



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

APR 16 2002

FAC No. CU-
Case No. CU-

Dear Mr.

This is in response to your letter on behalf of _____ requesting confirmation that pursuant to the informational materials exemption of the Cuban Assets Control Regulations, 31 C.F.R. Part 515 (the "CACR"), prior authorization is not required for foreign subsidiaries of _____ to book through non-U.S. web sites transportation to and from Cuba and to book hotel and rental car reservations in Cuba for persons not subject to U.S. jurisdiction. In the alternative, you request OFAC to issue a specific license authorizing _____ foreign subsidiaries to engage in such transactions.

As you know, the CACR prohibit all persons subject to U.S. jurisdiction from dealing in property in which Cuba or a Cuban national has an interest unless such transactions are authorized by a general or specific license in accordance with current licensing policy set forth in the Regulations or are otherwise exempt. Persons subject to U.S. jurisdiction include U.S.-owned or controlled foreign firms. *See* 31 C.F.R. § 515.329.

In summary, your letter informs us that _____ provides its services in two ways. First, it provides real-time access to schedule, pricing and availability information for airlines, lodging and rental car companies. This is done through a link to a _____ (known as a Computerized Reservation System ("CRS") in the airline industry) that searches for the requested information based on a customer's inquiry processed through the _____ website. Secondly, it provides a "_____ business model" in which _____ acquires inventory at discounted wholesale prices from suppliers for retail at more competitive prices to customers. _____ transactions include the sale of negotiated rate air tickets, hotel rooms and trip packages with non-U.S. airlines, hotels, and travel companies. You suggest that applicable policy in support of the Berman amendment relating to informational materials as well as a prior OFAC ruling in closely analogous circumstances provide grounds for issuing the requested ruling or license.

The "informational materials exemption," also known as the "Berman amendment," is found in § 2502(a) of the Omnibus Trade and Competitiveness Act, Pub. L. No. 100-418, 102 Stat. 1107 (1988), and § 525 of the Foreign Relations Authorization Act, Fiscal

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Years 1994 and 1995, Pub. L. No. 103-236, 108 Stat. 382 (1994). These amendments to § 5(b)(a) of the Trading with the Enemy Act, 50 U.S.C. App. §§ 1-44 ("TWEA"), restrict the President's authority to regulate, directly or indirectly, the importation or exportation of information or informational materials, regardless of the format or medium of transmission or whether the information or informational materials are for personal or commercial use. Sections 515.206 and 515.332 of the CACR, respectively, provide notice of this exemption and define the term "information and informational materials." Section 515.545 of the CACR contains a general license covering transactions incident to such exportation and importation.

With respect to the applicability of the informational materials exemption to CRS, you refer to a January 1995 OFAC ruling. Our 1995 ruling, in part, states that "FAC has reviewed information submitted by ... CRS operators and has concluded that a CRS constitutes merely a system for transmitting information and, therefore, that the transmission of information through the CRS may not be regulated under TWEA...." The ruling continues: "While concluding that the operation of a CRS involves only the transmission of information and, thus, is exempt from regulation pursuant to TWEA..., FAC is not suggesting that ...CRSs may provide services to governments, nationals or other entities that are themselves the target of economic sanctions." Examples of prohibited transactions then are provided.

OFAC affirms this ruling with modification to one statement of fact that has changed since January 1995 due to advancements in the information technology industry. A CRS today cannot be categorized as "merely a system for transmitting information." A current day CRS often has an operational component that allows users to conduct live transactions based upon their review of the information transmitted. To the extent that only information and informational materials are shared and no operational transactions are conducted involving the sanctioned country, the informational materials exemption is applicable. proposed transactions go beyond merely transmitting information. Thus, the January 1995 ruling is not applicable to proposed transactions.

Under § 515.572 of the Regulations, travel service providers must obtain OFAC authorization prior to providing services. OFAC operates a program pursuant to this section for authorizing persons who contemplate providing travel services from the United States to Cuba for individuals whose own travel-related transactions are authorized under a general or specific license. Tourist and most business travel-related transactions are prohibited by persons subject to U.S. jurisdiction. While we recognize that would not be assisting the travel of U.S. persons nonetheless proposes to engage in transactions fundamentally contrary to U.S. policy by facilitating the flow of tourists and business travelers to Cuba thus making a valuable contribution to

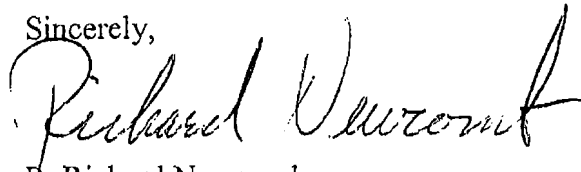
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the Cuban economy. There is no current policy under which OFAC would grant a license to authorize or any other U.S.-owned or controlled company abroad to provide such travel services. Your letter indicates that there are many U.S.-owned or controlled companies located in third countries that engage in providing travel services. OFAC has not granted a license authorizing any such companies to provide services associated with the tourism and business travel of third country nationals to Cuba. If you have specific information concerning apparent violations of the CACR by such companies, you may submit the information, preferably in writing, to the attention of OFAC's Chief of Enforcement.

You state that OFAC's assertion of jurisdiction over U.S. subsidiaries overseas is controversial. You suggest that failure to issue the license you have requested may result in "intergovernmental disagreements" over the scope and applicability of U.S. laws and regulations. Notwithstanding your concern, we disagree with such arguments against OFAC's jurisdiction and find that they do not provide a reason to issue the requested license to

Accordingly, 's request for a license is hereby denied.

Sincerely,



R. Richard Newcomb

Director

Office of Foreign Assets Control