

Senators Relaunch Bid To End The Cuba Trade Embargo

By Jennifer Doherty

Law360 (February 5, 2021, 10:47 PM EST) -- The chair of the Senate Finance Committee introduced a bill Friday that aims to normalize the U.S.' trade relationship with Cuba in one shot, repealing the 1961 trade embargo and protecting areas targeted by Trump administration regulations.

The 12-page bill, titled the United States-Cuba Trade Act of 2021, was authored by Sen. Ron Wyden, D-Ore., with backing from three Democratic co-sponsors. If passed, the bill would delete Section 620(a) of the Foreign Assistance Act of 1961, and press reset on presidential actions addressing Cuba under the Trading With the Enemy Act, the legislation underpinning the Cuban Assets Control Regulations. Those regulations date back to 1963 and were repeatedly tightened by former President Donald Trump.

While the measure also targets a slew of other laws for repeal or amendment, Wyden focused on the embargo, which he called "an outdated, harmful policy of isolation" in a statement Friday.

"While Trump increased tensions with Cuba during his disastrous time in office, I am optimistic about President Biden's new diplomatic course," he said. "Regardless, Congress has a moral and economic obligation to the American people to improve U.S.-Cuban relations as swiftly and safely as possible."

Wyden's language echoed that of former President Barack Obama, who moved to open up trade with Cuba seven years ago, but was unable to get enough lawmakers behind his push to lift the embargo.

Bipartisan congressional efforts to tear down the decades-old legislative barrier continued into the beginning of Trump's term, as the government moved to once again prohibit U.S. tourists from visiting the island and barred businesses from any dealings involving Cuba's far-reaching military conglomerate.

Under Trump, the Office of Foreign Assets Control also updated the CACR in 2019 to limit the types of remittances people subject to U.S. jurisdiction could send to Cuba, which included capping family remittances at \$1,000 per three-month period.

Separate from its rollback of the CACR, Wyden's bill would also prevent similar action by a future president by expressly prohibiting annual remittance ceilings.

"The Secretary of the Treasury may not limit the amount of remittances to Cuba that may be made by any person who is subject to the jurisdiction of the United States, and the Secretary shall rescind all regulations in effect on the date of the enactment of this Act that so limit the amount of those

remittances," the bill says, making an exception for money laundering or other unlawful transactions.

The bill would also bar future regulation of U.S. citizens' travel to Cuba.

Wyden's bill did not address Trump's redesignation of Cuba as a state sponsor of terrorism days before he left office, but it did call on the government to engage Havana in negotiations regarding its seizure of U.S. nationals' property as well as ongoing human rights abuses on the island.

The easing of U.S.-Cuba relations under Obama' administration was the result of 18 months of secret talks facilitated by the Vatican and Canada. However, Nicole Succar, counsel in Crowell & Moring LLP's international trade group, noted that neither the repeal of the embargo nor the bill's other provisions were conditioned on such talks in a call with Law360 on Friday.

"It means that this could all [happen] without codifying that those negotiations occurred — or that they went well," Succar said.

As Akin Gump counsel Dallas Woodrum pointed out in a statement to Law360, the bill would also repeal the Helms-Burton Act, Title III of which allows U.S. nationals to sue over commercial activity involving property expropriated by Cuba, without setting any preconditions on President Miguel Díaz-Canel's government.

While the rescission could come as a blow to the estimated 200,000 U.S. nationals with claims over confiscated assets, the law has provided a steep path to justice at best, according to Woodrum.

"Many predicted there would be an 'avalanche' of lawsuits as a result of the Trump administration's decision to activate Title III, but the number has been relatively low, given the large number of jurisdictional, procedural, and evidentiary hurdles a plaintiff has to overcome to successfully bring a claim," Woodrum said, noting that only "a handful" out of over 6,000 certified claims have made it to federal court.

--Additional reporting by Daniel Wilson and Alex Lawson. Editing by Emily Kokoll.