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U.S.-Cuban Relations:

An Analytic Compendium of U.S. Policies, Laws & Regulations

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OF THE UNITED STATES

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Foreword

This compendium presents the texts of the U.S. policy statements, laws and regulations (or relevant parts thereof) that govern U.S. relations with Cuba, on both the bilateral and multilateral levels. Preceding each group of documents is an analytic summary, which highlights the context, major provisions and significance of the policies, laws or regulations in question as they relate to U.S.-Cuban relations. At the end is an essay entitled, “Requirements for Normalization”, which discusses how a U.S. government seeking to do so might go about the process of normalizing relations, taking either a comprehensive or incremental approach.

The documents and analyses in this compendium were fully up-to-date as of 1 January 2004, when the authors completed their initial survey. During production, new developments prompted the U.S. government to revise some of the documents printed here, notably the Cuban Assets Control Regulations. In the interest of research integrity, however, such changes as appeared after the information cut-off date noted above have not been incorporated into the compendium. Rather, the Council will provide – through its website, www.acus.org – links to official and other online sources that post timely updates of key Cuba-related documents.

The Atlantic Council presents this compendium as a reference guide. The Council takes no institutional position on whether the United States ought to seek to normalize its relations with Cuba. Similarly, Dianne Rennack and Mark Sullivan, whom the Atlantic Council asked to compile this compendium, have provided their analysis in their personal capacities. That analysis does not necessarily reflect an institutional position of the Library of Congress. The Council wishes to thank the Ford Foundation, the Tinker Foundation and the United States Institute of Peace for their generous and crucial support of this project. Though I would again emphasize that the opinions, findings and conclusions or recommendations expressed in this publication are those of the authors and do not necessarily reflect the views of the Ford Foundation, the Tinker Foundation or the United States Institute of Peace.

The Council is most grateful to Dianne and Mark for bringing their expertise, energy and analytic skill to this project. Likewise, the Council recognizes the dedication and vast knowledge of the project’s two Senior Advisors, Sally Cowal and Bob Muse, as these were essential to ensuring the compendium’s completeness and accuracy. I would like to thank Dick Nelson, the former Director of the Council’s Program on International Security, for providing the able management without which this project would have been neither successful, nor indeed, possible. Finally, thanks are due to Jason Purcell for editing this compendium and to three of the Program on International Security’s interns – Máté Hegedűs, Jessica Varnum and Joshua D. Weintraub – for their invaluable formatting and research support.

Henry E. Catto, Jr.; *Chairman of the Board*; Atlantic Council of the United States

Executive Summary

For over 40 years, U.S. policy toward Cuba under Fidel Castro has largely consisted of economic sanctions designed to isolate the Castro government in order to bring about political change. A second – more recent – track of U.S. policy has been to support the Cuban people through such measures as radio and television broadcasting, private humanitarian assistance and U.S. government backing for democracy and human rights efforts in Cuba.

The Evolution of U.S. Policy

A Turbulent History

In the 1960s, U.S.-Cuban relations deteriorated quickly as the Castro government espoused communism and aligned itself with the Soviet Union. In response to Cuba's expropriation of U.S.-owned companies, the Eisenhower Administration cut the remainder of Cuba's sugar quota in July 1960 and later in the year restricted U.S. exports by requiring validated license controls for all except nonsubsidized foods, medicines and medical supplies. In January 1961, the Eisenhower Administration broke diplomatic relations with Cuba in response to Cuba's demand to decrease the staff of the U.S. Embassy within 48 hours.

In April 1961, the newly elected Kennedy Administration sponsored the ill-fated Bay of Pigs invasion, which was led by Cuban exiles attempting to overthrow the Castro government. As relations further deteriorated, President Kennedy imposed a trade embargo on Cuba in February 1962. In October 1962, tensions rose between the United States and the Soviet Union over the latter's attempts to place offensive nuclear missiles in Cuba. Only after the United States imposed a naval blockade on Cuba, did the crisis end with a Soviet decision to withdraw the missiles in exchange for assurances from the United States that it would not invade Cuba.

In the 1970s, under the Ford and Carter Administrations, there was some movement toward normalization of relations. U.S. foreign subsidiary trade was allowed beginning in 1975 and diplomatic Interests Sections were established in Havana and Washington in 1977. But Cuba's military involvement in, and support for, revolution abroad (among other factors) ultimately impeded improved relations. The Mariel exodus of 1980, in which 125,000 Cubans flooded south Florida further strained U.S.-Cuban relations. In the 1980s, under the Reagan Administration, U.S.-Cuban relations remained tense because of Cuba's military involvement in Africa and its increasing support for revolutionary movements and governments in Latin America and the Caribbean.

In the aftermath of the Cold War (the early 1990s), U.S. sanctions were strengthened, while a policy of providing support to the Cuban people gained momentum. The Cuban Democracy Act of 1992 (CDA) again banned U.S. foreign subsidiary trade with Cuba and prohibited ships from entering the United States if they had engaged in trade with Cuba within the previous 180 days. At the same time, the CDA included measures of support for the Cuban people, such as provision for direct phone services. The Cuban Liberty and

Democratic Solidarity Act (LIBERTAD) of 1996, enacted after Cuba's shutdown of two U.S. civilian planes in February 1996, further tightened U.S. sanctions on Cuba by codifying the economic embargo and linking its suspension and ultimate termination to significant political changes in Cuba. The Act also included controversial extraterritorial provisions designed to curb foreign investment in confiscated U.S. property in Cuba. In the late 1990s, the Clinton Administration announced several measures to support the Cuban people, including an expansion of direct passenger charter flights from New York and Los Angeles in addition to those already authorized from Miami, and a loosening of embargo restrictions to allow travel for professional, educational, religious, sporting and other activities.

In 2000, in an effort to ease restrictions on agricultural and medical exports to countries subject to U.S. economic sanctions, Congress enacted the Trade Sanctions Reform and Export Enhancement Act (TSRA). Among its other provisions, the Act allows commercial food and medical exports to Cuba through one-year export licenses, although no U.S. assistance is available to finance such exports and no U.S. private commercial financing or credit is allowed. At the same time, the Act tightened travel restrictions by circumscribing the Treasury Department's authority to issue specific travel licenses on a case-by-case basis for activities that do not specifically fall within the categories of travel authorized in the travel regulations.

U.S. Policy under the Bush Administration

As described in Section I of this study, U.S. policy under the Administration of George W. Bush has essentially continued the two-track approach of past Administrations: isolating the Cuban government through comprehensive sanctions while at the same time supporting the Cuban people. In his first major statement on Cuba in May 2001, President Bush asserted that U.S. sanctions are not just a policy tool; they are also a "moral statement". The President affirmed that he would "oppose any attempt to weaken sanctions against Cuba's government" until it "frees its political prisoners; holds democratic, free elections; and allows for free speech." In May 2002, the President set forth specific political and economic steps that, if taken by the Cuban government, could lead to an easing of trade and travel restrictions. But by October 2003, in the aftermath of Cuba's human rights crackdown, the President departed from this approach, maintaining that "the Castro regime will not change by its own choice." Among the measures announced by President Bush in October 2003 "to hasten the arrival of a new, free, democratic Cuba" was the establishment of a "Commission for Assistance to a Free Cuba", with the objective of helping plan for Cuba's transition from communism to democracy and identifying ways to bring this transition about.

Amid annual attempts in Congress to ease the embargo, the President clamped down on violators of the trade and travel bans. In July 2001, he asked the Treasury Department to enhance and expand the enforcement capabilities of the Office of Foreign Assets Control to prevent "unlicensed and excessive travel", and in October 2003, the President instructed the Department of Homeland Security to increase inspections of travelers and shipments to Cuba in order to enforce the existing restrictions on travel and trade.

The Component Parts of U.S.-Cuban Relations

Comprehensive Economic Sanctions

As described in Section II, the United States maintains a comprehensive embargo on trade and financial transactions, primarily pursuant to Section 620(a) of the Foreign Assistance Act of 1961 and to the Trading with the Enemy Act. The Cuban Assets Control Regulations, implemented by the Treasury Department's Office of Foreign Assets Control (OFAC), set forth prohibitions on most financial transactions, including on travel and remittances to Cuba. U.S. sanctions were made stronger through the Cuban Democracy Act of 1992, which, among other things, curtailed U.S. foreign subsidiary trade with Cuba. The Cuban Liberty and Democratic Solidarity Act of 1996 further strengthened sanctions by placing the embargo regulations into permanent law and creating extraterritorial sanctions aimed at curbing foreign investment in confiscated U.S. property in Cuba.

Aside from the embargo, Cuba is denied both normal trade relations treatment for its exports and eligibility for a generalized system of preferences pursuant to Title IV of the Trade Act of 1974 and the Harmonized Tariff Schedule of the United States. Cuba also is excluded from consideration for preferential tariff treatment under the Caribbean Basin Economic Recovery Act. Cuba's sugar quota is prohibited pursuant to Section 620(a)(2) of the Foreign Assistance Act of 1961 and will be so until Cuba takes action to return, or compensate the owners of, confiscated U.S. property. Since Cuba was added in 1982 to the list of countries supporting international terrorism – pursuant to Section 6(j) of the Export Administration Act of 1979 – certain trade relations and benefits are restricted. Moreover, Cuba is listed as a country “not fully cooperating with United States antiterrorism efforts” under Section 40A of the Arms Export Control Act, and thus is denied U.S. defense articles or defense services. Pursuant to a 1998 provision of law, commonly referred to as Section 211, the United States cannot accept payments from Cuban or foreign nationals for the registration or renewal of trademarks that were used in connection with a business or with assets in Cuba that were confiscated unless the original owner has consented. The Trade Sanctions Reform and Export Enhancement Act of 2000 allows the commercial export of food and medical supplies to Cuba through one-year export licenses, albeit with prohibitions against U.S. government support or assistance and against U.S. private commercial financing.

Most aid to the government of Cuba is prohibited pursuant to a variety of legislative provisions, most significantly Section 620(a) of the Foreign Assistance Act of 1961 and annual foreign operations appropriations measures. There are also a variety of restrictions in U.S. law on U.S. assistance to third countries or international organizations that provide assistance to Cuba. However, the United States does provide assistance to individuals and independent nongovernmental organizations working to build democracy in Cuba, pursuant to the Cuban Liberty and Democratic Solidarity Act and annual foreign operations appropriations legislation. The Cuban Liberty and Democratic Solidarity Act likewise calls for the President to develop a plan for providing assistance to Cuba if a transition occurs or if a democratically-elected government is in power. As noted above, in October 2003, President Bush announced the establishment of a “Commission for Assistance to a Free Cuba,” with the objective of helping plan for Cuba's transition from communism to democracy.

Diplomatic Relations

The United States broke relations with Cuba in January 1961 in response to a Cuban demand to decrease the number of U.S. Embassy personnel from 87 to 11. Currently, pursuant to a 1977 bilateral agreement, each country has an Interests Section in the other's capital (officially under the embassies of Switzerland in Havana and Washington) to handle the regular functions of an embassy, including consular work. The personnel of both Interests Sections have had various restrictions, including travel restrictions, placed on them by the host country. In addition, both countries have expelled each other's diplomats at various junctures, including most recently the expulsion of 14 Cuban diplomats in May 2003 (seven from the Cuban Interests Section in Washington and seven from Cuba's Mission to the United Nations in New York).

Migration

U.S. migration policy toward Cuba has evolved into a "wet foot/dry foot" policy in which Cubans interdicted at sea are returned to Cuba pursuant to a 1995 U.S.-Cuban migration agreement (except if they are deemed at risk for persecution), while those who reach shore are allowed to apply for permanent resident status in one year under the Cuban Refugee Adjustment Act of 1966. Pursuant to a 1994 U.S.-Cuban migration agreement, the United States ensures that the total legal migration of Cubans to the United States is a minimum of 20,000 each year, not including immediate relatives of U.S. citizens. In October 2003, in response to increasing criticism of the policy of returning Cubans, President Bush announced that the United States would increase the number of new Cuban immigrants each year, improve the methods for identifying refugees, redouble efforts to process Cubans seeking to leave and initiate a public information campaign to better inform Cubans of the routes to safe and legal entry into the United States.

Guantanamo Naval Base

The U.S. naval base at Guantanamo Bay, Cuba, a 45-square mile facility on the southeastern coast, dates back to 1903, and pursuant to a 1934 treaty, the U.S. presence can only be terminated by mutual agreement or by abandonment. The Cuban government opposes the U.S. military presence (considering it a national security threat) and believes that it infringes upon Cuba's right of sovereignty. The mission of the base has changed considerably over time. During the Cold War, the base was viewed as a good location for controlling Caribbean sea lanes and as a deterrent to the Soviet presence in the Caribbean. In the 1990s, the base housed thousands of Haitian and Cuban migrants. Another role for the base emerged amid the U.S.-led global campaign against terrorism. In the aftermath of the U.S. war in Afghanistan, Taliban and *al-Qa'eda* fighters were imprisoned at Guantanamo Bay. As of late 2003, some 660 detainees were imprisoned at Guantanamo, although the Bush Administration announced in December 2003 that some 140 would soon be released.

Radio and Television Broadcasting to Cuba

Radio and TV Marti broadcasting to Cuba, begun in 1985 and 1990 respectively, are part of the policy of reaching out to the Cuban people. Both programs are funded through the annual Commerce, Justice, State and related agencies appropriations measures. Cuba opposes the broadcasts as a violation of both international law and the country's sovereignty and thus attempts to jam them. In the past, there were various unsuccessful legislative

attempts to cut funding for the programs, especially TV Marti, which has not had an audience because of Cuban jamming efforts. Various methods to overcome Cuban jamming efforts have been tested.

Future U.S. Relations with Cuba

Future U.S. relations with Cuba will depend to a large extent on the course of events on the island and on how the U.S. executive and legislative branches respond to these events. At this juncture, Congress and the Administration essentially agree that any change in U.S. policy will only be triggered by substantial political and economic reforms in Cuba. This policy was set forth by the Cuban Liberty and Democratic Solidarity Act of 1996, which placed the embargo regulations into permanent law and linked the embargo's suspension and ultimate termination to the fulfillment of numerous political conditions by a new government that would include neither Fidel Castro, nor his brother Raul. The codification of the embargo essentially shifted the power to change the sanctions-based Cuba policy from the executive branch to Congress. This is because the power of the executive to ease the economic embargo significantly is circumscribed until certain democratic conditions are met. Over the past several years, there has been growing sentiment in Congress to make changes to the long-standing policy of isolating the Cuban government through sanctions. There have thus been numerous legislative attempts to overturn some embargo restrictions, notably the restrictions on travel, though none of these initiatives has yet been enacted into law.

U.S.-Cuban Relations:

An Analytic Compendium of U.S. Policies, Laws & Regulations

Section I:

U.S. Policy Statements of the George W. Bush Administration

Analytic Summary

U.S. policy toward Cuba under the Administration of George W. Bush has essentially continued the two-track policy of past Administrations: isolating the Cuban government through comprehensive economic sanctions while at the same time supporting the Cuban people through such efforts as private humanitarian assistance and U.S. government support for democracy and human rights in Cuba.

President Bush initially set forth his Cuba policy in two major statements – in May 2001 and May 2002 – both timed to coincide with Cuba’s May 20th Independence Day. The President vowed to oppose attempts to weaken sanctions against Cuba’s government until it undertook significant reforms, and he proposed new measures to support the Cuban people. In another policy statement in July 2001, President Bush ordered the Treasury Department to enhance and expand the capabilities of its Office of Foreign Assets Control to enforce the Cuba embargo regulations. More recently, in October 2003, President Bush announced initiatives to: enforce more stringently trade and travel restrictions; increase the number of Cuban migrants allowed into the United States; improve methods of identifying refugees; and establish a new commission to help plan for, and assist, Cuba’s transition from communism toward democracy.

On May 18, 2001, President Bush made his first major statement on his Administration’s policy toward Cuba. The President asserted that the U.S. sanctions on Cuba were not just a policy tool, but a “moral statement,” and he affirmed that his Administration would

“...oppose any attempt to weaken sanctions against Cuba’s government until the regime....frees its political prisoners, holds democratic, free elections, and allows for free speech.” In the speech, the President asserted that U.S. policy was not only aimed at isolating the Cuban government, but designed to “actively support those working to bring about democratic change in Cuba.”

On July 13, 2001, President Bush instructed the Treasury Department to enhance and expand the enforcement capabilities of its Office of Foreign Assets Control, the primary administrator of U.S. sanctions against Cuba. The President noted the importance of upholding and enforcing the law in order to prevent “unlicensed and excessive travel,” enforce limits on remittances and ensure that humanitarian and cultural exchanges actually reach pro-democracy activists in Cuba. The President reiterated his pledge of May 2001 to “...oppose any attempt to weaken sanctions against the Castro regime until it respects the basic human rights of its citizens, frees political prisoners, holds democratic free elections, and allows free speech.”

On May 20, 2002, President Bush announced an “Initiative for a New Cuba” that included several measures designed to reach out to the Cuban people: facilitating humanitarian assistance to the Cuban people by U.S. religious and other non-governmental organizations (NGOs); providing direct assistance to the Cuban people through NGOs; calling for the resumption of direct mail service between the United States and Cuba; and establishing scholarships in the United States for Cuban students and professionals involved in building civil institutions, and for family members of political prisoners. Of these measures, the only one that could be described as new is the U.S. scholarship program for Cuban students and professionals. To date, the program has not been established. With regard to the other measures, the United States has been providing assistance to the Cuban people through NGOs since 1996, and U.S. religious and other NGOs have been providing humanitarian assistance to Cuba for several years. Direct mail service to Cuba was suspended in 1962. The United States has raised this issue with Cuba in the past, but Cuba has asked for a civil aviation agreement and measures to prevent potential terrorism through the mail before resuming direct mail service.

Also in the May 2002 speech, President Bush set forth specific political and economic steps to be taken by the Cuban government that could, in turn, lead to the United States easing trade and travel restrictions. He called on the Cuban government to conduct free and fair elections for the National Assembly in 2003, setting forth the following “minimum steps” for the elections: opposition parties should have the freedom to organize and assemble, and should have equal access to the airwaves; political prisoners should be released and allowed to participate in the election process; human rights organizations should be able to visit Cuba to verify that the conditions for free elections are being created; and outside observers should monitor the elections. In terms of economic reform, the President called on Cuba to remove its “stranglehold on private economic activity,” including permission for independent trade unions to operate, respect for property rights and allowing workers of foreign companies to be paid directly by their employers. If Cuba took all these steps, the President said he would work with Congress to ease the Cuba embargo. The President asserted, however, that full normalization of relations (including diplomatic recognition,

open trade and aid) would only be possible “...when Cuba has a new government that is fully democratic, when the rule of law is respected, and when the human rights of all Cubans are fully protected.”

Notably, the President’s offer to ease the embargo did not include some of the conditions set forth in the Cuban Liberty and Democratic Solidarity Act of 1996, which would need to be fulfilled for a suspension of the embargo. For example, the President did not condition an easing of the embargo on Cuba’s public commitment to organize free and fair elections for a new government, on cessation of interference with Radio and TV Marti broadcasts or on the condition that the new government not include Fidel or Raul Castro. In this sense, some might see the President’s actions as a softening of U.S. policy as set forth in the Cuban Liberty and Democratic Solidarity Act. The President’s statement that “meaningful reform on Cuba’s part will be answered with a meaningful American response” harkened back to the policy first set forth in the Cuban Democracy Act of 1992, which asserted that U.S. policy should be “to be prepared to reduce the sanctions in carefully calibrated ways in response to positive developments in Cuba.” Nevertheless, the standards set forth by President Bush for a potential easing of the embargo remained high and unlikely to be fulfilled as long as Fidel Castro remained in power. Indeed, Cuba did hold legislative elections for its National Assembly in January 2003, but as in the past voters were not offered a choice of candidates. The next National Assembly elections are not scheduled until 2008. Even if the conditions set forth by the President had been fulfilled, the President acknowledged that he would have had to work with Congress to ease restrictions on trade and travel to Cuba. This can be viewed as an acknowledgment of the key power of Congress in maintaining in place the sanctions-based U.S. policy toward Cuba.

On October 10, 2003, in the aftermath of Cuba’s human rights crackdown earlier in the year, President Bush announced three initiatives “...to hasten the arrival of a new, free, democratic Cuba.” First, the President instructed the Department of Homeland Security (which houses U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement) to increase inspections of travelers and shipments to and from Cuba in order to enforce the Cuba embargo restrictions on travel and trade. Second, in order to ensure that Cubans fleeing their homeland do not risk their lives at sea, the President stated that the United States would increase the number of new Cuban immigrants accepted for entry each year, improve the method of identifying refugees, redouble efforts to process Cubans seeking to leave their homeland and initiate a public information campaign in Florida and Cuba to better inform Cubans of the routes to safe and legal entry into the United States. Third, the President announced the establishment of a “Commission for Assistance to a Free Cuba,” to be co-chaired by then Secretary of State Colin Powell and then Secretary of Housing and Urban Development Mel Martinez, to help plan for Cuba’s transition from communism to democracy and to help identify ways to help bring this about.

The President’s October 2003 speech was in large part a reaction to Cuba’s human rights crackdown earlier in the year, as well as a response to increasing criticism from Florida of the Administration’s embargo and migration policies toward Cuba. The speech can also be viewed as a departure from the offer made in May 2002 to Cuba to ease the embargo in exchange for political and economic changes in Cuba. The crackdown on illegal travel was a

continuation of the policy articulated in the President's July 2001 statement. It also demonstrated the Administration's resolve not to lighten up on Cuba sanctions at a time when Congress was considering legislation to ease Cuba travel restrictions. The migration initiatives were a response to criticism of the Administration after the Coast Guard repatriated several Cubans in July 2003 (those had been interdicted on a Cuban government vessel that had been stolen). The establishment of a new "Commission for Assistance to a Free Cuba" in some respects appears similar to work conducted by the Clinton Administration in 1996, pursuant to Title II of the Cuban Liberty and Democratic Solidarity Act, which called for the development of a plan for providing economic assistance once Cuba begins the transition to democracy.¹

¹ White House. "Support for a Democratic Transition in Cuba: Report to the Congress," January 28, 1997.

Document

Remarks by President George W. Bush in Recognition of Cuban Independence Day

Date: May 18, 2001

* * *

It's a great honor for me to welcome you all to the White House to celebrate May 20th, Cuban Independence Day. It's a day when we honor the warm family ties, the faith, the history and heritage that unite our two peoples.

As Angel and Lizebet and so many others remind us, it is a day when we pay thanks to the magnificent contributions of Cubans to our national life. They enrich every field, from science to industry, to the arts, including my favorite performing art – baseball. But mostly, today is a day when we reflect on the greatnesses of Cuba's far-too-distant past and the brightness of its future; of how, together, we can hasten that future's arrival.

Just last month I returned from the Summit of the Americas in Quebec City. Thirty-four democratic nations committed ourselves to building a hemisphere of freedom. But one nation was not there, because that nation has a leader who has no place at the democratic table. Indeed, his nation is not free, but enslaved. He is the last holdout of the hemisphere, and time is not on his side.

The Cuban independence we celebrate today was the product of the enormous courage of the Cuban people and the statesmanship of leaders such as Jose Marti. The tyranny that rules Cuba today stands as an insult to their sacrifices. But we're confident in one fact, Cuban courage is more powerful and enduring than Castro's legacy and tyranny.

Our nation has an economic embargo against Castro's regime. But today, of all days, it is important for us to remember that our goal is not to have an embargo against Cuba; it is freedom in Cuba.

The United States welcomes the opportunity to trade with Cuba when there are entrepreneurs who are free to trade with us. We welcome the opportunity to build diplomatic relations with Cuba when the Cuban government is a democracy, when the Cuban people can be free from fear to say what they think and choose who shall govern them.

The sanctions our government enforces against the Castro regime are not just a policy tool; they're a moral statement. My administration will oppose any attempt to weaken sanctions against Cuba's government until the regime – and I will fight such attempts until this regime frees its political prisoners, holds democratic, free elections, and allows for free speech.

The policy of our government is not merely to isolate Castro, but to actively support those working to bring about democratic change in Cuba. And that is why we will support legislation like the Cuban Solidarity Act, and the Cuban Internal Opposition Assistance Act.

History tells us that forcing change upon repressive regimes requires patience. But history also proves, from Poland to South Africa, that patience and courage and resolve can eventually cause oppressive governments to fear and then to fall.

One of the surest ways to foster freedom is to give people unlimited access to unbiased information. The strongest walls of oppression can't stand when the floodgates of modern telecommunications are opened. We must explore ways to expand access to the Internet for the average Cuban citizen. And we must strengthen the voices of Radio and TV Marti, with strong leadership. And we will strengthen those voices with strong leadership and new direction.

Today – today I say this to Mr. Castro: If you are confident your ideas are right, then stop jamming the broadcasts of those whose ideas are different. And until you do, we will look for ways to use new technology, from new locations, to counter your silencing of the voices of liberty.

Last month, the U.N. Human Rights Commission called on Castro's regime to respect the basic human rights of all its people. The United States leadership was responsible for passage of that resolution. Some say we paid a heavy price for it. But let me be clear: I'm very proud of what we did. And repressed people around the world must know this about the United States: We might not sit on some commission, but we will always be the world's leader in support of human rights.

Today, all our citizens are proud to stand with all Cubans, and all Cuban Americans who love freedom. We will continue to stand with you until that day, hopefully not in the too-distant future, when all Cubans breathe the heady air of liberty.

We are proud to stand with those Cubans who, today, enrich our nation with their energies and industry. We're proud to stand with the farmers and workers of Cuba who dream of liberty's blessings. We are proud to stand, too, with those who are suffering and dying in jails because they had the courage to speak the truth.

Y aqui en este Casa Blanca, estamos feliz de cultivar “una rosa blanca en Julio como en Enero”. Y por fin, viva Cuba libre. Thank you all.

Document

Remarks by President George W. Bush: Toward a Democratic Cuba

Date: July 13, 2001

Seven years ago today, a tugboat carrying 72 people off the coast of Cuba, the “13 de Marzo,” was repeatedly rammed by Cuban authorities resulting in 41 deaths, including 10 children. On this sad anniversary, the United States extends condolences to the families and survivors of this tragedy. The tyranny that rules Cuba today bears direct responsibility for this and other crimes – crimes, that should not go unpunished, against innocent civilians and countless other human rights violations over the years.

As I said on Cuban Independence Day, the sanctions the United States enforces against the Castro regime are not just a policy tool, but a moral statement. It is wrong to prop up a regime that routinely stifles all the freedoms that make us human. The United States stands opposed to such tyranny and will oppose any attempt to weaken sanctions against the Castro regime until it respects the basic human rights of its citizens, frees political prisoners, holds democratic free elections, and allows free speech.

In order to manage more effectively the sanctions against the Cuban regime and enforce the federal regulations governing the embargo, I have asked the Treasury Department to enhance and expand the enforcement capabilities of the Office of Foreign Assets Control in this area. It is important that we uphold and enforce the law to the fullest extent with a view toward preventing unlicensed and excessive travel, enforcing limits on remittances, and ensuring humanitarian and cultural exchanges actually reach pro-democracy activists in Cuba.

In addition, I will expand support for human rights activists, and the democratic opposition; and, we will provide additional funding for non-governmental organizations to work on pro-democracy programs in Cuba. Focusing our support on activities that promote democratic values will go a long way toward accelerating the democratic transition of Cuba.

Finally, it gives me great pleasure to announce the Director, Office of Cuba Broadcasting, Mr. Salvador Lew, a well-respected journalist and member of the Advisory Board for Cuba Broadcasting. I have told Mr. Lew that my number one priority is to make sure that Radio and TV Marti are broadcast clearly to Cuba allowing every Cuban citizen access to accurate news and information. In order to do that, I have instructed him to use all available means to overcome the jamming of Radio and TV Marti. Once we open the flow of information, the demands for freedom will ring stronger than ever.

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Remarks by President George W. Bush: Initiative for a New Cuba

Date: May 20, 2002

Bienvenidos. Welcome to the White House for the 100th anniversary of Cuban independence. Today we honor the ties of friendship, and family, and faith, that unite the Cuban people and the people of the United States.

We honor the contributions that Cuban-Americans have made to all aspects of our national life. And today, I am issuing a proposal and a challenge that can put Cuba on the path to liberty.

I appreciate our Secretary of State being here. He and I take this issue very seriously. He loves freedom as much as I love freedom. I want to thank Mel Martinez, a graduate of Pedro Pan, for being here; Mr. Secretary, you're doing a great job. Welcome.

I appreciate members of the diplomatic corps who are here. Thank you all for coming; I'm honored to have you here. I want to thank Senator George Allen from the Commonwealth of Virginia. I want to thank Congressman Dan Burton; Mr. Chairman. And, of course, two great members of the United States Congress, people who have got a lot to offer, a lot of sound advice: Ileana Ros-Lehtinen and Lincoln Diaz-Balart. Thank you all for coming.

Cuba's independence one century ago today was the inspiration of great figures such as Felix Varela. It was the result of determination and talent on the part of great statesmen such as Jose Marti, and great soldiers such as Antonio Maceo and Maximo Gomez. Most of all, Cuba's independence was the product of the great courage and sacrifice of the Cuban people.

Today, and every day for the past 43 years, that legacy of courage has been insulted by a tyrant who uses brutal methods to enforce a bankrupt vision. That legacy has been debased by a relic from another era, who has turned a beautiful island into a prison. In a career of oppression, Mr. Castro has imported nuclear-armed ballistic missiles, and he has exported his military forces to encourage civil war abroad.

He is a dictator who jails and tortures and exiles his political opponents. We know this. The Cuban people know this. And the world knows this. After all, just a month ago the United Nations Commission on Human Rights, in a resolution proposed by the nations of Latin America, called upon Cuba's government to finally – to finally – begin respecting the human rights of its people.

Through all their pains and deprivation, the Cuban people's aspirations for freedom are undiminished. We see this today in Havana, where more than 11,000 brave citizens have petitioned their government for a referendum on basic freedoms. If that referendum is allowed, it can be a prelude, a beginning for real change in Cuba.

The United States has no designs on Cuban sovereignty. It's not a part of our strategy, or a part of our vision. In fact, the United States has been a strong and consistent supporter of freedom for the Cuban people. And it is important for those who love freedom on that beautiful island to know that our support for them will never waver.

Today, I'm announcing an Initiative for a New Cuba that offers Cuba's government a way forward towards democracy and hope, and better relations with the United States.

Cuba's scheduled to hold elections to its National Assembly in 2003. Let me read Article 71 of the Cuban Constitution. It says, "The National Assembly is composed of deputies elected by free, direct, and secret vote." That's what the constitution says. Yet, since 1959, no election in Cuba has come close to meeting these standards. In most elections, there has been one candidate, Castro's candidate.

All elections in Castro's Cuba have been a fraud. The voices of the Cuban people have been suppressed, and their votes have been meaningless. That's the truth. *Es la verdad*. In the 2003 National Assembly elections in Cuba, Cuba has the opportunity to offer Cuban voters the substance of democracy, not its hollow, empty forms.

Opposition parties should have the freedom to organize, assemble, and speak, with equal access to all airwaves. All political prisoners must be released and allowed to participate in the election process. Human rights organizations should be free to visit Cuba to ensure that the conditions for free elections are being created. And the 2003 elections should be monitored by objective outside observers. These are the minimum steps necessary to make sure that next year's elections are the true expression of the will of the Cuban people.

I also challenge Cuba's government to ease its stranglehold, to change its stranglehold on private economic activity. Political and economic freedoms go hand in hand, and if Cuba opens its political system, fundamental questions about its backward economic system will come into sharper focus.

If the Cuban government truly wants to advance the cause of workers, of Cuban workers, surely it will permit trade unions to exist outside of government control. If Cuba wants to create more good-paying jobs, private employers have to be able to negotiate with and pay workers of their own choosing, without the government telling who they can hire and who they must fire.

If Cuba wants to attract badly needed investment from abroad, property rights must be respected. If the government wants to improve the daily lives of its people, goods and services produced in Cuba should be made available to all Cuban citizens. Workers employed by foreign companies should be paid directly by their employers, instead of having the government seize their hard-currency wages and pass on a pittance in the form of pesos. And the signs in hotels reading "Solamente Turistas" should finally be taken down.

Without major steps by Cuba to open up its political system and its economic system, trade with Cuba will not help the Cuban people. It's important for Americans to understand,

without political reform, without economic reform, trade with Cuba will merely enrich Fidel Castro and his cronies.

Well-intentioned ideas about trade will merely prop up this dictator, enrich his cronies, and enhance the totalitarian regime. It will not help the Cuban people. With real political and economic reform, trade can benefit the Cuban people and allow them to share in the progress of our times.

If Cuba's government takes all the necessary steps to ensure that the 2003 elections are certifiably free and fair – certifiably free and fair – and if Cuba also begins to adopt meaningful market-based reforms, then – and only then – I will work with the United States Congress to ease the ban on trade and travel between our two countries.

Meaningful reform on Cuba's part will be answered with a meaningful American response. The goal of the United States policy toward Cuba is not a permanent embargo on Cuba's economy. The goal is freedom for Cuba's people.

Today's initiative invites the Cuban government to trust and respect Cuban citizens. And I urge other democracies, in this hemisphere and beyond, to use their influence on Cuba's government to allow free and fair National Assembly elections, and to push for real and meaningful and verifiable reform.

Full normalization of relations with Cuba – diplomatic recognition, open trade, and a robust aid program – will only be possible when Cuba has a new government that is fully democratic, when the rule of law is respected, and when the human rights of all Cubans are fully protected.

Yet, under the Initiative for a New Cuba, the United States recognizes that freedom sometimes grows step by step. And we'll encourage those steps. The current of history runs strongly towards freedom. Our plan is to accelerate freedom's progress in Cuba in every way possible, just as the United States and our democratic friends and allies did successfully in places like Poland, or in South Africa. Even as we seek to end tyranny, we will work to make life better for people living under and resisting Castro's rule.

Today I'm announcing a series of actions that will directly benefit the Cuban people, and give them greater control of their economic and political destiny. My administration will ease restrictions on humanitarian assistance by legitimate U.S. religious and other non-governmental organizations that directly serve the needs of the Cuban people and will help build Cuban civil society. And the United States will provide such groups with direct assistance that can be used for humanitarian and entrepreneurial activities.

Our government will offer scholarships in the United States for Cuban students and professionals who try to build independent civil institutions in Cuba, and scholarships for family members of political prisoners. We are willing to negotiate direct mail service between the United States and Cuba.

My administration will also continue to look for ways to modernize Radio and TV Marti, because even the strongest walls of oppression cannot stand when the floodgates of information and knowledge are opened. And in the months ahead, my administration will continue to work with leaders all around our country, leaders who love freedom for Cuba, to implement new ways to empower individuals to enhance the chance for freedom.

The United States will continue to enforce economic sanctions on Cuba, and the ban on travel to Cuba, until Cuba's government proves that it is committed to real reform. We will continue to prohibit U.S. financing for Cuban purchases of U.S. agricultural goods, because this would just be a foreign aid program in disguise, which would benefit the current regime.

Today's initiative offers Cuba's government a different path, leading to a different future – a future of greater democracy and prosperity and respect. With real reform in Cuba, our countries can begin chipping away at four decades of distrust and division. And the choice rests with Mr. Castro.

Today, there is only one nation in our hemisphere that is not a democracy. Only one. There is only one national leader whose position of power owes more to bullets than ballots. Fidel Castro has a chance to escape this lonely and stagnant isolation. If he accepts our offer, he can bring help to his people and hope to our relations.

If Mr. Castro refuses our offer, he will be protecting his cronies at the expense of his people. And eventually, despite all his tools of oppression, Fidel Castro will need to answer to his people.

Jose Marti said, "Barriers of ideas are stronger than barricades of stone." For the benefit of Cuba's people, it is time for Mr. Castro to cast aside old and failed ideas and to start to think differently about the future. Today could mark a new dawn in a long friendship between our people, but only if the Castro regime sees the light.

Cuba's independence was achieved a century ago. It was hijacked nearly half a century ago. Yet the independent spirit of the Cuban people has never faltered. And it has never been stronger than it is today. The United States is proud to stand with all Cubans, and all Cuban-Americans, who love freedom. And we will continue to stand with you until liberty returns to the land you love so well.

Viva Cuba Libre.

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Remarks by President George W. Bush: Discussion of Cuban Policy in the Rose Garden Speech

Date: October 10, 2003

Hola. Sientese. Thank you for coming. Welcome to the Rose Garden. It's my honor to host you for an important policy announcement.

I'm proud to be joined by our great Secretary of State Colin Powell and a son of Cuba, a graduate of the Pedro Pan program – Mel Martinez. I'm also pleased to be joined with other members who will be – of my administration who will be charged with implementing policy. From the Department of Homeland Security, Under Secretary Asa Hutchinson is with us today. From the Treasury Department, Rick Newcomb, Director of the Office of Foreign Asset Control, is with us today. Rick, thank you for coming. Assistant Secretary for the Western Hemisphere, Roger Noriega, is with us today. Y, por fin, from my staff, Envoy Otto Reich.

As well, we're honored to have distinguished members of the Congress with us, starting with the very capable and able Senator from the state of Virginia, George Allen. Bienvenidos, Jorge. From the state of Florida, Congressman Lincoln Diaz-Balart. Y su hermano, Congressman Mario Diaz-Balart. Ileana Ros-Lehtinen. And Porter Goss. Thank you for coming. I'm honored you all are here.

The Secretary mentioned to me that Bob Dole is with us. Bob Dole is not with us.

One hundred and thirty-five years ago today, the struggle for Cuban freedom began at a sugar mill near Manzanillo. Carlos Manuel de Cespedes – known as the Father of the Homeland – led an uprising against colonial rule. Today, the struggle for freedom continues – it hasn't ended – in cities and towns of that beautiful island, in Castro's prisons, and in the heart of every Cuban patriot. It is carried on by brave dissidents like Oscar Elias Biscet, Marta Beatriz Roque, Leonardo Bruzon Avila.

Last year in Miami, I offered Cuba's government a way forward – a way forward toward democracy and hope and better relations with the United States. I pledged to work with our Congress to ease bans on trade and travel between our two countries if – and only if – the Cuban government held free and fair elections, allowed the Cuban people to organize, assemble and to speak freely, and ease the stranglehold on private enterprise.

Since I made that offer, we have seen how the Castro regime answers diplomatic initiatives. The dictator has responded with defiance and contempt and a new round of brutal oppression that outraged the world's conscience.

In April, 75 peaceful members of Cuban opposition were given harsh prison sentences, some as long as 20 years. Their crimes were to publish newspapers, to organize petition drives, to meet to discuss the future of their country. Cuba's political prisoners subjected to

beatings and solitary confinement and the denial of medical treatment. Elections in Cuba are still a sham. Opposition groups still organize and meet at their own peril. Private economic activity is still strangled. Non-government trade unions are still oppressed and suppressed. Property rights are still ignored. And most goods and services produced in Cuba are still reserved for the political elites.

Clearly, the Castro regime will not change by its own choice. But Cuba must change. So today I'm announcing several new initiatives intended to hasten the arrival of a new, free, democratic Cuba.

First, we are strengthening re-enforcement of those travel restrictions to Cuba that are already in place. U.S. law forbids Americans to travel to Cuba for pleasure. That law is on the books and it must be enforced. We allow travel for limited reasons, including visit to a family, to bring humanitarian aid, or to conduct research. Those exceptions are too often used as cover for illegal business travel and tourism, or to skirt the restrictions on carrying cash into Cuba. We're cracking down on this deception.

I've instructed the Department of Homeland Security to increase inspections of travelers and shipments to and from Cuba. We will enforce the law. We will also target those who travel to Cuba illegally through third countries, and those who sail to Cuba on private vessels in violation of the embargo.

You see, our country must understand the consequences of illegal travel. All Americans need to know that foreign-owned resorts in Cuba must pay wages – must pay the wages of their Cuban workers to the government. A good soul in America who wants to be a tourist goes to a foreign-owned resort, pays the hotel bill – that money goes to the government. The government, in turn, pays the workers a pittance in worthless pesos and keeps the hard currency to prop up the dictator and his cronies. Illegal tourism perpetuates the misery of the Cuban people. And that is why I've charged the Department of Homeland Security to stop that kind of illegal trafficking of money.

By cracking down on the illegal travel, we will also serve another important goal. A rapidly growing part of Cuba's tourism industry is the illicit sex trade, a modern form of slavery which is encouraged by the Cuban government. This cruel exploitation of innocent women and children must be exposed and must be ended.

Second, we are working to ensure that Cubans fleeing the dictatorship do not risk their lives at sea. My administration is improving the method through which we identify refugees, and redoubling our efforts to process Cubans who seek to leave. We will better inform Cubans of the many routes to safe and legal entry into the United States through a public outreach campaign in southern Florida and inside Cuba itself. We will increase the number of new Cuban immigrants we welcome every year. We are free to do so, and we will, for the good of those who seek freedom. Our goal is to help more Cubans safely complete their journey to a free land.

Third, our government will establish a Commission for the Assistance to a Free Cuba, to plan for the happy day when Castro's regime is no more and democracy comes to the island. This commission will be co-chaired by the Secretary of State, Colin Powell; and the Secretary of Housing and Urban Development, Mel Martinez. They will draw upon experts within our government to plan for Cuba's transition from Stalinist rule to a free and open society, to identify ways to hasten the arrival of that day.

The transition to freedom will present many challenges to the Cuban people and to America, and we will be prepared. America is not alone in calling for freedom inside of Cuba. Countries around the globe and the United Nations Human Rights Commission increasingly recognize the oppressive nature of the Castro regime, and have denounced its recent crackdowns. We will continue to build a strong international coalition to advance the cause of freedom inside of Cuba.

In addition to the measures I've announced today, we continue to break the information embargo that the Cuban government has imposed on its people for a half a century. Repressive governments fear the truth, and so we're increasing the amount and expanding the distribution of printed material to Cuba, of Internet-based information inside of Cuba, and of AM-FM and shortwave radios for Cubans.

Radio and TV Marti are bringing the message of freedom to the Cuban people. This administration fully recognizes the need to enhance the effectiveness of Radio and TV Marti. Earlier this year, we launched a new satellite service to expand our reach to Cuba. On May 20th, we staged the historic flight of Commando Solo, an airborne transmission system that broke through Castro's jamming efforts. Tyrants hate the truth; they jam messages. And on that day, I had the honor of speaking to the Cuban people in the native language.

It's only the beginning of a more robust effort to break through to the Cuban people. This country loves freedom and we know that the enemy of every tyrant is the truth. We're determined to bring the truth to the people who suffer under Fidel Castro.

Cuba has a proud history of fighting for freedom, and that fight goes on. In all that lies ahead, the Cuban people have a constant friend in the United States of America. No tyrant can stand forever against the power of liberty, because the hope of freedom is found in every heart. So today we are confident that no matter what the dictator intends or plans, Cuba sera pronto libre.

De nuevo, Cuba libre. Thank you all.

Section II: Comprehensive Economic Sanctions

Analytic Summary

Since the early 1960s, U.S. policy toward Cuba has consisted largely of isolating the government of Fidel Castro through comprehensive economic sanctions, including an embargo on trade and financial transactions with Cuba pursuant to the Foreign Assistance Act of 1961 and the Trading with the Enemy Act. These sanctions were made stronger with the Cuban Democracy Act of 1992 (CDA) (P.L. 102-484, Title XVII) and with the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (P.L. 104-114), often referred to as the Helms-Burton legislation after its Congressional sponsors. Among the Cuban Liberty and Democratic Solidarity Act's most significant provisions is Title I, Section 102(h), which codifies the Cuba embargo, including all restrictions under the Cuban Assets Control Regulations issued by the Treasury Department's Office of Foreign Assets Control (OFAC) to implement the embargo. This provision is especially noteworthy because of its long-lasting effect on U.S. policy options toward Cuba. In effect, the executive branch is circumscribed in lifting or substantially loosening the economic embargo without Congressional concurrence – and thus until certain democratic conditions are met. With the enactment of the Trade Sanctions and Export Enhancement Act of 2000 (P.L. 106-387, Title IX), Congress loosened the embargo somewhat by allowing for commercial agricultural exports to Cuba, albeit with restrictions on the financing of such exports. Over the past few years, there have been several unsuccessful legislative efforts to ease economic sanctions further, especially restrictions on travel to Cuba.

Prohibitions on Trade and Financial Transactions

As U.S.-Cuban relations deteriorated in the early 1960s, President Kennedy imposed a near total trade embargo in February 1962 under the authority of Section 620(a) of the Foreign Assistance Act (FAA) of 1961, which granted the President the authority "...to establish and maintain a total embargo upon all trade between the United States and Cuba." The legal authority for the embargo was later expanded when the President exercised discretionary authority granted his office under the Trading with the Enemy Act (TWEA) by declaring that restrictions beyond those authorized under the FAA would be imposed. Enacted in 1917, TWEA authorizes the President to prohibit, limit or regulate trade and financial transactions during times of war or national emergency. Section 620(a) of the FAA, along with TWEA, remain the underlying authorities for the comprehensive trade and financial embargo on Cuba today.

In July 1963, under the authority of TWEA, the President directed the Treasury Department to issue the Cuban Assets Control Regulations (CACR), which lay out a comprehensive set of economic sanctions against Cuba, including a prohibition on most financial transactions with Cuba, a prohibition on most direct and indirect trade and a freeze of Cuban government assets in the United States. The CACR have been amended many times over the years to reflect changes in U.S. policy. For example, in 1975, under the Ford Administration,

although direct U.S.-Cuban trade remained prohibited, the United States modified the trade embargo, amending the CACR to allow U.S. subsidiaries in third countries to trade with Cuba – a move later overturned by the Cuban Democracy Act of 1992. The CACR remain in force today and have been extended annually since 1978, as required by the National Emergencies Act and the International Emergency Economic Powers Act.

In addition to the comprehensive trade and financial embargo, Title IV of the Trade Act of 1974 requires the President to deny normal trade relations (NTR) status to Cuba, since Cuba's ineligibility had been established earlier under the Trade Agreements Extension Act of 1951 and the Tariff Classification Act of 1962. Title IV of the Trade Act of 1974 also lays out the conditions a country must meet for a change in trade status – including liberalizing emigration policies and negotiating a three-year renewable bilateral trade agreement with the United States. Moreover, section 502(b) of the Trade Act of 1974 prohibits designating a country as a “beneficiary developing country” – granting eligibility for the generalized system of preferences (GSP) – if that country is communist (unless NTR has been granted already, or other conditions are met); has nationalized, expropriated or otherwise seized ownership or control of a U.S. citizen's property; aids or abets international terrorists; or denies internationally recognized workers rights. Under current regulations, Cuba is denied NTR and GSP status, respectively, pursuant to General Headnotes 3(b) and 4(a) of the Harmonized Tariff Schedule of the United States (HTSUS).

Cuba is also excluded from consideration for preferential treatment under the Caribbean Basin Economic Recovery Act because of both its absence in the law authorizing the preferential trade program [Sec. 212 of the Caribbean Basin Economic Recovery Act, as amended] and its absence in General Headnote 7(a) of the HTSUS. The Caribbean Basin Economic Recovery Act also prohibits the President from designating a country as a beneficiary of the trade program if it is communist or if it has nationalized U.S. property without compensation.

In 1982, Cuba was added to the list of states sponsoring international terrorism, pursuant to Section 6(j) of the Export Administration Act of 1979. Certain trade relations, GSP benefits, foreign aid, support in the international financial institutions and other benefits are restricted, or are denied to countries named as state sponsors of international terrorism.

Regulations controlling exports to Cuba are generally promulgated by the Department of Commerce, Bureau of Industry and Security, in the Export Administration Regulations. Primarily under the authority of Section 6 of the Export Administration Act of 1979 and the Trading with the Enemy Act, licenses are required for exports to Cuba of virtually all items subject to Export Administration Regulations, excepting items addressed specifically by public law, such as informational materials and humanitarian donations.

The Department of State issues licenses for the export of defense articles and defense services, under the authority of the Arms Export Control Act. Cuba is prohibited from receiving defense articles and defense services because the Secretary of State has determined that it has failed to cooperate fully with U.S. antiterrorism efforts and because it “has

repeatedly provided support for acts of international terrorism” under Section 40 of that Act.

In the aftermath of the Cold War and the cutoff of Soviet subsidies to Cuba, U.S. Congressional attention focused on ways to promote political change in Cuba. The Cuban Democracy Act of 1992 (CDA) prohibits U.S. foreign subsidiaries from engaging in trade with Cuba and prohibits entry into the United States for any vessel to load or unload freight if it has engaged in trade with Cuba within the previous 180 days. At the same time, the CDA includes measures of support for the Cuban people, such as allowing direct telecommunications service between the United States and Cuba and allowing humanitarian food donations and licensed commercial medical exports to Cuba under certain conditions.

The Cuban Liberty and Democratic Solidarity Act, enacted in the aftermath of Cuba’s shooting down of two U.S. civilian planes in February 1996, combines a variety of measures to increase pressure on Cuba and provides for a plan to assist Cuba once it begins the transition to democracy. Most significantly, Title I, Section 102(h) of the Act codifies the economic embargo, including all restrictions under the CACR. This in effect circumscribes the executive branch from suspending the economic embargo without Congressional concurrence, which in part is triggered by the submission of a Presidential determination to Congress, stating that a variety of political conditions have been met by a government that does not include Fidel Castro, or his brother Raul. An actual termination of the embargo would require another Presidential determination to Congress that, among other conditions, a democratically elected government is in power. The Congressional conference report to the Act (House Report 104-468 to H.R. 927) stated that “it is the intent of the committee of conference that all economic sanctions in force on March 1, 1996, shall remain in effect until they are either suspended or terminated pursuant to the authorities provided” in the Act. The conference report further affirmed that “it is not the intent of this section [Sec. 102(h)] to prohibit executive branch agencies from amending existing regulations to tighten economic sanctions on Cuba.” (For further discussion, see: *Section VII, Requirements for Normalization.*)

Extraterritorial Sanctions

Through two controversial provisions, the Cuban Liberty and Democratic Solidarity Act also seeks to discourage foreign investment in property in Cuba that had been confiscated by the Cuban government.² Title III allows U.S. nationals to sue for money damages in U.S. Federal court those persons who traffic in property confiscated in Cuba. It extends the right to sue to Cuban Americans who became U.S. citizens after their properties were confiscated.

² The European Union (EU) had been pursuing a World Trade Organization dispute settlement case, in which it was challenging the Cuban Liberty and Democratic Solidarity Act as an extraterritorial application of U.S. law. The EU suspended the case in April 1997, when both sides reached an understanding in which they agreed to continue efforts to promote democracy in Cuba and to work together to develop an agreement on disciplines and principles for the strengthening of investment protection related to the confiscation of property by Cuba and other governments. A second U.S.-EU understanding was reached in May 1998, in which the EU agreed to apply disciplines for investment in expropriated properties worldwide in exchange for the Clinton Administration obtaining a waiver from Congress for Title IV of the Cuban Liberty and Democratic Solidarity Act. Neither the Clinton nor the Bush Administrations have been able to secure Title IV waiver authority from Congress, although no Title IV sanctions have been imposed on additional companies since 1996.

The President, under Section 306(c), has authority to suspend the right to file lawsuits for 6 months at a time if he determines that such a delay would be in the national interest and that it would expedite a transition to democracy in Cuba. In July 1996, President Clinton utilized this provision to suspend for six months the right of individuals to file suit against those persons benefiting from confiscated U.S. property in Cuba. At the same time, the President announced that he would allow Title III to go into effect and chose not to utilize the waiver authority under Section 306(b) of the Act; as a result, liability for trafficking under Title III became effective on November 1, 1996. According to the Clinton Administration, this was done to put foreign companies in Cuba on notice that they would face the prospect of future lawsuits and significant liability in the United States. Both President Clinton and President Bush continued to suspend the right to file lawsuits under Title III, at 6-month intervals pursuant to the law.

Title IV of the law denies aliens involved in the confiscation of U.S. property in Cuba (or in the trafficking of confiscated U.S. property in Cuba) admission into the United States. This includes corporate officers, principals or shareholders with a controlling interest in an entity involved in the confiscation of U.S. property or the trafficking of U.S. property. It also authorizes the exclusion of a spouse, minor child or agent of such aforementioned aliens. This provision is mandatory, and can only be waived on a case-by-case basis – permitting travel to the United States for humanitarian medical reasons or to allow individuals to defend themselves in legal actions regarding confiscated property. At present, the State Department bans from the United States the executives (and their families) of one Canadian and one Israeli company because of their investments in confiscated U.S. property in Cuba.

Sugar Import Restrictions

Section 620(a)(2) of the Foreign Assistance Act of 1961 prohibits providing a sugar quota to Cuba until the President determines that property taken from U.S. citizens or commercial entities has been returned, or that equitable compensation has been made for confiscated property. The President may waive this section if he finds it necessary and in the interest of the United States. Beginning with the 1986 to 1987 quota year, and continuing today (pursuant to the Food Security Act of 1985) quota allocations are denied to any country that is a net importer of sugarcane or sugar beets, unless such country verifies that it does not import from Cuba to reexport to the United States.

Travel Restrictions

Restrictions on travel to Cuba, set forth in the CACR, have been a key and often contentious component of U.S. efforts to isolate the communist government of Fidel Castro for much of the past 40 years. The embargo regulations do not ban travel itself, but place restrictions on any financial transactions related to travel to Cuba, which effectively results in a travel ban. Over time, there have been numerous changes to the CACR travel restrictions, and for five years, from 1977 until 1982, there were no restrictions on travel to Cuba.

At present, under the CACR, certain categories of travelers may travel to Cuba under a general license, which means that there is no need to obtain special permission from OFAC. The general license categories include U.S. government officials, professional journalists, persons with close relatives in Cuba who are nationals of Cuba (one trip every 12 months),

full-time professionals conducting research and amateur or semi-professional athletes participating in competitions. In addition, a wide variety of travelers engaging in educational, religious, humanitarian and other activities may be eligible for specific licenses, which are reviewed and granted by OFAC on a case-by-case basis. The specific license categories include persons visiting a close relative in Cuba (who is a national of Cuba) more than once in any 12-month period, persons visiting a close relative who is not a national of Cuba, freelance journalists and those involved in activities related to the marketing or sale of exports authorized by the Department of Commerce. In a provision in the Trade Sanctions Reform and Export Enhancement Act of 2000 (Section 9109(b)), Congress prohibited licenses for travel-related transactions for “tourist activities,” which it defined as any activity related to travel that is not expressly authorized in the Cuban Assets Control Regulations. This essentially circumscribed the authority of OFAC to issue specific travel licenses on a case-by-case basis for activities that do not fall within the categories of travel expressly authorized in the regulations. In March 2003, the Administration eased restrictions on those visiting close family members in Cuba, but eliminated travel for people-to-people educational exchanges unrelated to academic coursework.

Restrictions on Remittances

Likewise, restrictions on remittances to Cuba are regulated in the CACR and have changed over time. At present, pursuant to Section 515.570 of the CACR, \$300 per quarter may be sent to a Cuban household, provided the household does not include a senior-level Cuban government or Communist Party official. In addition, up to \$1,000 may be provided for emigration-related remittances – to allow a Cuban national to emigrate to the United States.

Trademark Restrictions

A provision in the FY1999 Department of Commerce and Related Agencies Appropriations Act (Section 211 of Division A, Section 101(b), Title II, P.L. 105-277, signed into law October 21, 1998) prevents the United States from accepting payment from Cuban or foreign nationals for trademark registrations or renewals that have been used in connection with a confiscated business or with confiscated assets in Cuba, unless the original owner of the trademark has consented. The provision likewise prohibits U.S. courts from recognizing such trademarks without the consent of the original owner. The provision was enacted because of a dispute between the French spirits company, Pernod Ricard, and the Bermuda-based Bacardi Ltd. Pernod Ricard entered into a joint venture with the Cuban government to produce and export Havana Club rum, but Bacardi maintains that it holds the right to the Havana Club name. Although Pernod Ricard cannot market Havana Club in the United States because of the trade embargo, it wants to protect its future distribution rights should the embargo be lifted.

The EU initiated a World Trade Organization (WTO) dispute settlement panel in June 2000, maintaining that the U.S. trademark restriction violates the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). An August 6, 2001 ruling by the WTO panel was mixed, with both sides claiming a partial victory. The panel ruled that WTO rules on intellectual property rights did not cover trade names, but also ruled that a portion of the U.S. law (Section 211(a)(2)), which prohibits U.S. courts from recognizing applicable Cuban trademarks based on common law rights or registration, is in violation of TRIPS because it

denies access to U.S. courts by trademark holders. In early October 2001, the EU formally notified the WTO that it was appealing the ruling. The WTO appeals panel issued its ruling on January 2, 2002, and again the ruling was described as mixed. The appellate panel upheld the U.S. position that WTO intellectual property rights rules leave WTO members free to protect trademarks by establishing their own trademark ownership criteria and overturned the earlier ruling that Section 211 was in violation of TRIPS because it denied access to U.S. courts by trademark holders. However, the appellate panel also found that Section 211 violated WTO provisions on national treatment and NTR treatment, thus requiring the United States to amend Section 211 so that it does not violate WTO rules. Although there is access to courts to enforce trademark rights, Section 211 restricted access in a discriminatory manner (against Cuban nationals and foreign successors-in-interest). On March 28, 2002, the United States agreed that it would come into compliance with the WTO ruling through legislative action by Congress by January 3, 2003. Since no legislative action has been taken, the EU and the United States have extended the period for the United States to implement the WTO ruling; the current deadline is December 31, 2004.

Agricultural and Medical Exports

Under U.S. sanctions, commercial medical and food exports to Cuba are allowed but with restrictions and licensing requirements. As noted above, the Cuban Democracy Act allows commercial medical exports to Cuba under certain conditions. The 106th Congress passed the Trade Sanctions Reform and Export Enhancement Act of 2000 (P.L. 106-387, Title IX) which allows for the granting of one-year export licenses for shipping food and medicine to Cuba. However, no U.S. government assistance, foreign assistance, export assistance, credits or credit guarantees are to be made available to finance such exports. Furthermore, the law denies exporters access to U.S. private commercial financing or credit; all transactions must be conducted in cash in advance, or with financing from third countries. The law reiterates the existing ban on importing goods from Cuba, but authorizes travel to Cuba – under a specific license – in order to conduct business related to the newly allowed food and medicine sales.

Aid Restrictions

The Foreign Assistance Act of 1961 (FAA) has several sections that restrict U.S. assistance to the government of Cuba. Most significantly, Section 620(a)(1) provides that, “no assistance shall be furnished under this Act to the present government of Cuba.”³ Section 620(a)(2) forbids the provision of aid to any government of Cuba until the President determines that property taken from U.S. citizens and commercial entities has been returned or that equitable compensation has been made for confiscated property. The provision may be waived if the President deems it in the interest of the United States.

Section 620(f) of the FAA generally prohibits most assistance to communist countries, and explicitly lists Cuba as communist. The President is authorized to waive the restriction if he reports to Congress that: aid is vital to U.S. national security; the recipient country is not

³ Despite comprehensive restrictions on foreign aid, the President retains authority to provide some assistance to Cuba under Section 614 of the Foreign Assistance Act of 1961, and some assistance that is directed toward certain humanitarian or environmental projects is allowed under the annual foreign operations appropriations measure, notwithstanding any other provision of law.

controlled by the international communist conspiracy; and that aid would promote the country's independence from international communism. The President is also authorized to remove a country from the list if he determines and reports to Congress that such action is important to the national interest of the United States. Section 620(h) of the FAA requires the President to adopt regulations and establish procedures to ensure that U.S. foreign aid does not promote or assist the foreign aid projects of any country that is communist, as listed in Section 620(f).

Section 620(t) of the FAA prohibits aid to any country that has broken diplomatic relations with the United States or with which the United States has broken relations. The United States broke diplomatic relations with Cuba on January 3, 1961. (For more, see Section III: Diplomatic Relations.)

Since 1974, funds for direct aid or reparations have been prohibited to certain countries by annual foreign assistance appropriations acts and continuing resolutions. Since 1989, Export-Import Bank loans, credits, insurance and guarantees have been included in the prohibition. Cuba was added to the list of restricted countries in 1977. Section 507 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2003 (P.L. 108-7, Division E) contains these prohibitions through fiscal year 2003.

On February 26, 1982, the Secretary of State added Cuba to the list of countries supporting international terrorists (under the authority of Section 6(j) of the Export Administration Act of 1979, as amended) for its support of terrorist groups in Latin America. Being listed as a supporter of international terrorism excludes Cuba from consideration for bilateral assistance appropriated in annual foreign assistance appropriations acts, as required most currently in Section 527 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2003 (P.L. 108-7, Division E). Furthermore, identifying Cuba as a supporter of international terrorism invokes a prohibition on the wide range of foreign assistance options listed under Section 620A of the Foreign Assistance Act of 1961, including most assistance under the Peace Corps Act, the Agricultural Trade Development and Assistance Act of 1954 (except emergency food aid under Title II) and the Export-Import Bank Act of 1945.

The Cuban Democracy Act of 1992 prohibits either the forgiveness or reduction of Cuba's debt to the U.S. government. The Cuban Liberty and Solidarity Act added a clause to the CDA to prohibit any exchange, reduction or forgiveness of Cuban foreign debt in exchange for interest in any Cuban property, investment or operation.

In September 2003, President Bush, pursuant to the Trafficking Victims Protection Act of 2000 (P.L. 106-386, Division A), determined that Cuba had not complied with minimum standards for the elimination of trafficking and that it was making no significant efforts to bring itself into compliance.⁴ The President's determination triggered a prohibition on Cuba

⁴ According to the State Department's June 2003 Trafficking in Persons Report: "Cuba is a country of internal trafficking for sexual exploitation and forced labor. Minors are victimized in sexual exploitation connected to the state-run tourism industry. Despite occasional measures by the Government of Cuba to crack

receiving funding for participation by officials or employees of the government of Cuba in educational or cultural exchange programs, pursuant to Section 110(d)(1)(A)(ii) of the Act. The President may waive the sanctions under the Act if it would promote Cuba's compliance or if it were in the U.S. national interest. While the President did not make a determination with regard to Section 110(d)(1)(B) of the Act requiring U.S. votes against loans to Cuba in the International Monetary Fund and the multilateral development banks, the President did note in his justification that it is the policy of the United States to vote against such loans, consistent with the provisions of the Act.

Section 109 of the Cuban Liberty and Democratic Solidarity Act of 1996 waives all other provisions of law (except the notification requirements in the Foreign Assistance Act of 1961 and the annual foreign operations appropriations acts) to authorize the President to provide support to individuals and independent nongovernmental organizations working to build democracy in Cuba. Such support may take the form of humanitarian assistance to victims of political repression and their families, assistance to democratic and human rights groups in Cuba and the financing of visits and permanent deployment of independent international human rights monitors in Cuba.

In addition, Section 202 of the Cuban Liberty and Democratic Solidarity Act calls for the President to develop plans for providing economic assistance to Cuba when the President determines that a transition government or a democratically-elected government is in power. The same political conditions in Cuba, described above for suspending or terminating the embargo, would apply.

Indirect Assistance Prohibitions

U.S. law also includes restrictions on U.S. assistance to third countries or international organizations that provide assistance to Cuba.

Section 1704(b) of the Cuban Democracy Act authorizes the President to deny foreign assistance to any country that provides assistance to Cuba. U.S. assistance in this case includes any program authorized by the Foreign Assistance Act of 1961 or the Arms Export Control Act. In addition, the President may deny the country providing aid to Cuba any forgiveness or reduction of debt owed to the U.S. Government. This Presidential authority was expanded in 1996 to include the denial of foreign assistance to any country that enters into an exchange, reduction or forgiveness of debt with Cuba, where the country receives in return any interest in a property, investment or operation of the Government of Cuba, or of a Cuban national.

Section 543 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2003 (P.L. 108-7, Division E) prohibits the provision of assistance to foreign governments that export lethal military equipment to countries designated by the Secretary of State as supporting international terrorism pursuant to Section 6(j) of the Export Administration Act. The President may waive this prohibition if he determines that furnishing such assistance is important to the U.S. national interest.

down on prostitution, state-controlled tourism establishments and independent operators facilitate and even encourage the sexual exploitation of minors by foreign tourists.”

There are several restrictions in law regarding assistance to the independent states of the former Soviet Union, which, until the end of the Cold War, provided substantial military and economic assistance to Cuba. Section 498A of the FAA conditions U.S. assistance to any government of an independent state of the former Soviet Union on that government's termination of all support for, withdrawal of troops from, and closing of military and intelligence facilities in Cuba, including those facilities at Lourdes and Cienfuegos. Effective in 1996, U.S. assistance may be reduced by an amount equal to any assistance or credit any former Soviet state provides to develop or support intelligence facilities in Cuba. In 1996, the conditionality of U.S. foreign assistance to former Soviet states laid out in Section 498A of the Foreign Assistance Act was broadened by the Cuban Liberty and Democratic Solidarity Act to require that the President determine and certify to Congress that any former Soviet state being considered for foreign assistance is not engaged in, or providing assistance for, non-market-based trade with the Cuban government.

