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United States Government Accountability Office
Washington, DC 20548

September 17, 2009

The Honorable Charles B. Rangel
Chairman
Committee on Ways and Means
House of Representatives

The Honorable Jeff Flake
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The Honorable Barbara Lee
House of Representatives

Subject: *U.S. Embargo on Cuba: Recent Regulatory Changes and Potential Presidential or Congressional Actions*

Since the early 1960s, the United States has maintained an embargo on Cuba through various laws, regulations, and presidential proclamations regarding trade, travel, and financial transactions. A stated purpose of the embargo—the most comprehensive set of U.S. economic sanctions on any country—is to deny hard currency to the Cuban government. The embargo, which the President has broad authority to modify, is implemented primarily by the Department of the Treasury (Treasury) through regulation of financial transactions with Cuba and by the Department of Commerce (Commerce) through regulation of the export of commodities, software, and technology to Cuba.¹ Modifications to the embargo by legislation and presidential policy directives in the 1990s and early 2000s alternately eased and tightened restrictions on travel, remittances,² gifts, and exports to Cuba. In September 2009, responding to legislation passed in March and presidential policy directives issued in April, Treasury and Commerce published regulatory changes that further ease some embargo restrictions.

¹The Department of Homeland Security (DHS), acting through U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement, and the U.S. Coast Guard, also has a primary role in enforcing the embargo. For example, CBP enforces the Air Commerce Regulations (19 CFR Part 122.151 *et seq.*), which govern aircraft travel to Cuba, restricting it to certain points of arrival and departure under specified circumstances and conditions. The Coast Guard enforces the Unauthorized Entry Into Cuban Territorial Waters Regulations (UEC Regulations) (33 CFR Part 107), which restricts vessels traveling to Cuba. These Coast Guard regulations were issued under authority of Presidential Proclamation 6867 (Mar. 1, 1996) and Presidential Proclamation 7757 (Feb. 26, 2004). However, this report does not focus on enforcement of the embargo from the perspective of DHS or its component agencies.

²A remittance is a payment of money sent to a person in another place. Generally recognized forms of remittances include international transfers of funds sent by immigrants or migrant workers from the country where they live and work to individuals (typically family members) in the immigrants' or migrant workers' country of origin.

This correspondence describes (1) the September 2009 changes to the embargo, (2) options available to the President to further modify the embargo, (3) actions that the President can or must take in the event of certain changes in the Cuban government, and (4) possible congressional actions to end the embargo.

To develop this information and to identify laws and regulations establishing the embargo, we reviewed congressional reports and authoritative reports and studies by academic and policy research institutes addressing the legal framework establishing the embargo. We analyzed these laws and regulations to identify measures that the President and Congress could undertake to modify or end the embargo. We also interviewed attorneys and policy staff at the Departments of Commerce, Homeland Security, State, and the Treasury and asked them to review and verify our analysis regarding the laws and regulations governing the embargo. Each agency provided technical comments, which we incorporated as appropriate. We did not review agency performance or provide recommendations to the agencies. We conducted our work from January to September 2009 and in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data we obtained, and the analysis we conducted, provide a reasonable basis for any findings and conclusions in this product. (See encl. I for further details of our scope and methodology.)

Results in Brief

The amended regulations that Treasury and Commerce published in September 2009 further ease restrictions on travel, remittances, gifts, and exports to Cuba in response to recent legislation and presidential policy directives. The Omnibus Appropriations Act of 2009, enacted in March, mandates the easing of restrictions on travel and exports to Cuba; the presidential directives issued in April call for the easing or removal of restrictions on family travel, cash remittances, and gift parcels and to authorize expanded telecommunications services between the United States and Cuba. Examples of the September 2009 regulatory changes include the authorization of family travel under a general license rather than a specific license;³ removal of limitations on the amount and frequency of family remittances; expansion of the types of items that can be included in gift parcels and the scope of individuals eligible to receive them; and authorization of licensed U.S. telecommunications service providers to enter into agreements with Cuban telecommunications providers.

