the Act to CWT B.V.’s Cuban activities, OFAC noted that it brought the action because US persons had majority ownership of CWT B.V., implicitly suggesting that it was not asserting jurisdiction because of any direct investment by CWT B.V. in Cuba or whether it was dealing in potentially confiscated property, two of the prongs under the Act.

OFAC also noted that CWT B.V.’s apparent violations exposed the Dutch company to a fine up to \$11,093,500 under the Cuba Penalty Schedule. It reduced this fine to just under 6 million taking the following facts into consideration:

- CWT failed to exercise a minimal degree of caution or care regarding its obligations to comply with OFAC sanctions against Cuba by processing unauthorized travel-related transactions for more than four years before recognizing that it was subject to US jurisdiction;
- CWT is a commercially sophisticated international corporation and travel services provider;
- CWT processed a high volume of transactions and assisted a large number of travelers, which caused significant harm to the objectives of the CACRs;
- CWT had no compliance program or an inadequate compliance program at the time of the apparent violations;
- The transactions were CWT’s “first violation,” as no Finding of Violation or penalty notice had been issued to CWT in the five years preceding these transactions;
- CWT provided substantial cooperation during OFAC’s investigation of the apparent violations, including by agreeing to toll the statute of limitations and by providing to OFAC detailed and well-organized documents and information; and
- CWT has taken significant remedial action in response to the apparent violations.

US Sanctions Restricting Travel to Cuba

The CACRs were issued on July 8, 1963, under the Trading With the Enemy Act in response to certain hostile actions by the Cuban Government. They apply to all persons (individuals and entities) subject to US jurisdiction – including all US citizens and permanent residents, wherever located, all persons in the United States, and all branches and subsidiaries of US organizations throughout the world – as well as all persons engaging in transactions that involve property in or otherwise subject to the jurisdiction of the United States. Criminal penalties for violating the CACRs range up to 10 years in prison, \$1,000,000 in corporate fines, and \$250,000 in individual fines. Civil penalties up to \$65,000 per violation may also be imposed. The CACRs require those dealing with Cuba (including traveling to Cuba) to maintain records for five years and, upon request from OFAC, to furnish information regarding such dealings.

A general or specific license is required to travel to Cuba. Unless authorized by a general or specific license, any person subject to US jurisdiction who engages in any Cuba travel-related transaction violates the CACRs and may be subject to penalties. A “general license” authorizes a particular type of transaction without the need for an application to, or further permission from, OFAC. A “specific license” authorizes specific transactions and is issued to a specific person or persons, usually in response to an application. Only persons whose travel falls into one of the limited categories identified under the CACRs (see [Cuban Sanctions Guidance](#)) may be authorized, *i.e.* licensed, to engage in transactions in connection with travel to, from, and within Cuba. On a case-by-case basis OFAC will consider applications for specific licenses to authorize Cuba travel-related transactions not covered by a general license but consistent with one of the categories of specific licenses listed in § 515.560(a) of the CACRs.

Importantly here, the CACRs require that any person subject to US jurisdiction who provides services akin to those of a travel agent with respect to Cuba (for example, arranging travel to, from, or within Cuba, selling tickets for flights to Cuba, or reserving and selling accommodations for authorized travelers within Cuba – which appears to be the essence of CWT B.V.’s business) must be specifically licensed by OFAC as a Travel Service Provider. An authorized traveler should not use any travel agent or tour operator in the United States that is not a licensed Travel Service Provider. A list of authorized Travel Service Providers is available [here](#). OFAC noted that CWT B.V. was not licensed to engage in the Cuban travel-related transaction during the relevant time period.

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As always, please feel free to call any of the partners listed above or your regular Shearman & Sterling contact if you would like to discuss the recent US sanctions or enforcement actions pursuant to the Cuban Assets Control Regulations, implications of those sanctions, or economic sanctions compliance in general.

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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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