Pursuant to the Cuban Liberty and Democratic Solidarity Act (Section 111), U.S. foreign assistance – including agricultural and food assistance – may be withheld from, or reduced for any country that assists Cuba in the completion of its nuclear power facility at Juragua. The amount withheld shall be an amount equal to the sum of the assistance and credits provided in support of the completion of the Juragua facility. In addition, pursuant to Section 620(y) of the FAA of 1961, U.S. foreign assistance to a third country shall be reduced by an amount equal to the aggregate value of nuclear fuel and related assistance and credits provided by that country to Cuba.

Section 307 of the FAA withholds the U.S. proportionate share from international organizations conducting programs in specific countries, with the exception of the International Atomic Energy Agency (IAEA) and the United Nations Children's Fund (UNICEF). Cuba is among the countries listed in this section, and it is also among the communist countries (listed in Section 620(f) of the FAA) against which the President may use this sanction at his discretion. With regard to the IAEA's programs in Cuba, the U.S. sanctions would not apply to those that provide for the discontinuation, dismantling or safety inspection of nuclear facilities or related materials, although the U.S. sanctions would apply to any such IAEA assistance in regard to the Juragua Nuclear Power Plant or the Pedro Pi Nuclear Research Center in Cuba, unless Cuba were to ratify the Treaty on the Non-Proliferation of Nuclear Weapons or the Treaty for the Prohibition of Nuclear Weapons in Latin America, negotiate full-scope safeguards with the IAEA and incorporate internationally-accepted nuclear standards. Section 516 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2003 (P.L. 108-7, Division E) provides that any funds that are returned or not made available pursuant to Section 307 of the FAA are subject to the regular notification procedures of the Committees on Appropriations.

Since Cuba is on the state sponsors of terrorism list (pursuant to Section 6(j) of the Export Administration Act of 1979), the country is excluded from consideration for international financial institutions' support under Section 6 of the Bretton Woods Agreement Act Amendments, 1978.

Pursuant to Section 104 of the Cuban Liberty and Democratic Solidarity Act, the Secretary of the Treasury is required to instruct U.S. executive directors in international financial institutions⁵ “...to use the voice and vote of the United States to oppose the admission of Cuba as a member of such institution[s]...” until the President determines that a democratically elected government is in power in Cuba. The Secretary is further required to protest any instance in which an international financial institution makes a loan or assistance grant to Cuba, by withholding an amount equal to the loan or grant in question from the U.S. contribution to that institution.

⁵ In this case, the law defines “international financial institution” as the International Monetary Fund, the Inter-American Development Bank, and the World Bank Group—the International Bank for Reconstruction and Development (World Bank), the International Development Association, the International Finance Corporation, and the Multilateral Guaranty Agency.

Document

Trading With the Enemy Act

Date: October 6, 1917

Public Law 65-91 [H.R. 4960], 40 Stat. 411, approved October 6, 1917, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That [50 U.S.C. app. 1] this Act shall be known as the “Trading with the Enemy Act”.

Sec. 2. [50 U.S.C. app. 2] – Definitions

That the word “enemy,” as used herein, shall be deemed to mean, for the purposes of such trading and of this Act –

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term “enemy.”

The words “ally of enemy,” as used herein, shall be deemed to mean –

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any ally nation, or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term “ally of enemy.”

The word “person,” as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

The words “United States,” as used herein, shall be deemed to mean all land and water, continental or insular, in any way within the jurisdiction of the United States or occupied by the military or naval forces thereof.

The words “the beginning of the war,” as used herein, shall be deemed to mean midnight ending the day on which the Congress has declared or shall declare war or the existence of a state of war.

The words “end of the war,” as used herein shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the “end of the war” within the meaning of this Act.

The words “bank or banks,” as used herein, shall be deemed to mean and include national banks, State banks, trust companies, or other banks or banking associations doing business under the laws of the United States, or of any State of the United States.

The words “to trade,” as used herein, shall be deemed to mean –

(a) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation.

(b) Draw, accept, pay, present for acceptance or payment, or endorse any negotiable instrument or chose in action.

(c) Enter into, carry on, complete, or perform any contract, agreement, or obligation.

(d) Buy or sell, loan or extend credit, trade in, deal with, exchange, transmit, transfer, assign, or otherwise dispose of, or receive any form of property.

(e) To have any form of business or commercial communication or intercourse with.

Sec. 3. [50 U.S.C. app. 3] – That it shall be unlawful –

(a) For any person in the United States, except with the license of the President, granted to such person, or to the enemy, or ally of enemy, as provided in this Act [sections 1 to 6, 7 to

39, and 41 to 44 of this Appendix] to trade, or attempt to trade, either directly or indirectly, with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy, or is conducting or taking part in such trade, directly or indirectly, for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy.

(b) For any person, except with the license of the President, to transport or attempt to transport into or from the United States, or for any owner, master, or other person in charge of a vessel of American registry to transport or attempt to transport from any place to any other place, any subject or citizen of an enemy or ally of enemy nation, with knowledge or reasonable cause to believe that the person transported or attempted to be transported is such subject or citizen.

(c) For any person (other than a person in the service of the United States Government or of the Government of any nation, except that of an enemy or ally of enemy nation, and other than such persons or classes of persons as may be exempted hereunder by the President or by such person as he may direct), to send, or take out of, or bring into, or attempt to send, or take out of, or bring into the United States, any letter or other writing or tangible form of communication, except in the regular course of the mail; and it shall be unlawful for any person to send, take, or transmit, or attempt to send, take, or transmit out of the United States, any letter or other writing, book, map, plan, or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an enemy or ally of enemy: *Provided, however,* That any person may send, take, or transmit out of the United States anything herein forbidden if he shall first submit the same to the President, or to such officer as the President may direct, and shall obtain the license or consent of the President, under such rules and regulations, and with such exemptions, as shall be prescribed by the President.

(d) Whenever, during the present war, the President shall deem that the public safety demands it, he may cause to be censored under such rules and regulations as he may from time to time establish, communications by mail, cable, radio, or other means of transmission passing between the United States and any foreign country he may from time to time specify, or which may be carried by any vessel or other means of transportation touching at any port, place, or territory of the United States and bound to or from any foreign country. Any person who willfully evades or attempts to evade the submission of any such communication to such censorship or willfully uses or attempts to use any code or other device for the purpose of concealing from such censorship the intended meaning of such communication shall be punished as provided in section sixteen of this Act.

* * * * *

Sec. 5. —

(a) * * *

(b) [50 U.S.C. app. 5(b)]

(1) During the time of war,⁶ the President may through any agency that he may designate, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise –

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer withdrawal, transportation, importation or exportation of, or dealing in or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, otherwise dealt with in the interest of and for the benefit of the United States and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

⁶ As originally enacted, the text at this point read “During the time of war, or during any other period of national emergency declared by the President...” The reference to national emergency was struck out by sec. 101(a) of the International Emergency Economic Powers Act (IEEPA; P.L. 95-223; enacted December 28, 1977). Thus, subsequent exercises of Presidential authority to declare national emergencies and to restrict economic transactions were invoked under authority of the IEEPA and the National Emergencies Act (P.L. 94-412, enacted September 14, 1976). Sec. 101(b) of the IEEPA, however, requires an annual determination from the President to continue the administration of any regulations issued pursuant to the Trading With the Enemy Act in instances other than war. Most recently, the Cuban Assets Control Regulations (31 CFR 515), issued under authority of the Trading With the Enemy Act, were extended by Presidential Determination No. 2003-36 (68 F.R. 54325; September 12, 2003).

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term “United States” means the United States and any place subject to the jurisdiction thereof: *Provided, however,* That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. As used in this subdivision the term “person” means an individual, partnership, association, or corporation.

(4) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD-ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 5 of the Export Administration Act of 1979, or under section 6 of that Act to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of title 18, United States Code.

* * * * *

Sec. 16. [50 U.S.C. app. 16] –

(a) Whoever shall willfully violate any of the provisions of this Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act shall, upon conviction, be fined not more than \$1,000,000, or, if a natural person, be fined not more than \$100,000, or imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall, upon conviction, be fined not more than \$100,000 or imprisoned for not more than ten years or both.

(b)

(1) A civil penalty of not to exceed \$50,000 may be imposed by the Secretary of the Treasury on any person who violates any license, order, rule, or regulation issued in compliance with the provisions of this Act.

(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation under paragraph (1) shall, at the direction of the Secretary of the Treasury, be forfeited to the United States Government.

(3) The penalties provided under this subsection may be imposed only on the record after opportunity for an agency hearing in accordance with sections 554 through 557 of title 5, United States Code, with the right to prehearing discovery.

(4) Judicial review of any penalty imposed under this subsection may be had to the extent provided in section 702 of title 5, United States Code.

(c) Upon conviction, any property, funds, securities, papers, or other articles or documents, or any vessel, together with tackle, apparel, furniture, and equipment, concerned in any violation of subsection (a) may be forfeited to the United States.

* * * * *

Document

Foreign Assistance Act of 1961

Date: September 4, 1961

Public Law 87-195 [S. 1983], 75 Stat. 424, approved September 4, 1961, as amended

An Act

To promote the foreign policy, security, and general welfare of the United States by assisting peoples of the world in their efforts toward economic development and internal and external security, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Foreign Assistance Act of 1961.”

Part I

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Title XII – Famine Prevention and Freedom From Hunger

* * * * *

Chapter 3 – International Organizations and Programs

* * * * *

Sec. 307. [22 U.S.C. 2227] – Withholding of United States Proportionate Share for Certain Programs of International Organizations.

(a) Notwithstanding any other provision of law, none of the funds authorized to be appropriated by this chapter shall be available for the United States proportionate share for programs for Burma, Iraq, North Korea, Syria, Libya, Iran, Cuba, or the Palestine Liberation Organization or for projects whose purpose is to provide benefits to the Palestine Liberation Organization or entities associated with it, or at the discretion of the President, Communist countries listed in section 620(f) of this Act.

(b) The Secretary of State –

(1) shall review, at least annually, the budgets and accounts of all international organizations receiving payments of any funds authorized to be appropriated by this chapter; and

(2) shall report to the appropriate committees of the Congress the amounts of funds expended by each such organization for the purposes described in subsection (a) and the amount contributed by the United States to each such organization.

(c)

(1) Subject to paragraph (2), the limitations of subsection (a) shall not apply to contributions to the International Atomic Energy Agency or the United Nations Children's Fund (UNICEF).

(2)

(A) Except as provided in subparagraph (B), with respect to funds authorized to be appropriated by this chapter and available for the International Atomic Energy Agency, the limitations of subsection (a) shall apply to programs or projects of such Agency in Cuba.

(B)

(i) Subparagraph (A) shall not apply with respect to programs or projects of the International Atomic Energy Agency that provide for the discontinuation, dismantling, or safety inspection of nuclear facilities or related materials, or for inspections and similar activities designed to prevent the development of nuclear weapons by a country described in subsection (a).

(ii) Clause (i) shall not apply with respect to the Juragua Nuclear Power Plant near Cienfuegos, Cuba, or the Pedro Pi Nuclear Research Center unless Cuba—

(I) ratifies the Treaty on the Non-Proliferation of Nuclear Weapons (21 UST 483) or the Treaty for the Prohibition of Nuclear Weapons in Latin America (commonly known as the Treaty of Tlatelolco);

(II) negotiates full-scope safeguards of the International Atomic Energy Agency not later than two years after ratification by Cuba of such Treaty; and

(III) incorporates internationally accepted nuclear safety standards.

(d)

(1) Notwithstanding subsection (c), if the Secretary of State determines that programs and projects of the International Atomic Energy Agency in Iran are inconsistent with United States nuclear nonproliferation and safety goals, will provide Iran with training or expertise relevant to the development of nuclear weapons, or are being used as a cover for the acquisition of sensitive nuclear technology, the limitations of subsection (a) shall apply to such programs and

projects, and the Secretary of State shall so notify the appropriate congressional committees (as defined in section 3 of the Foreign Relations Authorization Act, Fiscal Year 2003).

(2) A determination made by the Secretary of State under paragraph (1) shall be effective for the 1-year period beginning on the date of the determination.

* * * * *

Chapter 11 – Support for the Economic and Democratic Development of the Independent States of the Former Soviet Union

* * * * *

Sec. 498A. [22 U.S.C. 2295a] – Criteria for Assistance to Governments of the Independent States.

(a) In General – In providing assistance under this chapter for the government of any independent state of the former Soviet Union, the President shall take into account not only relative need but also the extent to which that independent state is acting to –

(1) – (10) * * *

(11) terminate support for the communist regime in Cuba, including removal of troops, closing military and intelligence facilities, including the military and intelligence facilities at Lourdes and Cienfuegos, and ceasing trade subsidies and economic, nuclear, and other assistance.

(b) Ineligibility for Assistance – The President shall not provide assistance under this chapter –

(1) – (4) * * *

(5) for the government of any independent state effective 30 days after the President has determined and certified to the appropriate congressional committees (and Congress has not enacted legislation disapproving the determination within that 30-day period) that such government is providing assistance for, or engaging in nonmarket based trade (as defined in section 498B(k)(3)) with, the Cuban Government; or

(6) * * *

(c) Exceptions to Ineligibility – Assistance prohibited by subsection (b) or any similar provision of law, other than assistance prohibited by the provisions referred to in subsection (b)(4), may be furnished under any of the following circumstances:

- (1) The President determines that furnishing such assistance is important to the national interest of the United States.
- (2) The President determines that furnishing such assistance will foster respect for internationally recognized human rights and the rule of law or the development of institutions of democratic governance.
- (3) The assistance is furnished for the alleviation of suffering resulting from a natural or man-made disaster.
- (4) The assistance is provided under the secondary school exchange program administered by the United States Information Agency.

The President shall immediately report to the Congress any determination under paragraph (1) or (2) or any decision to provide assistance under paragraph (3).

(d) Reduction in Assistance for Support of Intelligence Facilities in Cuba –

(1) Reduction in assistance – Notwithstanding any other provision of law, the President shall withhold from assistance provided, on or after the date of the enactment of this subsection, for an independent state of the former Soviet Union under this Act an amount equal to the sum of assistance and credits, if any, provided on or after such date by such state in support of intelligence facilities in Cuba, including the intelligence facility at Lourdes, Cuba.

(2) Waiver –

(A) The President may waive the requirement of paragraph (1) to withhold assistance if the President certifies to the appropriate congressional committees that the provision of such assistance is important to the national security of the United States, and, in the case of such a certification made with respect to Russia, if the President certifies that the Russian Government has assured the United States Government that the Russian Government is not sharing intelligence data collected at the Lourdes facility with officials or agents of the Cuban Government.

(B) At the time of a certification made with respect to Russia under subparagraph (A), the President shall also submit to the appropriate congressional committees a report describing the intelligence activities of Russia in Cuba, including the purposes for which the Lourdes facility is used by the Russian Government and the extent to which the Russian Government provides payment or government credits to the Cuban Government for the continued use of the Lourdes facility.

(C) The report required by subparagraph (B) may be submitted in classified form.

(D) For purposes of this paragraph, the term “appropriate congressional committees” includes the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(3) Exceptions to reductions in assistance – The requirement of paragraph (1) to withhold assistance shall not apply with respect to –

(A) assistance to meet urgent humanitarian needs, including disaster and refugee relief;

(B) democratic political reform or rule of law activities;

(C) technical assistance for safety upgrades of civilian nuclear power plants;

(D) the creation of private sector or nongovernmental organizations that are independent of government control;

(E) the development of a free market economic system;

(F) assistance under the secondary school exchange program administered by the United States Information Agency; or

(G) assistance for the purposes described in the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103-160).

* * * * *

Part III

* * * * *

Chapter 1 – General Provisions

* * * * *

Sec. 620. [22 U.S.C. 2370] – Prohibitions Against Furnishing Assistance.

(a)

(1) No assistance shall be furnished under this Act to the present government of Cuba. As an additional means of implementing and carrying into effect the policy of the preceding sentence, the President is authorized to establish and maintain a total embargo upon all trade between the United States and Cuba.

(2) Except as may be deemed necessary by the President in the interest of the United States, no assistance shall be furnished under this Act to any government of Cuba,

nor shall Cuba be entitled to receive any quota authorizing the importation of Cuban sugar into the United States or to receive any other benefit under any law of the United States, until the President determines that such government has taken appropriate steps according to international law standards to return to United States citizens, and to entities not less than 50 per centum beneficially owned by United States citizens, or to provide equitable compensation to such citizens and entities for property taken from such citizens and entities on or after January 1, 1959, by the Government of Cuba.

* * * * *

(f)

(1) No assistance shall be furnished under this Act, as amended (except section 214(b)), to any Communist country. This restriction may not be waived pursuant to any authority contained in this Act unless the President finds and promptly reports to Congress that: (A) such assistance is vital to the security of the United States; (B) the recipient country is not controlled by the international Communist conspiracy; and (C) such assistance will further promote the independence of the recipient country from international communism. For the purposes of this subsection, the phrase "Communist country" includes specifically, but is not limited to, the following countries:

(A) Democratic People's Republic of Korea.

(B) People's Republic of China.

(C) Republic of Cuba.

(D) Socialist Republic of Vietnam.

(E) Tibet.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the President may remove a country, for such period as the President determines, from the application of this subsection, and other provisions which reference this subsection, if the President determines and reports to the Congress that such action is important to the national interest of the United States. It is the sense of the Congress that when consideration is given to authorizing assistance to a country removed from the application of this subsection, one of the factors to be weighed, among others, is whether the country in question is giving evidence of fostering the establishment of a genuinely democratic system, with respect for internationally recognized human rights.

* * * * *

(h) The President shall adopt regulations and establish procedures to insure that United States foreign aid is not used in a manner which, contrary to the best interests of the United States, promotes or assists the foreign aid projects or activities of any country that is a Communist country for purposes of subsection (f).

* * * * *

(t) No assistance shall be furnished under this or any other Act and no sales shall be made under the Agricultural Trade Development and Assistance Act of 1954, in or to any country which has severed or hereafter severs diplomatic relations with the United States or with which the United States has severed or hereafter severs diplomatic relations, unless

(1) diplomatic relations have been resumed with such country and

(2) agreements for the furnishing of such assistance or the making of such sales, as the case may be, have been negotiated and entered into after the resumption of diplomatic relations with such country.

* * * * *

(y)

(1) Except as provided in paragraph (2), the President shall withhold from amounts made available under this Act or any other Act and allocated for a country for a fiscal year an amount equal to the aggregate value of nuclear fuel and related assistance and credits provided by that country, or any entity of that country, to Cuba during the preceding fiscal year.

(2) The requirement to withhold assistance for a country for a fiscal year under paragraph (1) shall not apply if Cuba –

(A) has ratified the Treaty on the Non-Proliferation of Nuclear Weapons (21 UST 483) or the Treaty of Tlatelco, and Cuba is in compliance with the requirements of either such Treaty;

(B) has negotiated and is in compliance with full-scope safeguards of the International Atomic Energy Agency not later than two years after ratification by Cuba of such Treaty; and

(C) incorporates and is in compliance with internationally accepted nuclear safety standards.

(3) The Secretary of State shall prepare and submit to the Congress each year a report containing a description of the amount of nuclear fuel and related assistance and credits provided by any country, or any entity of a country, to Cuba during the

preceding year, including the terms of each transfer of such fuel, assistance, or credits.

Sec. 620A. [22 U.S.C. 2371] – Prohibition on Assistance to Governments Supporting International Terrorism.

(a) Prohibition – The United States shall not provide any assistance under this Act, the Agricultural Trade Development and Assistance Act of 1954, the Peace Corps Act, or the Export-Import Bank Act of 1945 to any country if the Secretary of State determines that the government of that country has repeatedly provided support for acts of international terrorism.

(b) Publication of Determinations – Each determination of the Secretary of State under subsection (a), including each determination in effect on the date of the enactment of the Antiterrorism and Arms Export Amendments Act of 1989, shall be published in the Federal Register.

(c) Rescission – A determination made by the Secretary of State under subsection (a) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate –

(1) before the proposed rescission would take effect, a report certifying that –

(A) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(B) that government is not supporting acts of international terrorism;

(C) that government has provided assurances that it will not support acts of international terrorism in the future; or

(2) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that –

(A) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

(B) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

(d) Waiver – Assistance prohibited by subsection (a) may be provided to a country described in that subsection if –

(1) the President determines that national security interests or humanitarian reasons justify a waiver of subsection (a), except that humanitarian reasons may not be used

to justify assistance under part II of this Act (including chapter 4, chapter 6, and chapter 8), or the Export-Import Bank Act of 1945; and

(2) at least 15 days before the waiver takes effect, the President consults with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate regarding the proposed waiver and submits a report to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate containing –

- (A) the name of the recipient country;
- (B) a description of the national security interests or humanitarian reasons which require the waiver;
- (C) the type and amount of and the justification for the assistance to be provided pursuant to the waiver; and
- (D) the period of time during which such waiver will be effective.

The waiver authority granted in this subsection may not be used to provide any assistance under the Foreign Assistance Act of 1961 which is also prohibited by section 40 of the Arms Export Control Act.

* * * * *

Document

Arms Export Control Act Date: October 22, 1968

Public Law 90-629 [H.R. 1568], 82 Stat. 1320, approved October 22, 1968, as amended

An Act

To consolidate and revise foreign assistance legislation related to reimbursable military exports.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Arms Export Control Act”.

Part I

* * * * *

Chapter 3 – Military Export Controls

* * * * *

Sec. 40. [22 U.S.C. 2780] – Transactions With Countries Supporting Acts of International Terrorism.

(a) Prohibited Transactions by the United States Government – The following transactions by the United States Government are prohibited:

(1) Exporting or otherwise providing (by sale, lease or loan, grant, or other means), directly or indirectly, any munitions item to a country described in subsection (d) under the authority of this Act, the Foreign Assistance Act of 1961, or any other law (except as provided in subsection (h)). In implementing this paragraph, the United States Government –

(A) shall suspend delivery to such country of any such item pursuant to any such transaction which has not been completed at the time the Secretary of State makes the determination described in subsection (d), and

(B) shall terminate any lease or loan to such country of any such item which is in effect at the time the Secretary of State makes that determination.

(2) Providing credits, guarantees, or other financial assistance under the authority of this Act, the Foreign Assistance Act of 1961, or any other law (except as provided in subsection (h)), with respect to the acquisition of any munitions item by a country described in subsection (d). In implementing this paragraph, the United States

Government shall suspend expenditures pursuant to any such assistance obligated before the Secretary of State makes the determination described in subsection (d). The President may authorize expenditures otherwise required to be suspended pursuant to the preceding sentence if the President has determined, and reported to the Congress, that suspension of those expenditures causes undue financial hardship to a supplier, shipper, or similar person and allowing the expenditure will not result in any munitions item being made available for use by such country.

(3) Consenting under section 3(a) of this Act, under section 505(a) of the Foreign Assistance Act of 1961, under the regulations issued to carry out section 38 of this Act, or under any other law (except as provided in subsection (h)), to any transfer of any munitions item to a country described in subsection (d). In implementing this paragraph, the United States Government shall withdraw any such consent, which is in effect at the time the Secretary of State makes the determination described in subsection (d), except that this sentence does not apply with respect to any item that has already been transferred to such country.

(4) Providing any license or other approval under section 38 of this Act for any export or other transfer (including by means of a technical assistance agreement, manufacturing licensing agreement, or coproduction agreement) of any munitions item to a country described in subsection (d). In implementing this paragraph, the United States Government shall suspend any such license or other approval which is in effect at the time the Secretary of State makes the determination described in subsection (d), except that this sentence does not apply with respect to any item that has already been exported or otherwise transferred to such country.

(5) Otherwise facilitating the acquisition of any munitions item by a country described in subsection (d). This paragraph applies with respect to activities undertaken –

(A) by any department, agency, or other instrumentality of the Government,

(B) by any officer or employee of the Government (including members of the United States Armed Forces), or

(C) by any other person at the request or on behalf of the Government.

The Secretary of State may waive the requirements of the second sentence of paragraph (1), the second sentence of paragraph (3), and the second sentence of paragraph (4) to the extent that the Secretary determines, after consultation with the Congress, that unusual and compelling circumstances require that the United States Government not take the actions specified in that sentence.

(b) Prohibited Transactions by United States Persons. –

(1) In general – A United States person may not take any of the following actions:

(A) Exporting any munitions item to any country described in subsection (d).

(B) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any country described in subsection (d).

(C) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any recipient which is not the government of or a person in a country described in subsection (d) if the United States person has reason to know that the munitions item will be made available to any country described in subsection (d).

(D) Taking any other action which would facilitate the acquisition, directly or indirectly, of any munitions item by the government of any country described in subsection (d), or any person acting on behalf of that government, if the United States person has reason to know that that action will facilitate the acquisition of that item by such a government or person.

(2) Liability for actions of foreign subsidiaries, etc. – A United States person violates this subsection if a corporation or other person that is controlled in fact by that United States person (as determined under regulations, which the President shall issue), takes an action described in paragraph (1) outside the United States.

(3) Applicability to actions outside the United States. – Paragraph (1) applies with respect to actions described in that paragraph which are taken either within or outside the United States by a United States person described in subsection (1)(3)(A) or (B). To the extent provided in regulations issued under subsection (1)(3)(D), paragraph (1) applies with respect to actions described in that paragraph which are taken outside the United States by a person designated as a United States person in those regulations.

(c) Transfers to Governments and Persons Covered. – This section applies with respect to –

(1) the acquisition of munitions items by the government of a country described in subsection (d); and

(2) the acquisition of munitions items by any individual, group, or other person within a country described in subsection (d), except to the extent that subparagraph (D) of subsection (b)(1) provides otherwise.

(d) Countries Covered by Prohibition. – The prohibitions contained in this section apply with respect to a country if the Secretary of State determines that the government of that country has repeatedly provided support for acts of international terrorism. For purposes of

this subsection, such acts shall include all activities that the Secretary determines willfully aid or abet the international proliferation of nuclear explosive devices to individuals or groups, willfully aid or abet an individual or groups in acquiring unsafeguarded special nuclear material, or willingly aid or abet the efforts of an individual or group to use, develop, produce, stockpile, or otherwise acquire chemical, biological, or radiological weapons.

(e) Publication of Determinations. – Each determination of the Secretary of State under subsection (d) shall be published in the Federal Register.

(f) Rescission. –

(1) A determination made by the Secretary of State under subsection (d) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate –

(A) before the proposed rescission would take effect, a report certifying that –

(i) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(ii) that government is not supporting acts of international terrorism; and

(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

(B) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that –

(i) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

(2)

(A) No rescission under paragraph (1)(B) of a determination under subsection (d) may be made if the Congress, within 45 days after receipt of a report under paragraph (1)(B), enacts a joint resolution the matter after the resolving clause of which is as follows: “That the proposed rescission of the determination under section 40(d) of the Arms Export Control Act pursuant to the report submitted to the Congress on _____ hereby prohibited.”, the blank to be completed with the appropriate date.

(B) A joint resolution described in subparagraph (A) and introduced within the appropriate 45-day period shall be considered in the Senate and the House of Representatives in accordance with paragraphs (3) through (7) of section 8066(c) of the Department of Defense Appropriations Act (as contained in Public Law 98-473), except that references in such paragraphs to the Committees on Appropriations of the House of Representatives and the Senate shall be deemed to be references to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, respectively.

(g) Waiver – The President may waive the prohibitions contained in this section with respect to a specific transaction if –

(1) the President determines that the transaction is essential to the national security interests of the United States; and

(2) not less than 15 days prior to the proposed transaction, the President –

(A) consults with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate; and

(B) submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report containing –

(i) the name of any country involved in the proposed transaction, the identity of any recipient of the items to be provided pursuant to the proposed transaction, and the anticipated use of those items;

(ii) a description of the munitions items involved in the proposed transaction (including their market value) and the actual sale price at each step in the transaction (or if the items are transferred by other than sale, the manner in which they will be provided);

(iii) the reasons why the proposed transaction is essential to the national security interests of the United States and the justification for such proposed transaction;

(iv) the date on which the proposed transaction is expected to occur; and

(v) the name of every United States Government department, agency, or other entity involved in the proposed transaction, every foreign government involved in the proposed transaction, and every private party with significant participation in the proposed transaction.

To the extent possible, the information specified in subparagraph (B) of paragraph (2) shall be provided in unclassified form, with any classified information provided in an addendum to the report.

(h) Exemption for Transactions Subject to National Security Act Reporting Requirements. – The prohibitions contained in this section do not apply with respect to any transaction subject to reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.; relating to congressional oversight of intelligence activities).

(i) Relation to Other Laws. –

(1) In general. – With regard to munitions items controlled pursuant to this Act, the provisions of this section shall apply notwithstanding any other provisions of law, other than section 614(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2364(a)).

(2) Section 614(a) waiver authority. – If the authority of section 614(a) of the Foreign Assistance Act of 1961 is used to permit a transaction under that Act or the Arms Export Control Act which is otherwise prohibited by this section, the written policy justification required by that section shall include the information specified in subsection (g)(2)(B) of this section.

(j) Criminal Penalty. – Any person who willfully violates this section shall be fined for each violation not more than \$1,000,000, imprisoned not more than 10 years, or both.

(k) Civil Penalties; Enforcement. – In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies, and officials by sections 11(c), 11(e), 11(g), and 12(a) of the Export Administration Act of 1979 (subject to the same terms and conditions as are applicable to such powers under that Act), except that section 11(c)(2)(B) of such Act shall not apply, and instead, as prescribed in regulations issued under this section, the Secretary of State may assess civil penalties for violations of this Act and regulations prescribed thereunder and further may commence a civil action to recover such civil penalties, and except further that, notwithstanding section 11(c) of that Act, the civil penalty for each violation of this section may not exceed \$500,000.

(l) Definitions. – As used in this section –

(1) the term “munitions item” means any item enumerated on the United States Munitions list (without regard to whether the item is imported into or exported from the United States);

(2) the term “United States”, when used geographically, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States;

(3) the term “United States person” means –

(A) any citizen or permanent resident alien of the United States;

(B) any sole proprietorship, partnership, company, association, or corporation having its principal place of business within the United States or organized under the laws of the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States;

(C) any other person with respect to that person’s actions while in the United States; and

(D) to the extent provided in regulations issued by the Secretary of state, any person that is not described in subparagraph (A), (B), or (C) but –

(i) is a foreign subsidiary or affiliate of a United States person described in subparagraph (B) and is controlled in fact by that United States person (as determined in accordance with those regulations),
or

(ii) is otherwise subject to the jurisdiction of the United States with respect to that person’s actions while outside the United States;

(4) the term “nuclear explosive device” has the meaning given that term in section 830(4) of the Nuclear Proliferation Prevention Act of 1994; and

(5) the term “unsafeguarded special nuclear material” has the meaning given that term in section 830(8) of the Nuclear Proliferation Prevention Act of 1994.

Sec. 40A. [22 U.S.C. 2781] Transactions With Countries Not Fully Cooperating With United States Antiterrorism Efforts. –⁷

(a) Prohibited Transactions. – No defense article or defense service may be sold or licensed for export under this Act in a fiscal year to a foreign country that the President determines and certifies to Congress, by May 15 of the calendar year in which that fiscal year begins, is not cooperating fully with United States antiterrorism efforts.

⁷ On May 15, 2003, the Deputy Secretary of State determined and certified, as is done annually, “that the following countries are not cooperating fully with United States antiterrorism efforts: Cuba; Iran; Libya; North Korea; Sudan; and Syria” (Department of State Public Notice No. 4023; 67 F.R. 36062). The first list promulgated under this section, in 1997, included Afghanistan and Iraq. Afghanistan was removed from the list in 2002. Iraq was removed from the list in 2003.

(b) Waiver. — The President may waive the prohibition set forth in subsection (a) with respect to a specific transaction if the President determines that the transaction is important to the national interests of the United States.

* * * * *

Document

Export-Import Bank Act of 1945

Date: July 31, 1945

Public Law 79-173 [H.R. 3771], 59 Stat. 526, approved July 31, 1945, as amended

An Act

To provide for increasing the lending authority of the Export-Import Bank of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Export-Import Bank Act of 1945.”

* * * * *

Sec. 2. [12 U.S.C. 635] –

(a)

(1) There is hereby created a corporation with the name Export-Import Bank of the United States which shall be an agency of the United States of America. The objects and purposes of the Bank shall be to aid in financing and to facilitate exports and imports and the exchange of commodities and services between the United States or any of its territories or insular possessions and any foreign country or the agencies or nationals thereof. * * *

(b)

(1) * * *

(2) Prohibition on Aid to Marxist-Leninist Countries. –

(A) In general. – The Bank in the exercise of its functions shall not guarantee, insure, extend credit, or participate in the extension of credit –

(i) in connection with the purchase or lease of any product by a Marxist-Leninist country, or agency or national thereof; or

(ii) in connection with the purchase or lease of any product by any other foreign country, or agency or national thereof, if the product to be purchased or leased by such other country, agency, or national is, to the knowledge of the Bank, principally for use in, or sale or lease to, a Marxist-Leninist country.

(B) Marxist-Leninist country defined. –

(i) In general. – For purposes of this paragraph, the term “Marxist-Leninist country” means any country that maintains a centrally planned economy based on the principles of Marxism-Leninism, or is economically and militarily dependent on any other such country.

(ii) Specific countries deemed to be marxist-leninist. – Unless otherwise determined by the President in accordance with subparagraph (C), the following countries are deemed to be Marxist-Leninist countries for purposes of this paragraph:

- (I) Cambodian People’s Republic.
- (II) Democratic People’s Republic of Korea.
- (III) Democratic Republic of Afghanistan.
- (IV) Lao People’s Democratic Republic.
- (V) People’s Republic of China.
- (VI) Republic of Cuba.
- (VII) Socialist Federal Republic of Yugoslavia.
- (VIII) Socialist Republic of Vietnam.
- (IX) Tibet.

(C) Presidential determination that a country has ceased to be Marxist-Leninist. – If the President determines that any country on the list contained in subparagraph (B)(ii) has ceased to be a Marxist-Leninist country (within the definition of such term in subparagraph (B)(i)), such country shall not be treated as a Marxist-Leninist country for purposes of this paragraph after the date of such determination, unless the President subsequently determines that such country has again become a Marxist-Leninist country.

(D) Presidential determination relating to financing in the national interest. –

(i) In general. – Subparagraph (A) shall not apply to guarantees, insurance, or extensions of credit by the Bank to a country, agency, or national described in clause (i) or (ii) of subparagraph (A) (in connection with transactions described in such clauses) if the President determines that such guarantees, insurance, or extensions of credit are in the national interest.

(ii) Separate determination for certain transactions. – The President shall make a separate determination under clause (i) for each transaction described in clause (i) or (ii) of subparagraph (A) for which the Bank would extend a loan in an amount equal to or greater than \$50,000,000.

(iii) Report of clause (i) determinations to congress. – Any determination by the President under clause (i) shall be reported to the Congress not later than the earlier of –

(I) the end of the 30-day period beginning on the date of such determination; or

(II) the date the Bank takes final action with respect to the first transaction involving the country, agency, or national for which such determination is made after the date of the enactment of the Export-Import Bank Amendments of 1974, unless a report of a determination with respect to such date of enactment.

(iv) Report of clause (ii) determinations to congress. – Any determination by the President under clause (ii) shall be reported to the Congress not later than the earlier of –

(I) the end of the 30-day period beginning on the date of such determination; or

(II) the date the Bank takes final action with respect to the transaction for which such determination is made.

* * * * *

Document

Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2003

Date: February 20, 2003

Division E of Public Law 108-7 [Consolidated Appropriations Resolution; H.J. Res. 2], 117 Stat. 11 at 159, approved February 20, 2003, as amended

* * * * *

Division E – Foreign Operation, Export Financing, and Related Programs Appropriations, 2003

Joint Resolution making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2003, and for other purposes.

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, and for other purposes, namely:

* * * * *

Title V – General Provisions

* * * * *

Prohibition Against Direct Funding for Certain Countries

Sec. 507. –

None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to finance directly any assistance or reparations to Cuba, Iraq, Libya, North Korea, Iran, Sudan, or Syria: *Provided*, That for purposes of this section, the prohibition on obligations or expenditures shall include direct loans, credits, insurance and guarantees of the Export-Import Bank or its agents: * * *

* * * * *

Limitation on Availability of Funds for International Organizations and Programs

Sec. 516. –

Subject to the regular notification procedures of the Committees on Appropriations, funds appropriated under this Act or any previously enacted Act making appropriations for foreign operations, export financing, and related programs, which are returned or not made available for organizations and programs because of the implementation of section 307(a) of the

Foreign Assistance Act of 1961, shall remain available for obligation until September 30, 2004.

* * * * *

Prohibition on Bilateral Assistance to Terrorist Countries

Sec. 527. –

(a) Funds appropriated for bilateral assistance under any heading of this Act and funds appropriated under any such heading in a provision of law enacted prior to the enactment of this Act, shall not be made available to any country which the President determines –

(1) grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism; or

(2) otherwise supports international terrorism.

(b) The President may waive the application of subsection (a) to a country if the President determines that national security or humanitarian reasons justify such waiver. The President shall publish each waiver in the Federal Register and, at least 15 days before the waiver takes effect, shall notify the Committees on Appropriations of the waiver (including the justification for the waiver) in accordance with the regular notification procedures of the Committees on Appropriations.

* * * * *

Prohibition on Assistance to Foreign Governments that Export Lethal Military Equipment to Countries Supporting International Terrorism

Sec. 543. –

(a) None of the funds appropriated or otherwise made available by this Act may be available to any foreign government which provides lethal military equipment to a country the government of which the Secretary of State has determined is a terrorist government for purposes of section 6(j) of the Export Administration Act. The prohibition under this section with respect to a foreign government shall terminate 12 months after that government ceases to provide such military equipment. This section applies with respect to lethal military equipment provided under a contract entered into after October 1, 1997.

(b) Assistance restricted by subsection (a) or any other similar provision of law, may be furnished if the President determines that furnishing such assistance is important to the national interests of the United States.

(c) Whenever the waiver authority of subsection (b) is exercised, the President shall submit to the appropriate congressional committees a report with respect to the furnishing of such

assistance. Any such report shall include a detailed explanation of the assistance to be provided, including the estimated dollar amount of such assistance, and an explanation of how the assistance furthers United States national interests.

Document

Trafficking Victims Protection Act of 2000

Date: October 28, 2000

Division A of Public Law 106-386 [Victims of Trafficking and Violence Protection Act of 2000; H.R. 3244], 114 Stat. 1464, approved October 28, 2000; as amended

An Act

To combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude, to reauthorize certain Federal programs to prevent violence against women, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

Divisions A – Trafficking Victims Protection Act Of 2000

Sec. 101. [22 U.S.C. 7101 note] – Short Title.

This division may be cited as the “Trafficking Victims Protection Act of 2000”.

Sec. 102. [22 U.S.C. 7101] – Purposes and Findings.

(a) Purposes. – The purposes of this division are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.

(b) Findings. – Congress finds that: * * *

Sec. 103. [22 U.S.C. 7102] – Definitions.

In this division:

(1) Appropriate Congressional Committees. – The term “appropriate congressional committees” means the Committee on Foreign Relations and the Committee on the Judiciary of the Senate and the Committee on International Relations and the Committee on the Judiciary of the House of Representatives.

(2) Coercion. – The term “coercion” means –

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of the legal process.

(3) Commercial Sex Act. – The term “commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

(4) Debt bondage. – The term “debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

(5) Involuntary Servitude. – The term “involuntary servitude” includes a condition of servitude induced by means of –

(A) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or

(B) the abuse or threatened abuse of the legal process.

(6) Minimum Standards for the Elimination of Trafficking. – The term “minimum standards for the elimination of trafficking” means the standards set forth in section 108.

(7) Nonhumanitarian, Nontrade-Related Foreign Assistance. – The term “nonhumanitarian, nontrade-related foreign assistance” means –

(A) any assistance under the Foreign Assistance Act of 1961, other than –

(i) assistance under chapter 4 of part II of that Act that is made available for any program, project, or activity eligible for assistance under chapter 1 of part I of that Act;

(ii) assistance under chapter 8 of part I of that Act;

(iii) any other narcotics-related assistance under part I of that Act or under chapter 4 or 5 part II of that Act, but any such assistance provided under this clause shall be subject to the prior notification procedures applicable to reprogrammings pursuant to section 634A of that Act;

(iv) disaster relief assistance, including any assistance under chapter 9 of part I of that Act;

(v) antiterrorism assistance under chapter 8 of part II of that Act;

(vi) assistance for refugees;

(vii) humanitarian and other development assistance in support of programs of nongovernmental organizations under chapters 1 and 10 of that Act;

(viii) programs under title IV of chapter 2 of part I of that Act, relating to the Overseas Private Investment Corporation; and

(ix) other programs involving trade-related or humanitarian assistance; and

(B) sales, or financing on any terms, under the Arms Export Control Act, other than sales or financing provided for narcotics-related purposes following notification in accordance with the prior notification procedures applicable to reprogrammings pursuant to section 634A of the Foreign Assistance Act of 1961.

(8) Severe Forms of Trafficking in Persons. – The term “severe forms of trafficking in persons” means –

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(9) Sex Trafficking. – The term “sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(10) State. – The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and territories and possessions of the United States.

(11) Task Force. – The term “Task Force” means the Interagency Task Force to Monitor and Combat Trafficking established under section 105.

(12) United States. – The term “United States” means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States.

(13) Victim of a severe form of trafficking. – The term “victim of a severe form of trafficking” means a person subject to an act or practice described in paragraph (8).

(14) Victim of Trafficking. – The term “victim of trafficking” means a person subjected to an act or practice described in paragraph (8) or (9).

Sec. 104. – Annual Country Reports On Human Rights Practices.

(a) Countries Receiving Economic Assistance. – Section 116(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151(f)) [*sic*] is amended to read as follows: * * *

(b) Countries Receiving Security Assistance. – Section 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2304) is amended by adding at the end the following new subsection: * * *

Sec. 105. [22 U.S.C. 7103] – Interagency Task Force to Monitor and Combat Trafficking.

(a) Establishment. – The President shall establish an Interagency Task Force to Monitor and Combat Trafficking.

(b) Appointment. – The President shall appoint the members of the Task Force, which shall include the Secretary of State, the Administrator of the United States Agency for International Development, the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Director of Central Intelligence, and such other officials as may be designated by the President.

(c) Chairman. – The Task Force shall be chaired by the Secretary of State.

(d) Activities of the Task Force. – The Task Force shall carry out the following activities:

(1) Coordinate the implementation of this division.

(2) Measure and evaluate progress of the United States and other countries in the areas of trafficking prevention, protection, and assistance to victims of trafficking, and prosecution and enforcement against traffickers, including the role of public corruption in facilitating trafficking. The Task Force shall have primary responsibility for assisting the Secretary of State in the preparation of the reports described in section 110.

(3) Expand interagency procedures to collect and organize data, including significant research and resource information on domestic and international trafficking. Any

data collection procedures established under this subsection shall respect the confidentiality of victims of trafficking.

(4) Engage in efforts to facilitate cooperation among countries of origin, transit, and destination. Such efforts shall aim to strengthen local and regional capacities to prevent trafficking, prosecute traffickers and assist trafficking victims, and shall include initiatives to enhance cooperative efforts between destination countries and countries of origin and assist in the appropriate reintegration of stateless victims of trafficking.

(5) Examine the role of the international “sex tourism” industry in the trafficking of persons and in the sexual exploitation of women and children around the world.

(6) Engage in consultation and advocacy with governmental and nongovernmental organizations, among other entities, to advance the purposes of this division.

(e) Support for the Task Force. – The Secretary of State is authorized to establish within the Department of State an Office to Monitor and Combat Trafficking, which shall provide assistance to the Task Force. Any such Office shall be headed by a Director. The Director shall have the primary responsibility for assisting the Secretary of State in carrying out the purposes of this division and may have additional responsibilities as determined by the Secretary. The Director shall consult with nongovernmental organizations and multilateral organizations, and with trafficking victims or other affected persons. The Director shall have the authority to take evidence in public hearings or by other means. The agencies represented on the Task Force are authorized to provide staff to the Office on a nonreimbursable basis.

Sec. 106. [22 U.S.C. 7104] – Prevention of Trafficking.

(a) Economic Alternatives to Prevent and Deter Trafficking. – The President shall establish and carry out international initiatives to enhance economic opportunity for potential victims of trafficking as a method to deter trafficking. Such initiatives may include –

(1) microcredit lending programs, training in business development, skills training, and job counseling;

(2) programs to promote women’s participation in economic decisionmaking;

(3) programs to keep children, especially girls, in elementary and secondary schools, and to educate persons who have been victims of trafficking;

(4) development of educational curricula regarding the dangers of trafficking; and

(5) grants to nongovernmental organizations to accelerate and advance the political, economic, social, and educational roles and capacities of women in their countries.

(b) Public Awareness and Information. – The President, acting through the Secretary of Labor, the Secretary of Health and Human Services, the Attorney General, and the Secretary of State, shall establish and carry out programs to increase public awareness, particularly among potential victims of trafficking, of the dangers of trafficking and the protections that are available for victims of trafficking.

(c) Consultation Requirement. – The President shall consult with appropriate nongovernmental organizations with respect to the establishment and conduct of initiatives described in subsections (a) and (b).

Sec. 107. [22 U.S.C. 7105] – Protection and Assistance for Victims of Trafficking.

(a) Assistance for Victims in Other Countries. – * * *

(b) Victims in the United States. – * * *

(c) Trafficking Victim Regulations. – * * *

(d) Construction. – * * *

(e) Protection From Removal for Certain Crime Victims. – * * *

(f) Adjustment to Permanent Resident Status. – * * *

(g) Annual Reports. – * * *

Sec. 108. [22 U.S.C. 7106] – Minimum Standards for the Elimination of Trafficking.

(a) Minimum Standards. – For purposes of this division, the minimum standards for the elimination of trafficking applicable to the government of a country of origin, transit, or destination for a significant number of victims of severe forms of trafficking are the following:

(1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

(2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

(3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

(4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

(b) Criteria. – In determinations under subsection (a)(4), the following factors should be considered as indicia of serious and sustained efforts to eliminate severe forms of trafficking in persons:

(1) Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons that take place wholly or partly within the territory of the country.

(2) Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking, including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked.

(3) Whether the government of the country has adopted measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons.

(4) Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons.

(5) Whether the government of the country extradites persons charged with acts of severe forms of trafficking in persons on substantially the same terms and to substantially the same extent as persons charged with other serious crimes (or, to the extent such extradition would be inconsistent with the laws of such country or with international agreements to which the country is a party, whether the government is taking all appropriate measures to modify or replace such laws and treaties so as to permit such extradition).

(6) Whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner that is consistent with the vigorous investigation and prosecution of acts of such trafficking, as well as with the protection of human rights of victims and the internationally recognized human right to leave any country, including one's own, and to return to one's own country.

(7) Whether the government of the country vigorously investigates and prosecutes public officials who participate in or facilitate severe forms of trafficking in persons, and takes all appropriate measures against officials who condone such trafficking.

Sec. 109. – Assistance to Foreign Countries to Meet Minimum Standards.

Chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) is amended by adding at the end the following new section: * * *

Sec. 110. [22 U.S.C. 7107] – Actions Against Governments Failing to Meet Minimum Standards.

(a) Statement of Policy. – It is the policy of the United States not to provide nonhumanitarian, nontrade-related foreign assistance to any government that –

(1) does not comply with minimum standards for the elimination of trafficking; and

(2) is not making significant efforts to bring itself into compliance with such standards.

(b) Reports to Congress. –

(1)⁸ Annual Report. – Not later than June 1 of each year, the Secretary of State shall submit to the appropriate congressional committees a report with respect to the status of severe forms of trafficking in persons that shall include –

(A) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments fully comply with such standards;

(B) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments do not yet fully comply with such standards but are making significant efforts to bring themselves into compliance; and

(C) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments do not fully comply with such standards and are not making significant efforts to bring themselves into compliance.

(2) Interim Reports. – In addition to the annual report under paragraph (1), the Secretary of State may submit to the appropriate congressional committees at any time one or more interim reports with respect to the status of severe forms of trafficking in persons, including information about countries whose governments –

⁸ In June 2003, the Department of State issued its annual report pursuant to this section. The report established three tiers, organized to mirror sec. 110(b)(1)(A), (B) and (C). Tier 3 countries, whose governments do not fully comply with minimum standards and are not making significant efforts: Belize, Bosnia and Herzegovina, Burma, Cuba, Dominican Republic, Georgia, Greece, Haiti, Kazakhstan, Liberia, North Korea, Sudan, Suriname, Turkey, and Uzbekistan.

(A) have come into or out of compliance with the minimum standards for the elimination of trafficking; or

(B) have begun or ceased to make significant efforts to bring themselves into compliance, since the transmission of the last annual report.

(3) Significant Efforts. – In determinations under paragraph (1) or (2) as to whether the government of a country is making significant efforts to bring itself into compliance with the minimum standards for the elimination of trafficking, the Secretary of State shall consider –

(A) the extent to which the country is a country of origin, transit, or destination for severe forms of trafficking;

(B) the extent of noncompliance with the minimum standards by the government and, particularly, the extent to which officials or employees of the government have participated in, facilitated, condoned, or are otherwise complicit in severe forms of trafficking; and

(C) what measures are reasonable to bring the government into compliance with the minimum standards in light of the resources and capabilities of the government.

(c) Notification. – Not less than 45 days or more than 90 days after the submission, on or after January 1, 2003, of an annual report under subsection (b)(1), or an interim report under subsection (b)(2), the President shall submit to the appropriate congressional committees a notification of one of the determinations listed in subsection (d) with respect to each foreign country whose government, according to such report –

(1) does not comply with the minimum standards for the elimination of trafficking; and

(2) is not making significant efforts to bring itself into compliance, as described in subsection (b)(1)(C).

(d) Presidential Determinations. – The determinations referred to in subsection (c) are the following:

(1) Withholding of Nonhumanitarian, Nontrade-Related Assistance. – The President has determined that –

(A)

(i) the United States will not provide nonhumanitarian, nontrade-related foreign assistance to the government of the country for the subsequent fiscal year until such government complies with the

minimum standards or makes significant efforts to bring itself into compliance; or

(ii) in the case of a country whose government received no nonhumanitarian, nontrade-related foreign assistance from the United States during the previous fiscal year, the United States will not provide funding for participation by officials or employees of such governments in educational and cultural exchange programs for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance; and

(B) the President will instruct the United States Executive Director of each multilateral development bank and of the International Monetary Fund to vote against, and to use the Executive Director's best efforts to deny, any loan or other utilization of the funds of the respective institution to that country (other than for humanitarian assistance, for trade-related assistance, or for development assistance which directly addresses basic human needs, is not administered by the government of the sanctioned country, and confers no benefit to that government) for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance.

(2) Ongoing, Multiple, Broad-Based Restrictions on Assistance in Response to Human Rights Violations. – The President has determined that such country is already subject to multiple, broad-based restrictions on assistance imposed in significant part in response to human rights abuses and such restrictions are ongoing and are comparable to the restrictions provided in paragraph (1). Such determination shall be accompanied by a description of the specific restriction or restrictions that were the basis for making such determination.

(3) Subsequent Compliance. – The Secretary of State has determined that the government of the country has come into compliance with the minimum standards or is making significant efforts to bring itself into compliance.

(4) Continuation of Assistance in the National Interest. – Notwithstanding the failure of the government of the country to comply with minimum standards for the elimination of trafficking and to make significant efforts to bring itself into compliance, the President has determined that the provision to the country of nonhumanitarian, nontrade-related foreign assistance, or the multilateral assistance described in paragraph (1)(B), or both, would promote the purposes of this division or is otherwise in the national interest of the United States.

(5) Exercise of Waiver Authority. –

(A) In General. – The President may exercise the authority under paragraph (4) with respect to –

(i) all nonhumanitarian, nontrade-related foreign assistance to a country;

(ii) all multilateral assistance described in paragraph (1)(B) to a country; or

(iii) one or more programs, projects, or activities of such assistance.

(B) Avoidance of Significant Adverse Effects. – The President shall exercise the authority under paragraph (4) when necessary to avoid significant adverse effects on vulnerable populations, including women and children.

(6) Definition of Multilateral Development Bank. – In this subsection, the term “multilateral development bank” refers to any of the following institutions: the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the Inter-American Investment Corporation, the African Development Bank, the African Development Fund, the European Bank for Reconstruction and Development, and the Multilateral Investment Guaranty Agency.

(e) Certification. – Together with any notification under subsection (c), the President shall provide a certification by the Secretary of State that, with respect to any assistance described in clause (ii), (iii), or (v) of section 103(7)(A), or with respect to any assistance described in section 103(7)(B), no assistance is intended to be received or used by any agency or official who has participated in, facilitated, or condoned a severe form of trafficking in persons.

Sec. 111. [22 U.S.C. 7108] – Actions Against Significant Traffickers in Persons.

(a) Authority to Sanction Significant Traffickers in Persons. –

(1) In General. – The President may exercise the authorities set forth in section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701) without regard to section 202 of that Act (50 U.S.C. 1701) in the case of any of the following persons:

(A) Any foreign person that plays a significant role in a severe form of trafficking in persons, directly or indirectly in the United States.

(B) Foreign persons that materially assist in, or provide financial or technological support for or to, or provide goods or services in support of,

activities of a significant foreign trafficker in persons identified pursuant to subparagraph (A).

(C) Foreign persons that are owned, controlled, or directed by, or acting for or on behalf of, a significant foreign trafficker identified pursuant to subparagraph (A).

(2) Penalties. – The penalties set forth in section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) apply to violations of any license, order, or regulation issued under this section.

(b) Report to Congress on Identification and Sanctioning of Significant Traffickers in Persons. –

(1) In General. – Upon exercising the authority of subsection (a), the President shall report to the appropriate congressional committees—

(A) identifying publicly the foreign persons that the President determines are appropriate for sanctions pursuant to this section and the basis for such determination; and

(B) detailing publicly the sanctions imposed pursuant to this section.

(2) Removal of Sanctions. – Upon suspending or terminating any action imposed under the authority of subsection (a), the President shall report to the committees described in paragraph (1) on such suspension or termination.

(3) Submission of Classified Information. – Reports submitted under this subsection may include an annex with classified information regarding the basis for the determination made by the President under paragraph (1)(A).

(c) Law Enforcement and Intelligence Activities Not Affected. – Nothing in this section prohibits or otherwise limits the authorized law enforcement or intelligence activities of the United States, or the law enforcement activities of any State or subdivision thereof.

(d) Exclusion of Persons Who Have Benefited From Illicit Activities of Traffickers in Persons. – Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)) is amended by inserting at the end the following new subparagraph: * * *

(e) Implementation. –

(1) Delegation of Authority. – The President may delegate any authority granted by this section, including the authority to designate foreign persons under paragraphs (1)(B) and (1)(C) of subsection (a).

(2) Promulgation of Rules and Regulations. – The head of any agency, including the Secretary of Treasury, is authorized to take such actions as may be necessary to carry out any authority delegated by the President pursuant to paragraph (1), including promulgating rules and regulations.

(3) Opportunity for Review. – Such rules and regulations shall include procedures affording an opportunity for a person to be heard in an expeditious manner, either in person or through a representative, for the purpose of seeking changes to or termination of any determination, order, designation or other action associated with the exercise of the authority in subsection (a).

(f) Definition of Foreign Persons. – In this section, the term “foreign person” means any citizen or national of a foreign state or any entity not organized under the laws of the United States, including a foreign government official, but does not include a foreign state.

(g) Construction. – Nothing in this section shall be construed as precluding judicial review of the exercise of the authority described in subsection (a).

Sec. 112. [22 U.S.C. 7109] – Strengthening Prosecution and Punishment of Traffickers.

(a) Title 18 Amendments. – Chapter 77 of title 18, United States Code, is amended – * * *

(b) Amendment to the Sentencing Guidelines. –

(1) Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, if appropriate, amend the sentencing guidelines and policy statements applicable to persons convicted of offenses involving the trafficking of persons including component or related crimes of peonage, involuntary servitude, slave trade offenses, and possession, transfer or sale of false immigration documents in furtherance of trafficking, and the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act.

(2) In carrying out this subsection, the Sentencing Commission shall –

(A) take all appropriate measures to ensure that these sentencing guidelines and policy statements applicable to the offenses described in paragraph (1) of this subsection are sufficiently stringent to deter and adequately reflect the heinous nature of such offenses;

(B) consider conforming the sentencing guidelines applicable to offenses involving trafficking in persons to the guidelines applicable to peonage, involuntary servitude, and slave trade offenses; and

(C) consider providing sentencing enhancements for those convicted of the offenses described in paragraph (1) of this subsection that –

- (i) involve a large number of victims;
- (ii) involve a pattern of continued and flagrant violations;
- (iii) involve the use or threatened use of a dangerous weapon; or
- (iv) result in the death or bodily injury of any person.

(3) The Commission may promulgate the guidelines or amendments under this subsection in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that Act had not expired.

Sec. 113. [22 U.S.C. 7110] – Authorizations of Appropriations.

(a) Authorization of Appropriations in Support of the Task Force. – To carry out the purposes of sections 104, 105, and 110, there are authorized to be appropriated to the Secretary of State \$1,500,000 for fiscal year 2001 and \$3,000,000 for each of the fiscal years 2002 and 2003.

(b) Authorization of Appropriations to the Secretary of Health and Human Services. – To carry out the purposes of section 107(b), there are authorized to be appropriated to the Secretary of Health and Human Services \$5,000,000 for fiscal year 2001 and \$10,000,000 for fiscal year 2002.

(c) Authorization of Appropriations to the Secretary of State. –

(1) Assistance for Victims in Other Countries. – To carry out the purposes of section 107(a), there are authorized to be appropriated to the Secretary of State \$5,000,000 for fiscal year 2001 \$10,000,000 for fiscal year 2002, and \$15,000,000 for fiscal year 2003.

(2) Voluntary Contributions to OSCE. – To carry out the purposes of section 109, there is authorized to be appropriated to the Secretary of State for each of the fiscal years 2001, 2002, and 2003 \$300,000 for voluntary contributions to advance projects aimed at preventing trafficking, promoting respect for human rights of trafficking victims, and assisting the Organization for Security and Cooperation in Europe participating states in related legal reform for such fiscal year.

(3) Preparation of Annual Country Reports on Human Rights. – To carry out the purposes of section 104, there are authorized to be appropriated to the Secretary of State such sums as may be necessary to include the additional information required by that section in the annual Country Reports on Human Rights Practices, including

the preparation and publication of the list described in subsection (a)(1) of that section.

(d) Authorization of Appropriations to Attorney General. – To carry out the purposes of section 107(b), there are authorized to be appropriated to the Attorney General \$5,000,000 for fiscal year 2001 and \$10,000,000 for fiscal year 2002.

(e) Authorization of Appropriations to President. –

(1) Foreign Victim Assistance. – To carry out the purposes of section 106, there are authorized to be appropriated to the President \$5,000,000 for fiscal year 2001, \$10,000,000 for fiscal year 2002, and \$15,000,000 for fiscal year 2003.

(2) Assistance to Foreign Countries to Meet Minimum Standards. – To carry out the purposes of section 109, there are authorized to be appropriated to the President \$5,000,000 for fiscal year 2001, \$10,000,000 for fiscal year 2002, and \$15,000,000 for fiscal year 2003.

(f) Authorization of Appropriations to the Secretary of Labor. – To carry out the purposes of section 107(b), there are authorized to be appropriated to the Secretary of Labor \$5,000,000 for fiscal year 2001 and \$10,000,000 for fiscal year 2002.

* * * * *

Document

Cuban Democracy Act of 1992

Date: October 23, 1992

Public Law 102-484 [National Defense Authorization Act for Fiscal Year 1993; H.R. 5006], 106 Stat. 2315, approved October 23, 1992, as amended

An Act

To authorize appropriations for fiscal year 1993 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, to provide for defense conversion, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

Title XVII – Cuban Democracy Act of 1992

Sec. 1701. [22 U.S.C. 6001 note] – Short Title.

This title may be cited as the “Cuban Democracy Act of 1992”.

Sec. 1702. [22 U.S.C. 6001] – Findings.

The Congress makes the following findings:

(1) The government of Fidel Castro has demonstrated consistent disregard for internationally accepted standards of human rights and for democratic values. It restricts the Cuban people’s exercise of freedom of speech, press, assembly, and other rights recognized by the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on December 10, 1948. It has refused to admit into Cuba the representative of the United Nations Human Rights Commission appointed to investigate human rights violations on the island.

(2) The Cuban people have demonstrated their yearning for freedom and their increasing opposition to the Castro government by risking their lives in organizing independent, democratic activities on the island and by undertaking hazardous flights for freedom to the United States and other countries.

(3) The Castro government maintains a military-dominated economy that has decreased the well-being of the Cuban people in order to enable the government to engage in military interventions and subversive activities throughout the world and,

especially, in the Western Hemisphere. These have included involvement in narcotics trafficking and support for the FMLN guerrillas in El Salvador.

(4) There is no sign that the Castro regime is prepared to make any significant concessions to democracy or to undertake any form of democratic opening. Efforts to suppress dissent through intimidation, imprisonment, and exile have accelerated since the political changes that have occurred in the former Soviet Union and Eastern Europe.

(5) Events in the former Soviet Union and Eastern Europe have dramatically reduced Cuba's external support and threaten Cuba's food and oil supplies.

(6) The fall of communism in the former Soviet Union and Eastern Europe, the now universal recognition in Latin America and the Caribbean that Cuba provides a failed model of government and development, and the evident inability of Cuba's economy to survive current trends, provide the United States and the international democratic community with an unprecedented opportunity to promote a peaceful transition to democracy in Cuba.

(7) However, Castro's intransigence increases the likelihood that there could be a collapse of the Cuban economy, social upheaval, or widespread suffering. The recently concluded Cuban Communist Party Congress has underscored Castro's unwillingness to respond positively to increasing pressures for reform either from within the party or without.

(8) The United States cooperated with its European and other allies to assist the difficult transitions from Communist regimes in Eastern Europe. Therefore, it is appropriate for those allies to cooperate with United States policy to promote a peaceful transition in Cuba.

Sec. 1703. [22 U.S.C. 6002] – Statement of Policy.

It should be the policy of the United States –

(1) to seek a peaceful transition to democracy and a resumption of economic growth in Cuba through the careful application of sanctions directed at the Castro government and support for the Cuban people;

(2) to seek the cooperation of other democratic countries in this policy;

(3) to make clear to other countries that, in determining its relations with them, the United States will take into account their willingness to cooperate in such a policy;

(4) to seek the speedy termination of any remaining military or technical assistance, subsidies, or other forms of assistance to the Government of Cuba from any of the independent states of the former Soviet Union;

- (5) to continue vigorously to oppose the human rights violations of the Castro regime;
- (6) to maintain sanctions on the Castro regime so long as it continues to refuse to move toward democratization and greater respect for human rights;
- (7) to be prepared to reduce the sanctions in carefully calibrated ways in response to positive developments in Cuba;
- (8) to encourage free and fair elections to determine Cuba's political future;
- (9) to request the speedy termination of any military or technical assistance, subsidies, or other forms of assistance to the Government of Cuba from the government of any other country; and
- (10) to initiate immediately the development of a comprehensive United States policy toward Cuba in a post-Castro era.

Sec. 1704. [22 U.S.C. 6003] – International Cooperation.

(a) Cuban Trading Partners. – The President should encourage the governments of countries that conduct trade with Cuba to restrict their trade and credit relations with Cuba in a manner consistent with the purposes of this title.

(b) Sanctions Against Countries Assisting Cuba. –

(1) Sanctions. – The President may apply the following sanctions to any country that provides assistance to Cuba:

(A) The government of such country shall not be eligible for assistance under the Foreign Assistance Act of 1961 or assistance or sales under the Arms Export Control Act.

(B) Such country shall not be eligible, under any program, for forgiveness or reduction of debt owed to the United States Government.