The President has discretion to further ease regulatory restrictions such as those on travel, remittances, gift parcels, and trade with Cuba. For instance, the President can authorize travel under a general license for non-family travelers—such as freelance journalists, professional researchers, and full-time students—who currently must obtain

³A general license constitutes blanket authorization for transactions set forth in the relevant regulations; if certain stated conditions are met, no further permission from the U.S. government is required. A specific license is any license or authorization issued for a specific transaction; the U.S. government considers the issuance of specific licenses on a case-by-case basis.

a specific license; further increase the amount of cash remittances that travelers may carry to Cuba; and further expand the list of items eligible for gift parcels.

The President is authorized to suspend or end the embargo in the event of certain political changes in Cuba. Under the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, on determining that a transition Cuban government is in power, the President may take steps to suspend the embargo, including its implementing regulations restricting financial transactions related to travel, trade, and remittances. He may also suspend enforcement of several legislative measures related to the embargo. LIBERTAD also requires that on determining that a democratically elected Cuban government is in power, the President must take steps to end the embargo, including the implementing regulations, and that once he has made such a determination, certain listed embargo-related legislative measures are automatically repealed.

Absent a presidential determination of a democratically elected Cuban government, the President could end the embargo only if Congress were to amend or repeal LIBERTAD and various other embargo-related statutes, including provisions in the Foreign Assistance Act of 1961, the Food Security Act of 1985, the Cuban Democracy Act of 1992, the Omnibus Appropriations Act of 1999, and the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA). Such provisions include, for example, section 908(b)(1) and 910(b) of TSRA that require payment of cash in advance or third country financing for agricultural exports to Cuba and prohibit Treasury from authorizing travel to Cuba for tourist activities by persons subject to U.S. jurisdiction.

Background

Key Measures Establishing the Embargo

The following laws, administrative regulations, and presidential proclamation are among the key measures establishing the embargo on Cuba and the President's broad authority to modify the embargo (see encl. II for more details of the embargo's legal and regulatory authorities).

- *Trading With the Enemy Act of 1917 (TWEA), section 5(b)*. TWEA granted the President broad authority to impose embargoes on foreign countries during times of war and was amended in 1933 to also grant this authority during times of a presidentially declared national emergency. The International Emergency Economic Powers Act of 1977 (IEEPA) amended section 5(b) of TWEA, again limiting the President's authority to times of war but allowing the President's continued exercise of his national emergency authority with respect to the ongoing Cuba embargo.
- *Foreign Assistance Act of 1961*. This act contains provisions barring any assistance to Cuba and authorizing the President to establish and maintain an economic embargo on Cuba. Section 620(a) prohibits any U.S. foreign assistance to the "present" government of Cuba and authorizes the President to establish and maintain a total embargo on all trade between the United States and Cuba as a means of carrying out the assistance prohibition.

- *Proclamation 3447*. Issued by President Kennedy in 1962, Proclamation 3447 declared a total economic embargo on Cuba, authorizing and directing Treasury to carry out the President’s prohibition on importation of Cuban goods and of goods imported through Cuba. The proclamation also directed Commerce to continue an existing prohibition on exports to Cuba that had been imposed under the Export Control Act of 1949, and it authorized Commerce to “continue, make, modify or revoke exceptions” to the export prohibition. The proclamation was declared under authority of section 620(a) of the Foreign Assistance Act of 1961.
- *Cuban Assets Control Regulations (CACR)*. The CACR, which Treasury issued in 1963 under the President’s broad authority in section 5(b) of TWEA and the Foreign Assistance Act, prohibit persons subject to U.S. jurisdiction from engaging in transactions involving property in which Cuba or a Cuban national has an interest, including transactions related to travel, trade, and remittances, without authorization, that is, a government license from Treasury. Administered by Treasury’s Office of Foreign Assets Control (OFAC), the CACR provide the Secretary of the Treasury with the ability to modify the restrictions “by means of regulations, rulings, instructions, licenses, or otherwise.” The CACR established 12 categories of activities with respect to which Treasury authorizes travel-related transactions, including travel for family visits, journalistic activities, and professional research in Cuba but excluding travel for tourism. The CACR also provide for licensing of trade with Cuba⁴ and for authorized remittances to Cuban nationals.
- *Export Administration Regulations (EAR)*. The EAR are issued by Commerce under authority of the Export Administration Act of 1979 (EAA) and the International Emergency Economic Powers Act.⁵ Applications for licenses for export to Cuba of items subject to the EAR fall mostly under a general policy of denial,⁶ although some items, such as certain medical items, are exempt from this policy. (See discussion of the Trade Sanctions Reform and Export Enhancement Act below.) All exports to Cuba under Commerce jurisdiction require a specific license,⁷ unless the export qualifies for one of 12 license exceptions published in the EAR. One such license

