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Sep 22 New Cuba Rules Admit the Embargo Threatened the Safety of Civil Aviation

Posted by [Clif Burns](#) at 8:54 pm on September 22, 2015
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This blog has [noted before](#) that comprehensive embargoes by the United States that cover civil aircraft parts flaunt the [Convention on International Civil Aviation](#) to which the United States is a party inasmuch as they endanger the lives of people in the air and on the ground in countries not subject to the embargo. The new Cuba rules proposed by the Bureau of Industry and Security (found [here](#)) and by the Office of Foreign Assets Control (found [here](#)) begin to correct this problem, at least as far as the Cuba embargo and BIS are concerned.

Articles 4 and 44 of the Convention make clear that member states are not to compromise the safety of civil aviation as an instrument of national policy against other countries or to take actions in pursuing national goals that would endanger civil aviation in other member states. Use of an embargo to withhold essential parts for civilian aircraft clearly conflicts with these principles and with the United States' obligation under the Convention.

The proposed amendments forthrightly admit that the U.S. embargo endangers civil aviation by now adding section 746.2(b)(6) which, as now amended, states:

License applications for exports or re-exports of items to ensure safety in civil aviation, including the safe operation of commercial passenger aircraft will be considered on a case-by-case basis.

Not only does this admit that the embargo had a deleterious effect on flight safety, but it leaves open the possibility that the U.S. could continue to endanger flight safety on a "case-by-case basis." One has to wonder why there would ever be a question with respect to "items to ensure safety in civil aviation."

Of course, OFAC is up to its neck as well in this problem, because it also regulates exports and re-exports to Cuba. The general license in [section 515.533*](#) for exports of items licensed by BIS only covers items exported from the United States or items re-exported from the United States with 100% U.S. content. In the case of items with less than 100% U.S. content re-exported from outside the U.S., an OFAC license will be required (which will be *in addition* to a BIS license if the item is subject to the EAR, i.e., has 25% or more U.S. content.)

The new OFAC rules, however, do not contain an explicit statement of the licensing policy for Cuba. And unlike the case with Iran, where OFAC published a [licensing policy](#) for exports "to ensure the safe operation of Iranian commercial passenger aircraft," there is no such published policy with respect to Cuban commercial passenger aircraft, although OFAC may informally be applying that policy. So, at least with respect to re-exports of goods with less than 100% U.S. content, OFAC appears to be free to continue to violate the Convention to the detriment of international civil aviation, although whether it will do so remains to be seen.

*Because the Internet is hard, OFAC has, apparently by mistake, removed the complete text of the Cuba regulations from its site and now links instead only the text of the public notice announcing the new amendments.

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