(2) Definition of Assistance. – For purposes of paragraph (1), the term “assistance to Cuba” –

(A) means assistance to or for the benefit of the Government of Cuba that is provided by grant, concessional sale, guaranty, or insurance, or by any other means on terms more favorable than that generally available in the applicable market, whether in the form of a loan, lease, credit, or otherwise, and such term includes subsidies for exports to Cuba and favorable tariff treatment of articles that are the growth, product, or manufacture of Cuba;

(B) includes an exchange, reduction, or forgiveness of Cuban debt owed to a foreign country in return for a grant of an equity interest in a property, investment, or operation of the Government of Cuba (including the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba) or of a Cuban national; and

(C) does not include –

(i) donations of food to nongovernmental organizations or individuals in Cuba, or

(ii) exports of medicines or medical supplies, instruments, or equipment that would be permitted under section 1705(c).

As used in this paragraph, the term “agency or instrumentality of the Government of Cuba” means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with each reference in such section to “a foreign state” deemed to be a reference to “Cuba”.

(3) Applicability of Section. – This section, and any sanctions imposed pursuant to this section, shall cease to apply at such time as the President makes and reports to the Congress a determination under section 1708(a).

Sec. 1705. [22 U.S.C. 6004] – Support for the Cuban People.

(a) Provisions of Law Affected. – The provisions of this section apply notwithstanding any other provision of law, including section 620(a) of the Foreign Assistance Act of 1961, and notwithstanding the exercise of authorities, before the enactment of this Act, under section 5(b) of the Trading With the Enemy Act, the International Emergency Economic Powers Act, or the Export Administration Act of 1979.

(b) Donations of Food. – Nothing in this or any other Act shall prohibit donations of food to nongovernmental organizations or individuals in Cuba.

(c) Exports of Medicines and Medical Supplies. – Exports of medicines or medical supplies, instruments, or equipment to Cuba shall not be restricted –

(1) except to the extent such restrictions would be permitted under section 5(m) of the Export Administration Act of 1979 or section 203(b)(2) of the International Emergency Economic Powers Act;

(2) except in a case in which there is a reasonable likelihood that the item to be exported will be used for purposes of torture or other human rights abuses;

(3) except in a case in which there is a reasonable likelihood that the item to be exported will be reexported; and

(4) except in a case in which the item to be exported could be used in the production of any biotechnological product.

(d) Requirements for Certain Exports. –

(1) Onsite Verifications.

(A) Subject to subparagraph (B), an export may be made under subsection (c) only if the President determines that the United States Government is able to verify, by onsite inspections and other appropriate means, that the exported item is to be used for the purposes for which it was intended and only for the use and benefit of the Cuban people.

(B) Subparagraph (A) does not apply to donations to nongovernmental organizations in Cuba of medicines for humanitarian purposes.

(2) Licenses. – Exports permitted under subsection (c) shall be made pursuant to specific licenses issued by the United States Government.

(e) Telecommunications Services and Facilities. –

(1) Telecommunications Services. – Telecommunications services between the United States and Cuba shall be permitted.

(2) Telecommunications facilities. – Telecommunications facilities are authorized in such quantity and of such quality as may be necessary to provide efficient and adequate telecommunications services between the United States and Cuba.

(3) Licensing of Payments to Cuba. –

(A) The President may provide for the issuance of licenses for the full or partial payment to Cuba of amounts due Cuba as a result of the provision of telecommunications services authorized by this subsection, in a manner that is consistent with the public interest and the purposes of this title, except that this paragraph shall not require any withdrawal from any account blocked pursuant to regulations issued under section 5(b) of the Trading With the Enemy Act.

(B) If only partial payments are made to Cuba under subparagraph (A), the amounts withheld from Cuba shall be deposited in an account in a banking institution in the United States. Such account shall be blocked in the same manner as any other account containing funds in which Cuba has any interest, pursuant to regulations issued under section 5(b) of the Trading With the Enemy Act.

(4) Authority of Federal Communications Commission. – Nothing in this subsection shall be construed to supersede the authority of the Federal Communications Commission.

(5) Prohibition on Investment in Domestic Telecommunications Services. – Nothing in this subsection shall be construed to authorize the investment by any United States person in the domestic telecommunications network within Cuba. For purposes of this paragraph, an “investment” in the domestic telecommunications network within Cuba includes the contribution (including by donation) of funds or anything of value to or for, and the making of loans to or for, such network.

(6) Reports to Congress. – The President shall submit to the Congress on a semiannual basis a report detailing payments made to Cuba by any United States person as a result of the provision of telecommunications services authorized by this subsection.

(f) Direct Mail Delivery to Cuba. – The United States Postal Service shall take such actions as are necessary to provide direct mail service to and from Cuba, including, in the absence of common carrier service between the 2 countries, the use of charter service providers.

(g) Assistance to Support Democracy in Cuba. – The United States Government may provide assistance, through appropriate nongovernmental organizations, for the support of individuals and organizations to promote nonviolent democratic change in Cuba.

Sec. 1706. [22 U.S.C. 6005] – Sanctions.

(a) Prohibition on Certain Transactions Between Certain United States Firms and Cuba. –

(1) Prohibition. – Notwithstanding any other provision of law, no license may be issued for any transaction described in section 515.559 of title 31, Code of Federal Regulations, as in effect on July 1, 1989.

(2) Applicability to Existing Contracts. – Paragraph (1) shall not affect any contract entered into before the date of the enactment of this Act.

(b) Prohibitions on Vessels. –

(1) Vessels Engaging in Trade. – Beginning on the 61st day after the date of the enactment of this Act, a vessel which enters a port or place in Cuba to engage in the trade of goods or services may not, within 180 days after departure from such port or place in Cuba, load or unload any freight at any place in the United States, except pursuant to a license issued by the Secretary of the Treasury.

(2) Vessels Carrying Goods or Passengers to or From Cuba. – Except as specifically authorized by the Secretary of the Treasury, a vessel carrying goods or passengers to

or from Cuba or carrying goods in which Cuba or a Cuban national has any interest may not enter a United States port.

(3) Inapplicability of Ship Stores General License. – No commodities which may be exported under a general license described in section 771.9 of title 15, Code of Federal Regulations, as in effect on May 1, 1992, may be exported under a general license to any vessel carrying goods or passengers to or from Cuba or carrying goods in which Cuba or a Cuban national has an interest.

(4) Definitions. – As used in this subsection –

(A) the term “vessel” includes every description of water craft or other contrivance used, or capable of being used, as a means of transportation in water, but does not include aircraft;

(B) the term “United States” includes the territories and possessions of the United States and the customs waters of the United States (as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401)); and

(C) the term “Cuban national” means a national of Cuba, as the term “national” is defined in section 515.302 of title 31, Code of Federal Regulations, as of August 1, 1992.

(c) Restrictions on Remittances to Cuba. – The President shall establish strict limits on remittances to Cuba by United States persons for the purpose of financing the travel of Cubans to the United States, in order to ensure that such remittances reflect only the reasonable costs associated with such travel, and are not used by the Government of Cuba as a means of gaining access to United States currency.

(d) Clarification of Applicability of Sanctions. – The prohibitions contained in subsections (a), (b), and (c) shall not apply with respect to any activity otherwise permitted by section 1705 or section 1707 of this Act or any activity which may not be regulated or prohibited under section 5(b)(4) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)(4)).

Sec. 1707. [22 U.S.C. 6006] – Policy Toward a Transitional Cuban Government.

Food, medicine, and medical supplies for humanitarian purposes should be made available for Cuba under the Foreign Assistance Act of 1961 and the Agricultural Trade Development and Assistance Act of 1954 if the President determines and certifies to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate that the government in power in Cuba –

(1) has made a public commitment to hold free and fair elections for a new government within 6 months and is proceeding to implement that decision;

(2) has made a public commitment to respect, and is respecting, internationally recognized human rights and basic democratic freedoms; and

(3) is not providing weapons or funds to any group, in any other country, that seeks the violent overthrow of the government of that country.

Sec. 1708. [22 U.S.C. 6007] – Policy Toward a Democratic Cuban Government.

(a) Waiver of Restrictions. – The President may waive the requirements of section 1706 if the President determines and reports to the Congress that the Government of Cuba –

(1) has held free and fair elections conducted under internationally recognized observers;

(2) has permitted opposition parties ample time to organize and campaign for such elections, and has permitted full access to the media to all candidates in the elections;

(3) is showing respect for the basic civil liberties and human rights of the citizens of Cuba;

(4) is moving toward establishing a free market economic system; and

(5) has committed itself to constitutional change that would ensure regular free and fair elections that meet the requirements of paragraph (2).

(b) Policies. – If the President makes a determination under subsection (a), the President shall take the following actions with respect to a Cuban Government elected pursuant to elections described in subsection (a):

(1) To encourage the admission or reentry of such government to international organizations and international financial institutions.

(2) To provide emergency relief during Cuba's transition to a viable economic system.

(3) To take steps to end the United States trade embargo of Cuba.

Sec. 1709. [22 U.S.C. 6008] – Existing Claims Not Affected.

Except as provided in section 1705(a), nothing in this title affects the provisions of section 620(a)(2) of the Foreign Assistance Act of 1961.

Sec. 1710. [22 U.S.C. 6009] – Enforcement.

(a) Enforcement Authority. – The authority to enforce this title shall be carried out by the Secretary of the Treasury. The Secretary of the Treasury shall exercise the authorities of the

Trading With the Enemy Act in enforcing this title. In carrying out this subsection, the Secretary of the Treasury shall take the necessary steps to ensure that activities permitted under section 1705 are carried out for the purposes set forth in this title and not for purposes of the accumulation by the Cuban Government of excessive amounts of United States currency or the accumulation of excessive profits by any person or entity.

(b) Authorization of Appropriations. – There are authorized to be appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this title.

(c) Penalties Under the Trading With the Enemy Act. – Section 16 of the Trading With the Enemy Act (50 U.S.C. App. 16) is amended – * * *

(d) Applicability of Penalties. – The penalties set forth in section 16 of the Trading With the Enemy Act shall apply to violations of this title to the same extent as such penalties apply to violations under that Act.

(e) Office of Foreign Assets Control. – The Department of the Treasury shall establish and maintain a branch of the Office of Foreign Assets Control in Miami, Florida, in order to strengthen the enforcement of this title.

Sec. 1711. [22 U.S.C. 6010] – Definition.

As used in this title, the term “United States person” means any United States citizen or alien admitted for permanent residence in the United States, and any corporation, partnership, or other organization organized under the laws of the United States.

Sec. 1712. [22 U.S.C. 6001 note] – Effective Date.

This title shall take effect on the date of the enactment of this Act.

Document

Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996

Date: March 12, 1996

Public Law 104-114 [H.R. 927], 110 Stat. 785, approved March 12, 1996, as amended

An Act

To seek international sanctions against the Castro government in Cuba, to plan for support of a transition government leading to a democratically elected government in Cuba, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. [22 U.S.C. 6021 note] – Short Title; Table Of Contents.

(a) Short Title. – This Act may be cited as the “Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996”.

(b) Table of Contents. – The table of contents of this Act is as follows:

Sec. 1. – Short title; table of contents.

Sec. 2. – Findings.

Sec. 3. – Purposes.

Sec. 4. – Definitions.

Sec. 5. – Severability.

Title I – Strengthening International Sanctions Against the Castro Government

Sec. 101. – Statement of policy.

Sec. 102. – Enforcement of the economic embargo of Cuba.

Sec. 103. – Prohibition against indirect financing of Cuba.

Sec. 104. – United States opposition to Cuban membership in international financial institutions.

Sec. 105. – United States opposition to termination of the suspension of the Cuban Government from participation in the Organization of American States.

Sec. 106. – Assistance by the independent states of the former Soviet Union for the Cuban Government.

Sec. 107. – Television broadcasting to Cuba.

Sec. 108. – Reports on commerce with, and assistance to, Cuba from other foreign countries.

Sec. 109. – Authorization of support for democratic and human rights groups and international observers.

Sec. 110. – Importation safeguard against certain Cuban products.

Sec. 111. – Withholding of foreign assistance from countries supporting Juragua nuclear plant in Cuba.

Sec. 112. – Reinstitution of family remittances and travel to Cuba.

Sec. 113. – Expulsion of criminals from Cuba.

Sec. 114. – News bureaus in Cuba.

Sec. 115. – Effect of Act on lawful United States Government activities.

Sec. 116. – Condemnation of Cuban attack on American aircraft.

Title II – Assistance to a Free and Independent Cuba

Sec. 201. – Policy toward a transition government and a democratically elected government in Cuba.

Sec. 202. – Assistance for the Cuban people.

Sec. 203. – Coordination of assistance program; implementation and reports to Congress; reprogramming.

Sec. 204. – Termination of the economic embargo of Cuba.

Sec. 205. – Requirements and factors for determining a transition government.

Sec. 206. – Requirements for determining a democratically elected government.

Sec. 207. – Settlement of outstanding United States claims to confiscated property in Cuba.

Title III – Protection of Property Rights of United States Nationals

Sec. 301. – Findings.

Sec. 302. – Liability for trafficking in confiscated property claimed by United States nationals.

Sec. 303. – Proof of ownership of claims to confiscated property.

Sec. 304. – Exclusivity of Foreign Claims Settlement Commission certification procedure.

Sec. 305. – Limitation of actions.

Sec. 306. – Effective date.

Title IV – Exclusion of Certain Aliens

Sec. 401. – Exclusion from the United States of aliens who have confiscated property of United States nationals or who traffic in such property.

Sec. 2. [22 U.S.C. 6021] – Findings.

The Congress makes the following findings:

(1) The economy of Cuba has experienced a decline of at least 60 percent in the last 5 years as a result of –

(A) the end of its subsidization by the former Soviet Union of between 5 billion and 6 billion dollars annually;

(B) 36 years of communist tyranny and economic mismanagement by the Castro government;

(C) the extreme decline in trade between Cuba and the countries of the former Soviet bloc; and

(D) the stated policy of the Russian Government and the countries of the former Soviet bloc to conduct economic relations with Cuba on strictly commercial terms.

(2) At the same time, the welfare and health of the Cuban people have substantially deteriorated as a result of this economic decline and the refusal of the Castro regime to permit free and fair democratic elections in Cuba.

(3) The Castro regime has made it abundantly clear that it will not engage in any substantive political reforms that would lead to democracy, a market economy, or an economic recovery.

(4) The repression of the Cuban people, including a ban on free and fair democratic elections, and continuing violations of fundamental human rights, have isolated the Cuban regime as the only completely nondemocratic government in the Western Hemisphere.

(5) As long as free elections are not held in Cuba, the economic condition of the country and the welfare of the Cuban people will not improve in any significant way.

(6) The totalitarian nature of the Castro regime has deprived the Cuban people of any peaceful means to improve their condition and has led thousands of Cuban citizens to risk or lose their lives in dangerous attempts to escape from Cuba to freedom.

(7) Radio Marti and Television Marti have both been effective vehicles for providing the people of Cuba with news and information and have helped to bolster the morale of the people of Cuba living under tyranny.

(8) The consistent policy of the United States towards Cuba since the beginning of the Castro regime, carried out by both Democratic and Republican administrations, has sought to keep faith with the people of Cuba, and has been effective in sanctioning the totalitarian Castro regime.

(9) The United States has shown a deep commitment, and considers it a moral obligation, to promote and protect human rights and fundamental freedoms as expressed in the Charter of the United Nations and in the Universal Declaration of Human Rights.

(10) The Congress has historically and consistently manifested its solidarity and the solidarity of the American people with the democratic aspirations of the Cuban people.

(11) The Cuban Democracy Act of 1992 calls upon the President to encourage the governments of countries that conduct trade with Cuba to restrict their trade and credit relations with Cuba in a manner consistent with the purposes of that Act.

(12) Amendments to the Foreign Assistance Act of 1961 made by the FREEDOM Support Act require that the President, in providing economic assistance to Russia and the emerging Eurasian democracies, take into account the extent to which they are acting to “terminate support for the communist regime in Cuba, including removal of troops, closing military facilities, and ceasing trade subsidies and economic, nuclear, and other assistance”.

(13) The Cuban Government engages in the illegal international narcotics trade and harbors fugitives from justice in the United States.

(14) The Castro government threatens international peace and security by engaging in acts of armed subversion and terrorism such as the training and supplying of groups dedicated to international violence.

(15) The Castro government has utilized from its inception and continues to utilize torture in various forms (including by psychiatry), as well as execution, exile, confiscation, political imprisonment, and other forms of terror and repression, as means of retaining power.

(16) Fidel Castro has defined democratic pluralism as “pluralistic garbage” and continues to make clear that he has no intention of tolerating the democratization of Cuban society.

(17) The Castro government holds innocent Cubans hostage in Cuba by no fault of the hostages themselves solely because relatives have escaped the country.

(18) Although a signatory state to the 1928 Inter-American Convention on Asylum and the International Covenant on Civil and Political Rights (which protects the right to leave one’s own country), Cuba nevertheless surrounds embassies in its capital by armed forces to thwart the right of its citizens to seek asylum and systematically denies that right to the Cuban people, punishing them by imprisonment for seeking to leave the country and killing them for attempting to do so (as demonstrated in the case of the confirmed murder of over 40 men, women, and children who were seeking to leave Cuba on July 13, 1994).

(19) The Castro government continues to utilize blackmail, such as the immigration crisis with which it threatened the United States in the summer of 1994, and other unacceptable and illegal forms of conduct to influence the actions of sovereign states

in the Western Hemisphere in violation of the Charter of the Organization of American States and other international agreements and international law.

(20) The United Nations Commission on Human Rights has repeatedly reported on the unacceptable human rights situation in Cuba and has taken the extraordinary step of appointing a Special Rapporteur.

(21) The Cuban Government has consistently refused access to the Special Rapporteur and formally expressed its decision not to “implement so much as one comma” of the United Nations Resolutions appointing the Rapporteur.

(22) The United Nations General Assembly passed Resolution 47-139 on December 18, 1992, Resolution 48-142 on December 20, 1993, and Resolution 49-200 on December 23, 1994, referencing the Special Rapporteur’s reports to the United Nations and condemning violations of human rights and fundamental freedoms in Cuba.

(23) Article 39 of Chapter VII of the United Nations Charter provides that the United Nations Security Council “shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken . . . , to maintain or restore international peace and security.”

(24) The United Nations has determined that massive and systematic violations of human rights may constitute a “threat to peace” under Article 39 and has imposed sanctions due to such violations of human rights in the cases of Rhodesia, South Africa, Iraq, and the former Yugoslavia.

(25) In the case of Haiti, a neighbor of Cuba not as close to the United States as Cuba, the United States led an effort to obtain and did obtain a United Nations Security Council embargo and blockade against that country due to the existence of a military dictatorship in power less than 3 years.

(26) United Nations Security Council Resolution 940 of July 31, 1994, subsequently authorized the use of “all necessary means” to restore the “democratically elected government of Haiti”, and the democratically elected government of Haiti was restored to power on October 15, 1994.

(27) The Cuban people deserve to be assisted in a decisive manner to end the tyranny that has oppressed them for 36 years, and the continued failure to do so constitutes ethically improper conduct by the international community.

(28) For the past 36 years, the Cuban Government has posed and continues to pose a national security threat to the United States.

Sec. 3 [22 U.S.C. 6022] – Purposes.

The purposes of this Act are –

- (1) to assist the Cuban people in regaining their freedom and prosperity, as well as in joining the community of democratic countries that are flourishing in the Western Hemisphere;
- (2) to strengthen international sanctions against the Castro government;
- (3) to provide for the continued national security of the United States in the face of continuing threats from the Castro government of terrorism, theft of property from United States nationals by the Castro government, and the political manipulation by the Castro government of the desire of Cubans to escape that results in mass migration to the United States;
- (4) to encourage the holding of free and fair democratic elections in Cuba, conducted under the supervision of internationally recognized observers;
- (5) to provide a policy framework for United States support to the Cuban people in response to the formation of a transition government or a democratically elected government in Cuba; and
- (6) to protect United States nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Castro regime.

Sec. 4. [22 U.S.C. 6023] – Definitions.

As used in this Act, the following terms have the following meanings:

- (1) Agency or Instrumentality of a Foreign State. – The term “agency or instrumentality of a foreign state” has the meaning given that term in section 1603(b) of title 28, United States Code.
- (2) Appropriate Congressional Committees – The term “appropriate congressional committees” means the Committee on International Relations and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate.
- (3) Commercial Activity. – The term “commercial activity” has the meaning given that term in section 1603(d) of title 28, United States Code.
- (4) Confiscated. – As used in titles I and III, the term “confiscated” refers to –

(A) the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property, on or after January 1, 1959

–

(i) without the property having been returned or adequate and effective compensation provided; or

(ii) without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and

(B) the repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay, on or after January 1, 1959 –

(i) a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;

(ii) a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or

(iii) a debt which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

(5) Cuban Government. –

(A) The term “Cuban Government” includes the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba.

(B) For purposes of subparagraph (A), the term “agency or instrumentality of the Government of Cuba” means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, United States Code, with each reference in such section to “a foreign state” deemed to be a reference to “Cuba”.

(6) Democratically Elected Government in Cuba – The term “democratically elected government in Cuba” means a government determined by the President to have met the requirements of section 206.

(7) Economic Embargo of Cuba. – The term “economic embargo of Cuba” refers to

–

(A) the economic embargo (including all restrictions on trade or transactions with, and travel to or from, Cuba, and all restrictions on transactions in property in which Cuba or nationals of Cuba have an interest) that was

imposed against Cuba pursuant to section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), the Cuban Democracy Act of 1992 (22 U.S.C. 6001 and following), or any other provision of law; and

(B) the restrictions imposed by section 902(c) of the Food Security Act of 1985.

(8) Foreign National – The term “foreign national” means –

(A) an alien; or

(B) any corporation, trust, partnership, or other juridical entity not organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(9) Knowingly. – The term “knowingly” means with knowledge or having reason to know.

(10) Official of the Cuban Government or the Ruling Political Party in Cuba. – The term “official of the Cuban Government or the ruling political party in Cuba” refers to any member of the Council of Ministers, Council of State, central committee of the Communist Party of Cuba, or the Politburo of Cuba, or their equivalents.

(11) Person. – The term “person” means any person or entity, including any agency or instrumentality of a foreign state.

(12) Property. –

(A) The term “property” means any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest.

(B) For purposes of title III of this Act, the term “property” does not include real property used for residential purposes unless, as of the date of the enactment of this Act –

(i) the claim to the property is held by a United States national and the claim has been certified under title V of the International Claims Settlement Act of 1949; or

(ii) the property is occupied by an official of the Cuban Government or the ruling political party in Cuba.

(13) Traffics. –

(A) As used in title III, and except as provided in subparagraph (B), a person “traffics” in confiscated property if that person knowingly and intentionally –

(i) sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property,

(ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or

(iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person, without the authorization of any United States national who holds a claim to the property.

(B) The term “traffics” does not include –

(i) the delivery of international telecommunication signals to Cuba;

(ii) the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;

(iii) transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or

(iv) transactions and uses of property by a person who is both a citizen of Cuba and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

(14) Transition Government in Cuba. – The term “transition government in Cuba” means a government that the President determines is a transition government consistent with the requirements and factors set forth in section 205.

(15) United States National – The term “United States national” means –

(A) any United States citizen; or

(B) any other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth,

territory, or possession of the United States, and which has its principal place of business in the United States.

Sec. 5. [22 U.S.C. 6024] – Severability.

If any provision of this Act or the amendments made by this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, the amendments made by this Act, or the application thereof to other persons not similarly situated or to other circumstances shall not be affected by such invalidation.

Title I – Strengthening International Sanctions Against the Castro Government

Sec. 101. [22 U.S.C. 6031] – Statement of Policy.

It is the sense of the Congress that –

(1) the acts of the Castro government, including its massive, systematic, and extraordinary violations of human rights, are a threat to international peace;

(2) the President should advocate, and should instruct the United States Permanent Representative to the United Nations to propose and seek within the Security Council, a mandatory international embargo against the totalitarian Cuban Government pursuant to chapter VII of the Charter of the United Nations, employing efforts similar to consultations conducted by United States representatives with respect to Haiti;

(3) any resumption of efforts by any independent state of the former Soviet Union to make operational any nuclear facilities in Cuba, and any continuation of intelligence activities by such a state from Cuba that are targeted at the United States and its citizens will have a detrimental impact on United States assistance to such state; and

(4) in view of the threat to the national security posed by the operation of any nuclear facility, and the Castro government's continuing blackmail to unleash another wave of Cuban refugees fleeing from Castro's oppression, most of whom find their way to United States shores, further depleting limited humanitarian and other resources of the United States, the President should do all in his power to make it clear to the Cuban Government that –

(A) the completion and operation of any nuclear power facility, or

(B) any further political manipulation of the desire of Cubans to escape that results in mass migration to the United States,

will be considered an act of aggression which will be met with an appropriate response in order to maintain the security of the national borders of the United States and the health and safety of the American people.

Sec. 102. [22 U.S.C. 6032] – Enforcement of the Economic Embargo of Cuba.

(a) Policy. –

(1) Restrictions by Other Countries. – The Congress hereby reaffirms section 1704(a) of the Cuban Democracy Act of 1992, which states that the President should encourage foreign countries to restrict trade and credit relations with Cuba in a manner consistent with the purposes of that Act.

(2) Sanctions on Other Countries. – The Congress further urges the President to take immediate steps to apply the sanctions described in section 1704(b)(1) of that Act against countries assisting Cuba.

(b) Diplomatic Efforts. – The Secretary of State should ensure that United States diplomatic personnel abroad understand and, in their contacts with foreign officials, are communicating the reasons for the United States economic embargo of Cuba, and are urging foreign governments to cooperate more effectively with the embargo.

(c) Existing Regulations. – The President shall instruct the Secretary of the Treasury and the Attorney General to enforce fully the Cuban Assets Control Regulations set forth in part 515 of title 31, Code of Federal Regulations.

(d) Trading with the Enemy Act. –

(1) Civil Penalties. – Subsection (b) of section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16(b)), as added by Public Law 102-484, is amended to read as follows: * * *

(2) Conforming Amendment; Criminal Forfeiture. – Section 16 of the Trading with the Enemy Act is further amended by striking subsection (b), as added by Public Law 102-393.

(3) Clerical Amendments. – Section 16 of the Trading with the Enemy Act is further amended – * * *

(e) Denial of Visas to Certain Cuban Nationals. – It is the sense of the Congress that the President should instruct the Secretary of State and the Attorney General to enforce fully existing regulations to deny visas to Cuban nationals considered by the Secretary of State to be officers or employees of the Cuban Government or of the Communist Party of Cuba.

(f) Coverage of Debt-for-Equity Swaps by Economic Embargo of Cuba. – Section 1704(b)(2) of the Cuban Democracy Act of 1992 (22 U.S.C. 6003(b)(2)) is amended – * * *

(g) Telecommunications Services. – Section 1705(e) of the Cuban Democracy Act of 1992 (22 U.S.C. 6004(e)) is amended by adding at the end the following new paragraphs. * * *

(h) Codification of Economic Embargo. – The economic embargo of Cuba, as in effect on March 1, 1996, including all restrictions under part 515 of title 31, Code of Federal Regulations, shall be in effect upon the enactment of this Act, and shall remain in effect, subject to section 204 of this Act.

Sec. 103. [22 U.S.C. 6033] – Prohibition Against Indirect Financing of Cuba.

(a) Prohibition. – Notwithstanding any other provision of law, no loan, credit, or other financing may be extended knowingly by a United States national, a permanent resident alien, or a United States agency to any person for the purpose of financing transactions involving any confiscated property the claim to which is owned by a United States national as of the date of the enactment of this Act, except for financing by the United States national owning such claim for a transaction permitted under United States law.

(b) Suspension and Termination of Prohibition. –

(1) Suspension. – The President is authorized to suspend the prohibition contained in subsection (a) upon a determination made under section 203(c)(1) that a transition government in Cuba is in power.

(2) Termination. – The prohibition contained in subsection (a) shall cease to apply on the date on which the economic embargo of Cuba terminates as provided in section 204.

(c) Penalties. – Violations of subsection (a) shall be punishable by such civil penalties as are applicable to violations of the Cuban Assets Control Regulations set forth in part 515 of title 31, Code of Federal Regulations.

(d) Definitions. – As used in this section –

(1) the term “permanent resident alien” means an alien lawfully admitted for permanent residence into the United States; and

(2) the term “United States agency” has the meaning given the term “agency” in section 551(1) of title 5, United States Code.

Sec. 104. [22U.S.C. 6034] – United States Opposition to Cuban Membership in International Financial Institutions.

(a) Continued Opposition to Cuban Membership in International Financial Institutions. –

(1) In General. – Except as provided in paragraph (2), the Secretary of the Treasury shall instruct the United States executive director of each international financial institution to use the voice and vote of the United States to oppose the admission of Cuba as a member of such institution until the President submits a determination

under section 203(c)(3) that a democratically elected government in Cuba is in power.

(2) Transition Government. – Once the President submits a determination under section 203(c)(1) that a transition government in Cuba is in power –

(A) the President is encouraged to take steps to support the processing of Cuba's application for membership in any international financial institution, subject to the membership taking effect after a democratically elected government in Cuba is in power, and

(B) the Secretary of the Treasury is authorized to instruct the United States executive director of each international financial institution to support loans or other assistance to Cuba only to the extent that such loans or assistance contribute to a stable foundation for a democratically elected government in Cuba.

(b) Reduction in United States Payments to International Financial Institutions. – If any international financial institution approves a loan or other assistance to the Cuban Government over the opposition of the United States, then the Secretary of the Treasury shall withhold from payment to such institution an amount equal to the amount of the loan or other assistance, with respect to either of the following types of payment:

(1) The paid-in portion of the increase in capital stock of the institution.

(2) The callable portion of the increase in capital stock of the institution.

(c) Definition. – For purposes of this section, the term “international financial institution” means the International Monetary Fund, the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guaranty Agency, and the Inter-American Development Bank.

Sec. 105. [22 U.S.C. 6035] – United States Opposition to Termination of the Suspension of the Cuban Government from Participation in the Organization of American States.

The President should instruct the United States Permanent Representative to the Organization of American States to oppose and vote against any termination of the suspension of the Cuban Government from participation in the Organization until the President determines under section 203(c)(3) that a democratically elected government in Cuba is in power.

Sec. 106. [22 U.S.C. 6036] – Assistance by the Independent States of the Former Soviet Union For the Cuban Government.

(a) Reporting Requirement. – Not later than 90 days after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a report detailing progress toward the withdrawal of personnel of any independent state of the former Soviet Union (within the meaning of section 3 of the FREEDOM Support Act (22 U.S.C. 5801)), including advisers, technicians, and military personnel, from the Cienfuegos nuclear facility in Cuba.

(b) Criteria for Assistance. – Section 498A(a)(11) of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a(a)(11)) is amended * * *

(c) Ineligibility for Assistance. –

(1) In General. – Section 498A(b) of that Act (22 U.S.C. 2295a(b)) is amended – * * *

(2) Definition. – Subsection (k) of section 498B of that Act (22 U.S.C. 2295b(k)) is amended by adding at the end the following new paragraph: * * *

(3) Exception. – Section 498A(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2295A(c)) is amended * * *

(d) Facilities at Lourdes, Cuba. –

(1) Disapproval of Credits. – The Congress expresses its strong disapproval of the extension by Russia of credits equivalent to \$200,000,000 in support of the intelligence facility at Lourdes, Cuba, in November 1994.

(2) Reduction in Assistance. – Section 498A of the Foreign Assistance Act of 1961 (22 U.S.C. 2295a) is amended * * *

Sec. 107. [22 U.S.C. 6037] – Television Broadcasting to Cuba.

(a) Conversion to UHF. – The Director of the International Broadcasting Bureau shall implement a conversion of television broadcasting to Cuba under the Television Marti Service to ultra high frequency (UHF) broadcasting.

(b) Periodic Reports. – Not later than 45 days after the date of the enactment of this Act, and every three months thereafter until the conversion described in subsection (a) is fully implemented, the Director of the International Broadcasting Bureau shall submit a report to the appropriate congressional committees on the progress made in carrying out subsection (a).

(c) Termination of Broadcasting Authorities. – Upon transmittal of a determination under section 203(c)(3), the Television Broadcasting to Cuba Act (22 U.S.C. 1465aa and following) and the Radio Broadcasting to Cuba Act (22 U.S.C. 1465 and following) are repealed.

Sec. 108. [22 U.S.C. 6038] – Reports on Commerce with, and Assistance to, Cuba From Other Foreign Countries.

(a) Reports Required. – Not later than 90 days after the date of the enactment of this Act, and by January 1 of each year thereafter until the President submits a determination under section 203(c)(1), the President shall submit a report to the appropriate congressional committees on commerce with, and assistance to, Cuba from other foreign countries during the preceding 12-month period.

(b) Contents of Reports. – Each report required by subsection (a) shall, for the period covered by the report, contain the following, to the extent such information is available:

(1) A description of all bilateral assistance provided to Cuba by other foreign countries, including humanitarian assistance.

(2) A description of Cuba's commerce with foreign countries, including an identification of Cuba's trading partners and the extent of such trade.

(3) A description of the joint ventures completed, or under consideration, by foreign nationals and business firms involving facilities in Cuba, including an identification of the location of the facilities involved and a description of the terms of agreement of the joint ventures and the names of the parties that are involved.

(4) A determination as to whether or not any of the facilities described in paragraph (3) is the subject of a claim against Cuba by a United States national.

(5) A determination of the amount of debt of the Cuban Government that is owed to each foreign country, including—

(A) the amount of debt exchanged, forgiven, or reduced under the terms of each investment or operation in Cuba involving foreign nationals; and

(B) the amount of debt owed the foreign country that has been exchanged, forgiven, or reduced in return for a grant by the Cuban Government of an equity interest in a property, investment, or operation of the Cuban Government or of a Cuban national.

(6) A description of the steps taken to assure that raw materials and semifinished or finished goods produced by facilities in Cuba involving foreign nationals do not enter the United States market, either directly or through third countries or parties.

(7) An identification of countries that purchase, or have purchased, arms or military supplies from Cuba or that otherwise have entered into agreements with Cuba that have a military application, including –

- (A) a description of the military supplies, equipment, or other material sold, bartered, or exchanged between Cuba and such countries,
- (B) a listing of the goods, services, credits, or other consideration received by Cuba in exchange for military supplies, equipment, or material, and
- (C) the terms or conditions of any such agreement.

Sec. 109. [22 U.S.C. 6039] – Authorization of Support for Democratic and Human Rights Groups and International Observers.

(a) Authorization. – Notwithstanding any other provision of law (including section 102 of this Act), except for section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394-1) and comparable notification requirements contained in any Act making appropriations for foreign operations, export financing, and related programs, the President is authorized to furnish assistance and provide other support for individuals and independent nongovernmental organizations to support democracy-building efforts for Cuba, including the following:

- (1) Published and informational matter, such as books, videos, and cassettes, on transitions to democracy, human rights, and market economies, to be made available to independent democratic groups in Cuba.
- (2) Humanitarian assistance to victims of political repression, and their families.
- (3) Support for democratic and human rights groups in Cuba.
- (4) Support for visits and permanent deployment of independent international human rights monitors in Cuba.

(b) OAS Emergency Fund. –

- (1) For Support of Human Rights and Elections. – The President shall take the necessary steps to encourage the Organization of American States to create a special emergency fund for the explicit purpose of deploying human rights observers, election support, and election observation in Cuba.
- (2) Action of Other Member States. – The President should instruct the United States Permanent Representative to the Organization of American States to encourage other member states of the Organization to join in calling for the Cuban Government to allow the immediate deployment of independent human rights monitors of the Organization throughout Cuba and on-site visits to Cuba by the Inter-American Commission on Human Rights.
- (3) Voluntary contributions for fund. – Notwithstanding section 307 of the Foreign Assistance Act of 1961 (22 U.S.C. 2227) or any other provision of law limiting the

United States proportionate share of assistance to Cuba by any international organization, the President should provide not less than \$5,000,000 of the voluntary contributions of the United States to the Organization of American States solely for the purposes of the special fund referred to in paragraph (1).

(c) Denial of Funds to the Cuban Government. – In implementing this section, the President shall take all necessary steps to ensure that no funds or other assistance is provided to the Cuban Government.

Sec. 110. [22 U.S.C. 6040] – Importation Safeguard Against Certain Cuban Products.

(a) Prohibition on Import of and Dealings in Cuban Products. – The Congress notes that section 515.204 of title 31, Code of Federal Regulations, prohibits the entry of, and dealings outside the United States in, merchandise that –

(1) is of Cuban origin;

(2) is or has been located in or transported from or through Cuba; or

(3) is made or derived in whole or in part of any article which is the growth, produce, or manufacture of Cuba.

(b) Effect of NAFTA. – The Congress notes that United States accession to the North American Free Trade Agreement does not modify or alter the United States sanctions against Cuba. The statement of administrative action accompanying that trade agreement specifically states the following:

(1) “The NAFTA rules of origin will not in any way diminish the Cuban sanctions program. . . Nothing in the NAFTA would operate to override this prohibition.”

(2) “Article 309(3) [of the NAFTA] permits the United States to ensure that Cuban products or goods made from Cuban materials are not imported into the United States from Mexico or Canada and that United States products are not exported to Cuba through those countries.”

(c) Restriction of Sugar Imports. – The Congress notes that section 902(c) of the Food Security Act of 1985 (Public Law 99-198) requires the President not to allocate any of the sugar import quota to a country that is a net importer of sugar unless appropriate officials of that country verify to the President that the country does not import for reexport to the United States any sugar produced in Cuba.

(d) Assurance Regarding Sugar Products. – Protection of essential security interests of the United States requires assurances that sugar products that are entered, or withdrawn from warehouse for consumption, into the customs territory of the United States are not products of Cuba.

Sec. 111. [22 U.S.C. 6041] – Withholding of Foreign Assistance From Countries Supporting Juragua Nuclear Plant in Cuba.

(a) Findings. – The Congress makes the following findings:

(1) President Clinton stated in April 1993 that the United States opposed the construction of the Juragua nuclear power plant because of the concerns of the United States about Cuba's ability to ensure the safe operation of the facility and because of Cuba's refusal to sign the Nuclear Non-Proliferation Treaty or ratify the Treaty of Tlatelolco.

(2) Cuba has not signed the Treaty on the Non-Proliferation of Nuclear Weapons or ratified the Treaty of Tlatelolco, the latter of which establishes Latin America and the Caribbean as a nuclear weapons-free zone.

(3) The State Department, the Nuclear Regulatory Commission, and the Department of Energy have expressed concerns about the construction and operation of Cuba's nuclear reactors.

(4) In a September 1992 report to the Congress, the General Accounting Office outlined concerns among nuclear energy experts about deficiencies in the nuclear plant project in Juragua, near Cienfuegos, Cuba, including –

(A) a lack in Cuba of a nuclear regulatory structure;

(B) the absence in Cuba of an adequate infrastructure to ensure the plant's safe operation and requisite maintenance;

(C) the inadequacy of training of plant operators;

(D) reports by a former technician from Cuba who, by examining with x-rays weld sites believed to be part of the auxiliary plumbing system for the plant, found that 10 to 15 percent of those sites were defective;

(E) since September 5, 1992, when construction on the plant was halted, the prolonged exposure to the elements, including corrosive salt water vapor, of the primary reactor components; and

(F) the possible inadequacy of the upper portion of the reactors' dome retention capability to withstand only 7 pounds of pressure per square inch, given that normal atmospheric pressure is 32 pounds per square inch and United States reactors are designed to accommodate pressures of 50 pounds per square inch.

(5) The United States Geological Survey claims that it had difficulty determining answers to specific questions regarding earthquake activity in the area near Cienfuegos because the Cuban Government was not forthcoming with information.

(6) The Geological Survey has indicated that the Caribbean plate, a geological formation near the south coast of Cuba, may pose seismic risks to Cuba and the site of the power plant, and may produce large to moderate earthquakes.

(7) On May 25, 1992, the Caribbean plate produced an earthquake numbering 7.0 on the Richter scale.

(8) According to a study by the National Oceanic and Atmospheric Administration, summer winds could carry radioactive pollutants from a nuclear accident at the power plant throughout all of Florida and parts of the States on the coast of the Gulf of Mexico as far as Texas, and northern winds could carry the pollutants as far northeast as Virginia and Washington, D.C.

(9) The Cuban Government, under dictator Fidel Castro, in 1962 advocated the Soviets' launching of nuclear missiles to the United States, which represented a direct and dangerous provocation of the United States and brought the world to the brink of a nuclear conflict.

(10) Fidel Castro over the years has consistently issued threats against the United States Government, most recently that he would unleash another perilous mass migration from Cuba upon the enactment of this Act.

(11) Despite the various concerns about the plant's safety and operational problems, a feasibility study is being conducted that would establish a support group to include Russia, Cuba, and third countries with the objective of completing and operating the plant.

(b) Withholding of Foreign Assistance. –

(1) In General. – Notwithstanding any other provision of law, the President shall withhold from assistance allocated, on or after the date of the enactment of this Act, for any country an amount equal to the sum of assistance and credits, if any, provided on or after such date of enactment by that country or any entity in that country in support of the completion of the Cuban nuclear facility at Juragua, near Cienfuegos, Cuba.

(2) Exceptions. – The requirement of paragraph (1) to withhold assistance shall not apply with respect to –

(A) assistance to meet urgent humanitarian needs, including disaster and refugee relief;

- (B) democratic political reform or rule of law activities;
- (C) the creation of private sector or nongovernmental organizations that are independent of government control;
- (D) the development of a free market economic system;
- (E) assistance for the purposes described in the Cooperative Threat Reduction Act of 1993 (title XII of Public Law 103-160); or
- (F) assistance under the secondary school exchange program administered by the United States Information Agency.

(3) Definition. – As used in paragraph (1), the term “assistance” means assistance under the Foreign Assistance Act of 1961, credits, sales, guarantees of extensions of credit, and other assistance under the Arms Export Control Act, assistance under titles I and III of the Agricultural Trade Development and Assistance Act of 1954, assistance under the FREEDOM Support Act, and any other program of assistance or credits provided by the United States to other countries under other provisions of law.

Sec. 112. [22 U.S.C. 6042] – Reinstitution of Family Remittances and Travel to Cuba.

It is the sense of the Congress that the President should –

(1)

(A) before considering the reinstatement of general licenses for family remittances to Cuba, insist that, prior to such reinstatement, the Cuban Government permit the unfettered operation of small businesses fully empowered with the right to hire others to whom they may pay wages and to buy materials necessary in the operation of the businesses, and with such other authority and freedom as are required to foster the operation of small businesses throughout Cuba; and

(B) if licenses described in subparagraph (A) are reinstated, require a specific license for remittances described in subparagraph (A) in amounts of more than \$500; and

(2) before considering the reinstatement of general licenses for travel to Cuba by individuals resident in the United States who are family members of Cuban nationals who are resident in Cuba, insist on such actions by the Cuban Government as abrogation of the sanction for departure from Cuba by refugees, release of political prisoners, recognition of the right of association, and other fundamental freedoms.

Sec. 113. [22 U.S.C. 6043] – Expulsion of Criminals From Cuba.

The President shall instruct all United States Government officials who engage in official contacts with the Cuban Government to raise on a regular basis the extradition of or rendering to the United States all persons residing in Cuba who are sought by the United States Department of Justice for crimes committed in the United States.

Sec. 114. [22 U.S.C. 6044] – News Bureaus in Cuba.

(a) Establishment of News Bureaus. – The President is authorized to establish and implement an exchange of news bureaus between the United States and Cuba, if the exchange meets the following conditions:

- (1) The exchange is fully reciprocal.
- (2) The Cuban Government agrees not to interfere with the establishment of news bureaus or with the movement in Cuba of journalists of any United States-based news organizations, including Radio Marti and Television Marti.
- (3) The Cuban Government agrees not to interfere with decisions of United States-based news organizations with respect to individuals assigned to work as journalists in their news bureaus in Cuba.
- (4) The Department of the Treasury is able to ensure that only accredited journalists regularly employed with a news gathering organization travel to Cuba under this subsection.
- (5) The Cuban Government agrees not to interfere with the transmission of telecommunications signals of news bureaus or with the distribution within Cuba of publications of any United States-based news organization that has a news bureau in Cuba.

(b) Assurance Against Espionage. – In implementing this section, the President shall take all necessary steps to ensure the safety and security of the United States against espionage by Cuban journalists it believes to be working for the intelligence agencies of the Cuban Government.

(c) Fully Reciprocal. – As used in subsection (a)(1), the term “fully reciprocal” means that all news services, news organizations, and broadcasting services, including such services or organizations that receive financing, assistance, or other support from a governmental or official source, are permitted to establish and operate a news bureau in the United States and Cuba.

Sec. 115. [22 U.S.C. 6045] – Effect of Act on Lawful United States Government Activities.

Nothing in this Act prohibits any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency, or of an intelligence agency, of the United States.

Sec. 116. [22 U.S.C. 6046] – Condemnation of Cuban Attack on American Aircraft.

(a) Findings. – The Congress makes the following findings:

(1) Brothers to the Rescue is a Miami-based humanitarian organization engaged in searching for and aiding Cuban refugees in the Straits of Florida, and was engaged in such a mission on Saturday, February 24, 1996.

(2) The members of Brothers to the Rescue were flying unarmed and defenseless planes in a mission identical to hundreds they have flown since 1991 and posed no threat whatsoever to the Cuban Government, the Cuban military, or the Cuban people.

(3) Statements by the Cuban Government that Brothers to the Rescue has engaged in covert operations, bombing campaigns, and commando operations against the Government of Cuba have no basis in fact.

(4) The Brothers to the Rescue aircraft notified air traffic controllers as to their flight plans, which would take them south of the 24th parallel and close to Cuban airspace.

(5) International law provides a nation with airspace over the 12-mile territorial sea.

(6) The response of Fidel Castro's dictatorship to Saturday's afternoon flight was to scramble 2 fighter jets from a Havana airfield.

(7) At approximately 3:24 p.m., the pilot of one of the Cuban MiGs received permission and proceeded to shoot down one Brothers to the Rescue airplane more than 6 miles north of the Cuban exclusion zone, or 18 miles from the Cuban coast.

(8) Approximately 7 minutes later, the pilot of the Cuban fighter jet received permission and proceeded to shoot down the second Brothers to the Rescue airplane almost 18.5 miles north of the Cuban exclusion zone, or 30.5 miles from the Cuban coast.

(9) The Cuban dictatorship, if it truly felt threatened by the flight of these unarmed aircraft, could have and should have pursued other peaceful options as required by international law.

(10) The response chosen by Fidel Castro, the use of lethal force, was completely inappropriate to the situation presented to the Cuban Government, making such

actions a blatant and barbaric violation of international law and tantamount to cold-blooded murder.

(11) There were no survivors of the attack on these aircraft, and the crew of a third aircraft managed to escape this criminal attack by Castro's Air Force.

(12) The crew members of the destroyed planes, Pablo Morales, Carlos Costa, Mario de la Pena, and Armando Alejandro, were United States citizens from Miami flying with Brothers to the Rescue on a voluntary basis.

(13) It is incumbent upon the United States Government to protect the lives and livelihoods of United States citizens as well as the rights of free passage and humanitarian missions.

(14) This premeditated act took place after a week-long wave of repression by the Cuban Government against Concilio Cubano, an umbrella organization of human rights activists, dissidents, independent economists, and independent journalists, among others.

(15) The wave of repression against Concilio Cubano, whose membership is committed to peaceful democratic change in Cuba, included arrests, strip searches, house arrests, and in some cases sentences to more than 1 year in jail.

(b) Statements by the Congress. –

(1) The Congress strongly condemns the act of terrorism by the Castro regime in shooting down the Brothers to the Rescue aircraft on February 24, 1996.

(2) The Congress extends its condolences to the families of Pablo Morales, Carlos Costa, Mario de la Pena, and Armando Alejandro, the victims of the attack.

(3) The Congress urges the President to seek, in the International Court of Justice, indictment for this act of terrorism by Fidel Castro.

Title II – Assistance to a Free and Independent Cuba

Sec. 201. [22 U.S.C. 6061] – Policy Toward a Transition Government and a Democratically Elected Government in Cuba.

The policy of the United States is as follows:

(1) To support the self-determination of the Cuban people.

(2) To recognize that the self-determination of the Cuban people is a sovereign and national right of the citizens of Cuba which must be exercised free of interference by the government of any other country.

- (3) To encourage the Cuban people to empower themselves with a government which reflects the self-determination of the Cuban people.
- (4) To recognize the potential for a difficult transition from the current regime in Cuba that may result from the initiatives taken by the Cuban people for self-determination in response to the intransigence of the Castro regime in not allowing any substantive political or economic reforms, and to be prepared to provide the Cuban people with humanitarian, developmental, and other economic assistance.
- (5) In solidarity with the Cuban people, to provide appropriate forms of assistance –
 - (A) to a transition government in Cuba;
 - (B) to facilitate the rapid movement from such a transition government to a democratically elected government in Cuba that results from an expression of the self-determination of the Cuban people; and
 - (C) to support such a democratically elected government.
- (6) Through such assistance, to facilitate a peaceful transition to representative democracy and a market economy in Cuba and to consolidate democracy in Cuba.
- (7) To deliver such assistance to the Cuban people only through a transition government in Cuba, through a democratically elected government in Cuba, through United States Government organizations, or through United States, international, or indigenous nongovernmental organizations.
- (8) To encourage other countries and multilateral organizations to provide similar assistance, and to work cooperatively with such countries and organizations to coordinate such assistance.
- (9) To ensure that appropriate assistance is rapidly provided and distributed to the people of Cuba upon the institution of a transition government in Cuba.
- (10) Not to provide favorable treatment or influence on behalf of any individual or entity in the selection by the Cuban people of their future government.
- (11) To assist a transition government in Cuba and a democratically elected government in Cuba to prepare the Cuban military forces for an appropriate role in a democracy.
- (12) To be prepared to enter into negotiations with a democratically elected government in Cuba either to return the United States Naval Base at Guantanamo to Cuba or to renegotiate the present agreement under mutually agreeable terms.

(13) To consider the restoration of diplomatic recognition and support the reintegration of the Cuban Government into Inter-American organizations when the President determines that there exists a democratically elected government in Cuba.

(14) To take steps to remove the economic embargo of Cuba when the President determines that a transition to a democratically elected government in Cuba has begun.

(15) To assist a democratically elected government in Cuba to strengthen and stabilize its national currency.

(16) To pursue trade relations with a free, democratic, and independent Cuba.

Sec. 202. [22 U.S.C. 6062] – Assistance for the Cuban People.

(a) Authorization. –

(1) In General. – The President shall develop a plan for providing economic assistance to Cuba at such time as the President determines that a transition government or a democratically elected government in Cuba (as determined under section 203(c)) is in power.

(2) Effect on Other Laws. – Assistance may be provided under this section subject to an authorization of appropriations and subject to the availability of appropriations.

(b) Plan for Assistance. –

(1) Development of Plan. – The President shall develop a plan for providing assistance under this section –

(A) to Cuba when a transition government in Cuba is in power; and

(B) to Cuba when a democratically elected government in Cuba is in power.

(2) Types of Assistance. – Assistance under the plan developed under paragraph (1) may, subject to an authorization of appropriations and subject to the availability of appropriations, include the following:

(A) Transition Government. –

(i) Except as provided in clause (ii), assistance to Cuba under a transition government shall, subject to an authorization of appropriations and subject to the availability of appropriations, be limited to –

(I) such food, medicine, medical supplies and equipment, and assistance to meet emergency energy needs, as is necessary to meet the basic human needs of the Cuban people; and

(II) assistance described in subparagraph (C).

(ii) Assistance in addition to assistance under clause (i) may be provided, but only after the President certifies to the appropriate congressional committees, in accordance with procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961, that such assistance is essential to the successful completion of the transition to democracy.

(iii) Only after a transition government in Cuba is in power, freedom of individuals to travel to visit their relatives without any restrictions shall be permitted.

(B) Democratically Elected Government. – Assistance to a democratically elected government in Cuba may, subject to an authorization of appropriations and subject to the availability of appropriations, consist of economic assistance in addition to assistance available under subparagraph (A), together with assistance described in subparagraph (C). Such economic assistance may include –

(i) assistance under chapter 1 of part I (relating to development assistance), and chapter 4 of part II (relating to the economic support fund), of the Foreign Assistance Act of 1961;

(ii) assistance under the Agricultural Trade Development and Assistance Act of 1954;

(iii) financing, guarantees, and other forms of assistance provided by the Export-Import Bank of the United States;

(iv) financial support provided by the Overseas Private Investment Corporation for investment projects in Cuba;

(v) assistance provided by the Trade and Development Agency;

(vi) Peace Corps programs; and

(vii) other appropriate assistance to carry out the policy of section 201.

(C) Military Adjustment Assistance. – Assistance to a transition government in Cuba and to a democratically elected government in Cuba shall also

include assistance in preparing the Cuban military forces to adjust to an appropriate role in a democracy.

(c) Strategy for Distribution. – The plan developed under subsection (b) shall include a strategy for distributing assistance under the plan.

(d) Distribution. – Assistance under the plan developed under subsection (b) shall be provided through United States Government organizations and nongovernmental organizations and private and voluntary organizations, whether within or outside the United States, including humanitarian, educational, labor, and private sector organizations.

(e) International Efforts. – The President shall take the necessary steps –

(1) to seek to obtain the agreement of other countries and of international financial institutions and multilateral organizations to provide to a transition government in Cuba, and to a democratically elected government in Cuba, assistance comparable to that provided by the United States under this Act; and

(2) to work with such countries, institutions, and organizations to coordinate all such assistance programs.

(f) Communication with the Cuban People. – The President shall take the necessary steps to communicate to the Cuban people the plan for assistance developed under this section.

(g) Report to Congress. – Not later than 180 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a report describing in detail the plan developed under this section.

(h) Report on Trade and Investment Relations. –

(1) Report to Congress. – The President, following the transmittal to the Congress of a determination under section 203(c)(3) that a democratically elected government in Cuba is in power, shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and the appropriate congressional committees a report that describes –

(A) acts, policies, and practices which constitute significant barriers to, or distortions of, United States trade in goods or services or foreign direct investment with respect to Cuba;

(B) policy objectives of the United States regarding trade relations with a democratically elected government in Cuba, and the reasons therefor, including possible –

(i) reciprocal extension of nondiscriminatory trade treatment (most-favored-nation treatment);

(ii) designation of Cuba as a beneficiary developing country under title V of the Trade Act of 1974 (relating to the Generalized System of Preferences) or as a beneficiary country under the Caribbean Basin Economic Recovery Act, and the implications of such designation with respect to trade with any other country that is such a beneficiary developing country or beneficiary country or is a party to the North American Free Trade Agreement; and

(iii) negotiations regarding free trade, including the accession of Cuba to the North American Free Trade Agreement;

(C) specific trade negotiating objectives of the United States with respect to Cuba, including the objectives described in section 108(b)(5) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3317(b)(5)); and

(D) actions proposed or anticipated to be undertaken, and any proposed legislation necessary or appropriate, to achieve any of such policy and negotiating objectives.

(2) Consultation. – The President shall consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and the appropriate congressional committees and shall seek advice from the appropriate advisory committees established under section 135 of the Trade Act of 1974 regarding the policy and negotiating objectives and the legislative proposals described in paragraph (1).

Sec. 203. [22 U.S.C. 6063] – Coordination of Assistance Program; Implementation and Reports to Congress; Reprogramming.

(a) Coordinating Official. – The President shall designate a coordinating official who shall be responsible for –

(1) implementing the strategy for distributing assistance described in section 202(b);

(2) ensuring the speedy and efficient distribution of such assistance; and

(3) ensuring coordination among, and appropriate oversight by, the agencies of the United States that provide assistance described in section 202(b), including resolving any disputes among such agencies.

(b) United States-Cuba Council. – Upon making a determination under subsection (c)(3) that a democratically elected government in Cuba is in power, the President, after consultation with the coordinating official, is authorized to designate a United States-Cuba council –

(1) to ensure coordination between the United States Government and the private sector in responding to change in Cuba, and in promoting market-based development in Cuba; and

(2) to establish periodic meetings between representatives of the United States and Cuban private sectors for the purpose of facilitating bilateral trade.

(c) Implementation of Plan; Reports to Congress. –

(1) Implementation with Respect to Transition Government. – Upon making a determination that a transition government in Cuba is in power, the President shall transmit that determination to the appropriate congressional committees and shall, subject to an authorization of appropriations and subject to the availability of appropriations, commence the delivery and distribution of assistance to such transition government under the plan developed under section 202(b).

(2) Reports to Congress. –

(A) The President shall transmit to the appropriate congressional committees a report setting forth the strategy for providing assistance described in section 202(b)(2) (A) and (C) to the transition government in Cuba under the plan of assistance developed under section 202(b), the types of such assistance, and the extent to which such assistance has been distributed in accordance with the plan.

(B) The President shall transmit the report not later than 90 days after making the determination referred to in paragraph (1), except that the President shall transmit the report in preliminary form not later than 15 days after making that determination.

(3) Implementation with Respect to Democratically Elected Government. – The President shall, upon determining that a democratically elected government in Cuba is in power, submit that determination to the appropriate congressional committees and shall, subject to an authorization of appropriations and subject to the availability of appropriations, commence the delivery and distribution of assistance to such democratically elected government under the plan developed under section 202(b).

(4) Annual Reports to Congress. – Not later than 60 days after the end of each fiscal year, the President shall transmit to the appropriate congressional committees a report on the assistance provided under the plan developed under section 202(b), including a description of each type of assistance, the amounts expended for such assistance, and a description of the assistance to be provided under the plan in the current fiscal year.

(d) Reprogramming. – Any changes in the assistance to be provided under the plan developed under section 202(b) may not be made unless the President notifies the

appropriate congressional committees at least 15 days in advance in accordance with the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394-1).

Sec. 204. [22 U.S.C. 6064] – Termination of the Economic Embargo of Cuba.

(a) Presidential Actions. – Upon submitting a determination to the appropriate congressional committees under section 203(c)(1) that a transition government in Cuba is in power, the President, after consultation with the Congress, is authorized to take steps to suspend the economic embargo of Cuba and to suspend the right of action created in section 302 with respect to actions thereafter filed against the Cuban Government, to the extent that such steps contribute to a stable foundation for a democratically elected government in Cuba.

(b) Suspension of Certain Provisions of Law. – In carrying out subsection (a), the President may suspend the enforcement of –

- (1) section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a));
- (2) section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)) with respect to the “Republic of Cuba”;
- (3) sections 1704, 1705(d), and 1706 of the Cuban Democracy Act of 1992 (22 U.S.C. 6003, 6004(d), and 6005);
- (4) section 902(c) of the Food Security Act of 1985; and
- (5) the prohibitions on transactions described in part 515 of title 31, Code of Federal Regulations.

(c) Additional Presidential Actions. – Upon submitting a determination to the appropriate congressional committees under section 203(c)(3) that a democratically elected government in Cuba is in power, the President shall take steps to terminate the economic embargo of Cuba, including the restrictions under part 515 of title 31, Code of Federal Regulations.

(d) Conforming Amendments. – On the date on which the President submits a determination under section 203(c)(3) –

- (1) section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)) is repealed;
- (2) section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(f)) is amended by striking “Republic of Cuba”;
- (3) sections 1704, 1705(d), and 1706 of the Cuban Democracy Act of 1992 (22 U.S.C. 6003, 6004(d), and 6005) are repealed; and

(4) section 902(c) of the Food Security Act of 1985 is repealed.

(e) Review of Suspension of Economic Embargo. –

(1) Review. – If the President takes action under subsection (a) to suspend the economic embargo of Cuba, the President shall immediately so notify the Congress. The President shall report to the Congress no less frequently than every 6 months thereafter, until he submits a determination under section 203(c)(3) that a democratically elected government in Cuba is in power, on the progress being made by Cuba toward the establishment of such a democratically elected government. The action of the President under subsection (a) shall cease to be effective upon the enactment of a joint resolution described in paragraph (2).

(2) Joint Resolutions. – For purposes of this subsection, the term “joint resolution” means only a joint resolution of the 2 Houses of Congress, the matter after the resolving clause of which is as follows: “That the Congress disapproves the action of the President under section 204(a) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to suspend the economic embargo of Cuba, notice of which was submitted to the Congress on _____.”, with the blank space being filled with the appropriate date.

(3) Referral to Committees. – Joint resolutions introduced in the House of Representatives shall be referred to the Committee on International Relations and joint resolutions introduced in the Senate shall be referred to the Committee on Foreign Relations.

(4) Procedures. –

(A) Any joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) For the purpose of expediting the consideration and enactment of joint resolutions, a motion to proceed to the consideration of any joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(C) Not more than 1 joint resolution may be considered in the House of Representatives and the Senate in the 6-month period beginning on the date on which the President notifies the Congress under paragraph (1) of the action taken under subsection (a), and in each 6-month period thereafter.

Sec. 205. [22 U.S.C. 6065] – Requirements and Factors for Determining a Transition Government.

(a) Requirements. – For the purposes of this Act, a transition government in Cuba is a government that –

(1) has legalized all political activity;

(2) has released all political prisoners and allowed for investigations of Cuban prisons by appropriate international human rights organizations;

(3) has dissolved the present Department of State Security in the Cuban Ministry of the Interior, including the Committees for the Defense of the Revolution and the Rapid Response Brigades; and

(4) has made public commitments to organizing free and fair elections for a new government –

(A) to be held in a timely manner within a period not to exceed 18 months after the transition government assumes power;

(B) with the participation of multiple independent political parties that have full access to the media on an equal basis, including (in the case of radio, television, or other telecommunications media) in terms of allotments of time for such access and the times of day such allotments are given; and

(C) to be conducted under the supervision of internationally recognized observers, such as the Organization of American States, the United Nations, and other election monitors;

(5) has ceased any interference with Radio Marti or Television Marti broadcasts;

(6) makes public commitments to and is making demonstrable progress in –

(A) establishing an independent judiciary;

(B) respecting internationally recognized human rights and basic freedoms as set forth in the Universal Declaration of Human Rights, to which Cuba is a signatory nation;

(C) allowing the establishment of independent trade unions as set forth in conventions 87 and 98 of the International Labor Organization, and allowing the establishment of independent social, economic, and political associations;

(7) does not include Fidel Castro or Raul Castro; and

(8) has given adequate assurances that it will allow the speedy and efficient distribution of assistance to the Cuban people.

(b) Additional Factors. – In addition to the requirements in subsection (a), in determining whether a transition government in Cuba is in power, the President shall take into account the extent to which that government –

(1) is demonstrably in transition from a communist totalitarian dictatorship to representative democracy;

(2) has made public commitments to, and is making demonstrable progress in –

(A) effectively guaranteeing the rights of free speech and freedom of the press, including granting permits to privately owned media and telecommunications companies to operate in Cuba;

(B) permitting the reinstatement of citizenship to Cuban-born persons returning to Cuba;

(C) assuring the right to private property; and

(D) taking appropriate steps to return to United States citizens (and entities which are 50 percent or more beneficially owned by United States citizens) property taken by the Cuban Government from such citizens and entities on or after January 1, 1959, or to provide equitable compensation to such citizens and entities for such property;

(3) has extradited or otherwise rendered to the United States all persons sought by the United States Department of Justice for crimes committed in the United States; and

(4) has permitted the deployment throughout Cuba of independent and unfettered international human rights monitors.

Sec. 206. [22 U.S.C. 6066] – Requirements for Determining a Democratically Elected Government.

For purposes of this Act, a democratically elected government in Cuba, in addition to meeting the requirements of section 205(a), is a government which –

(1) results from free and fair elections –

(A) conducted under the supervision of internationally recognized observers; and

(B) in which –

(i) opposition parties were permitted ample time to organize and campaign for such elections; and

- (ii) all candidates were permitted full access to the media;
- (2) is showing respect for the basic civil liberties and human rights of the citizens of Cuba;
- (3) is substantially moving toward a market-oriented economic system based on the right to own and enjoy property;
- (4) is committed to making constitutional changes that would ensure regular free and fair elections and the full enjoyment of basic civil liberties and human rights by the citizens of Cuba;
- (5) has made demonstrable progress in establishing an independent judiciary; and
- (6) has made demonstrable progress in returning to United States citizens (and entities which are 50 percent or more beneficially owned by United States citizens) property taken by the Cuban Government from such citizens and entities on or after January 1, 1959, or providing full compensation for such property in accordance with international law standards and practice.

Sec. 207. [22 U.S.C. 6067] – Settlement of Outstanding United States Claims to Confiscated Property in Cuba.