⁴Consistent with the embargo, OFAC permits exports from the United States to Cuba and exports of 100 percent U.S.-origin items from third countries to Cuba if they are licensed by Commerce’s Bureau of Industry and Security (BIS), which requires a license for the export or re-export of almost all U.S. goods to Cuba.

⁵The authorization for the EAA was allowed to lapse in 2001. The president has used his emergency powers under IEEPA to continue the regulations created under the EAA.

⁶Under a policy of denial, agencies review export licensing applications with “a presumption of denial.” To obtain a license for export, applicants must provide sufficient justification and evidence to overcome this presumption.

⁷Treasury and Commerce issue licenses for transactions involving property in which Cuba or a national of Cuba has an interest. Treasury issues general and specific licenses. Commerce issues specific licenses for export but does not issue general licenses; instead, Commerce uses license exceptions. A license exception is an authorization that allows the export or re-export without a license, under stated conditions, of items subject to the EAR that would otherwise require a specific license.

exception allows agricultural exports to Cuba, including food for people and animals as well as items such as livestock, beverages, wood and wood products, and tobacco.⁸

- *Cuban Democracy Act of 1992 (CDA)*. The CDA was intended to support democracy in Cuba by modifying aspects of the restrictions on trade between the United States and Cuba and encouraging other countries to limit their trade with Cuba as well as their extension of credit and assistance to Cuba. Among its other provisions, the law restricts prohibitions that may be placed on humanitarian exports to Cuba and authorizes telecommunications facilities to provide efficient and adequate telecommunications services between the United States and Cuba. The CDA permits, with certain exceptions, U.S. exports of medicine and medical supplies to Cuba. However, such exports must be authorized through specific licenses, and the U.S. government must be able to verify through onsite inspection and other appropriate means that the items are used for their intended purposes and for the benefit and use of the Cuban people. The CDA restricts trade with Cuba by U.S. foreign subsidiaries and prohibits any vessel unlicensed by Treasury from (1) loading or unloading freight in a U.S. port within 180 days after leaving a Cuban port where it engaged in trade of goods or services or (2) entering a U.S. port while carrying goods or passengers to or from Cuba or goods in which Cuba or a Cuban national has an interest. In addition, the CDA requires the President to establish strict limits on remittances to Cuba for purposes of emigration by Cubans to the United States. The CDA also provides that various restrictions under the law—including those regarding U.S. foreign subsidiaries, vessels, and remittances—can be waived by the President if he determines, and reports to Congress, that the Cuban government has undertaken a series of major reforms.
- *Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996*. Commonly known as the Helms-Burton Act, LIBERTAD defined and codified the embargo as it was in effect on March 1, 1996, including the CACR restrictions and various embargo-related statutes. LIBERTAD authorizes the President to suspend the embargo only if he determines that a transition Cuban government is in power. Furthermore, LIBERTAD requires the President to terminate the embargo if he determines that a democratically elected Cuban government is in power. In addition, the law prohibits U.S. persons, permanent resident aliens, and agencies from indirectly financing any transactions involving property of U.S. nationals confiscated by the Cuban government; permits U.S. nationals to sue in U.S. courts persons trafficking in such confiscated property (this authority has been suspended by the President since enactment); and provides for denying entry into the United States to aliens determined by the Secretary of State to be involved in such trafficking.

