

## Insights

# RECENT CHANGES TO THE LIST OF STATE SPONSORS OF TERRORISM: WHAT IMPACT DO THEY HAVE ON EXPORT COMPLIANCE?

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Shortly before the end of his term, the Trump Administration made changes to the List of State Sponsors of Terrorism, removing Sudan and putting Cuba back on.

What do the changes mean for Sudan? With the sanctions against Sudan lifted in 2017, the key restrictions that remained were export controls on all items on the EAR's Commerce Control List, including all items controlled only for anti-terrorism (AT) purposes. The Secretary of State rescinded Sudan's designation as a State Sponsor of Terrorism effective December 14, 2020. Changes to the EAR were implemented effective January 14, 2021 to effectuate Sudan's new status for export control purposes under the EAR. Specifically, with Sudan's removal from the list of State Sponsors of Terrorism, items controlled for AT purposes only no longer require a license for the export or reexport to Sudan. Moreover, the threshold for *de minimis* content for exports to Sudan of foreign made items containing controlled US content is now 25%—and items controlled for AT reasons only will not count toward that threshold. Furthermore, exports to Sudan are now eligible for a broader range of license exceptions in light of its transfer out of Country Group E:1 and into Country Group B, although license exceptions GBS and TSR remain unavailable for transactions destined for Sudan.

On the other hand, Cuba is going back on the list after having been removed in 2015 under the Obama Administration. The change was announced January 11, 2021, but the EAR has not yet been amended to implement the changes that follow such a designation. The revisions that are expected to be made to the EAR, however, will not result in significant changes for most businesses in their dealings with Cuba. Since the Cuban embargo was not lifted, all items subject to the EAR continued to require a license for export or reexport to Cuba even after the rescission of the designation by the Obama Administration in 2015. As a result, there are no additional items for which a new license requirement will be introduced that haven't already had one, although AT controls for items on the Commerce Control List will need to be addressed for any licenses considered for Cuba. The *de minimis* level for Cuba was returned to 10% in October 2019 despite the prior de-listing as a state sponsor of terrorism. The change is likely, though, to result in certain

license exceptions becoming unavailable once the EAR is amended to effectuate the change. It is unclear, though, how quickly the Biden Administration will take that step.

For each of these, it is important to update your export compliance policies and procedures to ensure they reflect the current status of controls for both Sudan and Cuba.

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