- (a) Report to Congress. – Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall provide a report to the appropriate congressional committees containing an assessment of the property dispute question in Cuba, including –
 - (1) an estimate of the number and amount of claims to property confiscated by the Cuban Government that are held by United States nationals in addition to those claims certified under section 507 of the International Claims Settlement Act of 1949;
 - (2) an assessment of the significance of promptly resolving confiscated property claims to the revitalization of the Cuban economy;
 - (3) a review and evaluation of technical and other assistance that the United States could provide to help either a transition government in Cuba or a democratically elected government in Cuba establish mechanisms to resolve property questions;
 - (4) an assessment of the role and types of support the United States could provide to help resolve claims to property confiscated by the Cuban Government that are held by United States nationals who did not receive or qualify for certification under section 507 of the International Claims Settlement Act of 1949; and
 - (5) an assessment of any areas requiring legislative review or action regarding the resolution of property claims in Cuba prior to a change of government in Cuba.

(d) Sense of Congress. – It is the sense of the Congress that the satisfactory resolution of property claims by a Cuban Government recognized by the United States remains an essential condition for the full resumption of economic and diplomatic relations between the United States and Cuba.

Title III – Protection of Property Rights of United States Nationals

Sec. 301. [22 U.S.C. 6081] – Findings.

The Congress makes the following findings:

(1) Individuals enjoy a fundamental right to own and enjoy property which is enshrined in the United States Constitution.

(2) The wrongful confiscation or taking of property belonging to United States nationals by the Cuban Government, and the subsequent exploitation of this property at the expense of the rightful owner, undermines the comity of nations, the free flow of commerce, and economic development.

(3) Since Fidel Castro seized power in Cuba in 1959 –

(A) he has trampled on the fundamental rights of the Cuban people; and

(B) through his personal despotism, he has confiscated the property of –

(i) millions of his own citizens;

(ii) thousands of United States nationals; and

(iii) thousands more Cubans who claimed asylum in the United States as refugees because of persecution and later became naturalized citizens of the United States.

(4) It is in the interest of the Cuban people that the Cuban Government respect equally the property rights of Cuban nationals and nationals of other countries.

(5) The Cuban Government is offering foreign investors the opportunity to purchase an equity interest in, manage, or enter into joint ventures using property and assets some of which were confiscated from United States nationals.

(6) This “trafficking” in confiscated property provides badly needed financial benefit, including hard currency, oil, and productive investment and expertise, to the current Cuban Government and thus undermines the foreign policy of the United States –

(A) to bring democratic institutions to Cuba through the pressure of a general economic embargo at a time when the Castro regime has proven to be vulnerable to international economic pressure; and

(B) to protect the claims of United States nationals who had property wrongfully confiscated by the Cuban Government.

(7) The United States Department of State has notified other governments that the transfer to third parties of properties confiscated by the Cuban Government “would complicate any attempt to return them to their original owners”.

(8) The international judicial system, as currently structured, lacks fully effective remedies for the wrongful confiscation of property and for unjust enrichment from the use of wrongfully confiscated property by governments and private entities at the expense of the rightful owners of the property.

(9) International law recognizes that a nation has the ability to provide for rules of law with respect to conduct outside its territory that has or is intended to have substantial effect within its territory.

(10) The United States Government has an obligation to its citizens to provide protection against wrongful confiscations by foreign nations and their citizens, including the provision of private remedies.

(11) To deter trafficking in wrongfully confiscated property, United States nationals who were the victims of these confiscations should be endowed with a judicial remedy in the courts of the United States that would deny traffickers any profits from economically exploiting Castro’s wrongful seizures.

Sec. 302. [22 U.S.C. 6082] – Liability for Trafficking in Confiscated Property Claimed by United States Nationals.

(a) Civil Remedy. –

(1) Liability for Trafficking. –

(A) Except as otherwise provided in this section, any person that, after the end of the 3-month period beginning on the effective date of this title, traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages in an amount equal to the sum of –

(i) the amount which is the greater of –

(I) the amount, if any, certified to the claimant by the Foreign Claims Settlement Commission under the International Claims Settlement Act of 1949, plus interest;

(II) the amount determined under section 303(a)(2), plus interest; or

(III) the fair market value of that property, calculated as being either the current value of the property, or the value of the property when confiscated plus interest, whichever is greater; and

(ii) court costs and reasonable attorneys' fees.

(B) Interest under subparagraph (A)(i) shall be at the rate set forth in section 1961 of title 28, United States Code, computed by the court from the date of confiscation of the property involved to the date on which the action is brought under this subsection.

(2) **Presumption in Favor of the Certified Claims.** – There shall be a presumption that the amount for which a person is liable under clause (i) of paragraph (1)(A) is the amount that is certified as described in subclause (I) of that clause. The presumption shall be rebuttable by clear and convincing evidence that the amount described in subclause (II) or (III) of that clause is the appropriate amount of liability under that clause.

(3) **Increased Liability.** –

(A) Any person that traffics in confiscated property for which liability is incurred under paragraph (1) shall, if a United States national owns a claim with respect to that property which was certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949, be liable for damages computed in accordance with subparagraph (C).

(B) If the claimant in an action under this subsection (other than a United States national to whom subparagraph (A) applies) provides, after the end of the 3-month period described in paragraph (1) notice to –

(i) a person against whom the action is to be initiated, or

(ii) a person who is to be joined as a defendant in the action,

at least 30 days before initiating the action or joining such person as a defendant, as the case may be, and that person, after the end of the 30-day period beginning on the date the notice is provided, traffics in the

confiscated property that is the subject of the action, then that person shall be liable to that claimant for damages computed in accordance with subparagraph (C).

(C) Damages for which a person is liable under subparagraph (A) or subparagraph (B) are money damages in an amount equal to the sum of –

(i) the amount determined under paragraph (1)(A)(ii), and

(ii) 3 times the amount determined applicable under paragraph (1)(A)(i).

(D) Notice to a person under subparagraph (B) –

(i) shall be in writing;

(ii) shall be posted by certified mail or personally delivered to the person; and

(iii) shall contain –

(I) a statement of intention to commence the action under this section or to join the person as a defendant (as the case may be), together with the reasons therefor;

(II) a demand that the unlawful trafficking in the claimant's property cease immediately; and

(III) a copy of the summary statement published under paragraph (8).

(4) Applicability. –

(A) Except as otherwise provided in this paragraph, actions may be brought under paragraph (1) with respect to property confiscated before, on, or after the date of the enactment of this Act.

(B) In the case of property confiscated before the date of the enactment of this Act, a United States national may not bring an action under this section on a claim to the confiscated property unless such national acquires ownership of the claim before such date of enactment.

(C) In the case of property confiscated on or after the date of the enactment of this Act, a United States national who, after the property is confiscated, acquires ownership of a claim to the property by assignment for value, may not bring an action on the claim under this section.

(5) Treatment of Certain Actions. –

(A) In the case of a United States national who was eligible to file a claim with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but did not so file the claim, that United States national may not bring an action on that claim under this section.

(B) In the case of any action brought under this section by a United States national whose underlying claim in the action was timely filed with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but was denied by the Commission, the court shall accept the findings of the Commission on the claim as conclusive in the action under this section.

(C) A United States national, other than a United States national bringing an action under this section on a claim certified under title V of the International Claims Settlement Act of 1949, may not bring an action on a claim under this section before the end of the 2-year period beginning on the date of the enactment of this Act.

(D) An interest in property for which a United States national has a claim certified under title V of the International Claims Settlement Act of 1949 may not be the subject of a claim in an action under this section by any other person. Any person bringing an action under this section whose claim has not been so certified shall have the burden of establishing for the court that the interest in property that is the subject of the claim is not the subject of a claim so certified.

(6) Inapplicability of Act of State Doctrine. – No court of the United States shall decline, based upon the act of state doctrine, to make a determination on the merits in an action brought under paragraph (1).

(7) Licenses not required. –

(A) Notwithstanding any other provision of law, an action under this section may be brought and may be settled, and a judgment rendered in such action may be enforced, without obtaining any license or other permission from any agency of the United States, except that this paragraph shall not apply to the execution of a judgment against, or the settlement of actions involving, property blocked under the authorities of section 5(b) of the Trading with the Enemy Act that were being exercised on July 1, 1977, as a result of a national emergency declared by the President before such date, and are being exercised on the date of the enactment of this Act.

(B) Notwithstanding any other provision of law, and for purposes of this title only, any claim against the Cuban Government shall not be deemed to be an interest in property the transfer of which to a United States national required before the enactment of this Act, or requires after the enactment of this Act, a license issued by, or the permission of, any agency of the United States.

(8) Publication by Attorney General. – Not later than 60 days after the date of the enactment of this Act, the Attorney General shall prepare and publish in the Federal Register a concise summary of the provisions of this title, including a statement of the liability under this title of a person trafficking in confiscated property, and the remedies available to United States nationals under this title.

(b) Amount in Controversy. – An action may be brought under this section by a United States national only where the amount in controversy exceeds the sum or value of \$50,000, exclusive of interest, costs, and attorneys' fees. In calculating \$50,000 for purposes of the preceding sentence, the applicable amount under subclause (I), (II), or (III) of subsection (a)(1)(A)(i) may not be tripled as provided in subsection (a)(3).

(c) Procedural Requirements. –

(1) In General. – Except as provided in this title, the provisions of title 28, United States Code, and the rules of the courts of the United States apply to actions under this section to the same extent as such provisions and rules apply to any other action brought under section 1331 of title 28, United States Code.

(2) Service of Process. – In an action under this section, service of process on an agency or instrumentality of a foreign state in the conduct of a commercial activity, or against individuals acting under color of law, shall be made in accordance with section 1608 of title 28, United States Code.

(d) Enforceability of Judgments Against Cuban Government. – In an action brought under this section, any judgment against an agency or instrumentality of the Cuban Government shall not be enforceable against an agency or instrumentality of either a transition government in Cuba or a democratically elected government in Cuba.

(e) Certain Property Immune From Execution. – Section 1611 of title 28, United States Code, is amended by adding at the end the following new subsection:

“(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.”

(f) Election of Remedies. –

(1) Election. – Subject to paragraph (2) –

(A) any United States national that brings an action under this section may not bring any other civil action or proceeding under the common law, Federal law, or the law of any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States, that seeks monetary or nonmonetary compensation by reason of the same subject matter; and

(B) any person who brings, under the common law or any provision of law other than this section, a civil action or proceeding for monetary or nonmonetary compensation arising out of a claim for which an action would otherwise be cognizable under this section may not bring an action under this section on that claim.

(2) Treatment of Certified Claimants. –

(A) In the case of any United States national that brings an action under this section based on a claim certified under title V of the International Claims Settlement Act of 1949 –

(i) if the recovery in the action is equal to or greater than the amount of the certified claim, the United States national may not receive payment on the claim under any agreement entered into between the United States and Cuba settling claims covered by such title, and such national shall be deemed to have discharged the United States from any further responsibility to represent the United States national with respect to that claim;

(ii) if the recovery in the action is less than the amount of the certified claim, the United States national may receive payment under a claims agreement described in clause (i) but only to the extent of the difference between the amount of the recovery and the amount of the certified claim; and

(iii) if there is no recovery in the action, the United States national may receive payment on the certified claim under a claims agreement described in clause (i) to the same extent as any certified claimant who does not bring an action under this section.

(B) In the event some or all actions brought under this section are consolidated by judicial or other action in such manner as to create a pool of assets available to satisfy the claims in such actions, including a pool of assets in a proceeding in bankruptcy, every claimant whose claim in an action so consolidated was certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 shall be entitled to payment in full of its claim from the assets in such pool before

any payment is made from the assets in such pool with respect to any claim not so certified.

(g) Deposit of Excess Payments by Cuba Under Claims Agreement. – Any amounts paid by Cuba under any agreement entered into between the United States and Cuba settling certified claims under title V of the International Claims Settlement Act of 1949 that are in excess of the payments made on such certified claims after the application of subsection (f) shall be deposited into the United States Treasury.

(h) Termination of Rights. –

(1) In general. – All rights created under this section to bring an action for money damages with respect to property confiscated by the Cuban Government –

(A) may be suspended under section 204(a); and (B) shall cease upon transmittal to the Congress of a determination of the President under section 203(c)(3) that a democratically elected government in Cuba is in power.

(2) Pending Suits. – The suspension or termination of rights under paragraph (1) shall not affect suits commenced before the date of such suspension or termination (as the case may be), and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if the suspension or termination had not occurred.

(i) Imposition of Filing Fees. – The Judicial Conference of the United States shall establish a uniform fee that shall be imposed upon the plaintiff or plaintiffs in each action brought under this section. The fee should be established at a level sufficient to recover the costs to the courts of actions brought under this section. The fee under this subsection is in addition to any other fees imposed under title 28, United States Code.

Sec. 303. [22 U.S.C. 6083] – Proof of Ownership of Claims to Confiscated Property.

(a) Evidence of Ownership. –

(1) Conclusiveness of Certified Claims. – In any action brought under this title, the court shall accept as conclusive proof of ownership of an interest in property a certification of a claim to ownership of that interest that has been made by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following).

(2) Claims Not Certified. – If in an action under this title a claim has not been so certified by the Foreign Claims Settlement Commission, the court may appoint a special master, including the Foreign Claims Settlement Commission, to make determinations regarding the amount and ownership of the claim. Such determinations are only for evidentiary purposes in civil actions brought under this

title and do not constitute certifications under title V of the International Claims Settlement Act of 1949.

(3) Effect of Determinations of Foreign or International Entities. – In determining the amount or ownership of a claim in an action under this title, the court shall not accept as conclusive evidence any findings, orders, judgments, or decrees from administrative agencies or courts of foreign countries or international organizations that declare the value of or invalidate the claim, unless the declaration of value or invalidation was found pursuant to binding international arbitration to which the United States or the claimant submitted the claim.

(b) Amendment of the International Claims Settlement Act of 1949. – Title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following) is amended by adding at the end the following new section: * * *

(c) Rule of Construction. – Nothing in this Act or in section 514 of the International Claims Settlement Act of 1949, as added by subsection (b), shall be construed –

(1) to require or otherwise authorize the claims of Cuban nationals who became United States citizens after their property was confiscated to be included in the claims certified to the Secretary of State by the Foreign Claims Settlement Commission for purposes of future negotiation and espousal of claims with a friendly government in Cuba when diplomatic relations are restored; or

(2) as superseding, amending, or otherwise altering certifications that have been made under title V of the International Claims Settlement Act of 1949 before the date of the enactment of this Act.

Sec. 304. [Exclusivity of Foreign Claims Settlement Commission Certification Procedure] –

Title V of the International Claims Settlement Act of 1949 (22 U.S.C. 1643 and following), as amended by section 303, is further amended by adding at the end the following new section: * * *

Sec. 305. [[22 U.S.C. 6084] Limitation of Actions.

An action under section 302 may not be brought more than 2 years after the trafficking giving rise to the action has ceased to occur.

Sec. 306. [22 U.S.C. 6085] Effective Date.

(a) In General. – Subject to subsections (b) and (c), this title and the amendments made by this title shall take effect on August 1, 1996.

(b) Suspension Authority. –

- (1) Suspension Authority. – The President may suspend the effective date under subsection (a) for a period of not more than 6 months if the President determines and reports in writing to the appropriate congressional committees at least 15 days before such effective date that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.
- (2) Additional Suspensions. – The President may suspend the effective date under subsection (a) for additional periods of not more than 6 months each, each of which shall begin on the day after the last day of the period during which a suspension is in effect under this subsection, if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the date on which the additional suspension is to begin that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.
- (c) Other Authorities. –
- (1) Suspension. – After this title and the amendments of this title have taken effect –
- (A) no person shall acquire a property interest in any potential or pending action under this title; and
- (B) the President may suspend the right to bring an action under this title with respect to confiscated property for a period of not more than 6 months if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the suspension takes effect that such suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.
- (2) Additional suspensions. – The President may suspend the right to bring an action under this title for additional periods of not more than 6 months each, each of which shall begin on the day after the last day of the period during which a suspension is in effect under this subsection, if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the date on which the additional suspension is to begin that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.
- (3) Pending suits. – The suspensions of actions under paragraph (1) shall not affect suits commenced before the date of such suspension, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if the suspension had not occurred.
- (d) Rescission of Suspension. – The President may rescind any suspension made under subsection (b) or (c) upon reporting to the appropriate congressional committees that doing so will expedite a transition to democracy in Cuba.

Title IV – Exclusion of Certain Aliens

Sec. 401. [22 U.S.C. 6091] – Exclusion from the United States of Aliens Who Have Confiscated Property of United States Nationals or Who Traffic in Such Property.

(a) Grounds for Exclusion. – The Secretary of State shall deny a visa to, and the Attorney General shall exclude from the United States, any alien who the Secretary of State determines is a person who, after the date of the enactment of this Act –

(1) has confiscated, or has directed or overseen the confiscation of, property a claim to which is owned by a United States national, or converts or has converted for personal gain confiscated property, a claim to which is owned by a United States national;

(2) traffics in confiscated property, a claim to which is owned by a United States national;

(3) is a corporate officer, principal, or shareholder with a controlling interest of an entity which has been involved in the confiscation of property or trafficking in confiscated property, a claim to which is owned by a United States national; or

(4) is a spouse, minor child, or agent of a person excludable under paragraph (1), (2), or (3).

(b) Definitions. – As used in this section, the following terms have the following meanings:

(1) Confiscated; Confiscation. – The terms “confiscated” and “confiscation” refer to –

(A) the nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property –

(i) without the property having been returned or adequate and effective compensation provided; or

(ii) without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and

(B) the repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay—

(i) a debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;

(ii) a debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or

(iii) a debt which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

(2) Traffics. –

(A) Except as provided in subparagraph (B), a person “traffics” in confiscated property if that person knowingly and intentionally –

(i)

(I) transfers, distributes, dispenses, brokers, or otherwise disposes of confiscated property,

(II) purchases, receives, obtains control of, or otherwise acquires confiscated property, or

(III) improves (other than for routine maintenance), invests in (by contribution of funds or anything of value, other than for routine maintenance), or begins after the date of the enactment of this Act to manage, lease, possess, use, or hold an interest in confiscated property,

(ii) enters into a commercial arrangement using or otherwise benefiting from confiscated property, or

(iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person, without the authorization of any United States national who holds a claim to the property.

(B) The term “traffics” does not include –

(i) the delivery of international telecommunication signals to Cuba;

(ii) the trading or holding of securities publicly traded or held, unless the trading is with or by a person determined by the Secretary of the Treasury to be a specially designated national;

(iii) transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or

(iv) transactions and uses of property by a person who is both a citizen of Cuba and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

(c) Exemption. – This section shall not apply where the Secretary of State finds, on a case by case basis, that the entry into the United States of the person who would otherwise be excluded under this section is necessary for medical reasons or for purposes of litigation of an action under title III.

(d) Effective Date. –

(1) In General. – This section applies to aliens seeking to enter the United States on or after the date of the enactment of this Act.

(2) Trafficking. – This section applies only with respect to acts within the meaning of “traffics” that occur on or after the date of the enactment of this Act.

Document

International Development Association Act

Date: June 30, 1960

Public Law 86-565 [H.R. 11001], 74 Stat. 293, approved June 30, 1960, as amended

An Act

To provide for the participation of the United States in the International Development Association.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Short Title

Sec. 1. – This Act may be cited as the “International Development Association Act”.

* * * * *

Sec. 12. [22 U.S.C. 284j] – The President shall instruct the United States Executive Directors of the International Bank for Reconstruction and Development and the International Development Association to vote against any loan or other utilization of the funds of the Bank and the Association for the benefit of any country which has –

(1) nationalized or expropriated or seized ownership or control of property owned by any United States citizen or by any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens;

(2) taken steps to repudiate or nullify existing contracts or agreements with any United States citizen or any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens; or

(3) imposed or enforced discriminatory taxes or other exactions, or restrictive maintenance or operational conditions, or has taken other actions, which have the effect of nationalizing, expropriating, or otherwise seizing ownership or control of property so owned; unless the President determines that

(A) an arrangement for prompt, adequate, and effective compensation has been made,

(B) the parties have submitted the dispute to arbitration under the rules of the Convention for the Settlement of Investment Disputes, or

(C) good faith negotiations are in progress aimed at providing prompt, adequate, and effective compensation under the applicable principles of international law.

Document

Inter-American Development Bank Act

Date: August 7, 1959

Public Law 86-147 [S. 1928], 73 Stat. 299, approved August 7, 1959, as amended

An Act

To provide for the participation of the United States in the Inter-American Development Bank.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Short Title

Sec. 1. – This Act may be cited as the “Inter-American Development Bank Act”.

* * * * *

Sec. 21. [22 U.S.C. 283r] – The President shall instruct the United States Executive Director of the Bank to vote against any loan or other utilization of the funds of the Bank for the benefit of any country which has –

(1) nationalized or expropriated or seized ownership or control of property owned by any United States citizen or by any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens;

(2) take steps to repudiate or nullify existing contracts or agreements with any United States citizen or any corporation, partnership, or association not less than 50 per centum of which is beneficially owned by United States citizens; or

(3) imposed or enforced discriminatory taxes or other exactions, or restrictive maintenance or operational conditions, or has taken other actions, which have the effect of nationalizing, expropriating, or otherwise seizing ownership or control of property so owned; unless the President determines that

(A) an arrangement for prompt, adequate, and effective compensation has been made,

(B) the parties have submitted the dispute to arbitration under the rules of the Convention for the Settlement of Investment Disputes, or

(C) good faith negotiations are in progress aimed at providing prompt, adequate, and effective compensation under the applicable principles of international law.

Document

Bretton Woods Agreements Act Amendments, 1978

Date: October 10, 1978

Public Law 95-435 [H.R. 9214], 92 Stat. 1051, approved October 10, 1978, as amended

An Act

To amend the Bretton Woods Agreements Act to authorize the United States to participate in the Supplementary Financing Facility of the International Monetary Fund.

* * * * *

Sec. 6. [22 U.S.C. 286e-11] – The Secretary of the Treasury shall instruct the Executive Director of the United States to the International Monetary Fund to work in opposition to any extension of financial or technical assistance by the Supplemental Financing Facility or by any other agency or facility of such Fund to any country the government of which –

(1) permits entry into the territory of such country to any person who has committed an act of international terrorism, including any act of aircraft hijacking, or otherwise supports, encourages, or harbors such person; or

(2) fails to take appropriate measures to prevent any such person from committing any such act outside the territory of such country.

* * * * *

Document

Tariff Classification Act of 1962

Date: May 24, 1962

Public Law 87-456 [Tariff Classification Act of 1962; H.R. 10607], 76 Stat. 72, approved May 24, 1962, 19 U.S.C. 1351 note

An Act

To amend the Tariff Act of 1930 and certain related laws to provide for the restatement of the tariff classification provisions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

This Act may be cited as the “Tariff Classification Act of 1962”.

* * * * *

Title IV – Tariff Treatment of Cuban Products

Sec. 401. –

(a) Cuba is hereby declared to be a nation described in section 5 of the Trade Agreements Extension Act of 1951, as amended (19 U.S.C. 1362, relating to imports from nations and areas dominated or controlled by the foreign government or foreign organization controlling the world Communist movement). Articles which are –

(1) the growth, produce, or manufacture of Cuba, and

(2) imported on or after the date of enactment of this Act (May 24, 1962), shall be denied the benefits of concessions contained in any trade agreement entered into under the authority of section 350 of the Tariff Act of 1930, as amended (19 U.S.C. 1351).

(b) Nothing in subsection (a) shall affect the rates of duty or the customs or excise treatment of articles the growth, produce, or manufacture of any country other than Cuba.

(c) Subsection (a) shall not apply on or after the date on which the President proclaims that he has determined that Cuba is no longer dominated or controlled by the foreign government or foreign organization controlling the world Communist movement.

(d) The Act of December 17, 1903 (19 U.S.C. 124, 125), and section 316 of the Tariff Act of 1930, as amended (19 U.S.C. 1316), both relating to the implementation of the treaty with

Cuba concluded on December 11, 1902, shall not apply during the period during which subsection (a) applies.

* * * * *

Document

Trade Act of 1974

Date: January 3, 1975

Public Law 93-618 [H.R. 10710], 88 Stat. 1978, approved January 3, 1975, as amended

An Act

To promote the development of an open, nondiscriminatory, and fair world economic system, to stimulate fair and free competition between the United States and foreign nations, to foster the economic growth of, and full employment in, the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the “Trade Act of 1974”.

* * * * *

Title IV – Trade Relations with Countries Not Receiving Nondiscriminatory Treatment

Chapter 1 – Trade Relations with Certain Countries

Sec. 401. [19 U.S.C. 2431] – Exception of the Products of Certain Countries or Areas.

Except as otherwise provided in this title, the President shall continue to deny nondiscriminatory treatment to the products of any country, the products of which were not eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of the enactment of this Act.

* * * * *

Sec. 406. [19 U.S.C. 2436] – Market Disruption.

(a)

(1) Upon the filing of a petition by an entity described in section 202(a),⁹ upon request of the President or the United States Trade Representative, upon resolution of either the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, or on its own motion, the International Trade Commission (hereafter in this section referred to as the “Commission”) shall promptly make an investigation to determine, with respect to imports of an article

⁹ 19 U.S.C. 2252, the section pertains to investigations, determinations, and recommendations by the Commission for relief from injury caused by import competition.

which is the product of a Communist country, whether market disruption exists with respect to an article produced by a domestic industry.

(2) The provisions of subsections (a)(3), (b)(4), and (c)(4) of section 202 shall apply with respect to investigations by the Commission under paragraph (1).

(3) The Commission shall report to the President its determination with respect to each investigation under paragraph (1) and the basis therefor and shall include in each report any dissenting or separate views. If the Commission finds, as a result of its investigation, that market disruption exists with respect to an article produced by a domestic industry, it shall find the amount of the increase in, or imposition of, any duty or other import restriction on such article which is necessary to prevent or remedy such market disruption and shall include such finding in its report to the President. The Commission shall furnish to the President a transcript of the hearings and any briefs which may have been submitted in connection with each investigation.

(4) The report of the Commission of its determination with respect to an investigation under paragraph (1) shall be made at the earliest practicable time, but not later than 3 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the President, the Commission shall also promptly make public such report (with exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

(b) With respect to any affirmative determination of the Commission under subsection (a) –

(1) such determination shall be treated as an affirmative determination made under section 201(b) of this Act (as in effect on the day before the date of the enactment of the Omnibus Trade and Competitiveness Act of 1988); and

(2) sections 202 and 203¹⁰ of this Act (as in effect on the day before the date of the enactment of such Act of 1988), rather than the provisions of chapter 1 of title II of this Act as amended by section 1401 of such Act of 1988, shall apply with respect to the taking of subsequent action, if any, by the President in response to such affirmative determination; except that –

(A) the President may take action under such sections 202 and 203 only with respect to imports from the country or countries involved of the article with respect to which the affirmative determination was made; and

(B) if such action consists of, or includes, an orderly marketing agreement, such agreement shall be entered into within 60 days after the import relief determination date.

¹⁰ 19 U.S.C. 2253, the sections relates to Presidential action after a determination is made finding import injury.

(c) If, at any time, the President finds that there are reasonable grounds to believe, with respect to imports of an article which is the product of a Communist country, that market disruption exists with respect to an article produced by a domestic industry, he shall request the Commission to initiate an investigation under subsection (a). If the President further finds that emergency action is necessary, he may take action under sections 202 and 203 referred to in subsection (b) as if an affirmative determination of the Commission had been made under subsection (a). Any action taken by the President under the preceding sentence shall cease to apply

(1) if a negative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the Commission's report of such determination is submitted to the President, or

(2) if an affirmative determination is made by the Commission under subsection (a) with respect to imports of such article, on the day on which the action taken by the President pursuant to such determination becomes effective.

(d)

(1) A petition may be filed with the President by an entity described in section 202(a) requesting the President to initiate consultations provided for by the safeguard arrangements of any agreement entered into under section 405 with respect to imports of an article which is the product of the country which is the other party to such agreement.

(2) If the President determines that there are reasonable grounds to believe, with respect to imports of such article, that market disruption exists with respect to an article produced by a domestic industry, he shall initiate consultations with such country with respect to such imports.

(e) For purposes of this section –

(1) The term “Communist country” means any country dominated or controlled by communism.

(2)

(A) Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

(B) For purposes of subparagraph (A):

(i) Imports of an article shall be considered to be increasing rapidly if there has been a significant increase in such imports (either actual or relative to domestic production) during a recent period of time.

(ii) The term “significant cause” refers to a cause which contributes significantly to the material injury of the domestic industry, but need not be equal to or greater than any other cause.

(C) The Commission, in determining whether market disruption exists, shall consider, among other factors –

(i) the volume of imports of the merchandise which is the subject of the investigation;

(ii) the effect of imports of the merchandise on prices in the United States for like or directly competitive articles;

(iii) the impact of imports of such merchandise on domestic producers of like or directly competitive articles; and

(iv) evidence of disruptive pricing practices, or other efforts to unfairly manage trade patterns.

* * * * *

Title V – Generalized System of Preferences

Sec. 501. [19 U.S.C. 2461] – Authority to Extend Preferences.

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this title. In taking any such action, the President shall have due regard for –

(1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;

(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

(3) the anticipated impact of such action on United States producers of like or directly competitive products; and

(4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

Sec. 502. [19 U.S.C. 2462] – Designation of Beneficiary Developing Countries.

(a) Authority to Designate Countries. –

(1) Beneficiary Developing Countries. – The President is authorized to designate countries as beneficiary developing countries for purposes of this title.

(2) Least-Developed Beneficiary Developing Countries. – The President is authorized to designate any beneficiary developing country as a least-developed beneficiary developing country for purposes of this title, based on the considerations in section 501 and subsection (c) of this section.

(b) Countries Ineligible for Designation. –

(1) Specific Countries. – The following countries may not be designated as beneficiary developing countries for purposes of this title:

(A) Australia.

(B) Canada.

(C) European Union member states.

(D) Iceland.

(E) Japan.

(F) Monaco.

(G) New Zealand.

(H) Norway.

(I) Switzerland.

(2) Other Bases for Ineligibility. – The President shall not designate any country a beneficiary developing country under this title if any of the following applies:

(A) Such country is a Communist country, unless –

(i) the products of such country receive nondiscriminatory treatment,

(ii) such country is a WTO Member (as such term is defined in section 2(10) of the Uruguay Round Agreements Act) (19 U.S.C. 3501(10)) and a member of the International Monetary Fund, and

(iii) such country is not dominated or controlled by international communism.

(B) Such country is a party to an arrangement of countries and participates in any action pursuant to such arrangement, the effect of which is –

(i) to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level, and

(ii) to cause serious disruption of the world economy.

(C) Such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce.

(D)

(i) Such country –

(I) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(II) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or

(III) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless clause (ii) applies.

(ii) This clause applies if the President determines that –

(I) prompt, adequate, and effective compensation has been or is being made to the citizen, corporation, partnership, or association referred to in clause (i),

(II) good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or the country described in clause (i) is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(III) a dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and the President promptly furnishes a copy of such determination to the Senate and House of Representatives.

(E) Such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

(F) Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism or the Secretary of State makes a determination with respect to such country under section 6(j)(1)(A) of the Export Administration Act of 1979.

(G) Such country has not implemented its commitments to eliminate the worst forms of child labor.

Subparagraphs (D), (E), (F), (G), and (H) (to the extent described in section 507(6)(D)) shall not prevent the designation of any country as a beneficiary developing country under this title if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with the reasons therefor.

(c) Factors Affecting Country Designation. – In determining whether to designate any country as a beneficiary developing country under this title, the President shall take into account –

(1) an expression by such country of its desire to be so designated;

- (2) the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the President deems appropriate;
 - (3) whether or not other major developed countries are extending generalized preferential tariff treatment to such country;
 - (4) the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;
 - (5) the extent to which such country is providing adequate and effective protection of intellectual property rights;
 - (6) the extent to which such country has taken action to –
 - (A) reduce trade distorting investment practices and policies (including export performance requirements); and
 - (B) reduce or eliminate barriers to trade in services; and
 - (7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.
- (d) Withdrawal, Suspension, or Limitation of Country Designation. –
- (1) In General. – The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under this title with respect to any country. In taking any action under this subsection, the President shall consider the factors set forth in section 501 and subsection (c) of this section.
 - (2) Changed Circumstances. – The President shall, after complying with the requirements of subsection (f)(2), withdraw or suspend the designation of any country as a beneficiary developing country if, after such designation, the President determines that as the result of changed circumstances such country would be barred from designation as a beneficiary developing country under subsection (b)(2). Such country shall cease to be a beneficiary developing country on the day on which the President issues an Executive order or Presidential proclamation revoking the designation of such country under this title.
 - (3) Advice to Congress. – The President shall, as necessary, advise the Congress on the application of section 501 and subsection (c) of this section, and the actions the President has taken to withdraw, to suspend, or to limit the application of duty-free

treatment with respect to any country which has failed to adequately take the actions described in subsection (c).

(e) **Mandatory Graduation of Beneficiary Developing Countries.** – If the President determines that a beneficiary developing country has become a “high income” country, as defined by the official statistics of the International Bank for Reconstruction and Development, then the President shall terminate the designation of such country as a beneficiary developing country for purposes of this title, effective on January 1 of the second year following the year in which such determination is made.

(f) **Congressional Notification.** –

(1) **Notification of Designation.** –

(A) **In General.** – Before the President designates any country as a beneficiary developing country under this title, the President shall notify the Congress of the President’s intention to make such designation, together with the considerations entering into such decision.

(B) **Designation as Least-Developed Beneficiary Developing Country.** – At least 60 days before the President designates any country as a least-developed beneficiary developing country, the President shall notify the Congress of the President’s intention to make such designation.

(2) **Notification of Termination.** – If the President has designated any country as a beneficiary developing country under this title, the President shall not terminate such designation unless, at least 60 days before such termination, the President has notified the Congress and has notified such country of the President’s intention to terminate such designation, together with the considerations entering into such decision.

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Document

Export Administration Act of 1979

Date: September 29, 1979

Public Law 96-72 [S. 737], 93 Stat. 503, approved September 29, 1979, as amended

An Act

To provide authority to regulate exports, to improve the efficiency of export regulation, and to minimize interference with the ability to engage in commerce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Short Title

Sec. 1. [50 U.S.C. app. 2401 note] – This Act may be cited as the “Export Administration Act of 1979”.

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Foreign Policy Controls

Sec. 6. [50 U.S.C. app. 2405] –

* * * * *

(j)¹¹ Countries Supporting International Terrorism. –

(1) A validated license shall be required for the export of goods or technology to a country if the Secretary of State has made the following determinations:

(A) The government of such country has repeatedly provided support for acts of international terrorism.

¹¹ The Secretary of State is required to issue a list of countries found to support acts of international terrorism under sec. 6(j) only when that list of countries changes. Most recently, in Department of State Public Notice 1878 of August 12, 1993, (58 F.R. 52523), the Secretary of State stated: “In accordance with section 6(j) of the Export Administration Act (50 U.S.C. App. 2405(j)), I hereby determine that Sudan is a country which has repeatedly provided support for acts of international terrorism. The list of 6(j) countries as of this time therefore includes Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.” The Secretary added Cuba to the sec. 6(j) list, effective March 1, 1982 (reflected in a published “clarification of foreign policy export controls,” issued by the Office of Export Administration, Department of Commerce; 47 F.R. 16623).

(B) The export of such goods or technology could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.

(2) The Secretary and the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before issuing any validated license required by paragraph (1).

(3) Each determination of the Secretary of State under paragraph (1)(A), including each determination in effect on the date of the enactment of the Antiterrorism and Arms Export Amendments Act of 1989, shall be published in the Federal Register.

(4) A determination made by the Secretary of State under paragraph (1)(A) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs and the chairman of the Committee on Foreign Relations of the Senate –

(A) before the proposed rescission would take effect, a report certifying that –

(i) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(ii) that government is not supporting acts of international terrorism; and

(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

(B) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that –

(i) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

(5) The Secretary and the Secretary of State shall include in the notification required by paragraph (2) –

(A) a detailed description of the goods or services to be offered, including a brief description of the capabilities of any article for which a license to export is sought;

(B) the reasons why the foreign country or international organization to which the export or transfer is proposed to be made needs the goods or services which are the subject of such export or transfer and a description of the manner in which such country or organization intends to use such articles, services, or design and construction services;

(C) the reasons why the proposed export or transfer is in the national interest of the United States;

(D) an analysis of the impact of the proposed export or transfer on the military capabilities of the foreign country or international organization to which such export or transfer would be made;

(E) an analysis of the manner in which the proposed export would affect the relative military strengths of countries in the region to which the goods or services which are the subject of such export would be delivered and whether other countries in the region have comparable kinds and amounts of articles, services, or design and construction services; and

(F) an analysis of the impact of the proposed export or transfer on the United States relations with the countries in the region to which the goods or services which are the subject of such export would be delivered.

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Document

Food Security Act of 1985

Date: December 23, 1985

Public Law 99-198 [H.R. 2100], 99 Stat. 1354, approved December 23, 1985, as amended

An Act

To extend and revise agricultural price support and related programs, to provide for agricultural export, resource conservation, farm credit, and agricultural research and related programs, to continue food assistance to low-income persons, to ensure consumers an abundance of food and fiber at reasonable prices, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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Title IX—Sugar

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Prevention of Sugar Loan Forfeitures

Sec. 902. [7 U.S.C. 1446 note] – * * *

(c) Beginning with the quota year for sugar imports which begins after the 1985/1986 quota year, the President shall not allocate any of the sugar import quota under such provisions to any country that is a net importer of sugar derived from sugarcane or sugar beets unless the appropriate officials of the country verify to the President that that country does not import for reexport to the United States any sugar produced in Cuba.

(2)

(A) Effective 90 days after the date of enactment of this paragraph and by August 1 of each year thereafter through 1995, the Secretary of Agriculture shall report to the President and Congress on the extent, if any, of sugar imports from Cuba by the countries described in paragraph (1).

(B) Commencing with the quota year for sugar imports after the 1990-1991 quota year, the President shall report to Congress by January 1, on –

(i) the identity of the countries that are net importers of sugar derived from sugarcane or sugar beets who have a quota for the current quota year;

(ii) the identity of such countries who have verified that they do not import for reexport to the United States any sugar produced in Cuba; and

(iii) the action, if any, taken by the President with respect to countries reported by the Secretary of Agriculture as net importers of sugar derived from sugarcane or sugar beets who imported the sugar from Cuba who reexported the sugar to the United States during the previous quota year.

* * * * *

Document

Trade Sanctions Reform and Export Enhancement Act of 2000

Date: October 28, 2000

Title IX of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001[[Public Law 106-387; H.R. 4461], 114 Stat. 1549, approved October 28, 2000

An Act

Making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2001, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

Title IX – A Trade Sanctions Reform and Export Enhancement

Sec. 901. – Short Title

This title may be cited as the “Trade Sanctions Reform and Export Enhancement Act of 2000”.

Sec. 902. – Definitions.

In this title:

- (1) Agricultural Commodity. – The term “agricultural commodity” has the meaning given the term in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).
- (2) Agricultural Program. – The term “agricultural program” means –
 - (A) any program administered under the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.);
 - (B) any program administered under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431);
 - (C) any program administered under the Agricultural Trade Act of 1978 (7 U.S.C. 5601 et seq.);

(D) the dairy export incentive program administered under section 153 of the Food Security Act of 1985 (15 U.S.C. 713a-14);

(E) any commercial export sale of agricultural commodities; or

(F) any export financing (including credits or credit guarantees) provided by the United States Government for agricultural commodities.

(3) Joint Resolution. – The term “joint resolution” means –

(A) in the case of section 903(a)(1), only a joint resolution introduced within 10 session days of Congress after the date on which the report of the President under section 903(a)(1) is received by Congress, the matter after the resolving clause of which is as follows: “That Congress approves the report of the President pursuant to section 903(a)(1) of the Trade Sanctions Reform and Export Enhancement Act of 2000, transmitted on _____.”, with the blank completed with the appropriate date; and

(B) in the case of section 906(1), only a joint resolution introduced within 10 session days of Congress after the date on which the report of the President under section 906(2) is received by Congress, the matter after the resolving clause of which is as follows: “That Congress approves the report of the President pursuant to section 906(1) of the Trade Sanctions Reform and Export Enhancement Act of 2000, transmitted on _____.”, with the blank completed with the appropriate date.

(4) Medical Device. – The term “medical device” has the meaning given the term “device” in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(5) Medicine. – The term “medicine” has the meaning given the term “drug” in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(6) Unilateral Agricultural Sanction. – The term “unilateral agricultural sanction” means any prohibition, restriction, or condition on carrying out an agricultural program with respect to a foreign country or foreign entity that is imposed by the United States for reasons of foreign policy or national security, except in a case in which the United States imposes the measure pursuant to –

(A) a multilateral regime and the other member countries of that regime have agreed to impose substantially equivalent measures; or

(B) a mandatory decision of the United Nations Security Council.

(7) Unilateral Medical Sanction. – The term “unilateral medical sanction” means any prohibition, restriction, or condition on exports of, or the provision of assistance consisting of, medicine or a medical device with respect to a foreign country or foreign entity that is imposed by the United States for reasons of foreign policy or national security, except in a case in which the United States imposes the measure pursuant to –

(A) a multilateral regime and the other member countries of that regime have agreed to impose substantially equivalent measures; or

(B) a mandatory decision of the United Nations Security Council.

Sec. 903. – Restriction.

(a) New Sanctions. – Except as provided in sections 904 and 905 and notwithstanding any other provision of law, the President may not impose a unilateral agricultural sanction or unilateral medical sanction against a foreign country or foreign entity, unless –

(1) not later than 60 days before the sanction is proposed to be imposed, the President submits a report to Congress that –

(A) describes the activity proposed to be prohibited, restricted, or conditioned; and

(B) describes the actions by the foreign country or foreign entity that justify the sanction; and

(2) there is enacted into law a joint resolution stating the approval of Congress for the report submitted under paragraph (1).

(b) Existing Sanctions. – The President shall terminate any unilateral agricultural sanction or unilateral medical sanction that is in effect as of the date of enactment of this Act.

Sec. 904. – Exceptions.

Section 903 shall not affect any authority or requirement to impose (or continue to impose) a sanction referred to in section 903 –

(1) against a foreign country or foreign entity –

(A) pursuant to a declaration of war against the country or entity;

(B) pursuant to specific statutory authorization for the use of the Armed Forces of the United States against the country or entity;

(C) against which the Armed Forces of the United States are involved in hostilities; or

(D) where imminent involvement by the Armed Forces of the United States in hostilities against the country or entity is clearly indicated by the circumstances; or (2) to the extent that the sanction would prohibit, restrict, or condition the provision or use of any agricultural commodity, medicine, or medical device that is –

(i) controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778);

(ii) controlled on any control list established under the Export Administration Act of 1979 or any successor statute (50 U.S.C. App. 2401 et seq.); or

(iii) used to facilitate the development or production of a chemical or biological weapon or weapon of mass destruction.

Sec. 905. – Termination of Sanctions.

Any unilateral agricultural sanction or unilateral medical sanction that is imposed pursuant to the procedures described in section 903(a) shall terminate not later than 2 years after the date on which the sanction became effective unless –

(1) not later than 60 days before the date of termination of the sanction, the President submits to Congress a report containing –

(A) the recommendation of the President for the continuation of the sanction for an additional period of not to exceed 2 years; and

(B) the request of the President for approval by Congress of the recommendation; and

(2) there is enacted into law a joint resolution stating the approval of Congress for the report submitted under paragraph (1).

Sec. 906. – State Sponsors of International Terrorism.

(a) Requirement. –

(1) In General. – Notwithstanding any other provision of this title (other than section 904), the export of agricultural commodities, medicine, or medical devices to Cuba or to the government of a country that has been determined by the Secretary of State to have repeatedly provided support for acts of international terrorism under section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), section 6(j)(1)

of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)), or to any other entity in such a country, shall only be made pursuant to 1-year licenses issued by the United States Government for contracts entered into during the 1-year period of the license and shipped within the 12-month period beginning on the date of the signing of the contract, except that the requirements of such 1-year licenses shall be no more restrictive than license exceptions administered by the Department of Commerce or general licenses administered by the Department of the Treasury, except that procedures shall be in place to deny licenses for exports to any entity within such country promoting international terrorism.

(2) Exception. – Paragraph (1) shall not apply with respect to the export of agricultural commodities, medicine, or medical devices to the Government of Syria or to the Government of North Korea.

(b) Quarterly Reports. – The applicable department or agency of the Federal Government shall submit to the appropriate congressional committees on a quarterly basis a report on any activities undertaken under subsection (a)(1) during the preceding calendar quarter.

(c) Biennial Reports. – Not later than 2 years after the date of enactment of this Act, and every 2 years thereafter, the applicable department or agency of the Federal Government shall submit a report to the appropriate congressional committees on the operation of the licensing system under this section for the preceding 2-year period, including –

- (1) the number and types of licenses applied for;
- (2) the number and types of licenses approved;
- (3) the average amount of time elapsed from the date of filing of a license application until the date of its approval;
- (4) the extent to which the licensing procedures were effectively implemented; and
- (5) a description of comments received from interested parties about the extent to which the licensing procedures were effective, after the applicable department or agency holds a public 30-day comment period.

Sec. 907. Congressional Procedures.

(a) Referral of Report. – A report described in section 903(a)(1) or 905(1) shall be referred to the appropriate committee or committees of the House of Representatives and to the appropriate committee or committees of the Senate.

(b) Referral of Joint Resolution. –

(1) In General. – A joint resolution introduced in the Senate shall be referred to the Committee on Foreign Relations, and a joint resolution introduced in the House of Representatives shall be referred to the Committee on International Relations.

(2) Reporting Date. – A joint resolution referred to in paragraph (1) may not be reported before the eighth session day of Congress after the introduction of the joint resolution.

Sec. 908. Prohibition on United States Assistance and Financing.

(a) Prohibition on United States Assistance. –

(1) In General. – Notwithstanding any other provision of law, no United States Government assistance, including United States foreign assistance, United States export assistance, and any United States credit or guarantees shall be available for exports to Cuba or for commercial exports to Iran, Libya, North Korea, or Sudan.

(2) Rule of Construction. – Nothing in paragraph (1) shall be construed to alter, modify, or otherwise affect the provisions of section 109 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6039) or any other provision of law relating to Cuba in effect on the day before the date of the enactment of this Act.

(3) Waiver. – The President may waive the application of paragraph (1) with respect to Iran, Libya, North Korea, and Sudan to the degree the President determines that it is in the national security interest of the United States to do so, or for humanitarian reasons.

(b) Prohibition on Financing of Agricultural Sales to Cuba. –

(1) In General. – No United States person may provide payment or financing terms for sales of agricultural commodities or products to Cuba or any person in Cuba, except in accordance with the following terms (notwithstanding part 515 of title 31, Code of Federal Regulations, or any other provision of law):

(A) Payment of cash in advance.

(B) Financing by third country financial institutions (excluding United States persons or Government of Cuba entities), except that such financing may be confirmed or advised by a United States financial institution.

Nothing in this paragraph authorizes payment terms or trade financing involving a debit or credit to an account of a person located in Cuba or of the Government of Cuba maintained on the books of a United States depository institution.

(2) Penalties. – Any private person or entity that violates paragraph (1) shall be subject to the penalties provided in the Trading With the Enemy Act for violations under that Act.

(3) Administration and enforcement. – The President shall issue such regulations as are necessary to carry out this section, except that the President, in lieu of issuing new regulations, may apply any regulations in effect on the date of the enactment of this Act, pursuant to the Trading With the Enemy Act, with respect to the conduct prohibited in paragraph (1).

(4) Definitions. – In this subsection –

(A) the term “financing” includes any loan or extension of credit;

(B) the term “United States depository institution” means any entity (including its foreign branches or subsidiaries) organized under the laws of any jurisdiction within the United States, or any agency, office or branch located in the United States of a foreign entity, that is engaged primarily in the business of banking (including a bank, savings bank, savings association, credit union, trust company, or United States bank holding company); and

(C) the term “United States person” means the Federal Government, any State or local government, or any private person or entity of the United States.

Sec. 909. Prohibition on Additional Imports from Cuba.

Nothing in this title shall be construed to alter, modify, or otherwise affect the provisions of section 515.204 of title 31, Code of Federal Regulations, relating to the prohibition on the entry into the United States of merchandise that: (1) is of Cuban origin; (2) is or has been located in or transported from or through Cuba; or (3) is made or derived in whole or in part of any article which is the growth, produce, or manufacture of Cuba.

Sec. 910. Requirements Relating to Certain Travel-Related Transactions with Cuba.

(a) Authorization of Travel Relating to Commercial Sale of Agricultural Commodities. – The Secretary of the Treasury shall promulgate regulations under which the travel-related transactions listed in subsection (c) of section 515.560 of title 31, Code of Federal Regulations, may be authorized on a case-by-case basis by a specific license for travel to, from, or within Cuba for the commercial export sale of agricultural commodities pursuant to the provisions of this title.

(b) Prohibition on Travel Relating to Tourist Activities. –

(1) In General. – Notwithstanding any other provision of law or regulation, the Secretary of the Treasury, or any other Federal official, may not authorize the travel-

related transactions listed in subsection (c) of section 515.560 of title 31, Code of Federal Regulations, either by a general license or on a case-by-case basis by a specific license for travel to, from, or within Cuba for tourist activities.

(2) Definition. – In this subsection, the term “tourist activities” means any activity with respect to travel to, from, or within Cuba that is not expressly authorized in subsection (a) of this section, in any of paragraphs (1) through (12) of section 515.560 of title 31, Code of Federal Regulations, or in any section referred to in any of such paragraphs (1) through (12) (as such sections were in effect on June 1, 2000).

Sec. 911. Effective Date.

(a) In General. – Except as provided in subsection (b), this title shall take effect on the date of enactment of this Act, and shall apply thereafter in any fiscal year.

(b) Existing Sanctions. – In the case of any unilateral agricultural sanction or unilateral medical sanction that is in effect as of the date of enactment of this Act, this title shall take effect 120 days after the date of enactment of this Act, and shall apply thereafter in any fiscal year.

Document

Department of Commerce and Related Agencies Appropriations Act, 1999

Date: 1999

Division A, Sec. 101(b), Title II of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 [Public Law 105-277; H.R. 4328], 112 Stat. 2681, at 2681-88

Sec. 211. –

(a)

(1) Notwithstanding any other provision of law, no transaction or payment shall be authorized or approved pursuant to section 515.527 of title 31, Code of Federal Regulations, as in effect on September 9, 1998, with respect to a mark, trade name, or commercial name that is the same as or substantially similar to a mark, trade name, or commercial name that was used in connection with a business or assets that were confiscated unless the original owner of the mark, trade name, or commercial name, or the bona fide successor-in-interest has expressly consented.

(2) No U.S. court shall recognize, enforce or otherwise validate any assertion of rights by a designated national based on common law rights or registration obtained under such section 515.527 of such a confiscated mark, trade name, or commercial name.

(b) No U.S. court shall recognize, enforce or otherwise validate any assertion of treaty rights by a designated national or its successor-in-interest under sections 44 (b) or (e) of the Trademark Act of 1946 (15 U.S.C. 1126(b) or (e)) for a mark, trade name, or commercial name that is the same as or substantially similar to a mark, trade name, or commercial name that was used in connection with a business or assets that were confiscated unless the original owner of such mark, trade name, or commercial name, or the bona fide successor-in-interest has expressly consented.

Document

Caribbean Basin Economic Recovery Act

Date: August 5, 1983

Public Law 98-67 [H.R. 2973], 97 Stat. 369, approved August 5, 1983, as amended

An Act

To promote economic revitalization and facilitate expansion of economic opportunities in the Caribbean Basin region, to provide for backup withholding of tax from interest and dividends, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

Title II – Caribbean Basin Initiative

Sec. 201. – Short Title.

This title may be cited as the “Caribbean Basin Economic Recovery Act”.

Subtitle A – Duty-Free Treatment

Sec. 211. [19 U.S.C. 2701] – Authority to Grant Duty-Free Treatment.

The President may proclaim duty-free treatment (or other preferential treatment) for all eligible articles from any beneficiary country in accordance with the provisions of this title.

Sec. 212. [19 U.S.C. 2702] – Beneficiary Country.

(a)

(1) For purposes of this title –

(A) The term “beneficiary country” means any country listed in subsection (b) with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of this title. Before the President designates any country as a beneficiary country for purposes of this title, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(B) The term “entered” means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(C) The term “HTS” means Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(D) The term “NAFTA” means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

(E) The terms “WTO” and “WTO member” have the meanings given those terms in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501).

(2) If the President has designated any country as a beneficiary country for purposes of this title, he shall not terminate such designation (either by issuing a proclamation for that purpose or by issuing a proclamation which has the effect of terminating such designation) unless, at least sixty days before such termination, he has notified the House of Representatives and the Senate and has notified such country of his intention to terminate such designation, together with the considerations entering into such decision.

(b) In designating countries as “beneficiary countries” under this title the President shall consider only the following countries and territories or successor political entities:

Anguilla	Haiti
Antigua and Barbuda	Honduras
Aruba	Jamaica
Bahamas, The	Montserrat
Barbados	Netherlands Antilles
Belize	Nicaragua
Cayman Islands	Panama
Costa Rica	St. Kitts and Nevis
Dominica	Saint Lucia
Dominican Republic	Saint Vincent and the Grenadines
El Salvador	Suriname
Grenada	Trinidad and Tobago
Guatemala	Turks and Caicos Islands
Guyana	Virgin Islands, British

In addition, the President shall not designate any country a beneficiary country under this title –

(1) if such country is a Communist country;

(2) if such country –

(A) has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens,

(B) has taken steps to repudiate or nullify –

(i) any existing contract or agreement with, or

(ii) any patent, trademark, or other intellectual property of, a United States citizen or a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that

–

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) a dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and promptly furnishes a copy of such determination to the Senate and House of Representatives;

(3) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership or association which is 50 per centum or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

(4) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received

assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

(5) if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;

(6) unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and

(7) if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section 507(4) of the Trade Act of 1974) to workers in the country (including any designated zone in that country).

Paragraphs (1), (2), (3), (5), and (7) shall not prevent the designation of any country as a beneficiary country under this Act if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

(c) In determining whether to designate any country a beneficiary country under this title, the President shall take into account –

(1) an expression by such country of its desire to be so designated;

(2) the economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

(4) the degree to which such country follows the accepted rules of international trade provided for under the WTO Agreement and the multilateral trade agreements (as such terms are defined in paragraphs (9) and (4), respectively, of section 2 of the Uruguay Round Agreements Act);

(5) the degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;

(6) the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

(7) the degree to which such country is undertaking self-help measures to promote its own economic development;

(8) whether or not such country has taken or is taking steps to afford workers in that country (including any designated zone in that country) internationally recognized worker rights;

(9) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

(10) the extent to which such country prohibits its nationals from engaging in the broadcasts of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent; and

(11) the extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this title.

(d) General headnote 3(a) of the TSUS (relating to products of the insular possessions) is amended by adding at the end thereof the following paragraph: * * *

(e)

(1)

(A) The President may, after the requirements of subsection (a)(2) and paragraph (2) have been met –

(i) withdraw or suspend the designation of any country as a beneficiary country, or

(ii) withdraw, suspend, or limit the application of duty-free treatment under this subtitle to any article of any country,

if, after such designation, the President determines that as a result of changed circumstances such country would be barred from designation as a beneficiary country under subsection (b).

(B) The President may, after the requirements of subsection (a)(2) and paragraph (2) have been met –

(i) withdraw or suspend the designation of any country as a CBTPA beneficiary country; or

(ii) withdraw, suspend, or limit the application of preferential treatment under section 213(b)(2) and (3) to any article of any country,

if, after such designation, the President determines that, as a result of changed circumstances, the performance of such country is not satisfactory under the criteria set forth in section 213(b)(5)(B).

(2)

(A) The President shall publish in the Federal Register notice of the action the President proposes to take under paragraph (1) at least 30 days prior to taking such action.

(B) The United States Trade Representative shall, within the 30-day period beginning on the date on which the President publishes under subparagraph (A) notice of proposed action –

(i) accept written comments from the public regarding such proposed action,

(ii) hold a public hearing on such proposed action, and

(iii) publish in the Federal Register –

(I) notice of the time and place of such hearing prior to the hearing, and

(II) the time and place at which such written comments will be accepted.

(3) If preferential treatment under section 213(b)(2) and (3) is withdrawn, suspended, or limited with respect to a CBTPA beneficiary country, such country shall not be deemed to be a ‘party’ for the purposes of applying section 213(b)(5)(C) to imports of articles for which preferential treatment has been withdrawn, suspended, or limited with respect to such country.

(f) Reporting Requirements. –

(1) In General. – Not later than December 31, 2001, and every 2 years thereafter during the period this title is in effect, the United States Trade Representative shall submit to Congress a report regarding the operation of this title, including –

(A) with respect to subsections (b) and (c), the results of a general review of beneficiary countries based on the considerations described in such subsections; and

(B) the performance of each beneficiary country or CBTPA beneficiary country, as the case may be, under the criteria set forth in section 213(b)(5)(B).

(2) Public Comment. – Before submitting the report described in paragraph (1), the United States Trade Representative shall publish a notice in the Federal Register requesting public comments on whether beneficiary countries are meeting the criteria listed in section 213(b)(5)(B).

* * * * *

Subtitle C – Sense of the Congress Regarding Sugar Imports

Sec. 231. Sugar Imports.

It is the sense of the Congress that sugar from any Communist country in the Caribbean Basin or in Central America should not be imported into the United States.

Document

United States-Caribbean Basin Trade Partnership Act

Date: May 18, 2000

Public Law 106-200 [Trade and Development Act of 2000; H.R. 434], 114 Stat. 251, approved May 18, 2000

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

Title II – Trade Benefits for Caribbean Basin

Subtitle A – Trade Policy for Caribbean Basin Countries

Sec. 201. [19 U.S.C. 2701 note] – Short Title.

This title may be cited as the “United States-Caribbean Basin Trade Partnership Act”.

Sec. 202. – Findings and Policy.

(a) Findings. – Congress makes the following findings:

(1) The Caribbean Basin Economic Recovery Act (in this title referred to as “CBERA”) represents a permanent commitment by the United States to encourage the development of strong democratic governments and revitalized economies in neighboring countries in the Caribbean Basin.

(2) In 1998, Hurricane Mitch and Hurricane Georges devastated areas in the Caribbean Basin region, killing more than 10,000 people and leaving 3,000,000 homeless.

(3) The total direct impact of Hurricanes Mitch and Georges on Honduras, Nicaragua, the Dominican Republic, El Salvador, and Guatemala amounts to \$4,200,000,000, representing a severe loss to income levels in this underdeveloped region.

(4) In addition to short term disaster assistance, United States policy toward the region should focus on expanding international trade with the Caribbean Basin region as an enduring solution for successful economic growth and recovery.

(5) Thirty-four democratically elected leaders agreed at the 1994 Summit of the Americas to conclude negotiation of a Free Trade Area of the Americas (in this title referred to as “FTAA”) by the year 2005.

(6) The economic security of the countries in the Caribbean Basin will be enhanced by the completion of the FTAA.

(7) Offering temporary benefits to Caribbean Basin countries will preserve the United States commitment to Caribbean Basin beneficiary countries, promote the growth of free enterprise and economic opportunity in these neighboring countries, and thereby enhance the national security interests of the United States.

(8) Given the greater propensity of countries located in the Western Hemisphere to use United States components and to purchase United States products compared to other countries, increased trade and economic activity between the United States and countries in the Western Hemisphere will create new jobs in the United States as a result of expanding export opportunities.

(b) Policy. – It is the policy of the United States –

(1) to offer Caribbean Basin beneficiary countries willing to prepare to become a party to the FTAA or another free trade agreement, tariff treatment essentially equivalent to that accorded to products of NAFTA countries for certain products not currently eligible for duty-free treatment under the CBERA; and

(2) to seek the participation of Caribbean Basin beneficiary countries in the FTAA or another free trade agreement at the earliest possible date, with the goal of achieving full participation in such agreement not later than 2005.

Sec. 203. – Definitions.

In this title:

(1) NAFTA. – The term “NAFTA” means the North American Free Trade Agreement entered into between the United States, Mexico, and Canada on December 17, 1992.

(2) NAFTA Country. – The term “NAFTA country” means any country with respect to which the NAFTA is in force.

(3) WTO and WTO Member. – The terms “WTO” and “WTO member” have the meanings given those terms in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501).

* * * * *

Document

Executive Proclamation No. 3447

Date: February 6, 1962

27 F.R. 1085; 22 U.S.C. 2370 note

I, John F. Kennedy, President of the United States of America, acting under the authority of section 620(a) of the Foreign Assistance Act of 1961 (75 Stat. 445), as amended, do

1. Hereby proclaim an embargo upon trade between the United States and Cuba in accordance with paragraphs 2 and 3 of this proclamation.
2. Hereby prohibit, effective 12:01 A.M., Eastern Standard Time, February 7, 1962, the importation into the United States of all goods of Cuban origin and all goods imported from or through Cuba; and I hereby authorize and direct the Secretary of the Treasury to carry out such prohibition, to make such exceptions thereto, by license or otherwise, as he determines to be consistent with the effective operation of the embargo hereby proclaimed, and to promulgate such rules and regulations as may be necessary to perform such functions.
3. And Further, I do hereby direct the Secretary of Commerce, under the provisions of the Export Control Act of 1949, as amended (50 U. S. C. App. 2021-2032),¹² to continue to carry out the prohibition of all exports from the United States to Cuba, and I hereby authorize him, under that Act, to continue, make, modify or revoke exceptions from such prohibition.

¹² Superseded by the Export Administration Act of 1979, 50 U.S.C. App. 2401 *et seq.*

Document

Implementation of the Cuban Democracy Act

Date: July 4, 1993

Executive Order 12854 of July 4, 1993, 58 F.R. 36587, 22 U.S.C. 6001 note

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Trading With the Enemy Act, as amended (50 U.S.C. App. 1096, 7-39, 41-44), the Cuban Democracy Act of 1992 (Public Law 102-484, sections 1701-1712, October 23, 1992, 106 Stat. 2575) (the "Act"), and section 301 of title 3, United States Code,

I, William J. Clinton, President of the United States of America, hereby order:

Sec. 1. – Implementation of the Act

All agencies are hereby directed to take all appropriate measures within their authority, including the promulgation of rules and regulations, to carry out the provisions of the Act.

Sec. 2. – Functions of the Department of State.

The Secretary of State shall be responsible for implementing sections 1704, 1707, and 1708 of the Act. Responsibility for transmitting the certification required by section 1707 and the report required by section 1708 of the Act is delegated to the Secretary of State.

Sec. 3. – Functions of the Department of the Treasury.

Except as provided in section 4 of this order, the Secretary of the Treasury shall be responsible for implementing sections 1705(b)-(e) and 1706 of the Act, to the extent that these sections pertain to transactions with Cuba.

Sec. 4. – Functions of the Department of Commerce.

The Secretary of Commerce shall be responsible for implementing sections 1705(b)-(e) of the Act, to the extent that these sections pertain to the exportation to Cuba from the United States or from a third country of goods and technology subject to the jurisdiction of the Department of Commerce.

Sec. 5. – Consultation.

In consultation with the Secretary of State, the Secretary of the Treasury and the Secretary of Commerce are hereby authorized to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of the Act and this order.

Sec. 6. –

Nothing in this order shall be deemed to affect any functions vested by law in the Federal Communications Commission.

Sec. 7. – Effective Date.

This order shall be effective immediately.

Document

Declaration of a National Emergency and Invocation of Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels Date: March 1, 1996

Presidential Proclamation 6867 of March 1, 1996, 61 F.R. 8843; 50 U.S.C. 191 note, as continued by annual notice

By the President of the United States of America
A Proclamation

WHEREAS, on February 24, 1996, Cuban military aircraft intercepted and destroyed two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba;

WHEREAS the Government of Cuba has demonstrated a ready and reckless willingness to use excessive force, including deadly force, in the ostensible enforcement of its sovereignty;

WHEREAS, on July 13, 1995, persons in U.S.-registered vessels who entered into Cuban territorial waters suffered injury as a result of the reckless use of force against them by the Cuban military; and

WHEREAS the entry of U.S.-registered vessels into Cuban territorial waters could again result in injury to, or loss of life of, persons engaged in that conduct, due to the potential use of excessive force, including deadly force, against them by the Cuban military, and could threaten a disturbance in international relations;

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States of America, including section 1 of title II of Public Law 65-24, ch. 30, June 15, 1917, as amended (50 U.S.C. 191), sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.), and section 301 of title 3, United States Code, find and do hereby proclaim that a national emergency does exist by reason of a disturbance or threatened disturbance of international relations. In order to address this national emergency and to secure the observance of the rights and obligations of the United States, I hereby authorize and direct the Secretary of Transportation (the "Secretary") to make and issue such rules and regulations as the Secretary may find appropriate to regulate the anchorage and movement of vessels, and delegate to the Secretary my authority to approve such rules and regulations, as authorized by the Act of June 15, 1917.