⁸After the enactment of Trade Sanctions Reform and Export Enhancement Act of 2000, Commerce implemented a license exception for exporting certain agricultural goods to Cuba.

- *Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA)*. TSRA requires the President to end any unilateral agricultural and medical sanctions. In addition, TSRA requires Commerce to authorize the export of agricultural commodities (including food) to Cuba.⁹ TSRA prohibits U.S. government assistance for financing exports to Cuba and prohibits U.S. private financing or payment of agricultural commercial sales to Cuba, except where payment is made with cash in advance or financing is from third-country financial institutions. TSRA also prohibits the licensing of travel to Cuba for tourist activities by persons subject to U.S. jurisdiction.

Prior Administrations' Changes to the Embargo

Using the President's authority to modify the embargo on Cuba, administrations in the late 1990s and early 2000s made a number of changes to the embargo's restrictions on U.S. travel, remittances, gifts, and exports to Cuba. Examples of these changes to the embargo include the following:

- In 1996, the Clinton administration suspended all direct flights between the United States and Cuba after the Cuban military shot down two U.S. civilian aircraft in the Florida Straits.¹⁰ Treasury implemented travel procedures allowing authorized carrier service providers to arrange indirect flights, provided that U.S. responsibility for such flights ended in a country other than the United States or Cuba.
- In 1998, implementing Clinton administration policy, Treasury issued revised procedures allowing U.S.-licensed carrier service providers to arrange direct flights from the United States to Cuba, using either U.S. or non-U.S. aircraft and flight crews. Treasury also restored direct humanitarian flights between the United States and Cuba and imposed additional monitoring procedures on fully hosted flights.
- In 1998, the Clinton administration changed family remittance procedures, citing humanitarian reasons, to allow persons subject to U.S. jurisdiction to send family remittances of up to \$300 per quarter to relatives in Cuba pursuant to a general license.
- In 1999, implementing Clinton administration policy, Treasury amended the CACR to expand remittances to support Cuban families and organizations independent of the Cuban government and to expand "people-to-people" contact through two-way exchanges among academics, athletes, scientists, and others.

⁹Commerce implemented this requirement through a license exception in the EAR. According to Treasury and Commerce, TSRA did not amend or supersede the export licensing requirements for medicine and medical supplies in the CDA. Therefore, medicines and medical devices are not eligible for export or re-export to Cuba under TSRA procedures and require licenses authorized under the CDA. See 66 Federal Register 36678, July 12, 2001.

¹⁰The two U.S. private airplanes, operated by a U.S. nongovernmental organization called Brothers to the Rescue, were shot down in the Florida Straits. U.S. officials asserted that the incident occurred over international waters. Four of the private planes' crew members were killed in the attack.