Sec. 1. –

The Secretary may make rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, which may be used, or is susceptible of being used, for voyage into Cuban territorial waters and that may create unsafe conditions and threaten a disturbance of international relations. Any rule or

regulation issued pursuant to this proclamation may be effective immediately upon issuance as such rule or regulation shall involve a foreign affairs function of the United States.

Sec. 2. –

The Secretary is authorized to inspect any vessel, foreign or domestic, in the territorial waters of the United States, at any time; to place guards on any such vessel; and, with my consent expressly hereby granted, take full possession and control of any such vessel and remove the officers and crew, and all other persons not specifically authorized by the Secretary to go or remain on board the vessel when necessary to secure the rights and obligations of the United States.

Sec. 3. –

The Secretary may request assistance from such departments, agencies, officers, or instrumentalities of the United States as the Secretary deems necessary to carry out the purposes of this proclamation. Such departments, agencies, officers, or instrumentalities shall, consistent with other provisions of law and to the extent practicable, provide requested assistance.

Sec. 4. –

The Secretary may seek assistance from State and local authorities in carrying out the purposes of this proclamation. Because State and local assistance may be essential for an effective response to this emergency, I urge all State and local officials to cooperate with Federal authorities and to take all actions within their lawful authority necessary to prevent the unauthorized departure of vessels intending to enter Cuban territorial waters.

Sec. 5. –

All powers and authorities delegated by this proclamation to the Secretary may be delegated by the Secretary to other officers and agents of the United States Government unless otherwise prohibited by law.

Sec. 6. –

This proclamation shall be immediately transmitted to the Congress and published in the Federal Register.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

Document

Regulations

Cuban Assets Control Regulations
Office of Foreign Assets Control
Department of the Treasury
31 CFR Part 515

Subpart A – Relation of this Part to Other Laws and Regulations

Authority Note Applicable to Entire Part:

18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001-6010; 31 U.S.C. 321(b); 50 U.S.C. App. 1-44; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106-387, 114 Stat. 1549; E.O. 9193, 7 FR 5205, 3 CFR, 1938-1943 Comp., p. 1147; E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959-1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Sec. 515.101. – Relation of this Part to Other Laws and Regulations.

(a) This part is separate from, and independent of, the other parts of this chapter with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. No license or authorization contained in or issued pursuant to one of those parts, or any other provision of law, authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part shall be deemed to authorize any transaction prohibited by any law other than the Trading With the Enemy Act, 50 U.S.C. App. 5(b), as amended, the Foreign Assistance Act of 1961, 22 U.S.C. 2370, or any proclamation, order, regulation or license issued pursuant thereto.

[50 FR 27437, July 3, 1985; 62 FR 45098, 45106, Aug. 25, 1997]

Subpart B – Prohibitions

Sec. 515.201. – Transactions Involving Designated Foreign Countries or their Nationals; Effective Date.

(a) All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, if either such transactions are by, or on behalf of, or pursuant to the direction of a foreign country designated under this part, or any national thereof, or such transactions involve property in which a foreign country designated under this part, or any national thereof, has at any time on or since the effective date of this section had any interest of any nature whatsoever, direct or indirect:

- (1) All transfers of credit and all payments between, by, through, or to any banking institution or banking institutions wheresoever located, with respect to any property subject to the jurisdiction of the United States or by any person (including a banking institution) subject to the jurisdiction of the United States;
 - (2) All transactions in foreign exchange by any person within the United States; and
 - (3) The exportation or withdrawal from the United States of gold or silver coin or bullion, currency or securities, or the earmarking of any such property, by any person within the United States.
- (b) All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, if such transactions involve property in which any foreign country designated under this part, or any national thereof, has at any time on or since the effective date of this section had any interest of any nature whatsoever, direct or indirect:
- (1) All dealings in, including, without limitation, transfers, withdrawals, or exportations of, any property or evidences of indebtedness or evidences of ownership of property by any person subject to the jurisdiction of the United States; and
 - (2) All transfers outside the United States with regard to any property or property interest subject to the jurisdiction of the United States.
- (c) Any transaction for the purpose or which has the effect of evading or avoiding any of the prohibitions set forth in paragraph (a) or (b) of this section is hereby prohibited.
- (d) For the purposes of this part, the term *foreign country designated under this part* and the term *designated foreign country* mean Cuba and the term *effective date* and the term *effective date of this section* mean with respect to Cuba, or any national thereof, 12:01 a.m., e.s.t., July 8, 1963.
- (e) When a transaction results in the blocking of funds at a banking institution pursuant to this section and a party to the transaction believes the funds have been blocked due to mistaken identity, that party may seek to have such funds unblocked pursuant to the administrative procedures set forth in Sec. 501.806 of this chapter.

[28 FR 6974, July 9, 1963; 62 FR 45098, 45106, Aug. 25, 1997]

Sec. 515.202. – Transactions with Respect to Securities Registered or Inscribed in the Name of a Designated National.

Unless authorized by a license expressly referring to this section, the acquisition, transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty

of signatures on or otherwise dealing in any security (or evidence thereof) registered or inscribed in the name of any designated national is prohibited irrespective of the fact that at any time (either prior to, on, or subsequent to the “effective date”) the registered or inscribed owner thereof may have, or appears to have, assigned, transferred or otherwise disposed of any such security.

[28 FR 6974, July 9, 1963]

Sec. 515.203. – Effect of Transfers Violating the Provisions of this Part.

(a) Any transfer after the “effective date” which is in violation of any provision of this part or of any regulation, ruling, instruction, license, or other direction or authorization thereunder and involves any property in which a designated national has or has had an interest since such “effective date” is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such property.

(b) No transfer before the “effective date” shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property in which a designated national has or has had an interest since the “effective date” unless the person with whom such property is held or maintained had written notice of the transfer or by any written evidence had recognized such transfer prior to such “effective date.”

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Secretary of the Treasury before, during or after a transfer shall validate such transfer or render it enforceable to the same extent as it would be valid or enforceable but for the provisions of section 5(b) of the Trading With the Enemy Act, as amended, and this part and any ruling, order, regulation, direction or instruction issued hereunder.

(d) Transfers of property which otherwise would be null and void, or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void, or unenforceable pursuant to such provisions, as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization by or pursuant to the provisions of this part and was not so licensed or authorized or if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation or the withholding of material facts or was otherwise fraudulently obtained; and

(3) Promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license or other direction or authorization thereunder, or

(ii) Such transfer was not licensed or authorized by the Secretary of the Treasury, or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation or the withholding of material facts or was otherwise fraudulently obtained; the person with whom such property was held or maintained filed with the Treasury Department, Washington, D.C., a report in triplicate setting forth in full the circumstances relating to such transfer. The filing of a report in accordance with the provisions of this paragraph shall not be deemed to be compliance or evidence of compliance with paragraphs (d) (1) and (2) of this section.

(e) Unless licensed or authorized by Sec. 515.504 or otherwise licensed or authorized pursuant to this chapter any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which on or since the “effective date” there existed the interest of a designated foreign country or national thereof.

(f) For the purpose of this section the term *property* includes gold, silver, bullion, currency, coin, credit, securities (as that term is defined in section 2(1) of the Securities Act of 1933, as amended), bills of exchange, notes, drafts, acceptances, checks, letters of credit, book credits, debts, claims, contracts, negotiable documents of title, mortgages, liens, annuities, insurance policies, options and futures in commodities, and evidences of any of the foregoing. The term *property* shall not, except to the extent indicated, be deemed to include chattels or real property.

[28 FR 6974, July 9, 1963, as amended at 28 FR 7941, Aug. 3, 1963]

Sec. 515.204. – Importation of and Dealings in Certain Merchandise.

(a) Except as specifically authorized by the Secretary of the Treasury (or any person, agency, or instrumentality designated by him) by means of regulations, rulings, instructions, licenses, or otherwise, no person subject to the jurisdiction of the United States may purchase, transport, import, or otherwise deal in or engage in any transaction with respect to any merchandise outside the United States if such merchandise:

(1) Is of Cuban origin; or

(2) Is or has been located in or transported from or through Cuba; or

(3) Is made or derived in whole or in part of any article which is the growth, produce or manufacture of Cuba.

[28 FR 6974, July 9, 1963]

Sec. 515.205. – Holding of Certain Types of Blocked Property in Interest-Bearing Accounts.

(a) Except as provided by paragraphs (d), (e) and (f) of this section, or as authorized by the Secretary of the Treasury or his delegate by specific license, any person holding any property included in paragraph (h) of this section is prohibited from holding, withholding, using, transferring, engaging in any transactions involving, or exercising any right, power, or privilege with respect to any such property, unless it is held in an interest-bearing account in a domestic bank.

(b) Any person presently holding property subject to the provisions of paragraph (a) of this section which, as of the effective date of this section, is not being held in accordance with the provisions of that paragraph shall transfer such property to or hold such property or cause such property to be held in an interest-bearing account in any domestic bank within 30 days of the effective date of this section.

(c) Any person holding any checks or drafts subject to the provisions of Sec. 515.201 is authorized and directed, wherever possible consistent with state law (except as otherwise specifically provided in paragraph (c)(3) of this section), to negotiate or present for collection or payment such instruments and credit the proceeds to interest-bearing accounts. Any transaction by any person incident to the negotiation, processing, presentment, collection or payment of such instruments and deposit of the proceeds into an interest-bearing account is hereby authorized: *Provided that:*

(1) The transaction does not represent, directly or indirectly, a transfer of the interest of a designated national to any other country or person;

(2) The proceeds are held in a blocked account indicating the designated national who is the payee or owner of the instrument; and,

(3) In the case of a blocked check or draft which has been purchased by the maker/drawer from the drawee bank (*e.g.*, cashier's check, money order, or traveler's check) or which is drawn against a presently existing account, such bank, on presentment of the instrument in accordance with the provisions of this section, shall either: (i) Pay the instrument (subject to paragraphs (c)(1) and (2) of this section) or (ii) credit a blocked account on its books with the amount payable on the instrument. In either event, the blocked account shall be identified as resulting from the proceeds of a blocked check or draft, and the identification shall include a reference to the names of both the maker and payee of the instrument.

(d) Property subject to the provisions of paragraph (a) or (b) of this section, held by a person claiming a set-off against such property, is exempt from the provisions of paragraphs (a), (b)

and (c) of this section to the extent of the set-off: *Provided however*, That interest shall be due from 30 days after the effective date of this section if it should ultimately be determined that the claim to a set-off is without merit.

(e) Property subject to the provisions of paragraphs (a) and (b) of this section, held in a customer's account by a registered broker/dealer in securities, may continue to be held for the customer by the broker/dealer provided interest is credited to the account on any balance not invested in securities in accordance with Sec. 515.513. The interest paid on such accounts by a broker/dealer who does not elect to hold such property for a customer's account in a domestic bank shall not be less than the maximum rate payable on the shortest time deposit available in any domestic bank in the jurisdiction in which the broker/dealer holds the account.

(f) Property subject to the provisions of paragraphs (a) and (b) of this section, held by a state agency charged with the custody of abandoned or unclaimed property under Sec. 515.554 may continue to be held by the agency provided interest is credited to the blocked account in which the property is held by the agency, or the property is held by the agency in a blocked account in a domestic bank. The interest credited to such accounts by an agency which does not elect to hold such property in a domestic bank shall not be less than the maximum rate payable on the shortest time deposit available in any domestic bank in the state.

(g) For purposes of this section, the term *interest-bearing account* means a blocked account earning interest at no less than the maximum rate payable on the shortest time deposit in the domestic bank where the account is held: *Provided however*, That such an account may include six-month Treasury bills or insured certificates, with a maturity not exceeding six-months, appropriate to the amounts involved.

(h) The following types of property are subject to paragraphs (a) and (b) of this section:

(1) Any currency, bank deposit and bank accounts subject to the provisions of Sec. 515.201;

(2) Any property subject to the provisions of Sec. 515.201 which consists, in whole or in part, of undisputed and either liquidated or matured debts, claims, obligations or other evidence of indebtedness, to the extent of any amount that is undisputed and liquidated or matured; and

(3) Any proceeds resulting from the payment of an obligation under paragraph (c) of this section.

(i) For purposes of this section, the term *domestic bank* includes any FSLIC-insured institution (as defined in 12 CFR 561.1).

(j) For the purposes of this section the term *person* includes the United States Government or any agency or instrumentality thereof, except where the agency or instrumentality submits to the Office of Foreign Assets Control an opinion of its General Counsel that either:

- (1) It lacks statutory authority to comply with this section, or
- (2) the requirements of paragraphs (a) and (b) of this section are inconsistent with the statutory program under which it operates.

[44 FR 11770, Mar. 2, 1979]

Sec. 515.206. – Exempt Transactions.

(a) Information and informational materials.

(1) The importation from any country and the exportation to any country of information or informational materials as defined in Sec. 515.332, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of this part except for payments owed to Cuba for telecommunications services between Cuba and the United States, which are subject to the provisions of Sec. 515.542.

(2) This section does not authorize transactions related to information or informational materials not fully created and in existence at the date of the transaction, or to the substantive or artistic alteration or enhancement of information or informational materials, or to the provision of marketing and business consulting services by a person subject to the jurisdiction of the United States. Such prohibited transactions include, without limitation, payment of advances for information or informational materials not yet created and completed, provision of services to market, produce or co-produce, create or assist in the creation of information or informational materials, and payment of royalties to a designated national with respect to income received for enhancements or alterations made by persons subject to the jurisdiction of the United States to information or informational materials imported from a designated national.

(3) This section does not authorize transactions incident to the transmission of restricted technical data as defined in the Export Administration Regulations, 15 CFR parts 730-774, or to the exportation of goods for use in the transmission of any data. The exportation of such goods to designated foreign countries is prohibited, as provided in Sec. 515.201 of this part and Sec. 785.1 of the Export Administration Regulations.

(4) This section does not authorize transactions related to travel to Cuba when such travel is not otherwise authorized under Sec. 515.545.

Example #1: A U.S. publisher ships 500 copies of a book to Cuba directly from Miami aboard a chartered aircraft, and receives payment by means of a letter of credit issued by a Cuban bank and confirmed by an American bank. These are permissible transactions under this section.

Example #2: A Cuban party exports a single master copy of a Cuban motion picture to a U.S. party and licenses the U.S. party to duplicate, distribute, show and exploit in the United States the Cuban film in any medium, including home video distribution, for five years, with the Cuban party receiving 40% of the net income. All transactions relating to the activities described in this example are authorized under this section or Sec. 515.545.

Example #3: A U.S. recording company proposes to contract with a Cuban musician to create certain musical compositions, and to advance royalties of \$10,000 to the musician. The music written in Cuba is to be recorded in a studio that the recording company owns in the Bahamas. These are all prohibited transactions. The U.S. party is prohibited under Sec. 515.201 from contracting for the Cuban musician's services, from transferring \$10,000 to Cuba to pay for those services, and from providing the Cuban with production services through the use of its studio in the Bahamas. No information or informational materials are in being at the time of these proposed transactions. However, the U.S. recording company may contract to purchase and import preexisting recordings by the Cuban musician, or to copy the recordings in the United States and pay negotiated royalties to Cuba under this section or Sec. 515.545.

Example #4: A Cuban party enters into a subpublication agreement licensing a U.S. party to print and publish copies of a musical composition and to sub-license rights of public performance, adaptation, and arrangement of the musical composition, with payment to be a percentage of income received. All transactions related to the activities described in this example are authorized under this section and Sec. 515.545, except for adaptation, and arrangement, which constitute artistic enhancement of the Cuban composition. Payment to the Cuban party may not reflect income received as a result of these enhancements.

(b) Donation of food. The prohibitions contained in this part do not apply to transactions incident to the donation of food to nongovernmental organizations or individuals in Cuba.

[54 FR 5233, Feb. 2, 1989; 60 FR 39256, Aug. 2, 1995; 64 FR 25808, 25812, May 13, 1999]

Sec. 515.207. – Entry of Vessels Engaged in Trade with Cuba.

Except as specifically authorized by the Secretary of the Treasury (or any person, agency or instrumentality designated by him), by means of regulations, rulings, instructions, licenses or otherwise,

(a) No vessel that enters a port or place in Cuba to engage in the trade of goods or the purchase or provision of services, may enter a U.S. port for the purpose of loading or unloading freight for a period of 180 days from the date the vessel departed from a port or place in Cuba; and

(b) No vessel carrying goods or passengers to or from Cuba or carrying goods in which Cuba or a Cuban national has an interest may enter a U.S. port with such goods or passengers on board.

Note to Sec. 515.207: For the waiver of the prohibitions contained in this section for certain vessels engaged in licensed or exempt trade with Cuba, see Sec. 515.550.

[58 FR 34710, June 29, 1993; 66 FR 36683, 36687, July 12, 2001]

Sec. 515.208. – Restrictions on Loans, Credits and Other Financing.

No United States national, permanent resident alien, or United States agency may knowingly make a loan, extend credit or provide other financing for the purpose of financing transactions involving confiscated property the claim to which is owned by a United States national, except for financing by a United States national owning such a claim for a transaction permitted under United States law.

[61 FR 37385, 37386, July 18, 1996]

Subpart C – General Definitions

Sec. 515.301. – Foreign Country.

The term foreign country also includes, but not by way of limitation:

- (a) The state and the government of any such territory on or after the “effective date” as well as any political subdivision, agency, or instrumentality thereof or any territory, dependency, colony, protectorate, mandate, dominion, possession or place subject to the jurisdiction thereof,
- (b) Any other government (including any political subdivision, agency, or instrumentality thereof) to the extent and only to the extent that such government exercises or claims to exercise control, authority, jurisdiction or sovereignty over territory which on the “effective date” constituted such foreign country,
- (c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the “effective date,” acting or purporting to act directly or indirectly for the benefit or on behalf of any of the foregoing, and
- (d) Any territory which on or since the “effective date” is controlled or occupied by the military, naval or police forces or other authority of such foreign country.

[28 FR 6974, July 9, 1963]

Sec. 515.302. – National.

- (a) The term *national* when used with respect to a country shall include:

- (1) A subject or citizen of that country or any person who has been domiciled in or a permanent resident of that country at any time on or since the “effective date,” except persons who were permanent residents of or domiciled in that country in the service of the U.S. Government and persons whose transactions in that country were authorized by the Office of Foreign Assets Control.
 - (2) Any partnership, association, corporation, or other organization that, on or since the effective date:
 - (i) Was or has been organized under the laws of that country;
 - (ii) Had or has had its principal place of business in that country; or
 - (iii) Was or has been controlled by, or a substantial part of the stocks, share, bonds, debentures, notes, drafts, or other securities or obligations of which was or has been controlled by, directly or indirectly, that country and/or one or more nationals thereof.
 - (3) Any organization’s office or other sub-unit that is located within that country.
 - (4) Any person to the extent that such person, on or since the “effective date” was or has been acting or purporting to act directly or indirectly for the benefit or on behalf of any national of that country.
 - (5) Any other person who there is reasonable cause to believe is a “national” as defined in this section.
- (b) Persons who travel in Cuba do not become nationals of Cuba solely because of such travel.
- (c) The Secretary of the Treasury retains full power to determine that any person is or shall be deemed to be a “national” within the meaning of this section, and to specify the foreign country of which such person is or shall be deemed to be a national.

[28 FR 6974, July 9, 1963, as amended at 50 FR 27437, July 3, 1985; 64 FR 25808, 25812, May 13, 1999; 68 FR 14141, 14144, Mar. 24, 2003]

Sec. 515.303. – Nationals of More than One Foreign Country.

- (a) Any person who by virtue of any provision in this chapter is a national of more than one foreign country shall be deemed to be a national of each of such foreign countries.
- (b) In any case in which a person is a national of two or more designated foreign countries, as defined in this chapter, a license or authorization with respect to nationals of one of such designated foreign countries shall not be deemed to apply to such person unless a license or

authorization of equal or greater scope is outstanding with respect to nationals of each other designated foreign country of which such person is a national.

(c) In any case in which the combined interests of two or more designated foreign countries, as defined in this chapter, and/or nationals thereof are sufficient in the aggregate to constitute control or ownership of 25 per centum or more of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of a partnership, association, corporation or other organization, but such control or a substantial part of such stock, shares, bonds, debentures, notes, drafts, or other securities or obligations is not held by any one such foreign country and/or national thereof, such partnership, association, corporation or other organization shall be deemed to be a national of each of such foreign countries.

[28 FR 6974, July 9, 1963]

Sec. 515.305. – Designated National.

For the purposes of this part, the term *designated national* shall mean Cuba and any national thereof including any person who is a specially designated national.

[28 FR 6974, July 9, 1963]

Sec. 515.306. – Specially Designated National.

(a) The term *specially designated national* shall mean:

- (1) Any person who is determined by the Secretary of the Treasury to be a specially designated national,
- (2) Any person who on or since the “effective date” has acted for or on behalf of the Government or authorities exercising control over a designated foreign country, or
- (3) Any partnership, association, corporation or other organization which on or since the “effective date” has been owned or controlled directly or indirectly by the Government or authorities exercising control over a designated foreign country or by any specially designated national.

Note to Sec. 515.306: Please refer to the appendices at the end of this chapter for listings of persons designated pursuant to this part. Section 501.807 of this chapter sets forth the procedures to be followed by persons seeking administrative reconsideration of their designation or that of a vessel as blocked, or who wish to assert that the circumstances resulting in the designation are no longer applicable.

[28 FR 6974, July 9, 1963; 61 FR 32936, 32938, June 26, 1996; 62 FR 45098, 45106, Aug. 25, 1997]

Sec. 515.307. – Unblocked National.

Any person licensed pursuant to Sec. 515.505 licensed as an *unblocked national* shall, while so licensed, be regarded as a person within the United States who is not a national of any designated foreign country: *Provided, however,* That the licensing of any person as an *unblocked national* shall not be deemed to suspend in any way the requirements of any section of this chapter relating to reports, or the production of books, documents, and records specified therein.

[28 FR 6974, July 9, 1963, as amended at 54 FR 5233, Feb. 2, 1989]

Sec. 515.308. – Person.

The term *person* means an individual, partnership, association, corporation, or other organization.

[28 FR 6974, July 9, 1963]

Sec. 515.309. – Transactions.

The phrase *transactions which involve property in which a designated foreign country, or any national thereof, has any interest of any nature whatsoever, direct or indirect,* includes, but not by way of limitation:

- (a) Any payment or transfer to such designated foreign country or national thereof,
- (b) any export or withdrawal from the United States to such designated foreign country, and
- (c) any transfer of credit, or payment of an obligation, expressed in terms of the currency of such designated foreign country.

[28 FR 6974, July 9, 1963]

Sec. 515.310. – Transfer.

The term *transfer* shall mean any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or preformed within the United States, the purpose, intent, or effect of which is to create, surrender, release, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and without limitation upon the foregoing shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the appointment of any agent, trustee, or other fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or the levy of or under any judgment, decree, attachment, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition, or the exercise of any power of appointment, power of attorney, or other power.

[28 FR 6974, July 9, 1963]

Sec. 515.311. – Property; Property Interests.

(a) Except as defined in Sec. 515.203(f) for the purposes of that section the terms *property* and *property interest* or *property interests* shall include, but not by way of limitation, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness obligations, notes, debentures, stocks, bonds, coupons, and other financial securities, bankers' acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, real estate and any interest therein, leaseholds, ground rents, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks, copyrights, contracts or licenses affecting or involving patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, contracts of any nature whatsoever, services, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

(b) As used in Sec. 515.208, the term *property* means any property (including patents, copyrights, trademarks, and any other form of intellectual property), whether real, personal, or mixed, and any present, future, or contingent right, security, or other interest therein, including any leasehold interest.

[28 FR 6974, July 9, 1963, as amended at 50 FR 27437, July 3, 1985; 56 FR 49847, Oct. 2, 1991; 61 FR 37385, 37386, July 18, 1996]

Sec. 515.312. – Interest.

The term *interest* when used with respect to property shall mean an interest of any nature whatsoever, direct or indirect.

[28 FR 6974, July 9, 1963]

Sec. 515.313. – Property Subject to the Jurisdiction of the United States.

(a) The phrase *property subject to the jurisdiction of the United States* includes, without limitation, securities, whether registered or bearer, issued by:

- (1) The United States or any State, district, territory, possession, county, municipality, or any other subdivision or agency or instrumentality of any thereof; or
- (2) Any person with the United States whether the certificate which evidences such property or interest is physically located within or outside the United States.

(b) The phrase *property subject to the jurisdiction of the United States* also includes, without limitation, securities, whether registered or bearer, by whomsoever issued, if the instrument evidencing such property or interest is physically located within the United States.

[28 FR 6974, July 9, 1963]

Sec. 515.314. – Banking Institution.

The term *banking institution* shall include any person engaged primarily or incidentally in the business of banking, of granting or transferring credits, or of purchasing or selling foreign exchange or procuring purchases and sellers thereof, as principal or agent, or any person holding credits for others as a direct or incidental part of his business, or any broker; and, each principal, agent, home office, branch or correspondent of any person so engaged shall be regarded as a separate “banking institution.”

[28 FR 6974, July 9, 1963]

Sec. 515.316. – License.

Except as otherwise specified, the term *license* shall mean any license or authorization contained in or issued pursuant to this part.

[28 FR 6974, July 9, 1963]

Sec. 515.317. – General License.

A general license is any license or authorization the terms of which are set forth in this part.

[28 FR 6974, July 9, 1963]

Sec. 515.318. – Specific License.

A specific license is any license or authorization issued pursuant to this part but not set forth in this part.

[28 FR 6974, July 9, 1963; 28 FR 7427, July 20, 1963]

Sec. 515.319. – Blocked Account.

The term *blocked account* shall mean an account in which any designated national has an interest, with respect to which account payments, transfers or withdrawals or other dealings may not be made or effected except pursuant to an authorization or license authorizing such action. The term *blocked account* shall not be deemed to include accounts of unblocked nationals.

[28 FR 6974, July 9, 1963; 28 FR 7427, July 20, 1963]

Sec. 515.320. – Domestic Bank.

The term *domestic bank* shall mean any branch or office within the United States of any of the following which is not a national of a designated foreign country; any bank or trust company incorporated under the banking laws of the United States or any State, territory, or district of the United States, or any private bank or banker subject to supervision and examination under the banking laws of the United States or of any State, territory or district of the United States. The Secretary of the Treasury may also authorize any other banking institution to be treated as a “domestic bank” for the purpose of this definition or for the purpose of any or all sections of this part.

[28 FR 6974, July 9, 1963]

Sec. 515.321. – United States; Continental United States.

The term *United States* means the United States and all areas under the jurisdiction or authority thereof, including the Trust Territory of the Pacific Islands. The term *continental United States* means the States of the United States and the District of Columbia.

[49 FR 27144, July 2, 1984]

Sec. 515.322. – Authorized Trade Territory; Member of the Authorized Trade Territory.

(a) The term *authorized trade territory* includes all countries, including any colony, territory, possession, or protectorate, except those countries subject to sanctions pursuant to this chapter. The term does not include the United States.

(b) The term *member of the authorized trade territory* shall mean any of the foreign countries or political subdivisions comprising the authorized trade territory.

[43 FR 51762, Nov. 7, 1978, as amended at 54 FR 5233, Feb. 2, 1989; 60 FR 54194, 54195, Oct. 20, 1995]

Sec. 515.323. – Occupied Area.

The term *occupied area* shall mean any territory occupied by a designated foreign country which was not occupied by such country prior to the “effective date” of this part.

[28 FR 6974, July 9, 1963]

Sec. 515.325. – National Securities Exchange.

The term *national securities exchange* shall mean an exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (48 Stat. 885, 15 U.S.C. 78f).

[28 FR 6974, July 9, 1963]

Sec. 515.326. – Custody of Safe Deposit Boxes.

Safe deposit boxes shall be deemed to be in the *custody* not only of all persons having access thereto but also of the lessors of such boxes whether or not such lessors have access to such boxes. The foregoing shall not in any way be regarded as a limitation upon the meaning of the term *custody*.

[28 FR 6974, July 9, 1963]

Sec. 515.327. – Blocked Estate of a Decedent.

The term *blocked estate of a decedent* shall mean any decedent's estate in which a designated national has an interest. A person shall be deemed to have an interest in a decedent's estate if he:

- (a) Was the decedent;
- (b) Is a personal representative; or
- (c) Is a creditor, heir, legatee, devisee, distributee, or beneficiary.

[28 FR 6974, July 9, 1963]

Sec. 515.329. – Person Subject to the Jurisdiction of the United States.

The term *person subject to the jurisdiction of the United States* includes:

- (a) Any individual, wherever located, who is a citizen or resident of the United States;
- (b) Any person within the United States as defined in Sec. 515.330;
- (c) Any corporation, partnership, association, or other organization organized under the laws of the United States or of any State, territory, possession, or district of the United States; and
- (d) Any corporation, partnership, association, or other organization, wherever organized or doing business, that is owned or controlled by persons specified in paragraphs (a) or (c) of this section.

[50 FR 27437, July 3, 1985; 68 FR 14141, 14145, Mar. 24, 2003]

Sec. 515.330. – Person Within the United States.

- (a) The term *person within the United States*, includes:

- (1) Any person, wheresoever located, who is a resident of the United States;
- (2) Any person actually within the United States;
- (3) Any corporation, partnership, association, or other organization organized under the laws of the United States or of any State, territory, possession, or district of the United States; and
- (4) Any corporation, partnership, association, or other organization, wherever organized or doing business, which is owned or controlled by any person or persons specified in paragraphs (a)(1) or (a)(3) of this section.

(b) [Reserved]

[28 FR 6974, July 9, 1963; 68 FR 14141, 14145, Mar. 24, 2003]

Sec. 515.331. – Merchandise.

The term *merchandise* means all goods, wares and chattels of every description without limitation of any kind.

[28 FR 6974, July 9, 1963]

Sec. 515.332. – Information and Informational Materials.

(a) For purposes of this part, the term *information and informational materials* means:

- (1) Publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD-ROMs, artworks, news wire feeds, and other information and informational articles.
- (2) To be considered informational materials, artworks must be classified under Chapter subheadings 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information and informational materials* does not include items:

- (1) That would be controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401-2420 (1993) (the “EAA”), or section 6 of the EAA to the extent that such controls promote nonproliferation of antiterrorism policies of the United States, including “software” that is not “publicly available” as these terms are defined in 15 CFR Parts 779 and 799.1 (1994); or
- (2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

[54 FR 5233, Feb. 2, 1989; 60 FR 39256, Aug. 2, 1995]

Sec. 515.333. – Depository Institution.

The term *depository institution* means any of the following:

- (a) An insured bank as defined in section 3 of the Federal Deposit Insurance Act;
- (b) An insured institution as defined in section 408(a) of the National Housing Act;
- (c) An insured credit union as defined in section 101 of the Federal Credit Union Act; or
- (d) Any other institution that is carrying on banking activities pursuant to a charter from a Federal or state banking authority.

[57 FR 53997, Nov. 16, 1992]

Sec. 515.334. – United States National.

As used in Sec. 515.208, the term *United States national* means:

- (a) Any United States citizen; or
- (b) Any other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or any commonwealth, territory, or possession of the United States, and which has its principal place of business in the United States.

[61 FR 37385, 37386, July 18, 1996]

Sec. 515.335. – Permanent Resident Alien.

As used in Sec. 515.208, the term *permanent resident alien* means an alien lawfully admitted for permanent residence into the United States.

[61 FR 37385, 37386, July 18, 1996]

Sec. 515.336. – Confiscated.

As used in Sec. 515.208, the term *confiscated* refers to:

- (a) The nationalization, expropriation, or other seizure by the Cuban Government of ownership or control of property, on or after January 1, 1959:
 - (1) Without the property having been returned or adequate and effective compensation provided; or
 - (2) Without the claim to the property having been settled pursuant to an international claims settlement agreement or other mutually accepted settlement procedure; and

(b) The repudiation by the Cuban Government of, the default by the Cuban Government on, or the failure of the Cuban Government to pay, on or after January 1, 1959:

- (1) A debt of any enterprise which has been nationalized, expropriated, or otherwise taken by the Cuban Government;
- (2) A debt which is a charge on property nationalized, expropriated, or otherwise taken by the Cuban Government; or
- (3) A debt which was incurred by the Cuban Government in satisfaction or settlement of a confiscated property claim.

[61 FR 37385, 37386, July 18, 1996]

Subpart D – Interpretations

Sec. 515.401. – Reference to Amended Sections.

Reference to any section of this part or to any regulation, ruling, order, instruction, direction or license issued pursuant to this part shall be deemed to refer to the same as currently amended unless otherwise so specified.

[28 FR 6974, July 9, 1963]

Sec. 515.402. – Effect of Amendment of Sections of this Part or of Other Orders, etc.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Secretary of the Treasury pursuant to section 3(a) or 5(b) of the Trading With the Enemy Act, as amended, or pursuant to Proclamation 3447, shall not unless otherwise specifically provided be deemed to affect any act done or omitted to be done, or any suit or proceeding had or commenced in any civil or criminal case, prior to such amendment, modification, or revocation, and all penalties, forfeitures, and liabilities under any such section, order, regulation, ruling, instruction or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made.

[28 FR 6974, July 9, 1963]

Sec. 515.403. – Termination and Acquisition of the Interest of a Designated National.

(a) Except as provided in Sec. 515.525, whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a designated national, such property shall no longer be deemed to be property in which a designated national has or has had an interest unless there exists in such property an interest of a designated national, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization contained in or issued pursuant to this part, if property (including any property interest) is transferred to a designated national such property shall be deemed to be property in which there exists the interest of a designated national.

[28 FR 6974, July 9, 1963]

Sec. 515.404. – Transactions Between Principal and Agent.

A transaction between any person within the United States and any principal, agent, home office, branch, or correspondent, outside the United States of such person is a transaction prohibited by Sec. 515.201 to the same extent as if the parties to the transaction were in no way affiliated or associated with each other.

[28 FR 6974, July 9, 1963]

Sec. 515.405. – Exportation of Securities, Currency, Checks, Drafts and Promissory Notes.

Section 515.201 prohibits the exportation of securities, currency, checks, drafts and promissory notes to a designated foreign country.

[28 FR 6974, July 9, 1963]

Sec. 515.406. – Drafts Under Irrevocable Letters of Credit; Documentary Drafts.

Sec. 515.201 prohibits the presentation, acceptance or payment of:

- (a) Drafts or other orders for payment drawn under irrevocable letters of credit issued in favor or on behalf of any designated national;
- (b) Drafts or other orders for payment, in which any designated national has on or since the “effective date” had any interest, drawn under any irrevocable letter of credit; and
- (c) Documentary drafts in which any designated national has on or since the “effective date” had any interest.

[28 FR 6974, July 9, 1963]

Sec. 515.407. – Administration of Blocked Estates of Decedents.

Sec. 515.201 prohibits all transactions incident to the administration of the blocked estate of a decedent, including the appointment and qualification of personal representatives, the collection and liquidation of assets, the payment of claims, and distribution to beneficiaries. Attention is directed to Sec. 515.523 which authorizes certain transactions in connection with the administration of blocked estates of decedents, and Sec. 515.522 which authorizes

the unblocking by specific license of estate assets to certain heirs under certain circumstances.

[28 FR 6974, July 9, 1963, as amended at 54 FR 5234, Feb. 2, 1989; 64 FR 25808, 25812, May 13, 1999]

Sec. 515.408. – Access to Certain Safe Deposit Boxes Prohibited.

Sec. 515.201 prohibits access to any safe deposit box within the United States in the custody of any designated national or containing any property in which any designated national has any interest or which there is reasonable cause to believe contains property in which any such designated national has any interest. Attention is directed to Sec. 515.517 which authorizes access to such safe deposit boxes under certain conditions.

[28 FR 6974, July 9, 1963]

Sec. 515.409. – Certain Payments to a Designated Foreign Country and Nationals Through Third Countries.

Sec. 515.201 prohibits any request or authorization made by or on behalf of a bank or other person within the United States to a bank or other person outside of the United States as a result of which request or authorization such latter bank or person makes a payment or transfer of credit either directly or indirectly to a designated national.

[28 FR 6974, July 9, 1963]

Sec. 515.410. – Dealing Abroad in Cuban Origin Commodities.

Sec. 515.204 prohibits, unless licensed, the importation of commodities of Cuban origin. It also prohibits, unless licensed, persons subject to the jurisdiction of the United States from purchasing, transporting or otherwise dealing in commodities of Cuban origin which are outside the United States.

[39 FR 25317, July 10, 1974]

Sec. 515.411. – Exclusion from authorization in Sec. 515.518.

Heirs, legatees, etc. who acquire an interest in blocked property after July 8, 1963 pursuant to Sec. 515.525 are excluded from the provisions of Sec. 515.518 authorizing debits to blocked accounts for certain personal expenditures.

[39 FR 25317, July 10, 1974]

Sec. 515.413. – [Reserved]

Sec. 515.415. – Travel to Cuba; Transportation of Certain Cuban Nationals.

(a) The following transactions are prohibited by Sec. 515.201 when in connection with the transportation of any Cuban national, except a Cuban national holding an unexpired immigrant or non-immigrant visa or a returning resident of the United States, from Cuba to the United States, unless otherwise licensed:

- (1) Transactions incident to travel to, from, or within Cuba;
- (2) The transportation to Cuba of a vessel or aircraft;
- (3) The transportation into the United States of any vessel or aircraft which has been in Cuba since the effective date, regardless of registry;
- (4) The provision of any services to a Cuban national, regardless of whether any consideration for such services is furnished by the Cuban national;
- (5) The transportation or importation of baggage or other property of a Cuban national;
- (6) The transfer of funds or other property to any person where such transfer involves the provision of services to a Cuban national or the transportation or importation of, or any transactions involving, property in which Cuba or any Cuban national has any interest, including baggage or other such property;
- (7) Any other transaction such as payment of port fees and charges in Cuba and payment for fuel, meals, lodging; and
- (8) The receipt or acceptance of any gratuity, grant, or support in the form of meals, lodging, fuel, payments of travel or maintenance expenses, or otherwise, in connection with travel to or from Cuba or travel or maintenance within Cuba.

(b) Transactions incident to the travel to the United States of Cuban nationals traveling without a visa issued by the Department of State are not authorized under the provisions of Sec. 515.571.

(c) Transactions described in paragraph (a) of this section are not “transactions ordinarily incident to travel to and from Cuba” as set forth in Sec. 515.560(c).

[45 FR 32671, May 19, 1980; 64 FR 25808, 25812, May 13, 1999]

Sec. 515.416. – [Reserved]

[57 FR 53997, Nov. 16, 1992; 59 FR 44884, Aug. 30, 1994; 60 FR 54194, 54195, Oct. 20, 1995. See also 64 FR 25808, 25812, May 13, 1999]

Sec. 515.417. – [Reserved]

[60 FR 54194, 54195, Oct. 20, 1995. See also 64 FR 25808, 25812, May 13, 1999]

Sec. 515.418. – Transactions Related to Telecommunications.

(a) Section 515.542(c) provides that specific licenses may be issued for transactions incident to the receipt or transmission of communications between the United States and Cuba. Pursuant to Sec. 515.542(c), licenses may be issued for payment to Cuba for full or partial payment of amounts due Cuba as a result of the provision of telecommunications services provided such services and payments are approved by the Federal Communications Commission and are consistent with policy guidelines governing telecommunications between the United States and Cuba established to implement the Cuban Democracy Act of 1992.

(b) Section 515.545 provides, in part, that licenses will be issued in appropriate cases for transactions for travel related to the transmission of information. Pursuant to Sec. 515.545, licenses may be issued on a case-by-case basis for travel transactions related to travel for negotiation or performance of telecommunications agreements for service between the United States and Cuba.

[58 FR 45060, Aug. 26, 1993; 64 FR 25808, 25812, May 13, 1999]

Sec. 515.419. – [Reserved]

[60 FR 54194, 54196, Oct. 20, 1995. See also 64 FR 25808, 25812, May 13, 1999]

Sec. 515.420. – Fully-Hosted Travel to Cuba.

(a) A person subject to the jurisdiction of the United States will not be considered to violate the prohibition on engaging in travel-related transactions in which Cuba has an interest when all costs of, and all transactions related to, the travel of that person (the “fully-hosted” traveler) are covered or entered into by a person not subject to the jurisdiction of the United States, provided that:

(1) No person subject to the jurisdiction of the United States has made any payments or transferred any property or provided any service to Cuba or a Cuban national in connection with such fully-hosted travel or has prepaid or reimbursed any person for travel expenses, except as authorized in paragraph (b) of this section; and

(2) The travel is not aboard a direct flight between the United States and Cuba authorized pursuant to Sec. 515.572.

Note to paragraph (a): The interpretation set forth in this paragraph applies only to a fully-hosted traveler’s travel-related transactions and not to other transactions in Cuba. For example, a fully-hosted traveler is still prohibited from providing services in Cuba to a third-country national.

(b) Travel will be considered fully hosted notwithstanding a payment by a person subject to the jurisdiction of the United States for transportation to and from Cuba, provided that the carrier furnishing the transportation is not a Cuban national. Persons authorized as travel service providers pursuant to Sec. 515.572 may book passage on behalf of fully-hosted travelers through to Cuba, provided that such travel is not on a direct flight from the United States and that the carrier furnishing the transportation is not a Cuban national.

(c) Unless otherwise authorized pursuant to this part, any person subject to the jurisdiction of the United States who has traveled to Cuba shall be presumed to have engaged in travel-related transactions prohibited by Sec. 515.201. This presumption may be rebutted by a statement signed by the traveler providing specific supporting documentation showing that no transactions were engaged in by the traveler or on the traveler's behalf by other persons subject to U.S. jurisdiction or showing that the traveler was fully hosted by a third party not subject to the jurisdiction of the United States and that payments made on the traveler's behalf were not in exchange for services provided to Cuba or any national thereof. The statement should address the circumstances of the travel and explain how it was possible for the traveler to avoid entering into travel-related transactions such as payments for meals, lodging, transportation, bunkering of vessels, visas, entry or exit fees, and gratuities. If applicable, the statement should state what party hosted the travel and why. The statement must provide a day-to-day account of financial transactions waived or entered into on behalf of the traveler by the host, including but not limited to visa fees, room and board, local or international transportation costs, and Cuban airport departure taxes. In the case of pleasure craft calling at Cuban marinas, the statement must also address related refueling costs, mooring fees, club membership fees, provisions, cruising permits, local land transportation, and departure fees. Travelers fully hosted by a person or persons not subject to the jurisdiction of the United States must also provide an original signed statement from their sponsor or host, specific to that traveler, confirming that the travel was fully hosted and the reasons for the travel.

Note to paragraph (c): Travelers should be aware that fully-hosted travelers are not travelers whose travel-related transactions are licensed pursuant to this part and therefore such fully-hosted travelers may not engage in the travel-related transactions set forth in Sec. 515.560(c), including the purchase and importation of up to \$100 of Cuban merchandise for personal use. All documentation described in paragraph (c) of this section is subject to the recordkeeping requirements, including the record retention period, in Sec. 501.601 of this chapter.

(d) Persons planning to travel to Cuba may access the Office of Foreign Assets Control's information resources over the Internet at <http://www.treas.gov/ofac>, through the office's fax-on-demand service at 202/622-0077, or by calling the office's Compliance Programs Division at 202/622-2490, prior to their departure to familiarize themselves with the requirements for fully-hosted travel. Other inquiries concerning travel-related transactions should be addressed to the Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW. – Annex, Washington, DC 20220.

History:

[64 FR 25808, 25812, May 13, 1999; 68 FR 14141, 14145, Mar. 24, 2003]

Subpart E – Licenses, Authorizations, and Statements of Licensing Policy

Sec. 515.501. – General and Specific Licensing Procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part.

[68 FR 53640, 53657, Sept. 11, 2003]

Sec. 515.502. – Effect of Subsequent License or Authorization.

(a) No license or other authorization contained in this part or otherwise issued by or under the direction of the Secretary of the Treasury pursuant to section 3(a) or 5(b) of the Trading With the Enemy Act, as amended, or section 620(a), Pub. L. 87-195, or Proclamation 3447, shall be deemed to authorize or validate any transaction effected prior to the issuance thereof, unless such license or other authorization specifically so provides.

(b) No regulation, ruling, instruction, or license authorizes a transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Treasury Department and specifically refers to this part. No regulation, ruling, instruction or license referring to this part shall be deemed to authorize any transaction prohibited by part 500 of this chapter unless the regulation, ruling, instruction or license specifically refers to part 500.

[28 FR 6974, July 9, 1963]

Sec. 515.503. – Exclusion From Licenses and Authorizations.

The Secretary of the Treasury reserves the right to exclude from the operation of any license or from the privileges therein conferred or to restrict the applicability thereof with respect to particular persons, transactions or property or classes thereof. Such action shall be binding upon all persons receiving actual notice or constructive notice thereof.

[28 FR 6974, July 9, 1963]

Sec. 515.504. – Certain Judicial Proceedings with Respect to Property of Designated Nationals.

(a) Subject to the limitations of paragraphs (b), (c) and (d) of this section judicial proceedings are authorized with respect to property in which on or since the “effective date” there has existed the interest of a designated national.

(b) A judicial proceeding is authorized by this section only if it is based upon a cause of action which accrued prior to the “effective date”.

(c) This section does not authorize or license:

(1) The entry of any judgment or of any decree or order of similar or analogous effect upon any judgment book, minute book, journal or otherwise, or the docketing of any judgment in any docket book, or the filing of any judgment roll or the taking of any other similar or analogous action.

(2) Any payment or delivery out of a blocked account based upon a judicial proceeding nor does it authorize the enforcement or carrying out of any judgment or decree or order of similar or analogous effect with regard to any property in which a designated national has an interest.

(d) If a judicial proceeding relates to property in which there exists the interest of any designated national other than a person who would not have been a designated national except for his relationship to an occupied area, such proceeding is authorized only if it is based upon a claim in which no person other than any of the following has had an interest since the “effective date”:

(1) A citizen of the United States;

(2) A corporation organized under the laws of the United States or any State, territory or possession thereof, or the District of Columbia;

(3) A natural person who is and has been since the “effective date” a resident of the United States and who has not been a specially designated national;

(4) A legal representative (whether or not appointed by a court of the United States) or successor in interest by inheritance, devise, bequest, or operation of law, who falls within any of the categories specified in paragraphs (a) (1), (2), and (3) of this section but only to the same extent that their principals or predecessors would be qualified by such paragraphs.

[28 FR 6974, July 9, 1963]

Sec. 515.505. – Certain Cuban Nationals Unblocked; Transactions of Cuban Nationals Paroled into the United States.

(a) General license unblocking certain persons. The following persons are licensed as unblocked nationals, as that term is defined in Sec. 515.307 of this part:

(1) Any individual who:

(i) Has taken up residence in the United States;

(ii) Is a United States citizen, a permanent resident alien of the United States, or has applied to become a permanent resident alien of the United States and has an adjustment of status application pending; and

(iii) Is not a specially designated national; and

(2) Any entity that otherwise would be a national of Cuba solely because of the interest therein of an individual licensed in paragraph (a)(1) of this section as an unblocked national.

Note to paragraph (a): An individual unblocked pursuant to this paragraph does not become blocked again by leaving the United States unless he or she becomes domiciled or a permanent national of Cuba or otherwise becomes a specially designated national.

(b) Specific licenses unblocking individuals permanently resident in third countries. Individual nationals of Cuba who have taken up permanent residence in the authorized trade territory may apply to the Office of Foreign Assets Control to be specifically licensed as unblocked nationals. Applications for specific licenses under this paragraph should include at least two of the following documents issued by the government authorities of the new country of permanent residence: Passport; voter registration card; permanent resident alien card; or national identity card. Other documents tending to show residency, such as income tax returns, also may be submitted in support of government documentation, but are not themselves sufficient.

Note to paragraph (b): An individual unblocked pursuant to this paragraph does not become blocked again by leaving the United States unless he or she becomes domiciled or a permanent national of Cuba or otherwise becomes a specially designated national.

(c) General license authorizing certain transactions of individuals paroled into the United States. An individual national of Cuba who has been paroled into the United States is authorized to engage in all transactions available to unblocked nationals, as that term is defined in Sec. 515.307 of this part, except that all property in which the individual has an interest and that was blocked pursuant to this part prior to the date on which parole was granted shall remain blocked. Such an individual is further authorized to withdraw a total amount not to exceed \$250 in any one calendar month from any blocked accounts held in the individual's name.

(d) The licensing of any person pursuant to this section shall not suspend the requirements of any section of this chapter relating to the maintenance or production of records.

(e) The following examples illustrate the application of this section:

(1) *Example 1:* A national of Cuba with a blocked U.S. bank account receives a U.S. immigration visa. Upon arrival in the United States, she is issued a permanent resident alien card and thereby is licensed as an unblocked national pursuant to

paragraph (a) of this section. She can apply immediately to OFAC for a specific license to have her bank account unblocked.

(2) *Example 2:* A national of Cuba with a blocked U.S. bank account arrives in the United States without a valid visa and is paroled into the United States. One year later, he applies for and receives permanent resident alien status. From the date he is paroled into the United States until the date he applies for permanent resident alien status, he qualifies for the general license contained in paragraph (c) of this section. During this time he can engage in all transactions as if he is an unblocked national, but he cannot gain access to his blocked bank account other than to withdraw \$250 each month. Beginning with his application to become a permanent resident alien, he is licensed as an unblocked national pursuant to paragraph (a) of this section. At this time, he can apply to OFAC for a specific license to have his bank account unblocked.

(3) *Example 3:* A national of Cuba with a blocked U.S. bank account arrives in the United States on a temporary visa valid for six months. After her visa expires, she remains in the United States for an additional six months and then applies to become a permanent resident alien. She has an adjustment of status application pending until she receives permanent resident alien status one year later. From her arrival in the United States until her application for permanent resident alien status, she does not qualify for any of the authorizations contained in this section. Instead, she is authorized by Sec. 515.571 only to engage in transactions ordinarily incident to her travel and maintenance in the United States and to withdraw \$250 each month from her blocked account to cover her living expenses. Beginning with her application to become a permanent resident alien, she is licensed as an unblocked national pursuant to paragraph (a) of this section. At this time, she can apply to OFAC for a specific license to have her bank account unblocked.

Note to Sec. 515.505: See Sec. 515.571 for the authorization of certain limited transactions incident to travel to, from, and within the United States by Cuban nationals who enter the United States on a non-immigrant visa or other non-immigrant travel authorization issued by the State Department.

[50 FR 27437, July 3, 1985, as amended at 54 FR 5234, Feb. 2, 1989; 68 FR 14141, 14145, Mar. 24, 2003]

Sec. 515.506 – 515.507. – [Reserved]

Sec. 515.508. – Payments to Blocked Accounts in Domestic Banks.

(a) Any payment or transfer of credit to a blocked account in a domestic bank in the name of any designated national is hereby authorized providing such payment or transfer shall not be made from any blocked account if such payment or transfer represents, directly or indirectly, a transfer of the interest of a designated national to any other country or person.

(b) This section does not authorize:

- (1) Any payment or transfer to any blocked account held in a name other than that of the designated national who is the ultimate beneficiary of such payment or transfer; or
- (2) Any foreign exchange transaction including, but not by way of limitation, any transfer of credit, or payment of an obligation, expressed in terms of the currency of any foreign country.
- (c) This section does not authorize any payment or transfer of credit comprising an integral part of a transaction which cannot be effected without the subsequent issuance of a further license.
- (d) This section does not authorize the crediting of the proceeds of the sale of securities held in a blocked account or a subaccount thereof, or the income derived from such securities to a blocked account or subaccount under any name or designation which differs from the name or designation of the specific blocked account or subaccount in which such securities were held.
- (e) This section does not authorize any payment or transfer from a blocked account in a domestic bank to a blocked account held under any name or designation which differs from the name or designation of the blocked account from which the payment or transfer is made.

Note to Sec. 515.508: Please refer to Sec. 501.603 of this chapter for mandatory reporting requirements regarding financial transfers.

[32 FR 10846, July 25, 1967; 58 FR 47645, Sept. 10, 1993; 62 FR 45098, 45106, Aug. 25, 1997]

Sec. 515.509. – Entries in Certain Accounts for Normal Service Charges.

- (a) Any banking institution within the United States is hereby authorized to:
- (1) Debit any blocked account with such banking institution (or with another office within the United States of such banking institution) in payment or reimbursement for normal service charges owed to such banking institution by the owner of such blocked account.
- (2) Make book entries against any foreign currency account maintained by it with a banking institution in a designated foreign country for the purpose of responding to debits to such account for normal service charges in connection therewith.
- (b) As used in this section, the term “normal service charge” shall include charges in payment or reimbursement for interest due; cable, telegraph, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, account carrying charges, notary and protest

fees, and charges for reference books, photostats, credit reports, transcripts of statements, registered mail insurance, stationery and supplies, check books, and other similar items.

[28 FR 6974, July 9, 1963]

Sec. 515.510. – Payments to the United States, States and Political Subdivisions.

(a) The payment from any blocked account to the United States or any agency or instrumentality thereof or to any State, territory, district, county, municipality or other political subdivision in the United States, of customs duties, taxes, and fees payable thereto by the owner of such blocked account is hereby authorized.

(b) This section also authorizes transactions incident to the payment of customs duties, taxes, and fees from blocked accounts, such as the levying of assessments, the creation and enforcement of liens, and the sale of blocked property in satisfaction of liens for customs duties, taxes, and fees.

[28 FR 6974, July 9, 1963]

Sec. 515.511. – Transactions by Certain Business Enterprises.

(a) Except as provided in paragraphs (b), (c) and (d) of this section any partnership, association, corporation or other organization which on the “effective date” was actually engaged in a commercial, banking or financial business within the United States and which is a national of a designated foreign country, is hereby authorized to engage in all transactions ordinarily incidental to the normal conduct of its business activities within the United States.

(b) This section does not authorize any transaction which would require a license if such organization were not a national of a designated foreign country.

(c) This section does not authorize any transaction by a specially designated national.

(d) Any organization engaging in business pursuant to this section shall not engage in any transaction, pursuant to this section or any other license or authorization contained in this part, which, directly or indirectly, substantially diminishes or imperils the assets of such organization or otherwise prejudicially affects the financial position of such organization.

(e) No dealings with regard to any account shall be evidence that any person having an interest therein is actually engaged in commercial, banking or financial business within the United States.

[28 FR 6974, July 9, 1963]

Sec. 515.512. – Provision of Certain Legal Services Authorized.

(a) The provision of the following legal services to or on behalf of Cuba or a Cuban national is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed:

- (1) Provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;
- (2) Representation of persons when named as defendants in or otherwise made parties to domestic U.S. legal, arbitration, or administrative proceedings;
- (3) Initiation and conduct of domestic U.S. legal, arbitration, or administrative proceedings in defense of property interests subject to U.S. jurisdiction;
- (4) Representation of persons before any federal or state agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and
- (5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to Cuba or a Cuban national, not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement affecting property or interests in property or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property in which Cuba or a Cuban national has had an interest at any time on or since 12:01 a.m., e.s.t., July 8, 1963, is prohibited except to the extent otherwise provided by law or unless otherwise authorized by or pursuant to this part.

[68 FR 14141, 14146, Mar. 24, 2003]

Sec. 515.513. – Purchase and Sale of Certain Securities.

(a) The bona fide purchase and sale of securities on a national securities exchange by banking institutions within the United States for the account, and pursuant to the authorization, of nationals of a designated foreign country and the making and receipt of payments, transfers of credit, and transfers of such securities which are necessary incidents of any such purchase or sale are hereby authorized provided the following terms and conditions are complied with:

- (1) In the case of the purchase of securities, the securities purchased shall be held in an account in a banking institution within the United States in the name of the national whose account was debited to purchase such securities; and

(2) In the case of the sale of securities, the proceeds of the sale shall be credited to an account in the name of the national for whose account the sale was made and in the banking institution within the United States which held the securities for such national.

(b) This section does not authorize the crediting of the proceeds of the sale of securities held in a blocked account or a subaccount thereof, to a blocked account or subaccount under any name or designation which differs from the name or designation of the specific blocked account or subaccount in which such securities were held.

(c) Securities issued or guaranteed by the Government of the United States or any State, territory, district, county, municipality, or other political subdivision thereof (including agencies and instrumentalities of the foregoing) need not be purchased or sold on a national securities exchange, but purchases or sales of such securities shall be made at market value and pursuant to all other terms and conditions prescribed in this section.

[28 FR 6974, July 9, 1963]

Sec. 515.514. – Payment of Dividends and Interest on and Redemption and Collection of Securities.

(a) The payment to, and receipt by, a banking institution within the United States of funds or other property representing dividends or interest on securities held by such banking institution in a blocked account is hereby authorized provided the funds or other property are credited to or deposited in a blocked account in such banking institution in the name of the national for whose account the securities were held. Notwithstanding Sec. 515.202, this paragraph authorizes the foregoing transactions although such securities are registered or inscribed in the name of any designated national and although the national in whose name the securities are registered or inscribed may not be the owner of such blocked account.

(b) The payment to, and receipt by, a banking institution within the United States of funds payable in respect of securities (including coupons) presented by such banking institution to the proper paying agents within the United States for redemption or collection for the account and pursuant to the authorization of nationals of a designated country is hereby authorized provided the proceeds of the redemption or collection are credited to a blocked account in such banking institution in the name of the national for whose account the redemption or collection was made.

(c) The performance of such other acts, and the effecting of such other transactions, as may be necessarily incident to any of the foregoing, are also hereby authorized.

(d) This section does not authorize the crediting of the proceeds of the redemption or collection of securities (including coupons) held in a blocked account or a subaccount thereof, or the income derived from such securities to a blocked account or subaccount under any name or designation which differs from the name or designation of the specific blocked account or subaccount in which such securities were held.

(e) This section does not authorize any issuer or other obligor, with respect to a security, who is a designated national, to make any payment, transfer or withdrawal.

[28 FR 6974, July 9, 1963]

Sec. 515.515. – Transfers of Securities to Blocked Accounts in Domestic Banks.

(a) Transactions ordinarily incident to the transfer of securities from a blocked account in the name of any person to a blocked account in the same name in a domestic bank are hereby authorized provided such securities shall not be transferred from any blocked account if such transfer represents, directly or indirectly, a transfer of the interest of a designated national to any other country or person.

(b) This section does not authorize the transfer of securities held in a blocked account or subaccount thereof to a blocked account or subaccount under any name or designation which differs from the name or designation of the specific blocked account or subaccount in which such securities were held.

[32 FR 10847, July 25, 1967]

Sec. 515.516. – Voting and Soliciting of Proxies on Securities.

Notwithstanding Sec. 515.202, the voting and the soliciting of proxies or other authorizations is authorized with respect to the voting of securities issued by a corporation organized under the laws of the United States or of any State, territory, or district thereof, in which a designated national has any interest.

[28 FR 6974, July 9, 1963]

Sec. 515.517. – Access to Safe Deposit Boxes Under Certain Conditions.

(a) Access to any safe deposit box leased to a designated national or containing property in which any designated national has an interest, and the deposit therein or removal therefrom of any property is hereby authorized, provided the following terms and conditions are complied with:

(1) Access shall be permitted only in the presence of an authorized representative of the lessor of such box; and

(2) In the event that any property in which any designated national has any interest is to be removed from such box, access shall be permitted only in the presence of an authorized representative of a banking institution within the United States, which may be the lessor of such box, which shall receive such property into its custody immediately upon removal from such box and which shall hold the same in a blocked account under an appropriate designation indicating the interest therein of designated nationals.

(b) The terms and conditions set forth in paragraph (a) of this section shall not apply to access granted to a representative of the Office of Alien Property pursuant to any rule, regulation or order of such Office.

[28 FR 6974, July 9, 1963]

Sec. 515.518. – [Reserved.]

[28 FR 6974, July 9, 1963. See 64 FR 25808, 25813, May 13, 1999]

Sec. 515.519. – Limited Payments from Accounts of United States Citizens Abroad.

(a) Payments and transfers of credit from blocked accounts for expenditures within the United States or the authorized trade territory of any citizens of the United States who are within any foreign country are hereby authorized provided the following terms and conditions are complied with:

(1) Such payments and transfers shall be made only from blocked accounts in the name, or in which the beneficial interest is held by, such citizen or his family; and

(2) The total of all such payments and transfers made under this section shall not exceed \$1,000 in any one calendar month for any such citizen or his family.

(b) This section does not authorize any remittance to a designated foreign country or, any payment, transfer, or withdrawal which could not be effected without a license by a person within the United States who is not a national of a designated foreign country.

[28 FR 6974, July 9, 1963, as amended at 49 FR 27144, July 2, 1984]

Sec. 515.520. – Payments from accounts of United States citizens in employ of United States in foreign countries and certain other persons.

(a) Banking institutions within the United States are hereby authorized to make all payments, transfers and withdrawals from accounts in the name of citizens of the United States while such citizens are within any foreign country in the course of their employment by the Government of the United States.

(b) Banking institutions within the United States are also hereby authorized to make all payments, transfers and withdrawals from accounts in the name of members of the armed forces of the United States and of citizens of the United States accompanying such armed forces in the course of their employment by any organization acting on behalf of the Government of the United States while such persons are within any foreign country.

(c) This section is deemed to apply to the accounts of members of the armed forces of the United States and of citizens of the United States accompanying such armed forces in the

course of their employment by the Government of the United States or by any organization acting on its behalf even though they are captured or reported missing.

[28 FR 6974, July 9, 1963]

Sec. 515.521. – U.S. assets of certain Cuban corporations.

(a) Specific licenses may be issued unblocking the net pro rata shares of individuals who are permanent residents of the United States or the authorized trade territory, and who are not specially designated nationals, in U.S.-located assets of corporations formed under the laws of Cuba, after deducting the total debt due creditors for claims that accrued prior to the effective date, in cases where all of the following conditions are met:

- (1) The assets were owned by, or accrued to, the corporation before the effective date of the regulations;
- (2) The corporation did not carry on substantial business in Cuba under the management or control of the applicant(s) after the effective date;
- (3) In cases where the blocked assets purportedly have been nationalized by Cuba, compensation has not been paid to the applicant(s).

(b) Applications for specific licenses under this section must include all of the following information:

- (1) A detailed description of the corporation, its by-laws, activities, distribution of shares, and its current status;
- (2) Proof of the permanent residence of the applicant(s) in the United States or the authorized trade territory;
- (3) A list of all officers, directors and shareholders of the corporation, giving the citizenship and the residence of each person as of the date of the application;
- (4) A detailed description of all of the assets of the corporation, wherever located, including a statement of all known encumbrances or claims against them; and
- (5) Detailed information regarding the status of all debts and other obligations of the corporation, specifying the citizenship and residence of each creditor on the effective date and on the date of the application.

[50 FR 33720, Aug. 21, 1985; redesignated at 64 FR 25808, 25813, May 13, 1999]

Sec. 515.522. – U.S. Assets of Certain Cuban Decedents.

(a) Specific licenses may be issued unblocking the net pro rata shares of certain heirs of designated nationals in U.S.-located estate assets, after deducting the total debt due creditors for claims that accrued prior to the effective date, in cases where all of the following conditions are met:

- (1) The applicant is a permanent resident of the United States or the authorized trade territory and is not a specially designated national; and
- (2) No interest on the part of a designated national not licensed as an unblocked national pursuant to Sec. 515.505 exists in that portion of the assets to which the applicant is entitled.

(b) Applications for specific licenses under this section must include all of the following information:

- (1) Proof of permanent residence in the United States or the authorized trade territory, to be established by the submission of documentation issued by relevant government authorities that must include at least two of the following documents:
 - (i) passport;
 - (ii) voter registration card;
 - (iii) permanent resident alien card; or
 - (iv) national identity card.

Other documents tending to show residency, such as income tax returns, may also be submitted in support of government documentation, but will not suffice in and of themselves;

- (2) Proof of death of the designated national to be established by a death certificate;
- (3) Proof of heirship, to be established by a copy of the decedent's duly executed will certified by a probate court, a court decree determining the heirs, or, failing the availability of such documents, copies of certificates establishing the relationship of the heir to the deceased, e.g., birth or marriage certificates;
- (4) A description of the assets involved, including interest due on blocked funds since April 1, 1979, the name and address of the institution in which the assets are held, the account or safe deposit box number, the name in which the assets are held and a statement of all known encumbrances or claims against them; and

(c) Any document provided pursuant to this section that is not written in the English language must be accompanied by a translation into English, as well as a certification by the

translator that he is not an interested party to the proceeding, is qualified to make the translation, and has made an accurate translation of the document in question.

[54 FR 5235, Feb. 2, 1989; redesignated at 64 FR 25808, 25813, May 13, 1999]

Sec. 515.523. – Transactions Incident to the Administration of Decedents' Estates.

(a) The following transactions are authorized in connection with the administration of the assets in the United States of any blocked estate of a decedent:

- (1) The appointment and qualification of a personal representative;
- (2) The collection and preservation of such assets by such personal representative and the payment of all costs, fees and charges in connection therewith; and
- (3) The payment by such personal representative of funeral expenses and expenses of the last illness.
- (4) Any transfer of title pursuant to a valid testamentary disposition.

This paragraph does not authorize any unblocking or distribution of estate assets to a designated national.

(b) In addition to the authorization contained in paragraph (a) of this section, all other transactions incident to the administration of assets situated in the United States of any blocked estate of a decedent are authorized if:

- (1) The decedent was not a national of a designated foreign country at the time of his death;
- (2) The decedent was a citizen of the United States and a national of a designated foreign country at the time of his death solely by reason of his presence in a designated foreign country as a result of his employment by, or service with the United States Government; or
- (3) The assets are unblocked under a specific license issued pursuant to Sec. 515.522.

(c) Any property or interest therein distributed pursuant to this section to a designated national shall be regarded for the purpose of this chapter as property in which such national has an interest and shall accordingly be subject to all the pertinent sections of this chapter. Any payment or distribution of any funds, securities or other choses in action to a designated national shall be made by deposit in a blocked account in a domestic bank or with a public officer, agency, or instrumentality designated by a court having jurisdiction of the estate. Any such deposit shall be made in one of the following ways:

- (1) In the name of the national who is the ultimate beneficiary thereof;

- (2) In the name of a person who is not a national of a designated foreign country in trust for the national who is the ultimate beneficiary; or
 - (3) Under some other designation which clearly shows the interest therein of such national.
- (d) Any distribution of property authorized pursuant to this section may be made to a trustee of any testamentary trust or to the guardian of an estate of a minor or of an incompetent.
- (e) This section does not authorize:
- (1) Any designated national to act as personal representative or co-representative of any estate;
 - (2) Any designated national to represent, directly or indirectly, any person who has an interest in an estate;
 - (3) Any designated national to take distribution of any property as the trustee of any testamentary trust or as the guardian of an estate of a minor or of an incompetent; or
 - (4) Any transaction which could not be effected if no designated national had any interest in such estate.

(f) Any payment or distribution authorized by this section may be deposited in a blocked account in a domestic bank or with a public officer, agency, or instrumentality designated by the court having jurisdiction of the estate in one of the ways prescribed in paragraph (c) (1), (2) or (3) of this section, but this section does not authorize any other transaction directly or indirectly at the request, or upon the instructions of any designated national.

[28 FR 6974, July 9, 1963, as amended at 54 FR 5234, Feb. 2, 1989; 64 FR 25808, 25813, May 13, 1999]

Sec. 515.524. – Payment From, and Transactions in the Administration of Certain Trusts and Estates.

(a) Any bank or trust company incorporated under the laws of the United States, or of any State, territory, possession, or district of the United States, or any private bank subject to supervision and examination under the banking laws of any State of the United States, acting as trustee of a trust created by gift, donation or bequest and administered in the United States, or as legal representative of an estate of an infant or incompetent administered in the United States, in which trust or estate one or more persons who are designated nationals have an interest, beneficial or otherwise, or are co-trustees or co-representatives, is hereby authorized to engage in the following transactions:

- (1) Payments of distributive shares of principal or income to all persons legally entitled thereto upon the condition prescribed in paragraph (b) of this section.

(2) Other transactions arising in the administration of such trust or estate which might be engaged in if no national of a designated foreign country were a beneficiary, co-trustee or co-representative of such trust or estate upon the condition prescribed in paragraph (b) of this section.

(b) Any payment or distribution of any funds, securities or other choses in action to a national of a designated foreign country under this section shall be made by deposit in a blocked account in a domestic bank in the name of the national who is the ultimate beneficiary thereof.

(c) Any payment or distribution into a blocked account in a domestic bank in the name of any such national of a designated foreign country who is the ultimate beneficiary of and legally entitled to any such payment or distribution is authorized by this section, but this section does not authorize such trustee or legal representative to engage in any other transaction at the request, or upon the instructions, of any beneficiary, co-trustee or co-representative of such trust or estate or other person who is a national of any designated foreign country.

(d) The application of this section to trusts is limited to trusts established by gift, donation, or bequest from individuals or entities to benefit specific heirs, charitable causes, and similar beneficiaries. This section does not apply to trusts established for business or commercial purposes, such as sinking funds established by an issuer of securities in order to secure payment of interest or principal due on such securities.

[28 FR 6974, July 9, 1963, as amended at 49 FR 27144, July 2, 1984; 54 FR 5234, Feb. 2, 1989]

Sec. 515.525. – Certain Transfers by Operation of Law.

(a) The following are hereby authorized:

(1) Any transfer of any dower, curtesy, community property, or other interest of any nature whatsoever, provided that such transfer arises solely as a consequence of the existence or change of marital status;

(2) Any transfer to any person by intestate succession;

(3) Any transfer to any person as administrator, executor, or other fiduciary by reason of any testamentary disposition; and

(4) Any transfer to any person as administrator, executor, or fiduciary by reason of judicial appointment or approval in connection with any testamentary disposition or intestate succession.

(b) Except to the extent authorized by Sec. 515.522, Sec. 515.523 or by any other license or authorization contained in or issued pursuant to this part no transfer to any person by

intestate succession and no transfer to any person as administrator, executor, or other fiduciary by reason of any testamentary disposition, and no transfer to any person as administrator, executor, or fiduciary by reason of judicial appointment or approval in connection with any testamentary disposition or intestate succession shall be deemed to terminate the interest of the decedent in the property transferred if the decedent was a designated national.

[28 FR 6974, July 9, 1963, as amended at 54 FR 5234, Feb. 2, 1989; 64 FR 25808, 25813, May 13, 1999]

Sec. 515.526. – Transactions Involving Blocked Life Insurance Policies.

(a) The following transactions are hereby authorized:

(1) The payment of premiums and interest on policy loans with respect to any blocked life insurance policy;

(2) The issuance, servicing or transfer of any blocked life insurance policy in which the only blocked interest is that of one or more of the following:

(i) A member of the armed forces of the United States or a person accompanying such forces (including personnel of the American Red Cross, and similar organizations);

(ii) An officer or employee of the United States; or

(iii) A citizen of the United States resident in a designated foreign country; and

(3) The issuance, servicing or transfer of any blocked life insurance policy in which the only blocked interest (other than that of a person specified in paragraph (a)(2) of this section) is that of a beneficiary.

(b) Paragraph (a) of this section does not authorize:

(1) Any payment to the insurer from any blocked account except a blocked account of the insured or beneficiary, or

(2) Any payment by the insurer to a national of a designated foreign country unless payment is made by deposit in a blocked account in a domestic bank in the name of the national who is the ultimate beneficiary thereof.

(c) The application, in accordance with the provisions of the policy or the established practice of the insurer of the dividends, cash surrender value, or loan value, of any blocked life insurance policy is also hereby authorized for the purpose of:

- (1) Paying premiums;
- (2) Paying policy loans and interest thereon;
- (3) Establishing paid-up insurance; or
- (4) Accumulating such dividends or values to the credit of the policy on the books of the insurer.

(d) As used in this section:

(1) The term *blocked life insurance policy* shall mean any life insurance policy or annuity contract, or contract supplementary thereto, in which there is a blocked interest.

(2) Any interest of a national of a designated foreign country shall be deemed to be a “blocked interest.”

(3) The term *servicing* shall mean the following transactions with respect to any blocked life insurance policy:

(i) The payment of premiums, the payment of loan interest, and the repayment of policy loans;

(ii) The effecting by a life insurance company or other insurer of loans to an insured;

(iii) The effecting on behalf of an insured or surrenders, conversions, modifications, and reinstatements; and

(iv) The exercise or election by an insured of nonforfeiture options, optional modes of settlement, optional disposition of dividends, and other policy options and privileges not involving payment by the insurer.

(4) The term *transfer* shall mean the change of beneficiary, or the assignment or pledge of the interest of an insured in any blocked life insurance policy subsequent to the issuance thereof.

(e) This section does not authorize any transaction with respect to any blocked life insurance policy issued by a life insurance company or other insurer which is a national of a designated foreign country or which is not doing business or effecting insurance in the United States.

[28 FR 6974, July 9, 1963]

Sec. 515.527. – Certain Transactions with Respect to United States Intellectual Property.

(a)

(1) Transactions related to the registration and renewal in the United States Patent and Trademark Office or the United States Copyright Office of patents, trademarks, and copyrights in which the Government of Cuba or a Cuban national has an interest are authorized.

(2) No transaction or payment is authorized or approved pursuant to paragraph (a)(1) of this section with respect to a mark, trade name, or commercial name that is the same as or substantially similar to a mark, trade name, or commercial name that was used in connection with a business or assets that were confiscated, as that term is defined in Sec. 515.336, unless the original owner of the mark, trade name, or commercial name, or the bona fide successor-in-interest has expressly consented.

(b) This section authorizes the payment from blocked accounts or otherwise of fees currently due to the United States Government in connection with any transaction authorized in paragraph (a) of this section.

(c) This section further authorizes the payment from blocked accounts or otherwise of the reasonable and customary fees and charges currently due to attorneys or representatives within the United States in connection with the transactions authorized in paragraph (a) of this section.

[28 FR 6974, July 9, 1963; 60 FR 54194, 54196, Oct. 20, 1995; 64 FR 25808, 25813, May 13, 1999]

Sec. 515.528. – Certain Transactions with Respect to Blocked Foreign Intellectual Property.

(a) The following transactions by any person who is not a designated national are hereby authorized:

(1) The filing and prosecution of any application for a blocked foreign patent, trademark or copyright, or for the renewal thereof;

(2) The receipt of any blocked foreign patent, trademark or copyright;

(3) The filing and prosecution of opposition or infringement proceedings with respect to any blocked foreign patent, trademark, or copyright, and the prosecution of a defense to any such proceedings;

(4) The payment of fees currently due to the government of any foreign country, either directly or through an attorney or representative, in connection with any of the transactions authorized by paragraphs (a) (1), (2), and (3) of this section or for the maintenance of any blocked foreign patent, trademark or copyright; and

(5) The payment of reasonable and customary fees currently due to attorneys or representatives in any foreign country incurred in connection with any of the transactions authorized by paragraphs (a) (1), (2), (3), or (4) of this section.

(b) Payments effected pursuant to the terms of paragraphs (a) (4) and (5) of this section may not be made from any blocked account.

(c) As used in this section the term *blocked foreign patent, trademark, or copyright* shall mean any patent, petty patent, design patent, trademark or copyright issued by any foreign country in which a designated foreign country or national thereof has an interest, including any patent, petty patent, design patent, trademark, or copyright issued by a designated foreign country.

[28 FR 6974, July 9, 1963; 59 FR 44885, Aug. 30, 1994; 60 FR 54194, 54196, Oct. 20, 1995]

Sec. 515.529. – Powers of attorney.

(a) No power of attorney, whether granted before or after the “effective date” shall be invalid by reason of any of the provisions of this part with respect to any transaction licensed by or pursuant to the provisions of this part.

(b) This section does not authorize any transaction pursuant to a power of attorney if such transaction is prohibited by Sec. 515.201 and is not otherwise licensed or authorized by or pursuant to this part.

(c) This section does not authorize the creation of any power of attorney in favor of any person outside of the United States or the exportation from the United States of any power of attorney.

[28 FR 6974, July 9, 1963]

Sec. 515.530. – Exportation of Powers of Attorney or Instructions Relating to Certain Types of Transactions.

(a) The exportation to any foreign country of powers of attorney or other instruments executed or issued by any person within the United States who is not a national of a designated foreign country, which are limited to authorizations or instructions to effect transactions incident to the following, are hereby authorized upon the condition prescribed in paragraph (b) of this section:

(1) The representation of the interest of such person in a decedent’s estate which is being administered in a designated foreign country and the collection of the distributive share of such person in such estate;

(2) The maintenance, preservation, supervision or management of any property located in a designated foreign country in which such person has an interest; and

- (3) The conveyance, transfer, release, sale or other disposition of any property specified in paragraph (a)(1) of this section or any real estate or tangible personal property if the value thereof does not exceed the sum of \$5,000 or its equivalent in foreign currency.
- (b) No instrument which authorizes the conveyance, transfer, release, sale or other disposition of any property may be exported under this section unless it contains an express stipulation that such authority may not be exercised if the value of such property exceeds the sum of \$5,000 or the equivalent thereof in foreign currency.
- (c) As used in this section, the term *tangible personal property* shall not include cash, bullion, deposits, credits, securities, patents, trademarks, or copyrights.
[28 FR 6974, July 9, 1963]

Sec. 515.531. – Payment of Certain Checks and Drafts.

- (a) Any banking institution within the United States is hereby authorized to make payments from blocked accounts with such banking institution:
- (1) Of checks and drafts drawn or issued prior to the “effective date” provided:
- (i) The amount involved in any one payment, acceptance, or debit does not exceed \$500; or
- (ii) The check or draft was within the United States in process of collection by a domestic bank on or prior to the “effective date.”
- (b) This section does not authorize any payment to a designated foreign country or any designated national thereof except payments into a blocked account in a domestic bank, unless such designated national is otherwise licensed to receive such payment.
- (c) The authorization contained in this section shall expire at the close of business on August 8, 1963.

[28 FR 6974, July 9, 1963]

Sec. 515.532. – Completion of Certain Securities Transactions.

- (a) Banking institutions within the United States are hereby authorized to complete, on or before July 12, 1963 purchases and sales made prior to the “effective date” of securities purchased or sold for the account of a designated foreign country or any designated national thereof provided the following terms and conditions are complied with, respectively:
- (1) The proceeds of such sale are credited to a blocked account in a banking institution in the name of the person for whose account the sale was made; and

(2) The securities so purchased are held in a blocked account in a banking institution in the name of the person for whose account the purchase was made.

(b) This section does not authorize the crediting of the proceeds of the sale of securities held in a blocked account or a subaccount thereof, to a blocked account or subaccount under any name or designation which differs from the name or designation of the specific blocked account or subaccount in which such securities were held.

[28 FR 6974, July 9, 1963]

Sec. 515.533. – Transactions Incident to Exportations from the United States and Reexportations of U.S.-Origin Items to Cuba; Negotiation of Executory Contracts.

(a) All transactions ordinarily incident to the exportation of items from the United States, or the reexportation of U.S.-origin items from a third country, to any person within Cuba are authorized, provided that:

(1) The exportation or reexportation is licensed or otherwise authorized by the Department of Commerce under the provisions of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-0420) (see the Export Administration Regulations, 15 CFR 730-774); and

(2) Only the following payment and financing terms may be used:

(i) Payment of cash in advance;

(ii) For authorized sales of agricultural items, financing by a banking institution located in a third country provided the banking institution is not a designated national, U.S. citizen, U.S. permanent resident alien, or an entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches). Such financing may be confirmed or advised by a U.S. banking institution; or

(iii) For all other authorized sales, financing by a banking institution located in a third country provided the banking institution is not a designated national or a person subject to the jurisdiction of the United States. Such financing may be confirmed or advised by a U.S. banking institution.

Note to paragraph (a): The transactions authorized by this paragraph include, but are not limited to, all transactions that are directly incident to the shipping of specific exports or reexports (e.g., insurance and transportation of the exports to Cuba). Transactions that are not tied to specific exports or reexports, such as transactions involving future (non-specific) shipments, must be separately licensed by OFAC. For the waiver of the prohibitions on entry into U.S. ports contained in Sec. 515.207 for vessels transporting shipments of items between the United States and Cuba pursuant to this section, see Sec. 515.550.

(b) Persons subject to the jurisdiction of the United States are authorized to engage in all transactions ordinarily incident to negotiation of and entry into executory contracts for the sale of items that may be exported from the United States to Cuba or 100% U.S.-origin items that may be reexported from a third country to Cuba consistent with the export licensing policy of the Department of Commerce, provided that performance of such executory contracts is expressly made contingent on the prior authorization by the Department of Commerce.

Note to paragraph (b): This paragraph does not authorize transactions related to travel to, from, or within Cuba. See paragraph (e) for a statement of specific licensing policy with respect to such transactions.

(c) This section does not authorize:

(1) The financing of any transactions from any blocked account.

(2) Any transaction involving, directly or indirectly, property in which any designated national, other than a person located in the country to which the exportation or reexportation is consigned, has an interest or has had an interest since the effective date set forth in Sec. 515.201 of this part.

(d) [Reserved]

(e) Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in Sec. 515.560(c) and other transactions that are directly incident to the marketing, sales negotiation, accompanied delivery, or servicing of exports that appear consistent with the export or re-export licensing policy of the Department of Commerce.

[28 FR 6974, July 9, 1963, as amended at 57 FR 15216, Apr. 24, 1992; 59 FR 44885, Aug. 30, 1994; 64 FR 25808, 25813, May 13, 1999; 66 FR 36683, 36687, July 12, 2001; 68 FR 14141, 14146, Mar. 24, 2003]

Sec. 515.535. – Exchange of Certain Securities.

(a) Subject to the limitations and conditions of paragraph (b) of this section and notwithstanding Sec. 515.202, any banking institution within the United States is authorized to engage in the following transactions with respect to securities listed on a national securities exchange, including the withdrawal of such securities from blocked accounts:

(1) Exchange of certificates necessitated by reason of changes in corporate name, par value or capitalization,

(2) Exchanges of temporary for permanent certificates,

(3) Exchanges or deposits under plans of reorganization,

- (4) Exchanges under refunding plans, or
- (5) Exchanges pursuant to conversion privileges accruing to securities held.

(b) This section does not authorize the following transactions:

- (1) Any exchange of securities unless the new securities and other proceeds, if any, received are deposited in the blocked account in which the original securities were held immediately prior to the exchange.
- (2) Any exchange of securities registered in the name of any designated national, unless the new securities received are registered in the same name in which the securities exchanged were registered prior to the exchange.
- (3) Any exchange of securities issued by a person engaged in the business of offering, buying, selling, or otherwise dealing, or trading in securities, or evidences thereof, issued by another person.
- (4) Any transaction with respect to any security by an issuer or other obligor who is a designated national.

[28 FR 6974, July 9, 1963]

Sec. 515.536. – Certain Transactions with Respect to Merchandise Affected by Sec. – 515.204.

(a) With respect to merchandise the importation of which is prohibited by Sec. 515.204, all Customs transactions are authorized except the following:

- (1) Entry for consumption (including any appraisement entry, any entry of goods imported in the mails, regardless of value, and any other informal entries);
- (2) Entry for immediate exportation;
- (3) Entry for transportation and exportation;
- (4) Withdrawal from warehouse;
- (5) Transfer or withdrawal from a foreign-trade zone; or
- (6) Manipulation or manufacture in a warehouse or in a foreign-trade zone.

(b) Paragraph (a) of this section is intended solely to allow certain restricted disposition of merchandise which is imported without proper authorization. Paragraph (a) of this section does not authorize the purchase or importation of any merchandise.

(c) The purchase outside the United States for importation into the United States of nickel-bearing materials presumptively subject to Sec. 515.204 and the importation of such merchandise into the United States (including transactions listed in paragraph (a) of this section) are authorized if there is presented to the collector of customs in connection with such importation the original of an appropriate certificate of origin as defined in paragraph (d) of this section and provided that the merchandise was shipped to the United States directly, or on a through bill of lading, from the country issuing the appropriate certificate of origin.

(d) A certificate of origin is appropriate for the purposes of this section only if

(1) It is a certificate of origin the availability of which for Cuban Assets Control purposes has been announced in the Federal Register by the Office of Foreign Assets Control; and

(2) It bears a statement by the issuing agency referring to the Cuban Assets Control Regulations or stating that the certificate has been issued under procedures agreed upon with the U.S. Government.

[30 FR 15371, Dec. 14, 1965, as amended at 47 FR 4254, Jan. 29, 1982; 50 FR 5753, Feb. 12, 1985; 54 FR 5234, Feb. 2, 1989]

Sec. 515.540. – [Reserved.]

[57 FR 53998, Nov. 16, 1992. See also 64 FR 25808, 25813, May 13, 1999.]

Sec. 515.542. – Telecommunications, Information, and Informational Materials.

(a) All transactions of common carriers incident to the receipt or transmission of mail between the United States and Cuba are hereby authorized.

(b) Except as provided in paragraph (c) of this section, all transactions incident to the use of cables, satellite channels, radio signals, or other means of telecommunications for the provision of telecommunications services between Cuba and the United States, including telephone, telegraph and similar services, and the transmission of radio and television broadcasts and news wire feeds between Cuba and the United States, are authorized.

(c) Full or partial payments owed to Cuba as a result of telecommunications services authorized in paragraph (b) of this section are prohibited unless authorized pursuant to specific licenses, which will be issued on a case-by-case basis provided such payments are determined to be consistent with the public interest and the foreign policy of the United States.

[45 FR 58843, Sept. 5, 1980; 60 FR 39256, Aug. 2, 1995]

Sec. 515.543. – Proof of Origin.

Specific licenses for importation of goods of Cuban origin are generally not issued unless the applicant submits satisfactory documentary proof of the location of the goods outside Cuba prior to July 8, 1963 and of the absence of any Cuban interest in the goods at all times on or since that date. Since the type of document which would constitute satisfactory proof varies depending upon the facts of the particular case, it is not possible to state in advance the type of documents required. However, it has been found that affidavits, statements, invoices, and other documents prepared by manufacturers, processors, sellers or shippers cannot be relied on and are therefore not by themselves accepted by the Office of Foreign Assets Control as satisfactory proof of origin. Independent corroborating documentary evidence, such as insurance documents, bills of lading, etc., may be accepted as satisfactory proof.

[39 FR 25317, July 10, 1974]

Sec. 515.544. – Gifts of Cuban Origin Goods.

(a) Except as stated in paragraph (b) of this section, specific licenses are not issued for the importation of Cuban-origin goods sent as gifts to persons in the United States or acquired abroad as gifts by persons entering the United States. However, licenses are issued upon request for the return of such goods to the donors in countries other than Cuba.

(b) Specific licenses are issued for the importation directly from Cuba:

(1) Of goods which are claimed by the importer to have been sent as a bona fide gift or (2) of goods which are imported by a person entering the U.S., which are claimed to have been acquired in Cuba as a bona fide gift, subject to the conditions that:

(i) The goods are of small value, and

(ii) There is no reason to believe that there is, or has been since July 8, 1963, any direct or indirect financial or commercial benefit to Cuba or nationals thereof from the importation.

[39 FR 25317, July 10, 1974; 39 FR 28434, Aug. 7, 1974, as amended at 49 FR 27144, July 2, 1984]

Sec. 515.545. – Transactions Related to Information and Informational Materials.

(a) Except as provided in Sec. 515.542(c), all financial and other transactions directly incident to the importation or exportation of information or informational materials are authorized.

(b) Transactions relating to the dissemination of informational materials are authorized, including remittance of royalties paid for informational materials that are reproduced, translated, subtitled, or dubbed. This section does not authorize the remittance of royalties or other payments relating to works not yet in being, or for marketing and business consulting services, or artistic or other substantive alteration or enhancements to informational materials, as provided in Sec. 515.206(a)(3).

(c) Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in Sec. 515.560(c) for purposes related to the exportation, importation, or transmission of information or informational materials as defined in Sec. 515.332.

[54 FR 5234, Feb. 2, 1989; 60 FR 39257, Aug. 2, 1995; 64 FR 25808, 25813, May 13, 1999]

Sec. 515.546. – Accounts of Cuban Sole Proprietorships.

Specific licenses are issued unblocking sole proprietorships established under the laws of Cuba if the proprietor has emigrated from Cuba and established residence in the United States or a country in the authorized trade territory.

[39 FR 25319, July 10, 1974; redesignated at 64 FR 25808, 25813, May 13, 1999]

Sec. 515.547. – Research Samples.

Specific licenses are issued for importation of Cuban-origin commodities for bona-fide research purposes in sample quantities only.

[39 FR 25318, July 10, 1974]

Sec. 515.548. – Services Rendered by Cuba to United States Aircraft.

Specific licenses are issued for payment to Cuba of charges for services rendered by Cuba in connection with overflights of Cuba or emergency landings in Cuba, of private, commercial or government-owned United States aircraft.

[39 FR 25318, July 10, 1974, as amended at 49 FR 27144, July 2, 1984]

Sec. 515.549. – Bank Accounts and Other Property of Non-Cuban Citizens who were in Cuba on or after July 8, 1963.

(a) Citizens of foreign countries. Specific licenses are issued unblocking the accounts and other property of non-Cuban citizens who have left Cuba, provided that they submit evidence satisfactorily demonstrating that they have established residence in a foreign country in the authorized trade territory.

(b) Decedents who died in Cuba on or after July 8, 1963. Specific licenses are issued authorizing the administration of the estates of non-Cuban decedents who died in Cuba, provided that any distribution to a blocked national of Cuba is made by deposit in a blocked account in a domestic bank in the name of the blocked national.

[39 FR 25318, July 10, 1974]

Sec. 515.550. – Certain Vessel Transactions Authorized.

Unless a vessel has otherwise engaged in transactions that would prohibit entry pursuant to Sec. 515.207, Sec. 515.207 shall not apply to a vessel that is:

- (a) Engaging in trade with Cuba authorized by licenses issued pursuant to Sec. 515.533 or Sec. 515.559; or
- (b) Engaging in trade with Cuba that is exempt from the prohibitions of this part (see Sec. 515.206).

[58 FR 34711, June 29, 1993; redesignated and revised at 64 FR 25808, 25813, May 13, 1999]

Sec. 515.551. – Joint Bank Accounts.

(a) Specific licenses are issued unblocking a portion of or all of a joint bank account blocked by reason of the fact that one or more of the persons in whose names the account is held is a blocked national, where a non-blocked applicant claims beneficial ownership, as follows:

(1) *Joint bank account, without survivorship provisions.* Specific licenses are issued unblocking only that amount with respect to which the applicant is able to prove beneficial ownership by documentary evidence independent of his assertions of interest.

(2) *Joint bank account, with survivorship provisions.* Specific licenses are issued unblocking an amount equivalent to that portion of the total amount to which the applicant would be entitled if the total were divided evenly among the persons in whose names the account is held (e.g. 50 percent where there are two names; 33 1/3 percent where there are three names). Such licenses generally are issued on the basis of applicant's assertions of beneficial ownership interest without the requirement of independent evidence.

(3) *Joint bank account in the names of a husband and wife, with survivorship provision.* Specific licenses are issued unblocking portions of such accounts blocked by reason of the residence of one spouse in Cuba in favor of the non-blocked spouse under the policy stated in paragraph (a)(2) of this section. However, if 50 percent of the account has been unblocked under that policy, and the spouse who is the blocked Cuban national subsequently dies, the surviving spouse may be entitled to a license unblocking the remainder of the assets under Sec. 515.522.

(b) [Reserved]

[39 FR 25318, July 10, 1974, as amended at 49 FR 27145, July 2, 1984; 54 FR 5234, Feb. 2, 1989; 64 FR 25808, 25813, May 13, 1999]

Sec. 515.552. – Proceeds of Insurance Policies.

(a) Specific licenses are issued authorizing payment of the proceeds of blocked life insurance policies issued on the life of a Cuban national who died in Cuba after July 8, 1963, to certain beneficiaries licensed as unblocked nationals pursuant to Sec. 515.505, as follows:

- (1) The applicant is a permanent resident of the United States or the authorized trade territory and is not a specially designated national; and
- (2) No interest on the part of a designated national not licensed as an unblocked national exists in that portion of the funds to which the applicant is entitled.

(b) Applications for specific licenses under this section must include all of the following information:

(1) Proof of permanent residence in the United States or the authorized trade territory, to be established by the submission of documentation issued by relevant government authorities that must include at least two of the following documents:

- (i) Passport;
- (ii) voter registration card;
- (iii) permanent resident alien card; or
- (iv) national identity card. Other documents tending to show residency, such as income tax returns, may also be submitted in support of government documentation, but will not suffice in and of themselves;

(2) Proof of entitlement under the insurance policy to be established by a copy of the policy and an affidavit from an appropriate officer of a recognized insurance company acknowledging the legitimacy of the beneficiary's claim and the amount of the payment; and

(c) Any document provided pursuant to this section that is not written in the English language must be accompanied by a translation into English, as well as a certification by the translator that he is not an interested party to the proceeding, is qualified to make the translation, and has made an accurate translation of the document in question.

[54 FR 5234, Feb. 2, 1989]

Sec. 515.553. – Bank Accounts of Official Representatives in Cuba of Foreign Governments.

Specific licenses are issued authorizing payments from accounts of official representatives in Cuba of foreign governments for transactions which are not inconsistent with the purposes of any of the regulations in this chapter.

[39 FR 25319, July 10, 1974]

Sec. 515.554. – Transfers of Abandoned Property under State Laws.

(a) Except as stated in paragraphs (b) and (c) of this section, specific licenses are not issued authorizing the transfer of blocked property to State agencies under State laws governing abandoned property.

(b) Specific licenses are issued authorizing the transfer of blocked property, pursuant to the laws of the State governing abandoned property, to the appropriate State agency: Provided, That the State's laws are custodial in nature, i.e., there is no permanent transfer of beneficial interest to the State. Licenses require the property to be held by the State in accounts which are identified as blocked under the regulations. A separate index of these blocked assets is required to be maintained by the State agency. The requirements of this section for identification and separate indexing of blocked assets apply to all blocked assets held by State agencies and any licenses issued prior to the effective date of this section hereby are amended by the incorporation of such requirements.

(c) To be eligible for a specific license under this section, the state agency must demonstrate that it has the statutory authority under appropriate state law to comply with the requirements of Sec. 515.205. Such a showing shall include an opinion of the State Attorney General that such statutory authority exists.

[44 FR 11771, Mar. 2, 1979]

Sec. 515.555. – Assets of Cuban Firms Wholly or Substantially Owned by U.S. citizens.

(a) Specific licenses are issued to applicants requesting the unblocking of their stock in Cuban corporations if:

- (1) The corporation was wholly or substantially owned by United States citizens on July 8, 1963;
- (2) The assets are in the United States and either;
- (3) The applicant is a stockholder who was a United States citizen on July 8, 1963 and owned the stock interests on that date; or,
- (4) The applicant is a non-blocked person who acquired such stock interest after July 8, 1963 from a person specified in paragraph (a)(3) of this section.

(b) The issuance of licenses is conditioned on the applicant's furnishing the following information:

- (1) Detailed information as to the status of all debts and other obligations of the Cuban corporation, specifying the citizenship and residence of each creditor as of July 8, 1963, and as of the date of filing of the application;
- (2) Current status of the Cuban corporation, e.g., liquidated, nationalized, inoperative, etc.;
- (3) A detailed description of all the corporation's assets, wherever located;
- (4) A list of all officers, directors, and stockholders giving the citizenship and the residence of each such person as of July 8, 1963; and,
- (5) Satisfactory proof that such stock was owned by U.S. citizens as of July 8, 1963. Such proof may consist of sworn statements by the persons in question attesting to their citizenship. The Office of Foreign Assets Control reserves the right to require additional proof of citizenship.

[39 FR 25319, July 10, 1974]

Sec. 515.556. – [Reserved.]

[39 FR 29183, Aug. 14, 1974. See also 64 FR 25808, 25813, May 13, 1999]
Sec. 515.557. – Accounts of Cuban Partnerships.

Specific licenses are issued unblocking partnerships established under the laws of Cuba as follows:

- (a) Where all of the general partners and limited partners, if any, have emigrated from Cuba and have established residence in the United States or in a country in the authorized trade territory, specific licenses are issued unblocking the assets of the partnership after deducting the total debt due creditors wherever located.
- (b) Where one or more partners, whether general or limited, is still in Cuba (or elsewhere but still blocked), specific licenses are issued unblocking only the net pro-rata shares of those partners who are resident in the United States or in a country in the authorized trade territory after deducting the total debt due creditors wherever located.
- (c) The issuance of licenses is conditioned on the applicant's furnishing the following information:
 - (1) Detailed information as to the status of all debts and other obligations of the blocked partnership, specifying the citizenship and residence of each creditor as of July 8, 1963, and as of the date of the application;
 - (2) Current status of the Cuban partnership, e.g., liquidated, nationalized, inoperative, etc.;

- (3) A detailed description of all the partnership's assets, wherever located; and,
- (4) A list of all partners, indicating whether they are general, limited, etc. and giving their citizenship and residence as of July 8, 1963, and as of the date of filing of the application.

[39 FR 25319, July 10, 1974]

Sec. 515.558. – Bunkering of Cuban Vessels and Fueling of Cuban Aircraft by American-Owned or Controlled Foreign Firms.

Foreign firms owned or controlled by United States persons are authorized to engage in transactions ordinarily incident to the bunkering of vessels and to the fueling of aircraft owned or controlled by, or chartered to, Cuba or nationals thereof.

[42 FR 58518, Nov. 10, 1977; 43 FR 19852, May 9, 1978; redesignated at 64 FR 25808, 25813, May 13, 1999]

Sec. 515.559. – Certain Transactions by U.S.-Owned or Controlled Foreign Firms with Cuba.

- (a) Effective October 23, 1992, no specific licenses will be issued pursuant to paragraph
- (b) of this section for transactions between U.S.-owned or controlled firms in third countries and Cuba for the exportation to Cuba of commodities produced in the authorized trade zone or for the importation of goods of Cuban origin into countries in the authorized trade zone, unless, in addition to meeting all requirements of paragraph (b), one or more of the following conditions are satisfied:

- (1) The contract underlying the proposed transaction was entered into prior to October 23, 1992;

- (2) The transaction is for the exportation of medicine or medical supplies from a third country to Cuba, which shall not be restricted:

- (i) Except to the extent such restrictions would be permitted under section 5(m) of the Export Administration Act of 1979 or section 203(b)(2) of the International Emergency Economic Powers Act if the exportation were subject to these provisions;

- (ii) Except in a case in which there is a reasonable likelihood that the item to be exported will be used for purposes of torture or other human rights abuses;

- (iii) Except in a case in which there is a reasonable likelihood that the item to be exported will be reexported; or

(iv) Except in a case in which the item to be exported could be used in the production of any biotechnological product; and

(v) Except in a case where it is determined that the United States Government is unable to verify, by on-site inspection or other means, that the item to be exported will be used for the purpose for which it was intended and only for the use and benefit of the Cuban people, but this exception shall not apply to donations for humanitarian purposes to a nongovernmental organization in Cuba.

(3) The transaction is for the exportation of telecommunications equipment from a third country, when the equipment is determined to be necessary for efficient and adequate telecommunications service between the United States and Cuba.

(b) Specific licenses will be issued in appropriate cases for certain categories of transactions between U.S.-owned or controlled firms in third countries and Cuba, where local law requires, or policy in the third country favors, trade with Cuba. The categories include:

(1) Exportation to Cuba of commodities produced in the authorized trade territory, provided:

(i) The commodities to be exported are non-strategic;

(ii) United States-origin technical data (other than maintenance, repair and operations data) will not be transferred;

(iii) If any U.S.-origin parts and components are included therein, such inclusion has been authorized by the Department of Commerce;

(iv) If any U.S.-origin spares are to be reexported to Cuba in connection with a licensed transaction, such reexport has been authorized by the Department of Commerce;

(v) No U.S. dollar accounts are involved; and

(vi) Any financing or other extension of credit by a U.S.-owned or controlled firm is granted on normal short-term conditions which are appropriate for the commodity to be exported.

(2) Travel-related transactions set forth in Sec. 515.560(c) and other transactions that are directly incident to marketing, sales negotiation, accompanied delivery, or servicing of exports that are consistent with the licensing policy under this section.

(3) Importation of goods of Cuban origin into countries in the authorized trade territory.

Note to paragraph (b): On October 23, 1992, sections 1705 and 1706 of the Cuban Democracy Act of 1992, Pub. L. 102-484 (Oct. 23, 1992) (codified at 22 U.S.C. 6004 and 6005, respectively), prohibited OFAC from issuing licenses for any transaction described in this paragraph other than those transactions currently set forth in paragraph (a).

(c) The term *strategic goods* means any item, regardless of origin, of a type included in the Commodity Control List of the U.S. Department of Commerce (15 CFR part 399) and identified by the code letter “A” following the Export Control Commodity Numbers, or of a type the unauthorized exportation of which from the United States is prohibited by regulations issued under the Arms Export Control Act of 1976, 22 U.S.C. 2778, or under the Atomic Energy Act of 1954, 42 U.S.C. 2011, et seq., or successor acts restricting the export of strategic goods.

Note to Sec. 515.559: For reexportation of U.S.-origin goods, wares, or merchandise by U.S.-owned or controlled foreign firms, see Sec. 515.533. Transactions by U.S.-owned or controlled foreign firms directly incident to the exportation of information or informational materials or the donation of food to nongovernmental entities or individuals in Cuba are exempt from the prohibitions of this part. See Sec. 515.206. For the waiver of the prohibitions contained in Sec. 515.207 with respect to vessels transporting shipments of goods, wares, or merchandise pursuant to this section, see Sec. 515.550.

[40 FR 47108, Oct. 8, 1975, as amended at 42 FR 1472, Jan. 7, 1977; 42 FR 16621, Mar. 29, 1977; 50 FR 27438, July 3, 1985; 53 FR 47527, Nov. 23, 1988; 58 FR 34710, June 29, 1993; 64 FR 25808, 25813, May 13, 1999; 66 FR 36683, 36687, July 12, 2001; 68 FR 14141, 14146, Mar. 24, 2003]

Sec. 515.560. – Travel-Related Transactions to, from, and within Cuba by Persons Subject to U.S. Jurisdiction.

(a) The travel-related transactions listed in paragraph (c) of this section may be authorized either by a general license or on a case-by-case basis by a specific license for travel related to the following activities (see the referenced sections for general and specific licensing criteria):

- (1) Family visits (general and specific licenses) (see Sec. 515.561);
- (2) Official business of the U.S. government, foreign governments, and certain intergovernmental organizations (general license) (see Sec. 515.562);
- (3) Journalistic activity (general and specific licenses) (see Sec. 515.563);
- (4) Professional research (general and specific licenses) (see Sec. 515.564);
- (5) Educational activities (specific licenses) (see Sec. 515.565);
- (6) Religious activities (specific licenses) (see Sec. 515.566);

- (7) Public performances, clinics, workshops, athletic and other competitions, and exhibitions (general and specific licenses) (see Sec. 515.567);
 - (8) Support for the Cuban people (specific licenses) (see Sec. 515.574);
 - (9) Humanitarian projects (specific licenses) (see Sec. 515.575);
 - (10) Activities of private foundations or research or educational institutes (specific licenses) (see Sec. 515.576);
 - (11) Exportation, importation, or transmission of information or informational materials (specific licenses) (see Sec. 515.545); and
 - (12) Certain export transactions that may be considered for authorization under existing Department of Commerce regulations and guidelines with respect to Cuba or engaged in by U.S.-owned or controlled foreign firms (specific licenses) (see Sec. Sec. 515.533 and 515.559).
- (b) Effective October 28, 2000, no specific licenses will be issued authorizing the travel-related transactions in paragraph (c) of this section in connection with activities other than those referenced in paragraph (a) of this section.
- (c) Persons generally or specifically licensed under this part to engage in transactions in connection with travel to, from, and within Cuba may engage in the following transactions:
- (1) *Transportation to and from Cuba.* All transportation-related transactions ordinarily incident to travel to and from (not within) Cuba, provided no more than \$500 may be remitted to Cuba directly or indirectly in any consecutive 12-month period for fees imposed by the Government of Cuba in conjunction with such travel unless otherwise authorized.
 - (2) *Living expenses in Cuba.* All transactions ordinarily incident to travel anywhere within Cuba, including payment of living expenses and the acquisition in Cuba of goods for personal consumption there, provided that, unless otherwise authorized, the total for such expenses does not exceed the “maximum per diem rate” for Havana, Cuba in effect during the period that the travel takes place. The per diem rate is published in the State Department’s “Maximum Travel Per Diem Allowances for Foreign Areas,” a supplement to section 925, Department of State Standardized Regulations (Government Civilians, Foreign Areas), available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, or on the Internet at <http://www.state.gov/www/perdiems/index.html>.
 - (3) *Purchase in Cuba and importation into the United States of merchandise.* The purchase in Cuba and importation as accompanied baggage into the United States of merchandise with a foreign market value not to exceed \$100 per person, provided

the merchandise is imported for personal use only. Such merchandise may not be resold. This authorization may be used only once every six consecutive months. As provided in Sec. 515.206(a), the purchase and importation of information or informational materials are exempt from all restrictions contained in this part.

(4) *Carrying remittances to Cuba.* The carrying to Cuba of any remittances that the licensed traveler is authorized to remit pursuant to Sec. 515.570 provided that:

(i) The total of all household remittances authorized by Sec. 515.570(a) does not exceed \$3,000, and

(ii) No emigration remittances authorized by Sec. 515.570(b) are carried to Cuba unless a U.S. immigration visa has been issued for each payee and the licensed traveler can produce the visa recipients' full names, dates of birth, visa numbers, and visa dates of issuance.

Note to paragraph (c)(4): This paragraph does not authorize a traveler to carry remittances on behalf of other remitters.

(5) *Processing certain financial instruments.* All transactions incident to the processing and payment of checks, drafts, travelers' checks, and similar instruments negotiated in Cuba by any person authorized pursuant to this part to engage in financial transactions in Cuba. For purposes of this section, the authorized transactions may be conducted using currency, which is defined as money, cash, drafts, notes, travelers' checks, negotiable instruments, or scrip having a specified or readily determinable face value or worth, but which does not include gold or other precious metals in any form.

Note to paragraph (c): The authorizations in paragraph (c) of this section do not apply to fully-hosted travelers because their travel-related transactions are not licensed or authorized pursuant to this part. See Sec. 515.420.

(d) A Cuban national departing the United States may carry currency, as that term is defined in paragraph (c)(5) of this section, as follows:

(1) The amount of any currency brought into the United States by the Cuban national and registered with the U.S. Customs Service upon entry;

(2) Up to \$300 in funds received as remittances by the Cuban national during his or her stay in the United States; and

(3) Compensation earned by a Cuban national from a U.S. academic institution up to any amount that can be substantiated through payment receipts from such institution as authorized pursuant to Sec. 515.565(a)(2)(v).

(e) The following transactions by persons generally or specifically licensed to engage in travel-related transactions to, from, and within Cuba are prohibited by Sec. 515.201 unless specifically authorized:

(1) All transactions by persons subject to U.S. jurisdiction related to the utilization of charge cards, including but not limited to debit or credit cards, for expenditures in Cuba.

(2) All transactions related to the processing and payment by persons subject to U.S. jurisdiction, such as charge card issuers or intermediary banks, of charge card instruments (e.g., vouchers, drafts, or sales receipts) for expenditures in Cuba. The issuer of a charge card, or a foreign charge card firm owned or controlled by persons subject to U.S. jurisdiction, is not authorized to deal with a Cuban enterprise, a Cuban national, or a third-country person, such as a franchisee, in connection with the extension of charge card services to any person in Cuba.

(f) Persons traveling to Cuba fully hosted as described in Sec. 515.420 may not carry currency to pay for living expenses or the purchase of goods in Cuba except as specifically licensed pursuant to or exempted from the application of this part.

(g) Nothing in this section authorizes transactions in connection with tourist travel to Cuba, nor does it authorize transactions in relation to any business travel, including making or agreeing to make any investment in Cuba, establishing or agreeing to establish any branch or agency in Cuba, or transferring or agreeing to transfer any property to Cuba, except transfers by or on behalf of individual or group travelers authorized pursuant to this part.

[57 FR 53998, Nov. 16, 1992, as amended at 58 FR 34711, June 29, 1993; 59 FR 44885, Aug. 30, 1994; 60 FR 54194, 54196, Oct. 20, 1995; 63 FR 27349, 27351, May 18, 1998, as corrected at 63 FR 35808, July 1, 1998; 64 FR 25808, 25814, May 13, 1999; 66 FR 36683, 36688, July 12, 2001; 68 FR 14141, 14146, Mar. 24, 2003]

Sec. 515.561. – Persons Visiting Close Relatives in Cuba.

(a) General license for visiting a close relative who is a national of Cuba once in any 12-month period. Persons subject to the jurisdiction of the United States and persons traveling with them who share a common dwelling as a family with them are authorized to engage in the travel-related transactions set forth in Sec. 515.560(c) and additional travel-related transactions that are directly incident to the purpose of visiting a close relative who is a national of Cuba, as that term is defined in Sec. 515.302 of this part. The authorization contained in this paragraph may be used only once in any 12-month period. Any transactions related to additional family visits must be specifically licensed pursuant to paragraph (b) of this section.

(b) Specific licenses for visiting a close relative who is a national of Cuba more than once in any 12-month period. Specific licenses may be issued on a case-by-case basis authorizing persons subject to the jurisdiction of the United States and persons traveling with them who

share a common dwelling as a family with them to engage in the travel-related transactions set forth in Sec. 515.560(c) and additional travel-related transactions that are directly incident to the purpose of visiting a close relative who is a national of Cuba, as that term is defined in Sec. 515.302 of this part, more than once in any 12-month period.

(c) Specific licenses for visiting a close relative who is not a national of Cuba. Specific licenses may be issued on a case-by-case basis authorizing persons subject to the jurisdiction of the United States and persons traveling with them who share a common dwelling as a family with them to engage in the travel-related transactions set forth in Sec. 515.560(c) and additional travel-related transactions that are directly incident to the purpose of visiting a close relative who is not a national of Cuba, as that term is defined in Sec. 515.302 of this part.

Example to paragraph (c): If your daughter is a U.S. national engaging in a year-long course of study in Cuba, you need a specific license issued pursuant to this paragraph (c) to engage in transactions incident to traveling to Cuba to visit her.

(d) For the purpose of this section, the term close relative used with respect to any person means any individual related to that person by blood, marriage, or adoption who is no more than three generations removed from that person or from a common ancestor with that person.

Example to paragraph (d): Your mother's cousin is your close relative for the purposes of this section, because you are both no more than three generations removed from your great-grandparents, who are the ancestors you have in common. Similarly, your husband's great-grandson is your close relative for the purposes of this section, because he is no more than three generations removed from you. Your daughter's father-in-law is not your close relative for the purposes of this section, because you have no common ancestor.

[64 FR 25808, 25815, May 13, 1999; 68 FR 14141, 14147, Mar. 24, 2003]

Sec. 515.562. – Officials of the U.S. Government, Foreign Governments, and Certain Intergovernmental Organizations Traveling to, from, and within Cuba on Official Business.

The travel-related transactions set forth in Sec. 515.560(c) and such additional transactions as are directly incident to activities in their official capacities by persons who are officials of the United States Government, any foreign government, or any intergovernmental organization of which the United States is a member and who are traveling on the official business of their government or international organization are authorized.

[64 FR 25808, 25815, May 13, 1999]

Sec. 515.563. – Journalistic Activities in Cuba.

(a) *General license.* The travel-related transactions set forth in Sec. 515.560(c) and such additional transactions as are directly incident to journalistic activities in Cuba by persons

regularly employed as journalists by a news reporting organization or by persons regularly employed as supporting broadcast or technical personnel are authorized.

Note to paragraph (a): See Sec.Sec. 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. The exportation of equipment and other items to be used in journalistic activities may require separate licensing by the Department of Commerce.

(b) *Specific licenses.*

(1) Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in Sec. 515.560(c) and other transactions that are directly incident to doing research in Cuba for a free-lance article upon submission of an adequate written application including the following documentation:

- (i) A detailed itinerary and a detailed description of the proposed research; and
- (ii) A resume or similar document showing a record of publications.

(2) To qualify for a specific license pursuant to this section, the itinerary for the proposed research in Cuba for a free-lance article must demonstrate that the research constitutes a full work schedule that could not be accomplished in a shorter period of time.

(3) Specific licenses may be issued pursuant to this section authorizing transactions for multiple trips to Cuba over an extended period of time by applicants demonstrating a significant record of free-lance journalism.

[64 FR 25808, 25815, May 13, 1999]

Sec. 515.564. – Professional Research and Professional Meetings in Cuba.

(a) *General license.*

(1) The travel-related transactions set forth in Sec. 515.560(c) and such additional transactions that are directly incident to professional research by full-time professionals who travel to Cuba to conduct professional research in their professional areas are authorized, provided that:

- (i) The research is of a noncommercial, academic nature;
- (ii) The research comprises a full work schedule in Cuba;
- (iii) The research has a substantial likelihood of public dissemination; and

(iv) The research does not fall within the categories of activities described in paragraph (c), (d), or (e) of this section.

(2) The travel-related transactions set forth in Sec. 515.560(c) and such additional transactions as are directly incident to travel to Cuba by full-time professionals to attend professional meetings or conferences in Cuba organized by an international professional organization, institution, or association that regularly sponsors meetings or conferences in other countries are authorized, provided that:

(i) The international professional organization, institution, or association is not headquartered in the United States unless that organization, institution, or association has been specifically licensed to sponsor the meeting in Cuba;

(ii) The purpose of the meeting or conference is not the promotion of tourism in Cuba or other commercial activities involving Cuba that are inconsistent with this part; and

(iii) The meeting or conference is not intended primarily for the purpose of fostering production of any biotechnological products.

Note to paragraph (a): See Secs. 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. Exportation of equipment and other items, including the transfer of technology or software to foreign persons (“deemed exportation”) and items not eligible for Department of Commerce GFT or BAG License Exceptions, 15 CFR 740.12 and 740.14, may require separate authorization by the Department of Commerce.

(b) *Specific licensing.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in Sec. 515.560(c) and other transactions that are directly incident to professional research and professional meetings that do not qualify for the general license in paragraph (a) of this section. Specific licenses may be issued pursuant to this section authorizing transactions for multiple trips to Cuba over an extended period of time by applicants demonstrating a significant record of research. Specific licenses will not be issued for travel-related transactions for purposes of attendance at meetings or conferences in Cuba organized by the Cuban government where such meetings or conferences could be intended primarily for the purpose of fostering the production of any biotechnological products.

(c) Categories of activities that do not qualify for the general license in paragraph (a) of this section and for which the specific licenses described in paragraph (b) of this section will not be issued include recreational travel; tourist travel; travel in pursuit of a hobby; research for personal satisfaction only; and any travel for an authorized professional research purpose if the schedule of activities includes free time, travel, or recreation in excess of that consistent with a full work schedule of professional research or attendance at professional meetings or conferences.

(d) An entire group does not qualify for the general license in paragraph (a) of this section and will not be issued a specific license under paragraph (b) of this section merely because some members of the group could qualify individually for such licenses.

Example 1 to paragraph (d): A musicologist travels to Cuba to do research on Cuban music pursuant to the general license for professional researchers set forth in paragraph (a) of this section. Others who are simply interested in music but who do not research music as part of their careers may not engage in travel-related transactions with the musicologist in reliance on this general license. For example, an art historian who plays in the same band with the musicologist would not qualify as a professional researcher of Cuban music for purposes of this general license.

Example 2 to paragraph (d): A specific license issued pursuant to paragraph (b) of this section authorizing travel-related transactions by a fish biologist who travels to Cuba to engage in professional research does not authorize transactions by other persons who might travel with the fish biologist but whose principal purpose in travel is to engage in recreational or trophy fishing. The fact that such persons may engage in certain activities with or under the direction of the professional fish biologist, such as measuring or recording facts about their catch, does not bring these individuals' activities within the scope of professional research and similar activities.

(e) A person will not qualify as engaging in professional research merely because that person is a professional who plans to travel to Cuba.

Example 1 to paragraph (e): A professor of history interested in traveling to Cuba for the principal purpose of learning or practicing Spanish or attending general purpose lectures devoted to Cuban culture and contemporary life does not qualify for the general license in paragraph (a) of this section or for a specific license issued pursuant to paragraph (b) of this section.

Example 2 to paragraph (e): A professional photographer who wishes to take photographs in Cuba that will become the basis for creating post cards, paintings, and other secondary products or that merely document the photographer's travel does not qualify for the general license in paragraph (a) of this section or for a specific license issued pursuant to paragraph (b) of this section.

[64 FR 25808, 25815, May 13, 1999]

Sec. 515.565. – Educational Activities.

(a) *Specific license for U.S. academic institutions.* –

(1) *Issuance; renewal.* A specific license may be issued to an accredited U.S. academic institution authorizing the institution and its students and employees to engage, under the auspices of the institution, in educational activities involving transactions in which Cuba or a Cuban national has an interest. The application for the specific license must establish that the U.S. academic institution is accredited by an

appropriate national or regional educational accrediting association. The specific license may be renewed after a period of two years to authorize the accredited U.S. academic institution and its students and employees to continue to engage in the transactions authorized under the institution's license.

(2) *Scope of transactions authorized under U.S. academic institution's specific license; documentation.* Upon receipt of a specific license pursuant to paragraph (a)(1) of this section by the accredited U.S. academic institution, the institution and its students and employees are authorized to engage in the travel-related transactions set forth in Sec. 515.560(c) and such additional transactions as are directly incident to any of the categories of educational activities set forth in paragraphs (a)(2)(i) through (a)(2)(vii) of this section undertaken under the auspices of the specifically-licensed institution. Activities covered by this authorization are limited to the following:

(i) Participation in a structured educational program by an undergraduate or graduate student or undergraduate or graduate student group as part of a course offered at an accredited U.S. college or university. A student planning to engage in such transactions in Cuba must carry a letter from the U.S. academic institution stating that the student is currently enrolled in an undergraduate or graduate degree program there and that the Cuba travel is part of a structured educational program of that institution and citing the number of the relevant U.S. academic institution's specific license.

(ii) Noncommercial academic research in Cuba specifically related to Cuba by a person working to qualify academically as a professional (for example, research toward a graduate degree). A student planning to engage in such transactions in Cuba must carry a letter from the student's accredited U.S. academic institution stating that the individual is currently enrolled in a graduate degree program and that the Cuba research will be accepted for credit toward that degree and citing the number of the relevant U.S. academic institution's specific license.

(iii) Participation in a formal course of study at a Cuban academic institution by an undergraduate or graduate student currently enrolled in a degree program at an accredited U.S. college or university, provided the formal course of study in Cuba will be accepted for credit toward the student's undergraduate or graduate degree at that U.S. college or university. A student planning to engage in such transactions in Cuba must carry with him or her a letter from the student's U.S. academic institution stating that the student is currently enrolled in an undergraduate or graduate degree program and that the Cuban study will be accepted for credit toward that degree and citing the number of the relevant U.S. academic institution's specific license.

(iv) Teaching at a Cuban academic institution by an individual regularly employed in a teaching capacity at an accredited U.S. college or university, provided the teaching activities are related to an academic program at the

Cuban institution. An individual planning to teach at a Cuban academic institution must obtain and carry a written letter from the individual's U.S. academic institution, citing the number of that institution's specific license and stating that the individual is regularly employed there in a teaching capacity.

(v) Sponsorship, including the payment of a stipend or salary, of a Cuban scholar to teach or engage in other scholarly activity at a college or university in the United States (in addition to those transactions authorized by the general license contained in Sec. 515.571). Such earnings may be remitted to Cuba as provided in Sec. 515.570, or carried on the person of the Cuban scholar returning to Cuba as provided in Sec. 515.560(d)(3).

(vi) Educational exchanges sponsored by Cuban or U.S. secondary schools involving secondary school students' participation in a formal course of study or in a structured educational program offered by a secondary school or other academic institution and led by a teacher or other secondary school official. This authorization includes participation by a reasonable number of adult chaperones to accompany the secondary school student(s) to Cuba. A secondary school group planning to engage in such transactions in Cuba must carry a letter from the secondary school sponsoring the trip, citing the number of the school's specific license and listing the names of all persons traveling with the group.

(vii) The organization of and preparation for transactions and activities described in paragraphs (a)(2)(i) through (a)(2)(vi) of this section by a full-time employee of a U.S. academic institution. An individual engaging in such transactions must carry a written letter from the individual's U.S. academic institution, citing the number of that institution's specific license and stating that the individual is regularly employed there.

Note to Paragraph (a): See Secs. 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. Exportation of equipment and other items, including the transfer of technology or software to foreign persons ("deemed exportation"), and items not eligible for Department of Commerce GFT or BAG License Exceptions, 15 CFR 740.12 and 740.14, may require separate licensing from the Department of Commerce.

(b) *Specific license.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in Sec. 515.560(c) and other transactions that are directly incident to:

(1) Educational activities described in paragraphs (a)(2)(i) through (a)(2)(iii) of this section not covered by a specific license issued pursuant to paragraph (a) of this section to an accredited U.S. academic institution.

(2) [Reserved]

(c) Transactions related to activities that are primarily tourist-oriented, including self-directed educational activities that are intended only for personal enrichment, are not authorized by this section.

[64 FR 25808, 25816, May 13, 1999; 68 FR 14141, 14147, Mar. 24, 2003]

Sec. 515.566. – Religious Activities in Cuba.

(a) *Specific license for U.S. religious organizations.* –

(1) *Issuance; renewal.* A specific license may be issued to a religious organization located in the United States authorizing the organization and individuals and groups affiliated with the organization to engage, under the auspices of the organization, in religious activities involving transactions (including travel-related transactions) in which Cuba or a Cuban national has an interest. The application for the specific license must set forth examples of religious activities to be undertaken in Cuba. The religious organization's specific license may be renewed after a period of two years to authorize the organization and individuals and groups affiliated with the organization to continue to engage in the transactions authorized under the organization's license.

(2) *Scope of transactions authorized under U.S. religious organization's specific license; documentation.* Upon receipt by the religious organization located in the United States of a specific license pursuant to paragraph (a)(1) of this section, the organization and individuals or groups affiliated with the organization are authorized to engage in the travel-related transactions set forth in Sec. 515.560(c) and such additional transactions as are directly incident to religious activities in Cuba under the auspices of the organization. Travel-related transactions pursuant to this authorization must be for the purpose of engaging, while in Cuba, in a full-time program of religious activities. Financial and material donations to Cuba or Cuban nationals are not authorized by this paragraph (a)(2). All individuals who engage in transactions in which Cuba or Cuban nationals have an interest (including travel-related transactions) pursuant to this paragraph (a)(2) must carry with them a letter from the specifically-licensed U.S. religious organization, citing the number of the organization's specific license and confirming that they are affiliated with the organization and are traveling to Cuba to engage in religious activities under the auspices of the organization.

Note to paragraph (a): See Sec.Sec. 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. Exportation of items to be used in Cuba may require separate licensing by the Department of Commerce.

(b) *Specific licenses.* Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in Sec. 515.560(c) and other transactions that are directly incident to religious activities not covered by a specific license issued pursuant to paragraph (a) of this section to a U.S. religious organization. Specific licenses may be issued pursuant to

this section authorizing transactions for multiple trips over an extended period of time to engage in a full-time program of religious activities in Cuba.

[64 FR 25808, 25817, May 13, 1999]

Sec. 515.567. – Public Performances, Clinics, Workshops, Athletic and other Competitions, and Exhibitions.

(a) *General license.* The travel-related transactions set forth in Sec. 515.560(c) and such additional transactions as are directly incident to athletic competition by amateur or semi-professional athletes or amateur or semi-professional athletic teams traveling to participate in athletic competition held in Cuba are authorized, provided that:

- (1) The athletic competition in Cuba is held under the auspices of the international sports federation for the relevant sport;
- (2) The United States participants in the athletic competition are selected by the United States federation for the relevant sport; and
- (3) The competition is open for attendance, and in relevant situations participation, by the Cuban public.

Note to paragraph (a): See Secs. 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. Exportation of items to be used in Cuba may require separate licensing by the Department of Commerce.

(b) Specific licenses, including for multiple trips to Cuba over an extended period of time, may be issued on a case-by-case basis authorizing the travel-related transactions set forth in Sec. 515.560(c) and other transactions that are directly incident to participation in a public performance, clinic, workshop, athletic or other competition, or exhibition in Cuba by participants in such activities, provided that:

- (1) The event is open for attendance, and in relevant situations participation, by the Cuban public;
- (2) All U.S. profits from the event after costs are donated to an independent nongovernmental organization in Cuba or a U.S.-based charity, with the objective, to the extent possible, of promoting people-to-people contacts or otherwise benefiting the Cuban people; and
- (3) Any clinics or workshops in Cuba must be organized and run, at least in part, by the licensee. In general, an individual's attendance at a purely Cuba-organized clinic or workshop will not be authorized pursuant to this paragraph.

(c) Specific licenses will not be issued pursuant to this section authorizing any debit to a blocked account.

Note to Sec. 515.567: See Sec. 515.571 for the authorization of certain transactions related to the activities of nationals of Cuba traveling in the United States.

[64 FR 25808, 25817, May 13, 1999; 68 FR 14141, 14147, Mar. 24, 2003]

Sec. 515.568. – [Reserved.]

[64 FR 25808, 25818, May 13, 1999]

Sec. 515.569. – Foreign Passengers' Baggage.

The importation of Cuban-origin goods, otherwise prohibited by this part, brought into the United States as baggage by any person arriving in the United States other than a citizen or resident of the United States is hereby authorized, notwithstanding the provisions of Sec. 515.803, provided that such goods are not in commercial quantities and are not imported for resale. This authorization does not apply to the importation of Cuban-origin alcohol or tobacco products.

[57 FR 53998, Nov. 16, 1992; redesignated and revised 64 FR 25808, 25813, 25818, May 13, 1999]

Sec. 515.570. – Remittances to Nationals of Cuba.

(a) Periodic \$300 household remittances authorized. Persons subject to the jurisdiction of the United States who are 18 years of age or older are authorized to make remittances to Cuban households (including to Cuban individuals living alone) located in Cuba or in the authorized trade territory provided that:

(1) The remitter's total remittances do not exceed \$300 per Cuban household in any consecutive 3-month period, regardless of the number of individuals comprising that household;

(2) The remittances are not made from a blocked source unless:

(i) The remittances are authorized pursuant to paragraph (c) of this section;
or

(ii) The remittances are made to a Cuban household in a third country and are made from a blocked account in a banking institution in the United States held in the name of, or in which the beneficial interest is held by, the payee.

(3) No member of the payee's household is a senior-level Cuban government official or senior-level communist party official.

Note to paragraph (a): The maximum amount set forth in this paragraph does not apply to remittances to a Cuban individual who has been unblocked or whose current transactions are

otherwise authorized pursuant to Sec. 515.505, because remittances to such persons do not require separate authorization.

(b) Two one-time \$500 emigration-related remittances authorized. Persons subject to the jurisdiction of the United States are authorized to remit the following amounts:

(1) Up to \$500 per payee on a one-time basis to any Cuban nationals for the purpose of covering the payees' preliminary expenses associated with emigrating from Cuba to the United States. These remittances may be sent before the payees have received valid visas issued by the State Department or other approved U.S.-immigration documents, but may not be carried by a licensed traveler to Cuba until the payees have received valid visas issued by the State Department or other approved U.S.-immigration documents. See Sec. 515.560(c)(4) of this part for the rules regarding the carrying of authorized remittances to Cuba. These remittances may not be made from a blocked source unless authorized pursuant to paragraph (c) of this section.

(2) Up to an additional \$500 per payee on a one-time basis to any Cuban nationals for the purpose of enabling the payees to emigrate from Cuba to the United States, including for the purchase of airline tickets and payment of exit or third-country visa fees or other travel-related fees. These remittances may be sent only once the payees have received valid visas issued by the State Department or other approved U.S.-immigration documents. A remitter must be able to provide the visa recipients' full names, dates of birth, visa numbers, and visa dates of issuance. See Sec. 515.560(c)(4) of this part for the rules regarding the carrying of authorized remittances to Cuba. These remittances may not be made from a blocked source unless authorized pursuant to paragraph (c) of this section.

(c) Certain remittances from inherited blocked sources authorized. The remittances authorized in paragraphs (a) and (b) of this section may be made from a blocked account in a banking institution in the United States held in the name of, or in which the beneficial interest is held by, the payee, provided that the funds were deposited in the blocked account as a result of a valid testamentary disposition, intestate succession, or payment from a life insurance policy or annuity contract triggered by the death of the policy or contract holder.

(d) Specific licenses. Specific licenses may be issued on a case-by-case basis authorizing the following:

(1) Remittances by persons subject to U.S. jurisdiction to independent non-governmental entities in Cuba.

(2) Remittances by persons subject to U.S. jurisdiction from blocked accounts to Cuban households in third countries in excess of the amount specified in paragraph (a) of this section; or

(3) Remittances by persons subject to U.S. jurisdiction to a person in Cuba, directly or indirectly, for transactions to facilitate non-immigrant travel by an individual in

Cuba to the United States under circumstances where humanitarian need is demonstrated, including but not limited to illness or other medical emergency.