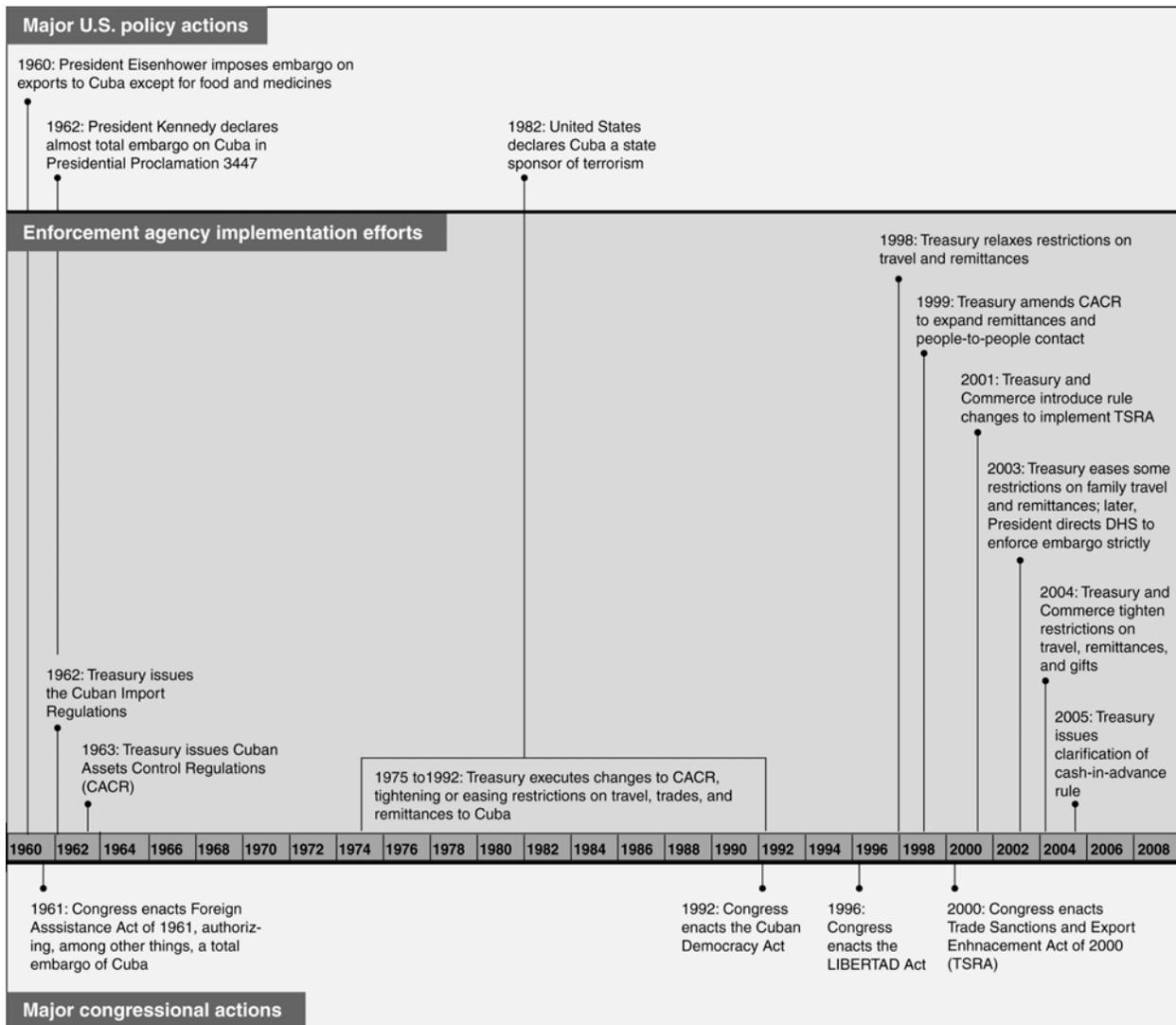
- In 2003, implementing Bush administration policy, Treasury modified some restrictions on travel and remittances by expanding the definition of close relatives who may be visited; announcing that licenses would no longer be granted for people-to-people educational exchanges; and authorizing certain remittances from blocked inherited accounts.¹¹
- In 2003, the Bush administration directed the Department of Homeland Security to strengthen enforcement of the embargo by increasing inspections of travelers and shipments to and from Cuba and to target illegal travel via third countries or on private vessels.
- In 2004, implementing Bush administration policy, Treasury tightened restrictions on travel by reducing the permitted frequency of family visits from once every 12 months to once every 3 years; narrowing the category of relatives eligible for such visits, from “close relative” to “immediate family”;¹² lowering the allowed daily expenditure per family traveler from \$167 to \$50 per day; requiring a specific, rather than a general, license for each family traveler; eliminating the license for additional family visits in cases of humanitarian need; and increasing restrictions on educational and religious travel.
- In 2004, Treasury and Commerce tightened restrictions on sending cash remittances and gift parcels to Cuba by restricting remittance recipients to include only immediate family; expanding the ban on remittances or gifts to senior Cuban government and Communist Party officials; drastically reducing the value of family remittances that travelers could carry to Cuba, from \$3,000 to \$300; and restricting the recipients and contents of gift parcels.
- In 2005, responding to a 2004 request by U.S. financial institutions, Treasury amended the CACR to clarify TSRA’s requirement of payment of cash in advance as meaning that payment for agricultural exports to Cuba must be made prior to shipment.