Note to Sec. 515.570: For the rules relating to the carrying of remittances to Cuba by licensed travelers to Cuba, see paragraph (c)(4) of Sec. 515.560. Persons subject to the jurisdiction of the United States are prohibited from engaging in the collection or forwarding of remittances to Cuba unless authorized pursuant to Sec. 515.572 of this part. Pursuant to Sec. 515.572, all depository institutions (e.g., banks) are authorized to provide such services. For a list of other authorized U.S. remittance service providers, see the following Web site: <http://www.treas.gov/offices/enforcement/ofac/sanctions/cuba/tsp.pdf>.

[64 FR 25808, 25818, May 13, 1999; 68 FR 14141, 14147, Mar. 24, 2003]

Sec. 515.571. – Certain Transactions Incident to Travel to, from, and within the United States by Cuban Nationals.

(a) Except as provided in paragraph (c) of this section, the following transactions by or on behalf of a Cuban national who enters the United States on a non-immigrant visa or other non-immigrant travel authorization issued by the State Department are authorized:

(1) All transactions ordinarily incident to travel between the United States and Cuba, including the importation into the United States of accompanied baggage for personal use;

(2) All transactions ordinarily incident to travel and maintenance within the United States, including the payment of living expenses and the acquisition of goods for personal consumption in the United States;

(3) All transactions on behalf of aircraft or vessels incident to non-scheduled flights or voyages between the United States and Cuba, provided that the carrier used has a carrier service provider license issued pursuant to Sec. 515.572. This paragraph does not authorize the carriage of any merchandise into the United States except accompanied baggage; and

(4) Normal banking transactions involving foreign currency drafts, travelers' checks, or other instruments negotiated incident to travel in the United States by any person under the authority of this section.

(5) All transactions ordinarily incident to the activities for which a visa or other travel authorization was issued.

(i) This paragraph (a)(5) does not authorize receipt of compensation in excess of amounts covering living expenses and the acquisition of goods for personal consumption. See Sec. 515.565(a)(2)(v) of this part for the case-by-case authorization of payments to certain Cuban scholars of stipends or salaries that exceed this limit.

(ii) Examples of transactions authorized by this paragraph (a)(5) include: the payment of tuition to a U.S. educational institution by a national of Cuba issued a student visa; the payment of compensation covering only living expenses and the purchase of goods for personal consumption to a national of Cuba issued a performance-related visa; and the rental of a stage by a Cuban group issued a performance visa.

(b) Payments and transfers of credit in the United States from blocked accounts in domestic banking institutions held in the name of a Cuban national who enters the United States on a visa or other travel authorization issued by the State Department to or upon the order of such Cuban national are authorized provided that:

(1) Such payments and transfers of credit are made only for the living, traveling, and similar personal expenses in the United States of such Cuban national or his or her family;

(2) The total of all such payments and transfers of credit made under this section from the accounts of such Cuban national do not exceed \$250 in any one calendar month; and

(3) No payment or transfer is made from a blocked account in which a specially designated national has an interest.

(c) This section does not authorize any transfer of property to Cuba, or, except as otherwise authorized in paragraph (b) of this section, any debit to a blocked account.

Note to Sec. 515.571: For the authorization of certain transactions by Cuba nationals who become U.S. citizens, apply for or receive U.S. permanent resident alien status, or are paroled into the United States, see Sec. 515.505 of this part.

[64 FR 25808, 25819, May 13, 1999; 68 FR 14141, 14148, Mar. 24, 2003]

Sec. 515.572. – Authorization of Transactions Incident to the Provision of Travel Services, Carrier Services, and Remittance Forwarding Services.

(a)

(1) *Authorization of travel service provider.* The following persons wishing to provide services in connection with travel to Cuba are “travel service providers” for purposes of this part: Travel agents, ticket agents, commercial and noncommercial organizations that arrange travel to Cuba; tour operators; persons arranging through transportation to Cuba; persons chartering an aircraft or vessel on behalf of others in Cuba; and persons arranging hotel accommodations, ground transportation, local tours, and similar travel activities on behalf of others in Cuba. Travel service providers must obtain authorization from the Office of Foreign Assets Control before providing services with respect to travel to Cuba. The list stated above should

not be considered exhaustive, as other persons may be “travel service providers” within the meaning of this part. Opinions may be obtained from the Office of Foreign Assets Control concerning the applicability of this licensing requirement in individual cases.

(2) *Authorization of carrier service provider.* Persons subject to U.S. jurisdiction wishing to provide carrier services by aircraft or vessels incidental to their non-scheduled flights or voyages to, from, or within Cuba are “carrier service providers” for purposes of this part. Carrier service providers must obtain authorization from the Office of Foreign Assets Control before providing services with respect to non-scheduled flights or voyages to, from, or within Cuba. Carriage to or from Cuba of any merchandise, cargo or gifts, other than those permitted to individual travelers as accompanied baggage, must also be authorized by licenses issued by the U.S. Department of Commerce.

(3) *Authorization of remittance forwarders.* Persons subject to U.S. jurisdiction, including persons who provide payment forwarding services and noncommercial organizations acting on behalf of donors, who wish to provide services in connection with the collection or forwarding of remittances authorized pursuant to this part must obtain authorization from the Office of Foreign Assets Control. Depository institutions, as defined in Sec. 515.333, are exempt from this requirement.

(b) *Terms and conditions of authorization to engage in service transactions.* Authorization to engage in service transactions will be issued only upon the applicant’s written affirmation and subsequent demonstration that it does not participate in discriminatory practices of the Cuban government against certain residents and citizens of the United States. Examples of such practices include, but are not limited to, charging discriminatory rates for air travel or requiring payment for services, such as hotel accommodations and meals, not desired, planned to be utilized, or actually utilized, based on such characteristics as race, color, religion, sex, citizenship, place of birth, or national origin. Authorization, whether a grant of provisional authorization or a license issued pursuant to this part, does not permit a travel or carrier service provider to provide services in connection with any individual’s transactions incident to travel which are prohibited by this part.

(c) *Initial applications for licenses.* The initial application for a license shall contain:

(1) The applicant organization’s name, address, telephone number, and the name of an official of the applicant organization responsible for its licensed services;

(2) The state of applicant’s organization, if a juridical entity, the address of its principal place of business and all branch offices, the identity and ownership percentages of all shareholders or partners, and the identity and position of all principal officers and directors;

(3) Copies of any bylaws, articles of incorporation, partnership agreements, management agreements, or other documents pertaining to the organization, ownership, control, or management of the applicant; and

(4)

(i) In the case of applications for authorization to serve as travel or carrier service providers, a report on the forms and other procedures used to establish that each customer is in full compliance with U.S. law implementing the Cuban embargo and either qualifies for one of the general licenses contained in this part authorizing travel-related transactions in connection with travel to Cuba, has received a specific license from the Office of Foreign Assets Control issued pursuant to this part, or is a fully-hosted traveler as described in Sec. 515.420. In the case of a customer traveling pursuant to a general license or claiming to be traveling fully hosted, the applicant must demonstrate that it requires each customer to attest, in a signed statement, to his or her qualification for the particular general license or fully-hosted status claimed. The statement must provide facts supporting the customer's belief that he or she qualifies for the general license or fully-hosted status claimed. In the case of a customer traveling under a specific license, the applicant must demonstrate that it requires the customer to furnish it with a copy of the license. The copy of the signed statement or the specific license must be maintained on file with the applicant.

(ii) In the case of applications for authorization as remittance forwarders, a report on the forms, account books, and other recordkeeping procedures used to determine whether each customer has violated the terms of any authorization for remittances contained in or issued pursuant to this part, or sent remittances to persons ineligible to receive them under Sec. 515.570; and the method by which remittances are sent to Cuba and the procedures used by the applicant to ensure that the remittances are received by the persons intended.

(d) *Required reports and recordkeeping.*

(1) Each specific license or grant of provisional authority shall require that the service provider furnish annual reports to the Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, during the term of the license. The required content of such reports and their due dates shall be provided to the service provider in a letter authorizing the provider to commence services. Each such report will cover only the one-year period immediately preceding the date of the report.

(2) While the names and addresses of individual travelers or remitters, the number and amount of each remittance, and the name and address of each recipient, as applicable, need not be submitted with annual reports, this information must be retained on file with all other information required by Sec. 501.601 of this chapter.

These records must be furnished to the Office of Foreign Assets Control on demand pursuant to Sec. 501.602 of this chapter.

(3) *Presentation of passenger lists.* Tour operators, persons operating an aircraft or vessel, or persons chartering an aircraft or vessel on behalf of others, for travel to, from, and within Cuba must furnish the U.S. Customs Service on demand a list of passengers on each flight or voyage to, from, and within Cuba.

(e) *Procedures governing the grant of provisional authority, denial, suspension, or revocation of authority to engage in service transactions.* –

(1) *Grant of provisional authority.* Following submission of a complete application as described in paragraph (c) of this section, the submission of any additional relevant information, and a preliminary evaluation by the Office of Foreign Assets Control, the applicant will be notified in writing that provisional authority has been granted to provide the services contemplated in the application. This provisional authority to provide services will remain in effect pending a final decision to grant or deny the license.

(2) *Denial of license.* –

(i) *Notice of denial.* If the Director, Office of Foreign Assets Control, determines that the application for a license to engage in service transactions related to travel to Cuba, carrier service transactions related to travel to Cuba, or transactions related to remittance forwarding should be denied for any reason, notice of denial shall be given to the applicant. The notice of denial shall state the reasons for the denial.

(ii) *Grounds for denial.* The causes sufficient to justify denial of an application for a license may include, but need not be limited to:

(A) Any cause which would justify suspension or revocation of the authority of a service provider pursuant to paragraph (e)(3) of this section;

(B) Failure to file a full and complete application;

(C) Any willful misstatement of pertinent facts in the application;

(D) Evidence indicating that the applicant participates in discriminatory practices of the Cuban Government against certain residents and citizens of the United States as described in paragraph (b) of this section; or

(E) A reputation imputing to the applicant criminal, dishonest, or unethical conduct, or a record of such conduct.

(3) *Suspension or revocation of a license or provisional authorization.* A license or provisional authorization issued pursuant to this section may be suspended for a specific period of time, or revoked, for the following reasons:

(i) The service provider has willfully made or caused to be made in any application for any license, request for a ruling or opinion, or report be filed with the Office of Foreign Assets Control, any statement that was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any application, request for ruling or opinion, or report any material fact that was required;

(ii) The service provider has failed to file timely reports or comply with the recordkeeping requirements of his license or provisional authorization.

(iii) The service provider has been convicted, at any time after filing an application for a license under this section, of any felony or misdemeanor that:

(A) Involved the importation, exportation, or transfer of property in violation of any law or regulation administered by the Office of Foreign Assets Control;

(B) Arose directly out of the conduct of the business covered by the license; or

(C) Involved larceny, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, misappropriation of funds, or a violation of the Customs laws, export or import control laws, or banking laws.

(iv) The service provider has violated any provision of law enforced by the Office of Foreign Assets Control or the rules or regulations issued under any such provision;

(v) The service provider has counseled, commanded, induced, procured, or knowingly aided or abetted the violation by any other person of any provision of any law or regulation referred to above;

(vi) The service provider has, in the course of the business covered by the license, with felonious intent, in any manner willfully and knowingly deceived, defrauded, misled, threatened, or coerced any client or prospective client; or

(vii) The service provider has committed any other act or omission that demonstrates unfitness to conduct the business covered by the license.

[57 FR 53999, Nov. 16, 1992; 59 FR 31142, June 17, 1994; 59 FR 44886, Aug. 30, 1994; 63 FR 27348, 27349, May 18, 1998; redesignated and amended at 64 FR 25808, 25813, 25819, May 13, 1999; 68 FR 14141, 14148, Mar. 24, 2003]

Sec. 515.573. – Transactions by News Organizations.

(a) Specific licenses may be issued authorizing all transactions necessary for the establishment and operation of news bureaus in Cuba whose primary purpose is the gathering and dissemination of news to the general public. Transactions that may be authorized include, but are not limited to, those incident to the following:

- (1) Leasing office space and securing related goods and services;
- (2) Hiring Cuban nationals to serve as support staff;
- (3) Purchasing Cuban-origin goods for use in the operation of the office; and
- (4) Paying fees related to the operation of the office in Cuba.

(b) Specific licenses may be issued authorizing transactions necessary for the establishment and operation of news bureaus in the United States by Cuban organizations whose primary purpose is the gathering and dissemination of news to the general public.

(c) Specific licenses may be issued authorizing transactions related to hiring Cuban nationals to provide reporting services or other services related to the gathering and dissemination of news.

(d) Note: The number assigned to a specific license issued pursuant to this section should be referenced in all import documents, and in all funds transfers and other banking transactions through banks organized or located in the United States, in connection with the licensed transaction to avoid the blocking of goods imported from Cuba and the interruption of the financial transactions with Cuba.

[60 FR 54194, 54197, Oct. 20, 1995; redesignated at 64 FR 25808, 25813, May 13, 1999]

Sec. 515.574. – Support for the Cuban People.

(a) Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in Sec. 515.560(c) and other transactions that are intended to provide support for the Cuban people including, but not limited to, the following:

- (1) Activities of recognized human rights organizations,
- (2) Activities of independent organizations designed to promote a rapid, peaceful transition to democracy, and

(3) Activities of individuals and non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba.

(b) Licenses will be issued pursuant to this section once the applicant shows that the proposed transactions are consistent with the purposes of this section and provides an explanation that no significant accumulation of funds or financial benefit will accrue to the government of Cuba.

[60 FR 54194, 54197, Oct. 20, 1995; 64 FR 25808, 25819, May 13, 1999; 68 FR 14141, 14148, Mar. 24, 2003]

Sec. 515.575. – Humanitarian Projects.

Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in Sec. 515.560(c) and such additional transactions as are directly incident to certain humanitarian projects in or related to Cuba not otherwise covered by this part that are designed to directly benefit the Cuban people. Such projects may include, but are not limited to: medical and health-related projects; construction projects intended to benefit legitimately independent civil society groups; environmental projects; projects involving formal or non-formal educational training, within Cuba or off-island, on topics including civil education, journalism, advocacy and organizing, adult literacy, and vocational skills; community-based grassroots projects; projects suitable to the development of small scale private enterprise; projects that are related to agricultural and rural development that promote independent activity; and projects to meet basic human needs. Specific licenses may be issued authorizing transactions for multiple visits for the same project over an extended period of time by applicants demonstrating a significant record of overseas humanitarian projects.

[64 FR 25808, 25819, May 13, 1999; 68 FR 14141, 14148, Mar. 24, 2003]

Sec. 515.576. – Activities of Private Foundations or Research or Educational Institutes.

Specific licenses may be issued on a case-by-case basis authorizing the travel-related transactions set forth in Sec. 515.560(c) and such additional transactions as are directly incident to activities by private foundations or research or educational institutes that have an established interest in international relations to collect information related to Cuba for noncommercial purposes, not otherwise covered by the general license for professional research contained in Sec. 515.564 or more properly issued under Sec. 515.575, relating to humanitarian projects. Specific licenses may be issued pursuant to this section authorizing transactions for multiple trips to Cuba for the same project over an extended period of time.

[64 FR 25808, 25820, May 13, 1999]

Subpart F – Reports

Sec. 515.601. – Records and Reports.

For provisions relating to records and reports, see subpart C of part 501 of this chapter.

[28 FR 6974, July 9, 1963; 62 FR 45098, 45106, Aug. 25, 1997]

Sec. 515.602. – [Removed.]

[28 FR 6974, July 9, 1963. See also 62 FR 45098, 45106, Aug. 25, 1997]

Sec. 515.603. – [Removed.]

[58 FR 47645, Sept. 10, 1993. See also 62 FR 45098, 45106, Aug. 25, 1997]

Sec. 515.611. – [Removed.]

[48 FR 41159, Sept. 14, 1983. See also 62 FR 45098, 45106, Aug. 25, 1997]

Subpart G – Penalties

Sec. 515.701. – Penalties.

For provisions relating to penalties, see part 501, subpart D, of this chapter.

[58 FR 34711, June 29, 1993; 59 FR 31142, June 17, 1994; 61 FR 37385, 37386, July 18, 1996; 61 FR 43459, 43461, Aug. 23, 1996; 61 FR 54936, 54938, Oct. 23, 1996; 62 FR 45098, 45106, Aug. 25, 1997; 63 FR 10321, 10331, March 3, 1998; 68 FR 53640, 53657, Sept. 11, 2003]

Sec. 515.702. – [Removed.]

[58 FR 34711, June 29, 1993; 59 FR 31143, June 17, 1994; 63 FR 10321, 10331, March 3, 1998. See also 68 FR 53640, 53657, Sept. 11, 2003]

Sec. 515.703. – [Removed.]

[58 FR 34711, June 29, 1993; 63 FR 10321, 10332, March 3, 1998. See also 68 FR 53640, 53657, Sept. 11, 2003]

Sec. 515.704. – [Removed.]

[58 FR 34711, June 29, 1993; 63 FR 10321, 10332, March 3, 1998. See also 68 FR 53640, 53657, Sept. 11, 2003]

Sec. 515.705. – [Removed.]

[58 FR 34711, June 29, 1993; 63 FR 10321, 10333, March 3, 1998. See 68 FR 53640, 53657, Sept. 11, 2003]

Sec. 515.706. – [Removed.]

[58 FR 34711, June 29, 1993; 63 FR 10321, 10333, March 3, 1998. See 68 FR 53640, 53657, Sept. 11, 2003]

Sec. 515.707. – [Removed.]

[58 FR 34711, June 29, 1993; 63 FR 10321, 10334, March 3, 1998. See 68 FR 53640, 53657, Sept. 11, 2003]

Sec. 515.708. – [Removed.]

[63 FR 10321, 10334, March 3, 1998. See 68 FR 53640, 53657, Sept. 11, 2003]

Sec. 515.709. – [Removed.]

[63 FR 10321, 10334, March 3, 1998. See 68 FR 53640, 53657, Sept. 11, 2003]

Sec. 515.710. – [Removed.]

[63 FR 10321, 10335, March 3, 1998. See 68 FR 53640, 53657, Sept. 11, 2003]

Sec. 515.711. – [Removed.]

[63 FR 10321, 10335, March 3, 1998. See 68 FR 53640, 53657, Sept. 11, 2003]

Sec. 515.712. – [Removed.]

[63 FR 10321, 10336, March 3, 1998. See 68 FR 53640, 53657, Sept. 11, 2003]

Sec. 515.713. – [Removed.]

[63 FR 10321, 10336, March 3, 1998. See 68 FR 53640, 53657, Sept. 11, 2003]

Sec. 515.714. – [Removed.]

[63 FR 10321, 10337, March 3, 1998. See 68 FR 53640, 53657, Sept. 11, 2003]

Sec. 515.715. – [Removed.]

[63 FR 10321, 10337, March 3, 1998. See 68 FR 53640, 53657, Sept. 11, 2003]

Sec. 515.716. – [Removed.]

[63 FR 10321, 10337, March 3, 1998. See 68 FR 53640, 53657, Sept. 11, 2003]

Sec. 515.717. – [Removed.]

[63 FR 10321, 10338, March 3, 1998. See 68 FR 53640, 53657, Sept. 11, 2003]

Sec. 515.718. – [Removed.]

[63 FR 10321, 10338, March 3, 1998. See 68 FR 53640, 53657, Sept. 11, 2003]

Subpart H – Procedures

Sec. 515.801. – Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

[28 FR 6974, July 9, 1963, as amended at 57 FR 1388, Jan. 14, 1992; 62 FR 45098, 45106, Aug. 25, 1997; 68 FR 53640, 53657, Sept. 11, 2003]

Sec. 515.802. – Delegation by the Secretary of the Treasury.

Any action under Sec. 515.201 which the Secretary of the Treasury is authorized to take pursuant to Proclamation 3447 or the Trading With the Enemy Act may be taken by the Director, Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

[28 FR 6974, July 9, 1963; redesignated at 62 FR 45098, 45106, Aug. 25, 1997]

Sec. 515.803 Customs procedures; merchandise specified in Sec. 515.204.

(a) With respect to merchandise specified in Sec. 515.204 (including nickel-bearing materials presumptively subject thereto) whether or not such merchandise has been imported into the United States, collectors of customs shall not accept or allow any:

- (1) Entry for consumption (including any appraisement entry, any entry of goods imported in the mails, regardless of value, and any other informal entries);
- (2) Entry for immediate exportation;
- (3) Entry for transportation and exportation;
- (4) Withdrawal from warehouse;
- (5) Transfer or withdrawal from a foreign-trade zone; or

(6) Manipulation or manufacture in a warehouse or in a foreign-trade zone, unless either:

- (i) The merchandise was imported prior to 12:01 a.m., February 7, 1962, or
- (ii) A specific license pursuant to this part is presented, or
- (iii) Instructions from the Office of Foreign Assets Control, authorizing the transaction are received, or
- (iv) The original of an appropriate certificate of origin as defined in Sec. 515.536(d) is presented.

(b) Whenever a specific license is presented to a collector of customs in accordance with this section, one additional legible copy of the entry, withdrawal or other appropriate document with respect to the merchandise involved shall be filed with the collector of customs at the port where the transaction is to take place. Each copy of any such entry, withdrawal or other appropriate document, including the additional copy, shall bear plainly on its face the number of the license pursuant to which it is filed. The original copy of the specific license shall be presented to the collector in respect of each such transaction and shall bear a notation in ink by the licensee or person presenting the license showing the description, quantity and value of the merchandise to be entered, withdrawn or otherwise dealt with. This notation should be so placed and so written that there will exist no possibility of confusing it with anything placed on the license at the time of its issuance. If the license in fact authorizes the entry, withdrawal or other transaction with regard to the merchandise the collector, or other authorized customs employee, shall verify the notation by signing or initialing it after first assuring himself that it accurately describes the merchandise it purports to represent. The license shall thereafter be returned to the person presenting it and the additional copy of the entry, withdrawal or other appropriate document shall be forwarded by the collector to the Foreign Assets Control.

(c)

(1) Whenever the original of an appropriate certificate or origin as defined in Sec. 515.536(d) is presented to a collector of customs in accordance with this section, an additional legible copy of the entry, withdrawal or other appropriate document with respect to the merchandise involved shall be filed with the collector of customs at the port where the transaction is to take place. Each copy of the entry, withdrawal, or other appropriate document, including the additional copy, shall bear plainly on its face the following statement: "This document is presented under the provisions of Sec. 515.536 (c) of the Cuban Assets Control Regulations." The original of the certificate of origin shall not be returned to the person presenting it. It shall be securely attached to the additional copy required by this subparagraph and shall be forwarded by the collector to the Office of Foreign Assets Control, Treasury Department, Washington, DC 20220. Collectors may forward such documents weekly or more often if the volume warrants.

(2) If the original of an appropriate certificate of origin is properly presented to a collector of customs with respect to a transaction which is the first of a series of transactions which may be allowed in connection therewith under paragraph (a)(6)(iv) of this section (as, for example, where merchandise has been entered in a bonded warehouse and an appropriate certificate of origin is presented which relates to all of the merchandise entered therein but the importer desires to withdraw only part of the merchandise in the first transaction), the collector shall so note on the original of the appropriate certificate of origin and return it to the importer. In addition, the collector shall endorse his pertinent records so as to record what merchandise is covered by the appropriate certificate of origin presented. The collector may thereafter allow subsequent authorized transactions on presentation of the certificate of origin. The collector shall, with respect to each such transaction, demand an additional copy of each withdrawal or other appropriate document, which copy shall be promptly forwarded by the collector to the Office of Foreign Assets Control, Treasury Department, Washington, DC 20220, with an endorsement thereon reading:

This document has been accepted pursuant to Sec. 515.808(c) (2) of the Cuban Assets Control Regulations. Appropriate certificate of origin No. ----- from (country).

When the final transaction has been effected under the certificate of origin, the original shall be taken up and attached to the entry and forwarded as in this paragraph.

(d) Whenever a person shall present an entry, withdrawal or other appropriate document affected by this section and shall assert that no specific Foreign Assets Control license or appropriate certificate of origin as defined in Sec. 515.536 (d) is required in connection therewith, the collector of customs shall withhold action thereon and shall advise such person to communicate directly with the Office of Foreign Assets Control to request that instructions be issued to the collector to authorize him to take action with regard thereto.

[30 FR 15371, Dec. 14, 1965, as amended at 57 FR 1388, Jan. 14, 1992; redesignated at 62 FR 45098, 45106, Aug. 25, 1997]

Sec. 515.804. – [Removed.]

[32 FR 10847, July 25, 1967. See 62 FR 45098, 45106, Aug. 25, 1997]

Sec. 515.805. – [Removed.]

[28 FR 6974, July 9, 1963. See 62 FR 45098, 45106, Aug. 25, 1997]

Sec. 515.806. – [Removed.]

[28 FR 6974, July 9, 1963. See 62 FR 45098, 45106, Aug. 25, 1997]

Sec. 515.807. – [This section was redesignated as Sec. 515.802. See 62 FR 45098, 45106, Aug. 25, 1997.]

[28 FR 6974, July 9, 1963]

Sec. 515.808. – [This section was redesignated as Sec. 515.803. See 62 FR 45098, 45106, Aug. 25, 1997.]

[30 FR 15371, Dec. 14, 1965, as amended at 57 FR 1388, Jan. 14, 1992]

Sec. 515.809. – [Removed.]

[57 FR 1388, Jan. 14, 1992. See 62 FR 45098, 45106, Aug. 25, 1997]

Sec. 515.901. – Paperwork Reduction Act Notice.

Collection of information on TDF 90-22.39, “Declaration, Travel to Cuba,” has been approved by the Office of Management and Budget (“OMB”) under the Paperwork Reduction Act (44 U.S.C. 3507(j)) and assigned control number 1505-0118. For approval by OMB under the Paperwork Reduction Act of information collections relating to recordkeeping and reporting requirements, to licensing procedures (including those pursuant to statements of licensing policy), and to other procedures, see Sec. 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

[57 FR 6297, Feb. 24, 1992; 58 FR 45061, Aug. 26, 1993; 62 FR 45098, 45106, Aug. 25, 1997]

Document

**Export Administration Regulations
Bureau of Industry and Security
Department of Commerce
15 CFR Part 700**

Part 742 – Control Policy – CCL Based Controls

15 CFR Part 742 Supplement No. 2

Supplement No. 2 to Part 742 – Anti-Terrorism Controls: Iran, North Korea, Syria and Sudan Contract Sanctity Dates and Related Policies

Note: Exports and reexports of items in performance of contracts entered into before the applicable contract sanctity date(s) will be eligible for review on a case-by-case basis or other applicable licensing policies that were in effect prior to the contract sanctity date. The contract sanctity dates set forth in this Supplement are for the guidance of exporters. Contract sanctity dates are established in the course of the imposition of foreign policy controls on specific items and are the relevant dates for the purpose of licensing determinations involving such items. If you believe that a specific contract sanctity date is applicable to your transaction, you should include all relevant information with your license application. BIS will determine any applicable contract sanctity date at the time an application with relevant supporting documents is submitted.

(a) *Terrorist-supporting countries.* The Secretary of State has designated Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria as countries whose governments have repeatedly provided support for acts of international terrorism under section 6(j) of the Export Administration Act (EAA).

(b) *Items controlled under EAA sections 6(j) and 6(a).* Whenever the Secretary of State determines that an export or reexport to any of these countries could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism, the item is subject to mandatory control under EAA section 6(j) and the Secretaries of Commerce and State are required to notify appropriate Committees of the Congress 30 days before a license for such an item may be issued.

(1) On December 28, 1993, the Secretary of State determined that the export to Cuba, Libya, Iran, Iraq, North Korea, Sudan, or Syria of items described in paragraphs (c)(1) through (c)(5) of this Supplement, if destined to military, police, intelligence or other sensitive end-users, are controlled under EAA section 6(j). Therefore, the 30-day advance Congressional notification requirement applies to the export or reexport of these items to sensitive end-users in any of these countries.

(2) License applications for items controlled to designated terrorist-supporting countries under EAA section 6(a) will also be reviewed to determine whether the Congressional notification requirements of EAA section 6(j) apply.

(3) Items controlled for anti-terrorism reasons under section 6(a) to Iran, North Korea, Sudan, and Syria are: * * *

(c) The license requirements and licensing policies for items controlled for anti-terrorism reasons to Iran, Syria, Sudan, and North Korea are generally described in * * *

[65 FR 38152, June 19, 2000, as amended at 66 FR 36682, July 12, 2001]

Part 746 – Embargoes and Other Special Controls

Authority Note Applicable to Entire Part:

50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 287c; 22 U.S.C. 6004; Sec. 901-911, Publ. L. 106-387; Sec. 221, Publ. L. 107-56; E.O. 12854, 58 FR 36587, 3 CFR 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

Sec. 746.1. – Introduction.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C. This part implements broad based controls for items and activities subject to the EAR imposed to implement U.S. government policies. Two categories of controls are included in this part.

(a) *Comprehensive controls.* This part contains or refers to all the BIS licensing requirements, licensing policies, and License Exceptions for countries subject to general embargoes, currently Cuba, Libya, Iran and Iraq. This part is the focal point for all the EAR requirements for transactions involving these countries.

(1) *Cuba and Libya.* All the items on the Commerce Control List (CCL) require a license to Cuba or Libya. In addition, most other items subject to the EAR, but not included on the CCL, designated by the Number “EAR99”, require a license to Cuba or Libya. Most items requiring a license to these destinations are subject to a general policy of denial. Because these controls extend to virtually all exports, they do not appear in the Country Chart in part 738 of the EAR, nor are they reflected in the Commerce Control List in part 774 of the EAR.

(2) *Iran and Iraq.* While BIS maintains controls on exports and reexports to Iran and Iraq, comprehensive embargoes on transactions involving these countries are administered by the Department of the Treasury’s Office of Foreign Assets Control (OFAC).

(b) – (d) * * *

[61 FR 12714, 12806, Mar. 25, 1996; 62 FR 25451, 25459, May 9, 1997; 65 FR 38148, 38160, June 19, 2000; 67 FR 70545, 70546, Nov. 25, 2002]

Sec. 746.2. – Cuba.

(a) *License requirements.* As authorized by section 6 of the Export Administration Act of 1979, as amended (EAA) and by the Trading with the Enemy Act of 1917, as amended, you will need a license to export or reexport all items subject to the EAR (see part 734 of the EAR for the scope of items subject to the EAR) to Cuba, except as follows.

(1) *License Exceptions.* You may export or reexport without a license if your transaction meets all the applicable terms and conditions of any of the following License Exceptions. To determine the scope and eligibility requirements, you will need to turn to the sections or specific paragraphs of part 740 of the EAR (License Exceptions). Read each License Exception carefully, as the provisions available for embargoed countries are generally narrow.

(i) Temporary exports and reexports (TMP) by the news media (see Sec. 740.9(a)(2)(viii) of the EAR).

(ii) Operation technology and software (TSU) for legally exported commodities (see Sec. 740.13(a) of the EAR).

(iii) Sales technology (TSU) (see Sec. 740.13(b) of the EAR).

(iv) Software updates (TSU) for legally exported software (see Sec. 740.13(c) of the EAR).

(v) Parts (RPL) for one-for-one replacement in certain legally exported commodities (see Sec. 740.10(a) of the EAR).

(vi) Baggage (BAG) (see Sec. 740.14 of the EAR).

(vii) Governments and international organizations (GOV) (see Sec. 740.11 of the EAR).

(viii) Gift parcels and humanitarian donations (GFT) (see Sec. 740.12 of the EAR).

(ix) Items in transit (TMP) from Canada through the U.S. (see Sec. 740.9(b)(1)(iv) of the EAR).

(x) Aircraft and vessels (AVS) for certain aircraft on temporary sojourn (see Sec. 740.15(a) of the EAR).

(xi) Permissive reexports of certain spare parts in foreign-made equipment (see Sec. 740.16(h) of the EAR).

(xii) Exports of agricultural commodities, classified as EAR99, under License Exception Agricultural Commodities (AGR) and certain reexports of U.S. origin agricultural commodities, classified as EAR99, under License Exception AGR (see Sec. 740.18 of the EAR).

(2) [Reserved]

(b) *Licensing policy.* Items requiring a license are subject to a general policy of denial, except as follows:

(1) *Medicines and Medical Devices.* Applications to export medicines and medical devices as defined in part 772 of the EAR will generally be approved, except:

(i) To the extent restrictions would be permitted under section 5(m) of the Export Administration Act of 1979, as amended (EAA), or section 203(b)(2) of the International Emergency Economic Powers Act;

(ii) If there is a reasonable likelihood that the item to be exported will be used for purposes of torture or other human rights abuses;

(iii) If there is a reasonable likelihood that the item to be exported will be reexported;

(iv) If the item to be exported could be used in the production of any biotechnological product; or

(v) If it is determined that the United States government is unable to verify, by on-site inspection or other means, that the item to be exported will be used for the purpose for which it was intended and only for the use and benefit of the Cuban people, but this exception shall not apply to donations of medicines for humanitarian purposes to a nongovernmental organization in Cuba.

(2) Telecommunications commodities may be authorized on a case-by-case basis, provided the commodities are part of an FCC-approved project and are necessary to provide efficient and adequate telecommunications services between the United States and Cuba.

(3) Exports from third countries to Cuba of non-strategic foreign-made products that contain an insubstantial proportion of U.S.-origin materials, parts, or components will generally be considered favorably on a case-by-case basis, provided all of the following conditions are satisfied:

- (i) The local law requires, or policy favors, trade with Cuba;
- (ii) The U.S.-origin content does not exceed 20 percent of the value of the product to be exported from the third country. Requests where the U.S.-origin parts, components, or materials represent more than 20 percent by value of the foreign-made product will generally be denied. See Supplement No. 2 to part 734 of the EAR for instructions on how to calculate value; and
- (iii) You are not a U.S.-owned or -controlled entity in a third country as defined by OFAC regulations, 31 CFR part 515, or you are a U.S.-owned or controlled entity in a third country and one or more of the following situations applies:
 - (A) You have a contract for the proposed export that was entered into prior to October 23, 1992.
 - (B) Your transaction involves the export of foreign-produced medicines or medical devices incorporating U.S. origin parts, components or materials, in which case the application will be reviewed according to the provisions of paragraph (b)(1) of this section.
 - (C) Your transaction is for the export of foreign-produced telecommunications commodities incorporating U.S.-origin parts, components and materials, in which case the application will be reviewed under the licensing policy set forth in paragraph (b)(2) of this section.
 - (D) Your transaction is for the export of donated food to individuals or non-governmental organizations in Cuba and does not qualify as a humanitarian donation under License Exception GFT (Sec. 740.12 of the EAR) or License Exception AGR (Sec. 740.18 of the EAR).

(4) Applications for licenses may be approved, on a case-by-case basis, for certain exports to Cuba intended to provide support for the Cuban people, as follows:

- (i) Applications for licenses for exports of certain commodities and software may be approved to human rights organizations, or to individuals and non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba when such exports do not give rise to U.S. national security or counter-terrorism concerns. Examples of such commodities include fax machines, copiers, computers (e.g., 486-level/CTP of 24.8 MTOPS or less), business/office software, document scanning equipment, printers, typewriters, and other office or office communications equipment. Applicants may donate or sell the commodities or software to be exported. Reexport to other end-users or end-uses is not authorized.

(ii) Commodities and software may be approved for export to U.S. news bureaus in Cuba whose primary purpose is the gathering and dissemination of news to the general public. In addition to the examples of commodities and software listed in paragraph (b)(4)(i) of this section, certain telecommunications equipment necessary for the operation of news organizations (e.g., 33M bit/s data signaling rate or less) may be approved for export to U.S. news bureaus.

(iii) Exports of agricultural items, which are outside the scope of agricultural commodities as defined in part 772 of the EAR, such as insecticides, pesticides and herbicides, as well as agricultural commodities not eligible for License Exception AGR, require a license and will be reviewed on a case-by-case basis.

(A) Agricultural commodities that will be considered for approval include, but are not limited to, insecticides, herbicides, pesticides, seeds and fertilizer. Agricultural equipment is not eligible under this paragraph (b)(4)(iii) for sale to Cuba.

(B) For purposes of this paragraph (b), independent non-government entities include, but are not limited to, religious groups, private farmers, and private sector undertakings such as family restaurants.

(c) Cuba has been designated by the Secretary of State as a country whose government has repeatedly provided support for acts of international terrorism. For anti-terrorism controls, see Supplement 2 to part 742 of the EAR.

(d) *Definitions.* For purposes of this section, “U.S. person” means any person subject to the jurisdiction of the United States, as described in Sec. 515.329 of the Cuban Assets Control Regulations (31 CFR 515.329).

(e) *Related controls.* OFAC maintains controls on the activities of persons subject to U.S. jurisdiction, wherever located, involving transactions with Cuba or any specially designated Cuban national, as provided in 31 CFR part 515. OFAC’s Terrorism List Government Sanctions Regulations in 31 CFR part 596 prohibit U.S. persons from engaging in a financial transaction with the government of a designated state sponsor of international terrorism without OFAC authorization. The Department of State also implements sanctions on countries that are designated state sponsors of international terrorism. Exporters and reexporters should consult with those agencies for further guidance on these related controls.

[61 FR 12714, 12807, Mar. 25, 1996; 61 FR 64272, 64284, Dec. 4, 1996; 62 FR 9364, Mar. 3, 1997; 62 FR 25451, 25459, May 9, 1997; 64 FR 25807, 25808, May 13, 1999; 66 FR 36676, 36682, July 12, 2001]

Document

Prohibiting International Traffic in Arms Department of State 22 CFR, Part 126

Authority Note Applicable to Entire Part:

Secs. 2, 38, 40, 42, and 71, P.L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899.

Sec. 126.1. – Prohibited Exports and Sales to Certain Countries.

(a) General. It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Belarus, Cuba, Iran, Iraq, Libya, North Korea, Syria, and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (e.g. Burma, China, Haiti, Liberia, Somalia, Sudan and Democratic Republic of the Congo (formerly Zaire)) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Information regarding certain other embargoes appears elsewhere in this section. Comprehensive arms embargoes are normally the subject of a State Department notice published in the Federal Register. The exemptions provided in the regulations in this subchapter, except Secs. 123.17 and 125.4(b)(13) of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries, areas, or persons in this Sec. 126.1.

(b) Shipments. A defense article licensed for export under this subchapter may not be shipped on a vessel, aircraft or other means of conveyance which is owned or operated by, or leased to or from, any of the proscribed countries or areas.

(c) Exports and sales prohibited by United Nations Security Council embargoes. Whenever the United Nations Security Council mandates an arms embargo, all transactions which are prohibited by the embargo and which involve U.S. persons anywhere, or any person in the United States, and defense articles and services of a type enumerated on the United States Munitions List (22 CFR part 121), irrespective of origin, are prohibited under the ITAR for the duration of the embargo, unless the Department of State publishes a notice in the Federal Register specifying different measures. This would include, but is not limited to, transactions involving trade by U.S. persons who are located inside or outside of the United States in defense articles and services of U.S. or foreign origin which are located inside or outside of the United States.

(d) Terrorism. Exports to countries which the Secretary of State has determined to have repeatedly provided support for act of international terrorism are contrary to the foreign policy of the United States and are thus subject to the policy specified in paragraph (a) of this

section and the requirements of section 40 of the Arms Export Control Act (22 U.S.C. 2780) and the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986 (22 U.S.C. 4801, note). The countries in this category are: Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. The same countries are identified pursuant to section 6(j) of the Export Administration Act, as amended (50 U.S.C. App. 2405(j)).

(e) Proposed sales. No sale or transfer and no proposal to sell or transfer any defense articles, defense services or technical data subject to this subchapter may be made to any country referred to in this section (including the embassies or consulates of such a country), or to any person acting on its behalf, whether in the United States or abroad, without first obtaining a license or written approval of the Office of Defense Trade Controls. However, in accordance with paragraph (a) of this section, it is the policy of the Department of State to deny licenses and approvals in such cases. Any person who knows or has reason to know of such a proposed or actual sale, or transfer, of such articles, services or data must immediately inform the Office of Defense Trade Controls.

(f) Angola. Consistent with U.N. Security Council Resolution 864 of September 15, 1993, an arms embargo exists with respect to UNITA. Accordingly, exports subject to this subchapter are prohibited in accordance with Security Council Resolution 864, Executive Order 12865 of September 29, 1993, and the UNITA (Angola) Sanctions Regulations issued by the Office of Foreign Assets Control, Department of the Treasury, on December 10, 1993 (58 FR 64904).

(g) Afghanistan. It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in Afghanistan except for the Government of Afghanistan (currently the Afghan Interim Authority) and the International Security Assistance Force, which will be reviewed on a case-by-case basis. In addition, lists of persons subject to a broad prohibition, including an arms embargo, due to their affiliation with the Taliban, Usama bin Laden, Al-Qaida or those associated with them will continue to be published from time to time.

(h) Rwanda. It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in Rwanda except for the Government of Rwanda, which will be reviewed on a case-by-case basis. UN Security Council Resolution 1011 (1995) lifted the embargo only with respect to the Government of Rwanda.

History:

[49 FR 47702, Dec. 6, 1984, as amended at 53 FR 11498, Apr. 7, 1988; 56 FR 55631, Oct. 29, 1991; 58 FR 39312, July 22, 1993; 59 FR 15625, April 4, 1994; 59 FR 42158, Aug. 17, 1994; 61 FR 6111, 6113, Feb. 16, 1996; 61 FR 19841, May 3, 1996; 61 FR 33313, June 27, 1996; 61 FR 36625, July 12, 1996; 61 FR 41499, Aug. 9, 1996; 61 FR 41737, 41738, Aug. 12, 1996; 62 FR 37133, July 11, 1997; 67 FR 1074, 1075, Jan. 9, 2002; 67 FR 15101, Mar. 29, 2002; 67 FR 44352, July 2, 2002; 68 FR 44613, 44614, July 30, 2003]

Sec. 126.2. – Temporary Suspension or Modification of this Subchapter.

The Director, Office of Defense Trade Controls, may order the temporary suspension or modification of any or all of the regulations of this subchapter in the interest of the security and foreign policy of the United States.

History:

[49 FR 47702, Dec. 6, 1984; 58 FR 39313, July 22, 1993]

Document

Prohibiting the Importation of Arms, Ammunition, and Implements of War Bureau of Alcohol, Tobacco, Firearms, and Explosives Department of Justice 27 CFR, Part 447

Authority Note Applicable to Entire Part:
22 U.S.C. 2778.

Sec. 447.52. – Import Restrictions Applicable to Certain Countries.

(a) It is the policy of the United States to deny licenses and other approvals with respect to defense articles and defense services originating in certain countries or areas. This policy applies to Cuba, Iran, Iraq, Libya, Mongolia, North Korea, Sudan, Syria, Vietnam, and some of the states that comprised the former Soviet Union (Armenia, Azerbaijan, Belarus, and Tajikistan). This policy applies to countries or areas with respect to which the United States maintains an arms embargo (e.g., Burma, China, the Federal Republic of Yugoslavia (Serbia and Montenegro), Haiti, Liberia, Rwanda, Somalia, Sudan, UNITA (Angola), and Zaire). It also applies when an import would not be in furtherance of world peace and the security and foreign policy of the United States.

Note: Changes in foreign policy may result in additions to and deletions from the above list of countries. The ATF will publish changes to this list in the Federal Register. Contact the Firearms and Explosives Imports Branch at (202) 927-8320 for current information.

(b) Notwithstanding paragraph (a) of this section, the appropriate ATF officer shall deny applications to import into the United States the following firearms and ammunition:

(1) Any firearm located or manufactured in Georgia, Kazakstan, Kyrgyzstan, Moldova, Russian Federation, Turkmenistan, Ukraine, or Uzbekistan, and any firearm previously manufactured in the Soviet Union, that is not one of the models listed below: * * *

(2) Ammunition located or manufactured in Georgia, Kazakstan, Kyrgyzstan, Moldova, Russian Federation, Turkmenistan, Ukraine, or Uzbekistan, and ammunition previously manufactured in the Soviet Union, that is 7.62X25mm caliber (also known as 7.63X25mm caliber or .30 Mauser); or

(3) A type of firearm the manufacture of which began after February 9, 1996.

(c) The provisions of paragraph (b) of this section shall not affect the fulfillment of contracts with respect to firearms or ammunition entered or withdrawn from warehouse for consumption in the United States on or before February 9, 1996.

(d) A defense article authorized for importation under this part may not be shipped on a vessel, aircraft or other means or conveyance which is owned or operated by, or leased to or from, any of the countries or areas covered by paragraph (a) of this section.

(e) Applications for permits to import articles that were manufactured in, or have been in, a country or area proscribed under this section may be approved where the articles are covered by Category I(a) of the Import List (other than those subject to the provisions of 27 CFR Part 479), are importable as curios or relics under the provisions of 27 CFR 478.118, and meet the following criteria:

(1) The articles were manufactured in a proscribed country or area prior to the date, as established by the Department of State, the country or area became proscribed, or, were manufactured in a non-proscribed country or area; and

(2) The articles have been stored for the five year period immediately prior to importation in a non-proscribed country or area.

(f) Applicants desiring to import articles claimed to meet the criteria specified in paragraph (e) of this section shall explain, and certify to, how the firearms meet the criteria. The certification statement will be prepared in letter form, executed under the penalties of perjury, and should be submitted with the application for an import permit. The certification statement must be accompanied by documentary information on the country or area of original manufacture and on the country or area of storage for the five year period immediately prior to importation. Such information may, for example, include a verifiable statement in the English language of a government official or any other person having knowledge of the date and place of manufacture and/or the place of storage; a warehouse receipt or other document which provides the required history of storage; and any other document that the applicant believes substantiates the place and date of manufacture and the place of storage. The appropriate ATF officer, however, reserves the right to determine whether documentation is acceptable. Applicants shall, when required by the appropriate ATF officer, furnish additional documentation as may be necessary to determine whether an import permit application should be approved.

History:

[50 FR 14382, Apr. 12, 1985, as amended by 50 FR 42162, Oct. 18, 1985; 54 FR 13681, Apr. 5, 1989; 57 FR 24189, June 8, 1992; 58 FR 47831, Sept. 13, 1993; 60 FR 47866, Sept. 15, 1995; 62 FR 61232, 61234, Nov. 17, 1997; 67 FR 64525, 64526, Oct. 21, 2002; redesignated and amended at 68 FR 3744, 3747, 3748, Jan. 24, 2003]

words

Sec. 447.53. – Exemptions.

(a) The provisions of this part are not applicable to:

(1) Importations by the United States or any agency thereof;

(2) Importation of components for items being manufactured under contract for the Department of Defense; or

(3) Importation of articles (other than those which would be “firearms” as defined in 18 U.S.C. 921(a)(3) manufactured in foreign countries for persons in the United States pursuant to Department of State approval.

(b) Any person seeking to import articles on the U.S. Munitions Import List as exempt under paragraph (a)(2) or (3) of this section may obtain release of such articles from Customs custody by submitting, to the Customs officer with authority to release, a statement claiming the exemption accompanied by satisfactory proof of eligibility. Such proof may be in the form of a letter from the Department of Defense or State, as the case may be, confirming that the conditions of the exemption are met.

History:

[39 FR 3251, Jan. 25, 1974, as amended by 50 FR 42162, Oct. 18, 1985; redesignated at 68 FR 3744, 3747, Jan. 24, 2003]

Sec. 447.54. – Administrative Procedures Inapplicable.

The functions conferred under section 38, Arms Export Control Act of 1976, as amended, are excluded from the operation of Chapter 5, Title 5, United States Code, with respect to Rule Making and Adjudication, 5 U.S.C. 553 and 554.

History:

[39 FR 3251, Jan. 25, 1974, as amended by 50 FR 42162, Oct. 18, 1985; redesignated at 68 FR 3744, 3747, Jan. 24, 2003]

Sec. 447.55. – Departments of State and Defense Consulted.

The administration of the provisions of this part will be subject to the guidance of the Secretaries of State and Defense on matters affecting world peace and the external security and foreign policy of the United States.

History:

[39 FR 3251, Jan. 25, 1974; redesignated at 68 FR 3744, 3747, Jan. 24, 2003]

Section III: Diplomatic Relations

U.S. relations with Cuba deteriorated rapidly in the early 1960s as the Castro government espoused communism and aligned itself with the Soviet Union. The Cuban government seized U.S.-owned oil refineries, without compensation, in June 1960; in response in July, the Eisenhower Administration cut Cuba's remaining 1960 sugar quota. Relations continued to deteriorate in August 1960, when Cuba began to nationalize U.S.-owned companies, and in October 1960, when the United States prohibited most exports to Cuba (with the exception of nonsubsidized food, medicine and medical supplies) and Cuba expropriated remaining U.S.-owned properties.

On January 3, 1961, the United States officially broke diplomatic relations with Cuba, in response to a Cuban demand to decrease the size of the U.S. Embassy staff within 48 hours.

In May 1977, as U.S.-Cuban relations were moving toward normalization during the beginning of the Carter Administration, the two countries signed an agreement for the establishment of an Interests Section in each capital. To implement the agreement, on September 1, 1977, the United States opened an Interests Section in Havana under the auspices of the Embassy of Switzerland, and Cuba opened an Interests Section in Washington under the auspices of the Embassy of Czechoslovakia. For all intents and purposes, the two Interests Sections operate as embassies (though not in name) and are located in the former embassy buildings of each country.

In early 1991, Czechoslovakia announced that it would no longer sponsor the Cuban Interests Section in Washington D.C. under its embassy. Relations between Cuba and Czechoslovakia had deteriorated as the Eastern European country transitioned from communist rule to a multi-party democracy. Switzerland stepped in and agreed to become the formal sponsor of the Cuban Interests Section in Washington beginning April 1, 1991.

The personnel of each Interests Section have had restrictions placed on them by the host country at various junctures, including travel restrictions. Such restrictions are imposed pursuant to the Foreign Missions Act of 1982 (22 U.S.C. 4301-4316), which provides the domestic legal authority for responding to restrictions on U.S. diplomats abroad by imposing reciprocal measures on foreign diplomats in the United States. For example, in the aftermath of Cuba's crackdown against dissidents in 2003, the Cuban government required that U.S. diplomats traveling outside of Havana Province had to request advance approval; as a result, similar restrictions were placed on Cuban diplomats in the United States. In August 2003, the State Department imposed a series of reciprocal terms and conditions on diplomats at the Cuban Interest Section in Washington with respect to the purchase, lease or sale of motor vehicles.¹³

¹³ Department of State Public Notice 4457, "Determination: Imposing Conditions and Restrictions on the Cuban Interests Section and Its Personnel with Respect to Acquisition and Disposition of Motor Vehicles in the United States," (68 Federal Register, Volume 68, 51060-51062, August 25, 2003).

Both countries have expelled diplomats at various junctures. In 1996, Cuba expelled the human rights officer at the U.S. Interests Section in Havana, and the United States responded by expelling a Cuban diplomat. The United States has expelled numerous Cuban diplomats since then. In 2000, the United States expelled a Cuban diplomat with alleged ties to a U.S. immigration official convicted of espionage. In 2002, the United States expelled four Cuban diplomats in response to a 2001 espionage case involving a Defense Intelligence Agency analyst. In May 2003, the United States expelled 14 Cuban diplomats for espionage; seven from Cuba's Mission to the United Nations and seven from the Cuban Interests Section in Washington. At various times when there has been increased tension in U.S.-Cuban relations, Fidel Castro has threatened to close the U.S. Interests Section in Havana.

Document

**Establishment of Interests Sections
Agreement effected by exchange of notes
Signed at New York May 30, 1977;
Entered into force May 30, 1977**

The Acting Assistant Secretary of State to the Cuban Vice Minister of External Affairs

City of New York

May 30, 1977

Excellency:

I have the honor to refer to the negotiations that our two delegations have conducted toward establishing an Interests Section of the United States of America in the Embassy of Switzerland in Havana and an Interests Section of Cuba in the Embassy of Czechoslovakia in Washington. We have reached agreement on the functions, personnel, privileges and immunities that both Sections will enjoy on the basis of full reciprocity. Each Interests Section will be headed by a diplomat with the rank of Counselor. The Interests Section will be able to employ a reasonable number of nationals of the receiving State, in Cuba through the national enterprise CUBALSE, and in the United States through normal employment practices.

Both Sections will be located in those buildings that were occupied by the Embassies of the United States of America in Havana and of the Republic of Cuba in Washington and will be under the protection of the Embassy of Switzerland in Havana and of the Embassy of Czechoslovakia in Washington. Both Interests Sections will be inviolable. Entry will not be permitted without the consent of the heads of the Interests Sections.

Signs on the exterior of the buildings occupied by the Interests Sections will indicate: Embassy of Switzerland in Havana, United States Interests Section; and Embassy of Czechoslovakia in Washington, Cuban Interests Section. The official stationery of both Interests Sections shall be so lettered with the exception of that used for internal communications.

No flags or national seals of either country shall be displayed on the outside of the aforementioned buildings or other properties, except those that are engraved on the buildings, because they are under the protection of other diplomatic missions.

Automobiles and other means of transportation used by the Interests Section or their employees shall be licensed in the series assigned to the automobiles belonging to the Swiss Embassy in Havana and the Czechoslovakian Embassy in Washington respectively and may only display the flags of those countries.

Official access of the United States Interests Section to the Ministry of Foreign Affairs in Havana and of the Cuban Interests Section to the Department of State in Washington will be at the same level.

The Interests Sections shall have the right of free communication for all official purposes, using open or encrypted diplomatic mail or communications. Official correspondence and diplomatic pouches will be inviolable, in accordance with international practice. The Interests Sections may maintain radio transmitters only with the consent of the host country.

Members of the Interests Sections shall have freedom to travel throughout the territory of the host country in accordance with the established international practice commonly accepted for Embassy personnel. In accordance with Protocol, the Head of each Interests Section shall rank in diplomatic precedence after Charges d'affaires. The Interests Sections may carry out routine diplomatic and consular functions and make their own financial transactions.

Both Governments reconfirm their commitments under the applicable international treaties governing diplomatic and consular relations to which both are parties. Personnel of both Sections shall benefit from the privileges and immunities provided by those treaties.

The names of the diplomats of both Interests Sections will appear in the Diplomatic List, apart from and after those of the diplomats of the Government of Switzerland in the case of the United States and of the Government of Czechoslovakia in the case of Cuba.

The Government of the United States shall obtain the concurrence of the Government of Switzerland and the Government of Cuba shall obtain the concurrence of the Government of Czechoslovakia to this arrangement.

Subject to the preceding paragraph, the opening of the Interests Sections will take place simultaneously in both capitals at a date to be mutually agreed within one month of the date of this exchange of notes.

I have the honor to propose that this note and your Excellency's reply thereto constitute an agreement between our two Governments.

Accept, Excellency, the assurances of my highest consideration.

William H. Luers

Dr. Pelegrin Torras,
Vice Minister of External Affairs
Republic of Cuba

Section IV: Migration

Since the early 1960s, hundreds of thousands of Cubans have migrated to the United States to escape conditions under the government of Fidel Castro. By 1966, some 165,000 Cubans had entered the United States, but did not have an opportunity under U.S. law to adjust to permanent resident status.¹⁴ In order to resolve this, Congress enacted the Cuban Refugee Adjustment Act of 1966 (P.L. 89-732), popularly referred to as the Cuban Adjustment Act, which gave Cubans an opportunity to apply for permanent resident status within one year of their arrival in the United States – an opportunity not provided to any other group or nationality.¹⁵

In the 1980 mass exodus of Cubans known as the Mariel boatlift, some 125,000 Cubans fled to the United States with the encouragement of the Cuban government. The exodus was precipitated when more than 10,000 Cubans crowded the grounds of the Peruvian Embassy in Havana, seeking political asylum after the Cuban government had withdrawn its guards around the embassy. Subsequently, the Cuban government opened the harbor at Mariel, encouraging a mass exodus by allowing Cuban Americans in the United States to pick up by boat anyone who wished to leave from Mariel.

In December 1984, the United States and Cuba signed a migration agreement for the normalization of immigration procedures. The United States agreed to issue up to 20,000 preference immigration visas each year, and to continue granting immigrant visas to Cuban residents who were close relations of U.S. citizens, separate and above the annual 20,000 limit. Cuba agreed to accept the return of 2,746 so-called excludables (criminal aliens) who had arrived in the 1980 Mariel boatlift.

In August 1994, Castro threatened to unleash another exodus of Cubans if the United States continued to encourage Cubans to leave illegally through immigration policies that welcomed Cubans fleeing by boat. In response, U.S. officials reiterated U.S. resolve not to allow another mass exodus. Nevertheless, the Cuban government decided to stop preventing Cubans from fleeing to the United States by boat, thereby creating a surge of Cuban migration. Amid escalating numbers of fleeing Cubans, President Clinton abruptly changed U.S. migration policy (under which Cubans fleeing their homeland were allowed into the United States) and announced that the U.S. Coast Guard would take Cubans rescued at sea to the U.S. naval base at Guantanamo.

By September 1, 1994, the United States and Cuba had begun talks on the migration crisis and on September 9, the two countries signed a migration agreement intended to stem the flow of Cubans to the United States. Both countries agreed to facilitate safe, legal and

¹⁴ U.S. Library of Congress, Congressional Research Service. *Cuban Adjustment Act of 1966*, CRS Report 93-253, by Larry M. Eig, February 24, 1993.

¹⁵ U.S. Library of Congress, Congressional Research Service. *Cuban Migration Policy and Issues*, CRS Report RS20468, by Ruth Ellen Wasem, August 6, 2003.

orderly Cuban migration to the United States, consistent with the 1984 agreement. The United States agreed to ensure that total legal Cuban migration to the United States would be a minimum of 20,000 persons each year, not including immediate relatives of U.S. citizens. Cuba agreed to take measures to prevent unsafe departures from Cuba. Both nations pledged to take action to prevent alien smuggling and to oppose and prevent the use of violence or forcible hijacking by people seeking to reach, or who arrive in, the United States.

In May 1995, Cuba and the United States signed another migration agreement that resulted in a major change to U.S. migration policy: future Cuban migrants attempting to enter the United States by sea would be interdicted and returned to Cuba. Both sides agreed to ensure that no action would be taken against those migrants returned to Cuba. Significantly, the United States agreed to parole those Cubans housed at Guantanamo, approximately 33,000, into the United States. Both countries reaffirmed the September 1994 agreement, pledging to take steps to prevent unsafe departures from Cuba and to oppose acts of violence associated with illegal immigration.

From late November 1999 through June 2000, U.S. public attention became focused on Cuban migration policy as a result of the case of Elian Gonzalez, the five-year old boy found clinging to an inner tube off the coast of Fort Lauderdale. The boy's mother had drowned trying to bring him to the United States, while his father, who resided in Cuba, called for his return. While the boy's relatives in Miami wanted him to stay in the United States, the Immigration and Naturalization Service ruled that the boy's father had the sole legal authority to speak on his behalf. Elian Gonzalez was returned to Cuba in June 2000, after numerous U.S. legal appeals by his Miami relatives.

Both the United States and Cuba have prosecuted those involved in alien smuggling and hijacking. In April 2003, the Cuban government executed three men who had hijacked a ferry in Havana, with the intention of fleeing to the United States. The summary execution of the hijackers after a closed trial prompted worldwide condemnation of the Cuban government. Cuba maintained that it took the action in order to put a stop to additional hijackings.

The combination of the Cuban Adjustment Act and the 1995 migration agreement (in which Cubans interdicted at sea would be returned to Cuba) resulted in a migration policy that has come to be known as a "wet foot/dry foot" policy. Since the 1995 migration accord, the U.S. Coast Guard has interdicted thousands of Cubans at sea and returned them to Cuba, while those deemed at risk for persecution have been transferred to Guantanamo and then to a third country granting them asylum. Those Cubans who reach shore are allowed to apply for permanent resident status in the United States in one year. This so-called "wet foot/dry foot" policy has been criticized by some, including the Cuban government, as effectively fostering alien smuggling and encouraging Cubans to risk their lives in order to make it to the United States. Others maintain that U.S. policy should welcome those migrants fleeing Cuba whether or not they are able to make it to land. In July 2003, the repatriation of 12 Cubans interdicted at sea who were involved in stealing a Cuban government boat prompted widespread criticism of the Bush Administration by those wanting to change U.S. Supporters of U.S. migration policy maintain that implementation of

the migration accords is important for preventing another mass exodus of Cubans to the United States.

On October 10, 2003, President Bush announced that, in order to ensure that Cubans fleeing their homeland do not risk their lives at sea, the United States would increase the number of new Cuban immigrants each year, improve its methods for identifying refugees, redouble efforts to process Cubans seeking to leave the island and initiate a public information campaign (both in Florida and in Cuba) to better inform Cubans of the routes to safe and legal entry into the United States. The announcement, which some viewed as a response to the increased criticism of the Administration's migration policy, was a signal that there would be no fundamental change to the migration policy set forth by the Cuban Adjustment Act and the 1994 and 1995 migration agreements. Cuba has generally ranked among the top ten source countries for immigrants into the United States; for example, in 2002, the United States admitted 28,272 immigrants from Cuba, making it the seventh largest source country for U.S. immigrants last year.¹⁶

There were a number of legislative initiatives introduced from 1991 to 1996 to repeal the Cuban Adjustment Act. Ultimately, in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208, Division C, Title VI, Section 606), Congress agreed to the eventual repeal of the Cuban Adjustment Act but it conditioned the repeal upon a presidential determination – under the Cuban Liberty and Democratic Solidarity Act of 1996 (P.L. 104-114) – that a democratically-elected government is in power in Cuba.

¹⁶ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services. 2002 Yearbook of Immigration Statistics.

Document

Public Laws

Cuban Refugee Adjustment Act of 1966

Date: November 2, 1966

Partial text of Public Law 89-732 [H.R. 15183], 80 Stat. 1161, 8 U.S.C. 1255 note, approved November 2, 1966, as amended

An Act

To adjust the status of Cuban refugees to that of lawful permanent residents of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Notwithstanding the provisions of section 245(c) of the Immigration and Nationality Act, the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least one year, may be adjusted by the Attorney General, in his direction and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. Upon approval of such an application for adjustment of status, the Attorney General shall create a record of the alien's admission for permanent residence as of a date thirty months prior to the filing of such an application or the date of his last arrival into the United States, whichever date is later. The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States, except that such spouse or child who has been battered or subjected to extreme cruelty may adjust to permanent resident status under this Act without demonstrating that he or she is residing with the Cuban spouse or parent in the United States. In acting on applications under this section with respect to spouses or children who have been battered or subjected to extreme cruelty, the Attorney General shall apply the provisions of section 204(a)(1)(H).

Sec. 2. –

In the case of any alien described in section 1 of this Act who, prior to the effective date thereof, has been lawfully admitted into the United States for permanent residence, the Attorney General shall, upon application, record his admission for permanent residence as of the date the alien originally arrived in the United States as a nonimmigrant or as a parolee, or a date thirty months prior to the date of enactment of this Act, whichever date is later.

* * * * *

Sec. 4. –

Except as otherwise specifically provided in this Act, the definitions contained in section 101(a) and (b) of the Immigration and Nationality Act shall apply in the administration of this Act. Nothing contained in this Act shall be held to repeal, amend, alter, modify, affect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration, nationality, or naturalization.

Sec. 5. – The approval of an application for adjustment of status to that of lawful permanent resident of the United States pursuant to the provisions of section 1 of this Act shall not require the Secretary of State to reduce the number of visas authorized to be issued in any class in the case of any alien who is physically present in the United States on or before the effective date of the Immigration and Nationality Act Amendments of 1976.

Document

Illegal Immigration Reform and Immigrant Responsibility Act of 1996

Date: September 30, 1996

Division C of Public Law 104-208 [Omnibus Consolidated Appropriations Act, 1997; H.R. 3610], 110 Stat. 3009, approved September 30, 1996

An Act

Making omnibus consolidated appropriations for the fiscal year ending September 30, 1997, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

Sec. 606. – Conditional Repeal of Cuban Adjustment Act.

(a) In General. – Public Law 89-732 is repealed effective only upon a determination by the President under section 203(c)(3) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Public Law 104-114) that a democratically elected government in Cuba is in power.

(b) Limitation. – Subsection (a) shall not apply to aliens for whom an application for adjustment of status is pending on such effective date.

Document

Executive Documents

Agreement on Immigration Procedures and the Return of Cuban Nationals

Date: December 14, 1984

Discussions between representatives of the United States of America and of the Republic of Cuba on immigration matters concluded today with the adoption of agreements for the normalization of immigration procedures between the two countries and to put an end to the abnormal situation which has existed since 1980.

The United States will resume issuance of preference immigrant visas to Cuban nationals residing in Cuba up to the number of 20,000 each year, in particular to close family relatives of United States citizens and of Cuban permanent residents in the United States.

The United States side expressed its willingness to implement – with the cooperation of the Cuban authorities – all necessary measures to ensure that Cuban nationals residing in Cuba wishing to emigrate to the United States and who qualify under United States law to receive immigrant visas, may enter the United States, taking maximum advantage of the number of up to 20,000 immigrants per year.

For its part, the United States will continue granting immigrant visas to residents of Cuba who are parents, spouses and unmarried children under 21 years of age, of United States citizens. These immigrants will not be counted against the annual limit indicated above.

Cuba will accept the return of those Cubans nationals who came to the United States in 1980 via the port of Mariel and who have been declared ineligible to enter the United States legally. The number of such persons is 2,746 and their names appear on an approved list. The return of these persons will be carried out by means of an orderly program of returns with the cooperation of the immigration authorities of both countries. The returns will proceed in a phased and orderly manner until all the identified individuals who appear on the approved list have been returned. The returns will be effected at a rate of 100 each calendar month, but if the figure of 100 is not met in a given month, the remaining numbers may be used in subsequent months, provided that no more than 150 will be returned in any calendar month. The United States stated that measures were being taken so that the Cuban nationals who came to the United States in 1980 via the port of Mariel may acquire, beginning now and with retroactive effect of approximately 30 months, legal status as permanent residents of the United States.

Both delegations expressed their concern in regard to the situation of those persons who, having been released after serving sentences for acts which Cuban penal legislation defines as “Offenses against the Security of the State,” wish to reside permanently in the United States. The United States will facilitate the admission of such persons and their immediate family members by means of a program to be carried out under applicable United States law. The United States delegation stated that to this end the necessary steps have been taken for admission during Fiscal Year 1985 of up to 3,000 such persons, including immediate family

members. The size of the program and any possible increase in subsequent fiscal years will be determined in the light of experience with the process and the desire expressed by both parties to carry out this program in such a way as to allow its ongoing implementation until fully completed in the shortest possible time.

The representatives of the United States of America and of the Republic of Cuba decided to meet again within six months in order to analyze progress in the implementation of these agreements.

Minute on Implementation, Dec. 14, 1984

In regard to the discussions on immigration matters which concluded today, the representatives of the United States of America and of the Republic of Cuba reached the following agreements on the implementation of certain points dealt with in the Communiqué announcing the results of these talks:

Concerning the return of Cuban nationals who came to the United States in 1980 via the port of Mariel and who have been identified by the United States as persons ineligible to enter the United States legally, it was agreed that the returns would begin no earlier than 30 days from today. The United States immigration authorities will give the Cuban authorities in advance of the actual return of any person all available health information, including any available medical records, diagnoses and recommendations for treatment. Both authorities will cooperate closely to assure that appropriate measures are taken to protect both the health of the individual and the public health.

With regard to persons charged with committing crimes in the United States, the United States will furnish a certified description, based on United States records, of the offense or offenses committed, the circumstances under which such offenses were committed, the nature of the evidence supporting the charges, the time the person was held in detention and the status of judicial proceedings, including the sentence imposed, if any.

Likewise, the United States will provide a certified copy of the applicable federal or state law establishing the offense. These documents will be provided as soon as possible and in no case later than 30 days prior to the date on which the person is to be returned to Cuba, allowing the Cuban authorities to analyze the criminal records of those who committed an offense during their stay in the United States and who are to be returned by the United States authorities. The United States immigration authorities will notify the Cuban immigration authorities, no less than 10 days prior to a return, of the registration number of the aircraft to be used to transport persons to Cuba, of the names of the individuals aboard such flights, and of the measures for inflight custody.

If, at the point of entry in Cuba, errors are detected which both parties agree negate the identification of a person being returned as a Cuban national who left Cuba via Mariel in 1980, that person will be returned to the United States pending further efforts to identify him.

The definition of “Offenses against the Security of the State” is understood to include former prisoners convicted of the offense of illegal departure from the country which, at the time the offense was committed, was defined by applicable criminal law as falling within that definition.

The former prisoner who emigrates to the United States may be accompanied by his parents, unmarried children under 21 years of age and spouse and, as appropriate, other family members who live with him under his protection or custody.

In order to facilitate the ongoing and uninterrupted implementation of the program for the normal issuance of immigrant visas and the program for former prisoners, the Government of Cuba will furnish to applicants for entry into the United States the necessary documents in accordance with United States law such as certified copies of vital statistics registry extracts (birth, marriage and death certificates), divorce decree, as well as penal records, and will facilitate to the extent possible the conduct of medical examinations including provisions of chest x-rays.

The United States Interests Section will continue to employ measures which are conducive to the orderly processing of persons applying to go to the United States, including the continued use of applications by mail.

The normal processing of immigrant visas and the processing of applications for the program for former prisoners will require the assignment of 10 additional United States officials to the United States Interests Section of the Embassy of Switzerland in Havana. The Cuban Government agreed to authorize these increases, on the understanding that these officers will be assigned temporarily and will not be considered permanent staff of the United States Interests Section, and agreed to provide them with the necessary facilities for carrying out their functions.

The representatives of the United States and Cuba agreed to meet within six months to analyze progress in implementation of these steps.

Document

Joint Communiqué on U.S.–Cuba Immigration Agreement

Date: September 9, 1994

Representatives of the United States of America and the Republic of Cuba today concluded talks concerning their mutual interest in normalizing migration procedures and agreed to take measures to ensure that migration between the two countries is safe, legal, and orderly.

Safety of Life at Sea

The United States and the Republic of Cuba recognize their common interest in preventing unsafe departures from Cuba which risk loss of human life. The United States underscored its recent decisions to discourage unsafe voyages. Pursuant to those decisions, migrants rescued at sea attempting to enter the United States will not be permitted to enter the United States, but instead will be taken to safe haven facilities outside the United States. Further, the United States has discontinued its practice of granting parole to all Cuban migrants who reach U.S. territory in irregular ways. The Republic of Cuba will take effective measures in every way it possibly can to prevent unsafe departures using mainly persuasive methods.

Alien Smuggling

The United States and the Republic of Cuba reaffirm their support for the recently adopted United Nations General Assembly resolution on alien smuggling. They pledged their cooperation to take prompt and effective action to prevent the transport of persons to the United States illegally. The two governments will take effective measures in every way they possibly can to oppose and prevent the use of violence by any persons seeking to reach, or who arrive in, the United States from Cuba by forcible diversions of aircraft and vessels.

Legal Migration

The United States and the Republic of Cuba are committed to directing Cuban migration into safe, legal and orderly channels consistent with strict implementation of the 1984 joint communiqué. Accordingly, the United States will continue to issue, in conformity with United States law, immediate relative and preference immigrant visas to Cuban nationals who apply at the U.S. Interests Section and are eligible to immigrate to the United States. The United States also commits, through other provisions of United States law, to authorize and facilitate additional lawful migration to the United States from Cuba. The United States ensures that total legal migration to the United States from Cuba will be a minimum of 20,000 Cubans each year, not including immediate relatives of United States citizens. As an additional, extraordinary measure, the United States will facilitate in a one year period the issuance of documentation to permit the migration to the United States of those qualified Cuban nationals in Cuba currently on the immigrant visa waiting list. To that end, both parties will work together to facilitate the procedures necessary to implement this measure. The two governments agree to authorize the necessary personnel to allow their respective interests sections to implement the provisions of this communiqué effectively.

Voluntary Return

The United States and the Republic of Cuba agreed that the voluntary return of Cuban nationals who arrived in the United States or in safe havens outside the United States on or after August 19, 1994, will continue to be arranged through diplomatic channels.

Excludables

The United States and the Republic of Cuba agreed to continue to discuss the return of Cuban nationals excludable from the United States.

Review of Agreement

The representatives of the United States and the Republic of Cuba agree to meet no later than 45 days from today's announcement to review implementation of this Joint Communiqué. Future meetings will be scheduled by mutual agreement.

Document

Joint Statement on U.S. – Cuba Immigration Agreement

Date: May 2, 1995

The United States of America and the Republic of Cuba have reached agreement on steps to normalize further their migration relationship. These steps build upon the September 9, 1994, agreement and seek to address safety and humanitarian concerns and to ensure that migration between the countries is safe, legal, and orderly.

Humanitarian Parole

The United States and the Republic of Cuba recognize the special circumstances of Cuban migrants currently at Guantánamo Bay. Accordingly, the two governments have agreed that the process of humanitarian parole into the United States should continue beyond those eligible for parole under existing criteria. The two governments agree that if the United States carries out such paroles, it may count them towards meeting the minimum number of Cubans it is committed to admit every year pursuant to the September 9, 1994, agreement. Up to 5,000 such paroles may be counted towards meeting the minimum number in any one year period beginning September 9, 1995, regardless of when the migrants are paroled into the United States.

Safety of Life at Sea

The United States and the Republic of Cuba reaffirm their common interest in preventing unsafe departures from Cuba. Effective immediately, Cuban migrants intercepted at sea by the United States and attempting to enter the United States will be taken to Cuba. Similarly, migrants found to have entered Guantánamo illegally will also be returned to Cuba. The United States and the Republic of Cuba will cooperate jointly in this effort. All actions taken will be consistent with the parties' international obligations. Migrants taken to Cuba will be informed by the United States officials about procedures to apply for legal admission to the United States at the U.S. Interests Section in Havana.

The United States and the Republic of Cuba will ensure that no action is taken against those migrants returned to Cuba as a consequence of their attempt to immigrate illegally. Both parties will work together to facilitate the procedures necessary to implement these measures. The United States and the Republic of Cuba agree to the return to Cuba of Cuban nationals currently at Guantánamo who are ineligible for admission to the United States.

September 9, 1994, Agreement

The United States and the Republic of Cuba agree that the provisions of the September 9, 1994, agreement remain in effect, except as modified by the present Joint Statement. In particular, both sides reaffirm their joint commitment to take steps to prevent unsafe departures from Cuba which risk loss of human life and to oppose acts of violence associated with illegal immigration.

Section V: Guantanamo Naval Base

The U.S. naval base at Guantanamo Bay, Cuba, has at times been a contentious issue in U.S.-Cuban relations. The 45-square mile base on the southeast coast of Cuba dates back to 1903, making it the oldest U.S. overseas military base. Formal negotiations for the U.S. basing rights began in 1902, after Cuba had attained its independence. Under the so-called Platt Amendment, passed by the U.S. Congress in 1901 and added as an appendix to the Cuban Constitution, the Cuban government agreed to sell or lease to the United States land areas for coaling¹⁷ or naval stations, in order “...to enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense.” Subsequently, in February 1903, the United States and Cuba signed a lease agreement “for the purposes of coaling and naval stations.” In 1934, the two countries signed a friendship treaty, which included a provision stating that the February 1903 lease agreement for coaling and naval stations would continue in effect until the two countries “...agree to the modification or abrogation...of the agreement...” According to the Department of State, the result of the 1934 treaty is that the U.S. presence at Guantanamo can only be terminated by mutual agreement or by abandonment by the United States.¹⁸

When Fidel Castro assumed power in the 1959 Cuban revolution, the new government gave assurances that it would respect all its existing international treaty commitments, including the 1934 treaty covering the Guantanamo base.¹⁹ Subsequently, however, as U.S.-Cuban relations deteriorated, the Cuban government began to oppose the U.S. presence as illegal. The Cuban government views the U.S. presence as a national security threat. Many Cuba scholars have argued that the very concept of a lease agreement means that it is temporary; they believe that the Guantanamo agreement, which has no end date, contradicts Cuba’s right of sovereignty. Moreover, they argue that U.S.-Cuban relations have changed considerably since the 1934 friendship treaty, and that the continuation of the U.S. presence on the basis of this treaty is a façade, given the hostility in U.S.-Cuban relations since the early 1960s.²⁰

Pursuant to an additional U.S.-Cuban agreement signed in July 1903, the United States agreed to pay Cuba the annual sum of \$2,000 in U.S. gold coin as long as the United States occupies the area. That amount has been adjusted over the years, and now stands at \$4,085. After coming into power, Fidel Castro cashed the first check, but has cashed none since.

¹⁷ A coaling station is a seaport where ships can take on supplies of coal.

¹⁸ A principal source for background information in this section is: U.S. Library of Congress, Congressional Research Service, *Guantanamo Bay Naval Base, Cuba: Background and Current Issues*, CRS Report 94-701 F, by Ronald O’Rourke and Mark P. Sullivan, September 2, 1994.

¹⁹ Wayne S. Smith and Esteban Morales Dominguez, eds. *Subject to Solution, Problems in Cuba-U.S. Relations*, Lynne Rienner Publishers: Boulder and London, 1988, p. 98.

²⁰ Miguel A. D’Estefano Pisani, “International Law and U.S.-Cuban Relations,” in Jorge Dominguez and Rafael Hernandez, *U.S.-Cuban Relations in the 1990s*, Boulder, Colorado: Westview Press, 1989, p. 267.

The mission of the U.S. naval base at Guantanamo has changed considerably over time. During the Cold War, the base was viewed as a good location for controlling Caribbean sea lanes, as a deterrent to the Soviet presence in the Caribbean and as a location for supporting potential military operations in the region. A primary mission of the base has been to provide training for the crews of ships in the U.S. Atlantic Fleet.

The naval base first began to house large numbers of asylum seekers when it took in thousands of Haitians in 1991. In 1994 and 1995, the base housed thousands of Cuban and Haitian migrants interdicted at sea by the U.S. Coast Guard, but by 1996 the last of these refugees had departed, with most Cubans paroled into the United States (pursuant to a May 1995 U.S.-Cuban migration accord), while the Haitian migrants were returned to their country. Since the 1995 U.S.-Cuban migration agreement, the U.S. Coast Guard has interdicted thousands of Cubans at sea and returned them to Cuba, while a much smaller number – those deemed at risk for persecution – have been taken to Guantanamo and then granted asylum in a third country.

Another role for the U.S. naval base at Guantanamo has emerged most recently amid the U.S.-led global campaign against terrorism, in the aftermath of the 9/11 terrorist attacks in the United States. During the U.S.-led war in Afghanistan, the Bush Administration decided to send captured Taliban and *al-Qa'eda* fighters to Guantanamo. Some 660 detainees from more than 40 countries had been imprisoned there as of late 2003, although the Bush Administration announced in December that some 140 would soon be released. In contrast to strong anti-U.S. rhetoric over the war in Afghanistan, the Cuban government had a much more muted response to the U.S. decision to send prisoners to Guantanamo. Although the Cuban government still objects to the U.S. presence at Guantanamo as a national security threat and opposes the presence as illegal, it has not opposed the new mission of housing detainees. Cuba's First Vice President and Minister of Defense, Raul Castro, even noted that, in the unlikely event that a prisoner should escape into Cuban territory, Cuba would capture the prisoner and return him to the U.S. base.²¹

In terms of the future of the Guantanamo base, a provision in the Cuban Liberty and Democratic Solidarity Act of 1996 (P.L. 104-114, Section 201) states that once a democratically-elected Cuban government is in place, U.S. policy will be to be prepared to enter into negotiations, either to return the base to Cuba or to renegotiate the present agreement under mutually agreeable terms. Reports in October 2003 that the U.S. military was building more permanent structures for imprisoned terrorists raises questions about the long-term U.S. use of Guantanamo as a prison facility for the global war against terrorism.²²

²¹ "Cuba Would Hand Over Escapees, Raul Castro Says," *Miami Herald*, January 20, 2002.

²² Neil A. Lewis, "U.S. Erecting a Solid Prison at Guantanamo for Long Term," *New York Times*, October 22, 2003.

Document

Treaty Between the United States of America and Cuba, 1934

Date: June 9, 1934

Signed at Washington, May 29, 1934; Ratification advised by the Senate of the United States, May 31, 1934 (legislative day of May 28, 1934); Ratified by the President of the United States, June 5, 1934; Ratified by Cuba, June 4, 1934; Ratifications exchanged at Washington, June 9, 1934; Proclaimed by the President of the United States, June 9, 1934

By the President of the United States of America

A Proclamation

Whereas a Treaty of Relations between the United States of America and the Republic of Cuba was concluded and signed by their respective Plenipotentiaries at Washington on the twenty-ninth day of May, one thousand nine hundred and thirty-four, the original of which Treaty, being in the English and Spanish languages, is word for word as follows:

The United States of America and the Republic of Cuba, being animated by the desire to fortify the relations of friendship between the two countries and to modify, with this purpose, the relations established between them by the Treaty of Relations signed at Habana, May 22, 1903, have appointed, with this intention, as their Plenipotentiaries:

The President of the United States of America; Mr. Cordell Hull, Secretary of State of the United States of America, and Mr. Sumner Welles, Assistant Secretary of the United States of America; and

The Provisional President of the Republic of Cuba, Senor Dr. Manuel Marquez Sterling, Ambassador Extraordinary and Plenipotentiary of the Republic of Cuba to the United States of America;

Who, after having communicated to each other their full powers which were found to be in good and due form, have agreed upon the following articles:

Article I

The Treaty of Relations which was concluded between the two contracting parties on May 22, 1903, shall cease to be in force, and is abrogated, from the date on which the present Treaty goes into effect.

Article II

All the acts effected in Cuba by the United States of America during its military occupation of the island, up to May 20, 1902, the date on which the Republic of Cuba was established,

have been ratified and held as valid; and all the rights legally acquired by virtue of those acts shall be maintained and protected.

Article III

Until the two contracting parties agree to the modification or abrogation of the stipulations of the agreement in regard to the lease to the United States of America of lands in Cuba for coaling and naval stations signed by the President of the Republic of Cuba on February 16, 1903, and by the President of the United States of America on the 23d day of the same month and year, the stipulations of that agreement with regard to the naval station of Guantanamo shall continue in effect. The supplementary agreement in regard to naval or coaling stations signed between the two Governments on July 2, 1903, also shall continue in effect in the same form and on the same conditions with respect to the naval station at Guantanamo. So long as the United States of America shall not abandon the said naval station of Guantanamo or the two Governments shall not agree to modification of its present limits, the station shall continue to have the territorial area that it now has, with the limits that it has on the date of the signature of the present Treaty.

Article IV

If at any time in the future a situation should arise that appears to point to an outbreak of contagious disease in the territory of either of the contracting parties, either of the two Governments shall, for its own protection, and without its act being considered unfriendly, exercise freely and at its discretion the right to suspend communications between those of its ports that it may designate and all or part of the territory of the other party, and for the period that it may consider to be advisable.

Article V

The present Treaty shall be ratified by the contracting parties in accordance with their respective constitutional methods; and shall go into effect on the date of the exchange of their ratifications, which shall take place in the city of Washington as soon as possible.

In faith whereof, the respective Plenipotentiaries have signed the present Treaty and have affixed their seals hereto.

Done in duplicate, in the English and Spanish languages, at Washington on the Twenty-ninth day of May, one thousand nine hundred and thirty-four.

Cordell HULL
Sumner WELLES
M. Marquez STERLING

And whereas, the said Treaty has been duly ratified on both parts, and the ratifications of the two Governments were exchanged in the city of Washington on the ninth day of June, one thousand nine hundred and thirty-four;

Now, therefore, be it known that I, Franklin D. Roosevelt, President of the United States of America, have caused the said Treaty to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof.

IN TESTIMONY WHEREOF, I have herunto set my hand and caused the seal of the United States of America to be affixed.

Done at the City of Washington this ninth day of June, in the year of our Lord one thousand nine hundred and thirty-four and of the Independence of the United States of America the one hundred and fifty-eighth.

Franklin D. ROOSEVELT

By the President:
Cordell HULL
Secretary of State

Document

Lease to the United States by the Government of Cuba of Certain Areas of Land and Water for Naval or Coaling Stations in Guantanamo and Bahia Honda, 1903 **Date: October 6, 1903**

Signed at Habana, July 2, 1903; Approved by the President, October 2, 1903; Ratified by the President of Cuba, August 17, 1903; Ratifications exchanged at Washington, October 6, 1903

The United States of America and the Republic of Cuba, being desirous to conclude the conditions of the lease of areas of land and water for the establishment of naval or coaling stations in Guantanamo and Bahia Honda the Republic of Cuba made to the United States by the Agreement of February 16/23, 1903, in fulfillment of the provisions of Article Seven of the Constitutional Appendix of the Republic of Cuba, have appointed their Plenipotentiaries to that end. –

The President of the United States of America, Herbert G. Squiers, Envoy Extraordinary and Minister Plenipotentiary in Havana.

And the President of the Republic of Cuba, Jose M. Garcia Montes, Secretary of Finance, and acting Secretary of State and Justice, who, after communicating to each other their respective full powers, found to be in due form, have agreed upon the following Articles; –

Article I

The United States of America agrees and covenants to pay to the Republic of Cuba the annual sum of two thousand dollars, in gold coin of the United States, as long as the former shall occupy and use said areas of land by virtue of said agreement.

All private lands and other real property with said areas shall be acquired forthwith by the Republic of Cuba.

The United States of America agrees to furnish to the Republic of Cuba the sums necessary for the purchase of said private lands and properties and such sums shall be accepted by the Republic of Cuba as advance payment on account of rental due by virtue of said Agreement.

Article II

The said areas shall be surveyed and their boundaries distinctly marked by permanent fences or inclosures.

The expenses of construction and maintenance of such fences or inclosures shall be borne by the United States.

Article III

The United States of America agrees that no person, partnership, or corporation shall be permitted to establish or maintain a commercial, industrial or other enterprise within said areas.

Article IV

Fugitives from justice charged with crimes or misdemeanors amenable to Cuban Law, taking refuge within said areas, shall be delivered up by the United States authorities on demand by duly authorized Cuban authorities.

On the other hand the Republic of Cuba agrees that fugitives from justice charged with crimes or misdemeanors amenable to United States law, committed within said areas, taking refuge in Cuban territory, shall on demand, be delivered up to duly authorized United States authorities.

Article V

Materials of all kinds, merchandise, stores and munitions of war imported into said areas for exclusive use and consumption therein, shall not be subject to payment of customs duties nor any other fees or charges and the vessels which may carry same shall not be subject to payment of port, tonnage, anchorage, or other fees, except in case said vessels shall be discharged without the limits of said areas; and said vessels shall not be discharged without the limits of said areas otherwise than through a regular port of entry of the Republic of Cuba when both cargo and vessel shall be subject to all Cuban Customs laws and regulations and payment of corresponding duties and fees.

It is further agreed that such materials, merchandise, stores and munitions of war shall not be transported from said areas into Cuban territory.

Article VI

Except as provided in the preceding Article, vessels entering into or departing from the Bays of Guantanamo and Bahia Honda within the limits of Cuban territory shall be subject exclusively to Cuban laws and authorities and orders emanating from the latter in all that respects port police, Customs or Health, and authorities of the United States shall place no obstacle in the way of entrance and departure of said vessels except in case of a state of war.

Article VII

This lease shall be ratified and the ratifications shall be exchanged in the City of Washington within seven months from this date.

In witness whereof, We, the respective Plenipotentiaries, have signed this lease and hereunto affixed our Seals.

Done at Havana, in duplicate in English and Spanish this second day of July nineteen hundred and three.

Jose M. Garcia MONTES
H.G. SQUIERS

I, Theodore Roosevelt, President of the United States of America, having seen and considered the foregoing lease, do hereby approve the same, by virtue of the authority conferred by the seventh of the provisions defining the relations which are to exist between the United States and Cuba, contained in the Act of Congress approved March 2, 1901, entitled "An Act making appropriation for the support of the Army for the fiscal year ending June 30, 1902"

Washington, October 2, 1903

Theodore ROOSEVELT

Document

Lease of Coaling or Naval Stations, 1903

Date: February 23, 1903

Signed by the President of Cuba, February 16, 1903; Signed by the President of the United States, February 23, 1903

Agreement

Between the United States of America and the Republic of Cuba for the lease (subject to terms to be agreed upon by the two Governments) to the United States of lands in Cuba for coaling and naval stations.

The United States of America and the Republic of Cuba, being desirous to execute fully the provisions of Article VII of the Act of Congress approved March second, 1901, and of Article VII of the Appendix to the Constitution of the Republic of Cuba promulgated on the 20th of May, 1902, which provide:

“Article VII. To enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense, the Cuban Government will sell or lease to the United States the lands necessary for coaling or naval stations, at certain specified points to be agreed upon with the President of the United States.”

have reached and agreement to that end as follows:

Article I

The Republic of Cuba hereby leases to the United States, for the time required for the purposes of coaling and naval stations, the following described areas of land and water situated in the Island of Cuba:

1st. In Guantanamo (see Hydrographic Office Chart 1857). From a point on the south coast, 4.37 nautical miles to the eastward of Windward Point Light House, a line running north (true) a distance of 4.25 nautical miles;

From the northern extremity of this line, a line running west (true), a distance of 5.87 nautical miles;

From the western extremity of this last line, a line running southwest (true) 3.31 nautical miles;

From the southwestern extremity of this last line, a line running south (true) to the seacoast.

This lease shall be subject to all the conditions named in Article II of this agreement.

2nd. In Northwestern Cuba (see Hydrographic Office Chart 2036).

In Bahia Honda (see Hydrographic Office Chart 520b).

All that land included in the peninsular containing Cerro del Morrillo and Punta del Carenero situated to the westward of a line running south (true) from the north coast at a distance of thirteen hundred yards east (true) from the crest of Cerro del Morrillo, and all the adjacent waters touching upon the coast line of the above described peninsula and including the estuary south of Punta del Carenero with the control of the headwaters as necessary for sanitary and other purposes.

And in addition all that piece of land and its adjacent waters on the western side of the entrance to Bahia Honda including between the shore line and a line running north and south (true) to low water marks through a point which is west (true) distant one nautical mile from Pta. del Cayman.

Article II

The grant of the foregoing Article shall include the right to use and occupy the waters adjacent to said areas of land and water, and to improve and deepen the entrances thereto and the anchorages therein, and generally to do any and all things necessary to fit the premises for use as coaling or naval stations only, and for no other purpose.

Vessels engaged in the Cuban trade shall have free passage through the waters included within this grant.

Article III

While on the one hand the United States recognizes the continuance of the ultimate sovereignty of the Republic of Cuba over the above described areas of land and water, on the other hand the Republic of Cuba consents that during the period of the occupation by the United States of said areas under the terms of this agreement the United States shall exercise complete jurisdiction and control over and within said areas with the right to acquire (under conditions to be hereafter agreed upon by the two Governments) for the public purposes of the United States any land or other property therein by purchase or by exercise of eminent domain with full compensation to the owners thereof.

Done in duplicate at Habana, and signed by the President of the Republic of Cuba this sixteenth day of February, 1903.

T. Estrada PALMA

Signed by the President of the United States the twenty-third of February, 1903.

Theodore ROOSEVELT

Section VI:

U.S. Government-Sponsored Radio and Television Broadcasting to Cuba

Radio Marti and TV Marti, U.S. government-sponsored radio and television broadcasting to Cuba, began in 1985 and 1990, respectively. In 1983, Congress approved the establishment of specialized radio broadcasting to Cuba with the passage of the Radio Broadcasting to Cuba Act (P.L. 98-111). According to the legislation, "...there is a need for broadcasts to Cuba which provide news, commentary and other information about events in Cuba and elsewhere to promote the cause of freedom in Cuba." As a result of the legislation, Radio Marti – named for 19th century Cuban nationalist poet José Martí – began broadcasting to Cuba on May 20, 1985. Congress funded the testing of television broadcasting to Cuba in 1987 and 1988, and in 1990 authorized the establishment of TV Marti when it enacted the Television Broadcasting to Cuba Act, as part of the State Department authorization measure for FY1990 and FY1991 (P.L. 101-246). Television broadcasting began on an experimental basis in March 1990, with regular operations starting in August 1990. Under the legislation authorizing Radio Marti, a nine-member Advisory Board for Cuba Broadcasting was created, which has the task of reviewing the effectiveness of both Radio and TV Marti and making any necessary recommendations.

Radio Marti broadcasts 24 hours a day, seven days a week, on short and medium wave (AM) channels, while TV Marti broadcasts for four and one-half hours daily on VHF and UHF channels. There has been testing of various methods to overcome Cuban jamming efforts for both media. On May 20, 2003, both Radio and TV Marti were transmitted for several hours from an Air Force EC-130 aircraft, while on the same day TV Marti was broadcast via a commercial network, DirecTV-Latin America, for several hours. In response, Cuba complained to the International Telecommunications Union and delivered a formal note of protest to the U.S. Interests Section in Havana, arguing that the broadcasts were a violation of international law and the island's sovereignty. U.S. State Department officials deny that the broadcasts violated any international obligations.²³

Congress funds Radio and TV Marti through the annual Commerce, Justice, State, and Related Agencies appropriations measure. Both programs have at times been the focus of controversies, including over adherence to broadcast standards, and there have been various unsuccessful legislative attempts to cut funding for the programs, especially for TV Marti, which does not have an audience because of Cuban jamming efforts. From Fiscal Year 1984 through Fiscal Year 2004, Congress had appropriated about \$460 million for broadcasting to Cuba, with \$281 million for Radio Marti and \$179 million for TV Marti.

A provision in the Cuban Liberty and Democratic Solidarity Act of 1996 (P.L. 104-114, Section 107) provides that both the Radio Broadcasting to Cuba Act and the Television

²³ "Havana Says U.S. Violating Airwaves," *Chicago Tribune*, May 24, 2003; "Cuba Objects to Increase in U.S. Broadcasts," *Miami Herald*, May 24, 2003.

Broadcasting to Cuba Act will be repealed once the President submits a determination that a democratically elected government is in power in Cuba.

Document

Radio Broadcasting to Cuba Act

Date: October 4, 1983

Public Law 98 – 111 [S. 602], 97 Stat. 749, approved October 4, 1983, as amended

An Act

To provide for the broadcasting of accurate information to the people of Cuba, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Radio Broadcasting to Cuba Act”.

Findings; Purposes

Sec. 2. [22 U.S.C. 1465] – The Congress finds and declares –

- (1) that it is the policy of the United States to support the right of the people of Cuba to seek, receive, and impart information and ideas through any media and regardless of frontiers, in accordance with article 19 of the Universal Declaration of Human Rights;
- (2) that, consonant with this policy, radio broadcasting to Cuba may be effective in furthering the open communication of accurate information and ideas to the people of Cuba, in particular information about Cuba;
- (3) that such broadcasting to Cuba, operated in a manner not inconsistent with the broad foreign policy of the United States and in accordance with high professional standards, would be in the national interest; and
- (4) that the Voice of America already broadcasts to Cuba information that represents America, not any single segment of American society, and includes a balanced and comprehensive projection of significant American thought and institutions but that there is a need for broadcasts to Cuba which provide news, commentary and other information about events in Cuba and elsewhere to promote the cause of freedom in Cuba.

Additional Functions of the Broadcasting Board of Governors

Sec. 3. [22 U.S.C. 1465a] –

- (a) In order to carry out the objectives set forth in section 2, the Broadcasting Board of Governors (hereafter in this Act referred to as the “Board”) shall provide for the open communication of information and ideas through the use of radio broadcasting to Cuba.

Radio broadcasting to Cuba shall serve as a consistently reliable and authoritative source of accurate, objective, and comprehensive news.

(b) Radio broadcasting in accordance with subsection (a) shall be part of the Voice of America radio broadcasting to Cuba and shall be in accordance with all Voice of America standards to ensure the broadcast of programs which are objective, accurate, balanced, and which present a variety of views.

(c) Radio broadcasting to Cuba authorized by this Act shall utilize the broadcasting facilities located at Marathon, Florida, and the 1180 AM frequency that were used by the Voice of America prior to the date of enactment of this Act. Other frequencies, not on the commercial Amplitude Modulation (AM) Band (535 kHz to 1605 kHz), may also be simultaneously utilized: *Provided*, That no frequency shall be used for radio broadcasts to Cuba in accordance with this Act which is not also used for all other Voice of America broadcasts to Cuba. Time leased from nongovernmental shortwave radio stations may be used to carry all or part of the Service programs and to rebroadcast Service programs: *Provided*, That not less than 30 per centum of the programs broadcast or rebroadcast shall be regular Voice of America broadcasts with particular emphasis on news and programs meeting the requirements of section 503(2) of Public Law 80-402.

(d) Notwithstanding subsection (c), in the event that broadcasts to Cuba on the 1180 AM frequency are subject to jamming or interference greater by 25 per centum or more than the average daily jamming or interference in the twelve months preceding September 1, 1983, the Broadcasting Board of Governors may lease time on commercial or noncommercial educational AM band radio broadcasting stations. The Federal Communications Commission shall determine levels of jamming and interference by conducting regular monitoring of the 1180 AM frequency. In the event that more than two hours a day of time is leased, not less than 30 per centum of the programming broadcast shall be regular Voice of America broadcasts with particular emphasis on news and programs meeting the requirements of section 503(2) of Public Law 80-402.

(e) Any program of United States Government radio broadcasts to Cuba authorized by this section shall be designated "Voice of America: Cuba Service" or "Voice of America: Radio Marti program".

(f) In the event broadcasting facilities located at Marathon, Florida, are rendered inoperable by natural disaster or by unlawful destruction, the Broadcasting Board of Governors may, for the period in which the facilities are inoperable but not to exceed one hundred and fifty days, use other United States Government-owned transmission facilities for Voice of America broadcasts to Cuba authorized by this Act.

Cuba Service of the International Broadcasting Bureau

Sec. 4. [22 U.S.C. 1465b] –

The Broadcasting Board of Governors shall establish within the International Broadcasting Bureau a Cuba Service (hereafter in this section referred to as the “Service”). The Service shall be responsible for all radio broadcasts to Cuba authorized by section 3. The Broadcasting Board of Governors shall appoint a head of the Service and shall employ such staff as the head of the Service may need to carry out his duties. The Cuba Service shall be administered separately from other International Broadcasting Bureau functions and the head of the Cuba Service shall report directly to the Board of the International Broadcasting Bureau.

Advisory Board for Cuba Broadcasting

Sec. 5. [22 U.S.C. 1465c] –

(a) There is established within the Office of the President the Advisory Board for Cuba Broadcasting (in this division referred to as the “Advisory Board”). The Advisory Board shall consist of nine members, appointed by the President by and with the advice and consent of the Senate, of whom not more than five shall be members of the same political party. The President shall designate one member of the Advisory Board to serve as chairperson.

(b) The Advisory Board shall review the effectiveness of the activities carried out under this Act and the Television Broadcasting to Cuba Act shall make such recommendations to the President and the Broadcasting Board of Governors as it may consider necessary.

(c) In appointing the initial voting members of the Advisory Board, the President shall designate three members to serve for a term of three years, three members to serve for a term of two years, and three members to serve for a term of one year. Thereafter, the term of each member of the Advisory Board shall be three years. The President shall appoint, by and with the advice and consent of the Senate, members to fill vacancies occurring prior to the expiration of a term, in which case the members so appointed shall serve for the remainder of such term. Any member whose term has expired may serve until his successor has been appointed and qualified.

(d) The head of the Cuba Service and the head of the Television Marti Service shall serve, ex officio, as members of the Advisory Board.

(e) Members of the Advisory Board appointed by the President shall, while attending meetings of the Advisory Board or while engaged in duties relating to such meetings or in other activities of the Advisory Board pursuant to this section, including traveltime, be entitled to receive compensation equal to the daily equivalent of the compensation prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code. While away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently. The ex officio members of the

Advisory Board shall not be entitled to any compensation under this section, but may be allowed travel expenses as provided in the preceding sentence.

(f) The Advisory Board may, to the extent it deems necessary to carry out its functions under this section, procure supplies, services, and other personal property, including specialized electronic equipment.

(g) Notwithstanding any other provision of law, the Board shall remain in effect indefinitely.

(h) There are authorized to be appropriated \$130,000 to carry out the provisions of this section.

Assistance from other Government Agencies

Sec. 6. [22 U.S.C. 1465d] –

(a) In order to assist the Broadcasting Board of Governors in carrying out the purposes set forth in section 2, any agency or instrumentality of the United States may sell, loan, lease, or grant property (including interests therein) and may perform administrative and technical support and services at the request of the Board. Support and services shall be provided on a reimbursable basis. Any reimbursement shall be credited to the appropriation from which the property, support, or services was derived.

(b) The Board may carry out the purposes of section 3 by means of grants, leases, or contracts (subject to the availability of appropriations), or such other means as the Board determines will be most effective.

Facility Compensation

Sec. 7. [22 U.S.C. 1465e] –

(a) It is the intent of the Congress that the Secretary of State should seek prompt and full settlement of United States claims against the Government of Cuba arising from Cuban interference with broadcasting in the United States. Pending the settlement of these claims, it is appropriate to provide some interim assistance to the United States broadcasters who are adversely affected by Cuban radio interference and who seek to assert their right to measures to counteract the effects of such interference.

(b) Accordingly, the Board may make payments to the United States radio broadcasting station licensees upon their application for expenses which they have incurred before, on or after the date of this Act in mitigating, pursuant to special temporary authority from the Federal Communications Commission, the effects of activities by the Government of Cuba which directly interfere with the transmission or reception of broadcasts by these licensees. Such expenses shall be limited to the costs of equipment replaced (less depreciation) and associated technical and engineering costs.

(c) The Federal Communications Commission shall issue such regulations and establish such procedures for carrying out this section as the Federal Communications Commission finds appropriate. Such regulations shall be issued no later than one hundred and eighty days after enactment of this Act.

(d) There are authorized to be appropriated to the Board, \$5,000,000 for use in compensating United States radio broadcasting licensees pursuant to this section. Amounts appropriated under this section are authorized to be available until expended.

(e) Funds appropriated for implementation of this section shall be available for a period of no more than four years following the initial broadcast occurring as a result of programs described in this Act.

(f) It is the sense of the Congress that the President should establish a task force to analyze the level of interference from the operation of Cuban radio stations experienced by broadcasters in the United States and to seek a practical political and technical solution to this problem.

(g) This section shall enter into effect on October 1, 1984.

Authorization of Appropriations

Sec. 8. [22 U.S.C. 1465f] –

(a) There are authorized to be appropriated for the Broadcasting Board of Governors \$14,000,000 for fiscal year 1984, and \$11,000,000 for fiscal year 1985 to carry out sections 3 and 4 of this Act. The amount obligated by the Broadcasting Board of Governors in ensuing fiscal years shall be sufficient to maintain broadcasts to Cuba under this Act at rates no less than the fiscal year 1985 level.

(b) In addition to amounts otherwise authorized to be appropriated to the Board for the fiscal years 1984 and 1985, there are authorized to be appropriated to the Board \$54,800,000 for the fiscal year 1984 and \$54,800,000 for the fiscal year 1985, which amounts shall be available only for expenses incurred by essential modernization of the facilities and operations of the Voice of America.

(c) Amounts appropriated under this section are authorized to be made available until expended.

Sec. 9. * * * – [Repealed – 1994]

Document

Television Broadcasting to Cuba Act

Date: February 16, 1990

Public Law 101-246 [H.R. 3793], 104 Stat. 15 at 58, approved February 16, 1990, as amended

An Act

To authorize appropriations for fiscal years 1990 and 1991 for the Department of State, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

Part D – Televisions Broadcasting to Cuba

Sec. 241. [22 U.S.C. 1465aa note] – Short Title.

This part may be cited as the “Television Broadcasting to Cuba Act”.

Sec. 242. [22 U.S.C. 1465aa] – Findings and Purposes.

The Congress finds and declares that –

- (1) it is the policy of the United States to support the right of the people of Cuba to seek, receive, and impart information and ideas through any media and regardless of frontiers, in accordance with article 19 of the Universal Declaration of Human Rights;
- (2) consonant with this policy, television broadcasting to Cuba may be effective in furthering the open communication of accurate information and ideas to the people of Cuba and, in particular, information about Cuba;
- (3) television broadcasting to Cuba, operated in a manner not inconsistent with the broad foreign policy of the United States and in accordance with high professional standards, would be in the national interest;
- (4) facilities broadcasting television programming to Cuba must be operated in a manner consistent with applicable regulations of the Federal Communications Commission, and must not affect the quality of domestic broadcast transmission or reception; and
- (5) that the Voice of America already broadcasts to Cuba information that represents America, not any single segment of American society, and includes a balanced and

comprehensive projection of significant American thought and institutions, but that there is a need for television broadcasts to Cuba which provide news, commentary, and other information about events in Cuba and elsewhere to promote the cause of freedom in Cuba.

Sec. 243. [22 U.S.C. 1465bb] – Television Broadcasting to Cuba.

(a) Television Broadcasting to Cuba. – In order to carry out the purposes set forth in section 242 and notwithstanding the limitation of section 501 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1461) with respect to the dissemination in the United States of information prepared for dissemination abroad to the extent such dissemination is inadvertent, the Broadcasting Board of Governors (hereafter in this part referred to as the “Agency”) shall provide for the open communication of information and ideas through the use of television broadcasting to Cuba. Television broadcasting to Cuba shall serve as a consistently reliable and authoritative source of accurate, objective, and comprehensive news.

(b) Voice of America Standards. – Television broadcasting to Cuba under this part shall be in accordance with all Voice of America standards to ensure the broadcast of programs which are objective, accurate, balanced, and which present a variety of views.

(c) Television Marti. – Any program of United States Government television broadcasts to Cuba authorized by this section shall be designated the “Television Marti Program”.

(d) Frequency Assignment. –

(1) Subject to the Communications Act of 1934, the Federal Communications Commission shall assign by order a suitable frequency to further the national interests expressed in this part, except that no such assignment shall result in objectionable interference with the broadcasts of any domestic licensee.

(2) No Federal branch or agency shall compel an incumbent domestic licensee to change its frequency in order to eliminate objectionable interference caused by broadcasting of the Service.

(3) For purposes of section 305 of the Communications Act of 1934, a television broadcast station established for purposes of this part shall be treated as a government station, but the Federal Communications Commission shall exercise the authority of the President under such section to assign a frequency to such station.

(e) Interference with Domestic Broadcasting. –

(1) Broadcasting by the Television Marti Service shall be conducted in accordance with such parameters as shall be prescribed by the Federal Communications Commission to preclude objectionable interference with the broadcasts of any domestic licensee. The Television Marti Service shall be governed by the same

standards regarding objectionable interference as any domestic licensee. The Federal Communications Commission shall monitor the operations of television broadcasting to Cuba pursuant to subsection (f). If, on the basis of such monitoring or a complaint from any person, the Federal Communications Commission determines, in its discretion, that broadcasting by the Television Marti Service is causing objectionable interference with the transmission or reception of the broadcasts of a domestic licensee, the Federal Communications Commission shall direct the Television Marti Service to cease broadcasting and to eliminate the objectionable interference. Broadcasts by the Service shall not be resumed until the Federal Communications Commission finds that the objectionable interference has been eliminated and should not recur.

(2) The Federal Communications Commission shall take such actions as are necessary and appropriate to assist domestic licensees in overcoming the adverse effects of objectionable interference caused by broadcasting by the Television Marti Service. Such assistance may include the authorization of nondirectional increases in the effective radiated power of a domestic television station so that its coverage is equivalent to the maximum allowable for such facilities, to avoid any adverse effect on such stations of the broadcasts of the Television Marti Service.

(3) If the Federal Communications Commission directs the Television Marti Service to cease broadcasting pursuant to paragraph (1), the Commission shall, as soon as practicable, notify the appropriate committees of Congress of such action and the reasons therefor. The Federal Communications Commission shall continue to notify the appropriate committees of Congress of progress in eliminating the objectionable interference and shall assure that Congress is fully informed about the operation of the Television Marti Service.

(f) **Monitoring of Interference.** – The Federal Communications Commission shall continually monitor and periodically report to the appropriate committees of the Congress interference to domestic broadcast licensees –

(1) from the operation of Cuban television and radio stations; and

(2) from the operations of the television broadcasting to Cuba.

(g) **Task Force.** – It is the sense of the Congress that the President should establish a task force to analyze the level of interference from the operation of Cuban television and radio stations experienced by broadcasters in the United States and to seek a practical political and technical solution to this problem.

Sec. 244. [22 U.S.C. 1465cc] – Television Marti Service.

(a) **Television Marti Service.** – There is within the Voice of America a Television Marti Service. The Service shall be responsible for all television broadcasts to Cuba authorized by this part. The Broadcasting Board of Governors shall appoint a head of the Service who

shall report directly to the International Broadcasting Bureau. The head of the Service shall employ such staff as the head of the Service may need to carry out the duties of the Service.

(b) Use of Existing Facilities of the USIA. – To assure consistency of presentation and efficiency of operations in conducting the activities authorized under this part, the Television Marti Service shall make maximum feasible utilization of Board facilities and management support, including Voice of America: Cuba Service, Voice of America, and the United States International Television Service.

(c) Authority. – The Board may carry out the purposes of this part by means of grants, leases, or contracts (subject to the availability of appropriations), or such other means as the Board determines will be most effective.

Sec. 245. [22 U.S.C. 1465c note] – Amendments to the Radio Broadcasting to Cuba Act.

(a) * * *

(b) References. – A reference in any provision of law to the “Advisory Board for Radio Broadcasting to Cuba” shall be considered to be a reference to the “Advisory Board for Cuba Broadcasting”.

(c) Continued Service of Members of Board. – Each member of the Advisory Board for Radio Broadcasting to Cuba as in existence on the day before the effective date of the amendment made by subsection (a) shall continue to serve for the remainder of the term to which such member was appointed as a member of the Advisory Board for Cuba Broadcasting.

(d) Staff Director. – The Advisory Board shall have a staff director who shall be appointed by the Chairperson of the Advisory Board for Cuba Broadcasting.

Sec. 246. [22 U.S.C. 1465dd] – Assistance from other Government Agencies.

In order to assist the Broadcasting Board of Governors in carrying out the provisions of this part, any agency or instrumentality of the United States may sell, loan, lease, or grant property (including interests therein) and may perform administrative and technical support and services at the request of the Board.

Sec. 247. [22 U.S.C. 1465ee] – Authorization of Appropriations.

(a) Authorization of Appropriations. – In addition to amounts otherwise made available under section 201 for such purposes, there are authorized to be appropriated to the United States Information Agency, \$16,000,000 for the fiscal year 1990 and \$16,000,000 for the fiscal year 1991 for television broadcasting to Cuba in accordance with the provisions of this part.

(b) Limitation. –

(1) Subject to paragraph (2), no funds authorized to be appropriated under subsection (a) may be obligated or expended unless the President determines and notifies the appropriate committees of Congress that the test of television broadcasting to Cuba (as authorized by title V of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989 (Public Law 100-459)) has demonstrated television broadcasting to Cuba is feasible and will not cause objectionable interference with the broadcasts of incumbent domestic licensees. The Federal Communications Commission shall furnish to the appropriate committees of Congress all interim and final reports and other appropriate documentation concerning objectionable interference from television broadcasting to Cuba to incumbent domestic licensees.

(2) Not less than 30 days before the President makes the determination under paragraph (1), the President shall submit a report to the appropriate committees of the Congress which includes the findings of the test of television broadcasting to Cuba. The period for the test of television broadcasting may be extended until—

(A) the date of the determination and notification by the President under paragraph (1), or

(B) 30 days,

whichever comes first.

(c) Availability of Funds. – Amounts appropriated to carry out the purposes of this part are authorized to be available until expended.

Sec. 248. [22 U.S.C. 1465ff] – Definitions.

As used in this part –

(1) the term “licensee” has the meaning provided in section 3(c) of the Communications Act of 1934;

(2) the term “incumbent domestic licensee” means a licensee as provided in section 3(c) of the Communications Act of 1934 that was broadcasting a television signal as of January 1, 1989;

(3) the term “objectionable interference” shall be applied in the same manner as such term is applied under regulations of the Federal Communications Commission to other domestic broadcasters; and

(4) the term “appropriate committees of Congress” includes the Committee on Foreign Affairs and the Committee on Energy and Commerce of the House of Representatives and the Committee on Foreign Relations of the Senate.

* * * * *

Section VII: Requirements for Normalization

As described in previous chapters, U.S. relations with Cuba are circumscribed by a variety of laws and regulations that restrict the full range of trade, economic linkages and U.S. government assistance to the present Cuban government. For the most part, U.S. policy since the early 1960s has had the aim of isolating the Castro government. For a number of years, U.S. policy has also consisted of measures to support the Cuban people through private humanitarian relief, U.S. government-funded broadcasting to Cuba and support for human rights and democracy activists.

Future U.S. relations with Cuba will depend to large extent on the course of events on the island and on how the U.S. executive and legislative branches respond to changes in Cuba. At this juncture, Congress and the Administration essentially agree that any change in U.S. policy will only be precipitated by substantial political and economic reforms in Cuba. This policy was articulated by the Cuban Liberty and Democratic Solidarity Act of 1996, which codified the U.S. economic embargo and linked its termination to the fulfillment of a number of political conditions by a new Cuban government that includes neither Fidel Castro nor his brother, Raul. The codification of the economic embargo essentially shifted the power to ease sanctions on Cuba from the Executive branch to Congress; Congress circumscribed the power of the Executive branch to ease the economic embargo until certain democratic conditions are met. Before the codification of the embargo in 1996, the President had sole power to terminate it, with the exception of prohibitions pertaining to trade by U.S. foreign subsidiaries, as set forth in the Cuban Democracy Act of 1992. (See the table at the end of this chapter for a listing of selected economic sanctions imposed to achieve foreign policy or national security objectives, which includes information on the statutory authority of the sanction and the authority to lift or waive each sanction.)

Over the past several years, there has been growing sentiment in Congress to make changes to the long-standing U.S. policy of isolating the Cuban government, with numerous legislative attempts to overturn restrictions on travel, agricultural exports, remittances and even the general embargo itself. The 106th Congress did make changes to the economic embargo on Cuba with the approval of the Trade Sanctions Reform and Export Enhancement Act of 2000 (P.L. 106-387, Title IX), which allows for commercial sales of agricultural products pursuant to one-year licenses. To date, legislative efforts to further ease various aspects of the economic embargo have not been approved by Congress. President Bush has made clear on several occasions that he would oppose efforts to weaken the economic embargo on Cuba, threatening to veto any such initiatives. In the first session of the 108th Congress, both houses approved a provision to the FY2004 Transportation-Treasury appropriation measure that would have prevented funds from being used to enforce restrictions on travel, but the provision was dropped from the final version of the bill because of the veto threat.

Economic Embargo Tied to Political Changes in Cuba

The economic embargo on trade and financial transactions with Cuba, including the Cuban Assets Control Regulations, can only be suspended when the President submits a determination to Congress that a transition government is in power in Cuba, pursuant to the variety of specific political conditions set forth in Section 205 of the Cuban Liberty and Democratic Solidarity Act of 1996. The Act defines the economic embargo as all trade, travel and transaction restrictions imposed pursuant to the Foreign Assistance Act, the Trading with the Enemy Act, the Cuban Democracy Act of 1992 or any other provision of law, as well as restrictions imposed by the Food Security Act of 1985. As set forth in Section 205 of the Cuban Liberty and Democratic Solidarity Act, a transition government is defined as one that:

- 1) has legalized all political activity;
- 2) has released all political prisoners and allowed for investigations of Cuban prisons by appropriate international human rights organizations;
- 3) has dissolved the present Department of State Security in the Cuban Ministry of the Interior, including the Committees for the Defense of the Revolution and the Rapid Response Brigades;
- 4) has made public commitments to organizing free and fair elections for a new government to be held within 18 months after the transition government assumes power, with the participation of multiple independent political parties that have full access to the media on an equal basis, and that are conducted under the supervision of internationally-recognized observers;
- 5) has ceased any interference with Radio Marti or TV Marti broadcasts;
- 6) makes public commitments to, and is making demonstrable progress in, establishing an independent judiciary; respecting internationally-recognized human rights and basic freedoms; and allowing the establishment of independent trade unions and independent social, economic; and political associations;
- 7) does not include Fidel or Raul Castro; and
- 8) has given adequate assurances that it will allow the speedy and efficient distribution of assistance to the Cuban people.

Moreover, the President is also to take into account several additional factors in determining whether a transition government is in power. Such factors relate to Cuban progress in: guaranteeing freedom of speech and of the press, allowing the reinstatement of citizenship to Cuban-born persons returning to Cuba, assuring the right to private property, taking steps to return to U.S. citizens property confiscated by the Cuban government (or to provide equitable compensation), extraditing U.S. fugitives from justice to the United States and permitting the deployment of independent and unfettered international human rights monitors throughout Cuba.

The actual termination of the economic embargo, pursuant to the Cuban Liberty and Democratic Solidarity Act, is allowed when the President submits a determination to Congress that a democratically-elected government is in power. Section 206 of the Act

defines a democratically-elected government as one that, in addition to meeting the requirements of a transition government:

- 1) results from free and fair elections;
- 2) is showing respect for the basic civil liberties and human rights of the citizens of Cuba;
- 3) is substantially moving toward a market-oriented economic system;
- 4) is committed to making constitutional changes to ensure regular free and fair elections and the full enjoyment of basic civil liberties and human rights;
- 5) has made demonstrable progress in establishing an independent judiciary; and
- 6) has made demonstrable progress in returning to U.S. citizens' property confiscated by the Cuban government or in providing equitable compensation.

Looking to when Fidel Castro is no longer on the scene, there are various scenarios of how political change will unfold in Cuba. Among the scenarios, a communist-successor government, headed by either hard-liners, centrists or reformers within the Cuban Communist Party is one of the possibilities.²⁴ In fact, Raul Castro, as First Vice President of the national government and Second Secretary of the Cuban Communist Party, is the designated successor to his brother Fidel, and could be the head of a centrist communist-successor government. The conditions set forth in the Cuban Liberty and Democratic Solidarity Act for the suspension and ultimate termination of the economic embargo assume that the political transition toward democracy will be swift and will include neither Fidel nor Raul Castro. However, if political change in Cuba does not unfold swiftly, along the lines envisioned in the U.S. law, U.S. policymakers will face the dilemma of how to react to change in Cuba. The U.S. sanctions-based policy toward Cuba will remain in place until either the political conditions in Cuba warrant the President making a determination to Congress (as discussed earlier) or legislation is enacted superceding the language of the Cuban Liberty and Democratic Solidarity Act. Some argue that it is important to keep the stringent conditions of the Cuban Liberty and Democratic Solidarity Act in place in order to ensure that the President does not back away from support for democracy in Cuba. Others argue that the conditions of the Act tie the hands of the President (and of the United States more generally) to respond quickly to political change in Cuba and to protect the interests of the United States.

Additional Trade Restrictions

As noted in Section II, in addition to the overall embargo on trade with Cuba, there are other provisions in U.S. trade law that would limit U.S. trade with Cuba even if the overall embargo were terminated. Cuba is denied nondiscriminatory treatment (normal trade relations treatment) pursuant to Section 401 of the Trade Act of 1974 until certain conditions are met, including the liberalization of emigration policies and the negotiation of a 3-year bilateral trade agreement with the United States. Under current regulations, Cuba is denied normal trade relations treatment pursuant to General Headnote 3(b) of the Harmonized Tariff Schedule of the United States. In order to extend normal trade relations

²⁴ Edward Gonzalez, "After Castro: Alternative Regimes and U.S. Policy," Cuba Transition Project, Institute for Cuban and Cuban-American Studies, University of Miami, 2002.

treatment to Cuba, legislation would have to be enacted authorizing the President to determine that Cuba should no longer be subject to Title IV and then authorizing the President to proclaim the extension of normal trade relations treatment to Cuba. Alternately, legislation could be enacted explicitly terminating the application of Title IV with regard to Cuba, amending General Headnote 3(b) of the Harmonized Tariff Schedule of the United States to eliminate Cuba from that category and stating that normal trade relations treatment shall apply to Cuba.

Cuba is also excluded from participation in the U.S. preferential trade programs for the Caribbean Basin region because of its absence from being named in authorization legislation, and because of prohibitions against designating a country as a beneficiary if it is communist or has expropriated U.S. property without compensation. Sugar imports from Cuba are also prohibited by Section 620(a) of the Foreign Assistance Act of 1961. Legislation would have to be enacted to change these prohibitions.

Finally, since Cuba remains on the list of states sponsoring international terrorism as determined by the Secretary of State pursuant to Section 6(j) of the Export Administration Act of 1979, it remains subject to certain restrictions on trade relations, as well as foreign assistance, security assistance and support in international financial institutions. Pursuant to the provisions in the Act, the President may remove a country from the Section 6(j) list in two ways. The first option is to submit a report to Congress certifying, before the removal would take effect, that: 1) there has been a fundamental change in the leadership and policies of the government; 2) the government is not supporting acts of international terrorism; and 3) the government has provided assurances that it will not support acts of international terrorism in the future. The second option is to submit a report at least 45 days before the removal of the country from the list certifying that 1) the government has not provided any support for international terrorism during the preceding 6-month period, and 2) that the government has provided assurances that it will not support acts of international terrorism in the future.

Aid Restrictions

As described in Section II, there are numerous restrictions in law prohibiting assistance to Cuba, including various provisions under the Foreign Assistance Act of 1961 and annual foreign operations appropriations legislation. Since Cuba has been added to the list of countries designated by the Secretary of State as a country supporting international terrorism (pursuant to Section 6(j) of the Export Administration Act of 1979), the country is excluded from a wide range of foreign assistance programs. While the President is authorized to waive some provisions of law restricting aid to Cuba, other provisions have no waivers, such as the general prohibition on U.S. assistance to the present government of Cuba set forth in Section 620(a)(1) of the Foreign Assistance Act. Despite comprehensive restrictions on foreign aid to Cuba, the President does retain authority to provide some assistance under Section 614 of the Foreign Assistance Act of 1961, and some assistance that is directed toward certain humanitarian or environmental projects is allowed under the annual foreign operations appropriations measure, notwithstanding any other provision of law.

In addition, a specific exception to the prohibition on the U.S. provision of assistance to Cuba is support for democratic and human rights groups. Section 109 of the Cuban Liberty and Democratic Solidarity Act authorizes the President "...to furnish assistance and provide other support for individuals and independent nongovernmental organizations to support democracy-building efforts for Cuba." U.S. assistance has been provided pursuant to this provision for several years and is requested annually by the Administration in its foreign operations budget request.

Similar to the conditions that must be fulfilled for lifting the economic embargo, U.S. assistance to a future Cuban government is tied to the fulfillment of certain political conditions in Cuba. Title II of the Cuban Liberty and Democratic Solidarity Act provides that the President shall develop a plan for providing economic assistance to Cuba when the President determines that a transition government or a democratically-elected government is in power, although such assistance is still subject to the availability of appropriations. Assistance under such a plan is linked to fulfillment of the same conditions, outlined above, that are needed to suspend and terminate the economic embargo. Assistance to a transition government would be limited to food, medical supplies and equipment, medicine and assistance to meet energy needs, as necessary to meet the basic human needs of the Cuban people; military assistance would also be allowed to help prepare the Cuban military forces to adjust to an appropriate role in a democracy. Assistance to a democratically elected government would consist of the broad array of U.S. assistance programs available for most other countries.

On October 10, 2003, President Bush announced the establishment of a "Commission for Assistance to a Free Cuba," that would help plan for Cuba's transition from communism to democracy and help identify ways to bring that transition about. The Commission, which was originally co-chaired by Secretary of State Colin Powell and Secretary of Housing and Urban Development Mel Martinez, is aimed at helping prepare the U.S. government to provide effective assistance to a free Cuba.

Other Aspects of U.S.-Cuban Relations

While the power to restore full U.S.-Cuban diplomatic relations rests with the President, Congress does have inherent powers that could complicate such efforts. Both the President and the Senate, pursuant to the Constitution (Article II, Section 2, Clause 1), share the powers to make treaties and appoint Ambassadors. Congress also has the power to control appropriations that would be necessary for the President to restore full diplomatic relations to the ambassadorial level. Moreover, while the President can restore relations, this would usually occur as part of a broader effort toward normalizing other aspects of the bilateral relationship. For example, the normalization of U.S. relations with Vietnam has proceeded incrementally for over a decade, with Congress playing a significant role in the normalization process. A detailed road-map for the normalization of relations with Vietnam was issued in 1991, though an ambassador was not appointed until 1997, after President Clinton issued a determination in 1996 that certain Congressional conditions had been met regarding

Vietnamese cooperation with the United States on POW/MIA issues.²⁵ In the case of Cuba, there would most likely have to be progress in a number of areas, including compensation for the expropriated properties of U.S. citizens, before the restoration of full diplomatic relations at the ambassadorial level.

With regard to migration issues, a potential future dilemma for U.S. policymakers is that the current “wet foot/dry foot” migration policy toward Cuba could potentially contribute to a migration crisis in the event of political upheaval in Cuba. Under the Cuban Refugee Adjustment Act of 1966, popularly known as the Cuban Adjustment Act, the Attorney General has used his parole authority to allow undocumented Cubans arriving in the United States to stay and adjust to permanent resident status. It should be noted, however, that relief under the Cuban Adjustment Act remains within the discretion of the Attorney General, so the Executive branch does have flexibility in this area. Moreover, the President has the authority to react to uncontrolled mass migrations and to control the entry of aliens into the United States.²⁶ As noted in Section III, there were legislative attempts to repeal the Cuban Adjustment Act in the 1990s, but in the end Congress conditioned its repeal on a presidential determination that a democratically elected government was in power in Cuba.

With regard to the future of the U.S. naval base at Guantanamo, the U.S. presence can only be terminated by mutual agreement or by abandonment by the United States. The Cuban Liberty and Democratic Solidarity Act states that U.S. policy is to be prepared to enter into negotiations with a democratically elected government in Cuba, either to return the base or to renegotiate the present agreement under mutually agreeable terms. Given the role of the base in housing Haitian and Cuban migrants interdicted at sea in the 1990s, and the more recent role of the base as a prison facility for captured Taliban and *al-Qa’eda* combatants in the U.S.-led global struggle against terrorism, it seems unlikely that the United States would choose to abandon the base in the near future.

Finally, with regard to the future of Radio and TV Marti broadcasting to Cuba, a provision in the Cuban Liberty and Democratic Solidarity Act (Section 107) states that the authorization for both programs will be repealed when the President submits a determination that a democratically-elected government is in power in Cuba. Another provision in the Cuban Liberty and Democratic Solidarity Act (Section 205) states that the Cuban government’s cessation of interference with Radio or TV Marti broadcasts is one of the requirements to determine whether or not the government is a transition government. Despite these provisions, Congress has the power to terminate the broadcasting activities at any point, since both are funded through the annual Commerce, Justice, State and Related Agencies appropriations measure. There have been several legislative attempts over the years to cut funding for TV Marti, although Congress has ultimately continued to fund both programs.

²⁵ U.S. Library of Congress, Congressional Research Service, “The Vietnam-U.S. Normalization Process,” CRS Issue Brief IB98033, by Mark Manyin, August 15, 2003.

²⁶ U.S. Library of Congress, Congressional Research Service, “Cuban Migration: Legal Basics,” CRS Report 94-692, by Larry M. Eig, September 1, 1994.

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Acronyms Guide

AGR – Agricultural Commodities
ATF – (United States Bureau of) Alcohol, Tobacco and Firearms
AVS – Aircraft and Vessels
BAG – Baggage
CACR – Cuban Assets Control Regulations
CBERA – Caribbean Basin Economic Recovery Act
CBTPA – Caribbean Basin Trade Partnership Act
CCL – Commerce Control List
CDA – Cuban Democracy Act
CFR – Code of Federal Regulations
EAA – Export Administration Act of 1979
EAR – Export Administration Regulations
EU – European Union
FAA – Foreign Assistance Act
FCC – Federal Communications Commission
FSLIC – Federal Savings and Loan Insurance Corporation
FTAA – Free Trade Area of the Americas
GFT – Gift Parcels and Humanitarian Donations
GOV – Governments and International Organizations
GSP – Generalized System of Preferences
HTS (HTSUS) – Harmonized Tariff Schedule of the United States
IAEA – International Atomic Energy Agency
IEEPA – International Emergency Economic Powers Act
IMF – International Monetary Fund
LIBERTAD – Cuban Liberty and Democratic Solidarity Act
MTOPS – Million Theoretical Operations Per Second
NAFTA – North American Free Trade Agreement
NTR – Normal Trade Relations
OAS – Organization of American States
OFAC – Office of Foreign Assets Control (of the United States Treasury Department)
OMB – Office of Management and Budget
RPL – Parts for One-for-One Replacement
TMP – Temporary Exports and Reexports
TRIPS – Agreement on Trade-Related Aspects of Intellectual Property Rights
TSRA – Trade Sanctions Reform and Export Enhancement Act
TSU – Operation Technology and Software
UNITA – National Union for the Total Independence of Angola
TWEA – Trading with the Enemy Act
UHF – Ultra High Frequency
UN – United Nations
UNICEF – United Nations Children’s Fund
USIA – United States Information Agency
WTO – World Trade Organization

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