Figure 1 illustrates major events related to the embargo from its inception through 2008, including key administrative changes.

¹¹“Close relative” is defined as any individual related to the traveler by blood, marriage, or adoption who is no more than three generations removed from the traveler or from a common ancestor of the traveler (e.g., the traveler’s mother’s first cousin or the traveler’s husband’s great-grandson). Treasury’s definition of the term was the broadest definition to that date.

¹²“Immediate family” is defined as a spouse, child, grandchild, parent, grandparent, or sibling of the traveler or the traveler’s spouse, as well as any spouse, widow, or widower of any of the foregoing.

Figure 1: Major Events in the Development of the U.S. Economic Embargo on Cuba, 1960-2008



Source: GAO analysis.

Recent Regulatory Changes Have Eased Embargo Restrictions on Travel, Remittances, Gifts, and Exports

In September 2009, Treasury and Commerce issued amended regulations for the Cuba embargo, implementing the Omnibus Appropriations Act of 2009, enacted in March, and policy directives that the President announced in April.¹³ Several sections of the 2009 Omnibus Appropriations Act mandate the easing of restrictions on travel and exports to

¹³Treasury and Commerce issued final rules implementing the relevant provisions of the 2009 legislation and the presidential directives on September 3, 2009, and published the final rules on September 8, 2009. See 74 Federal Register 46000, September 8, 2009; and 74 Federal Register, 45985, September 8, 2009.

Cuba.¹⁴ The presidential policy directives were intended to ease or remove restrictions on family travel, cash remittances, and gift parcels and to authorize expanded telecommunications services between the United States and Cuba. (See app. II for more details.)

Family travel

Responding to section 621 of the 2009 Omnibus Appropriations Act¹⁵ and to the presidential directive to remove all restrictions on family travel to Cuba, Treasury made the following changes, among others, in the CACR:

- Authorized family travel under a general license.
- Redefined family travel as including visits to close relatives—that is, related by blood, family, or marriage and no more than three generations removed from the traveler—who are nationals of Cuba.
- Removed limitations on the frequency and duration of visits to close relatives.
- Increased family travelers' allowed daily expenditures to the amount allowed for all other licensed travelers in Cuba.¹⁶
- Authorized any individual who shares, as a family, a common dwelling with an authorized traveler to accompany such traveler.

In addition, implementing the presidential directive regarding family travel to Cuba, Commerce made the following change in the EAR:

- Removed a 44-pound limit on personal baggage that travelers may carry to Cuba.

¹⁴Section 620 of the Omnibus Appropriations Act of 2009 amends TSRA to require Treasury to issue regulations authorizing by general license certain travel-related transactions for travel to, from, or within Cuba for the marketing and sale of agricultural and medical products; since 2004, the CACR had required a specific license for such transactions. Section 621 of the act prohibits funds made available under the act from being used to administer, implement, or enforce certain CACR provisions implemented in 2004 that, among other things, required a specific license for travel to Cuba by persons subject to U.S. jurisdiction to visit "immediate family" members who are nationals of Cuba. In addition, section 622 of the act prohibits funds made available under the act from being used to administer, implement, or enforce Treasury's 2005 amendment of the CACR, in which Treasury clarified the TSRA requirement of payment of cash in advance for agricultural exports to Cuba as meaning that such payments must be made prior to shipment.

¹⁵Treasury's regulatory changes issued on September 3, 2009, supersede changes that Treasury made in March 2009 to implement section 621 of the Omnibus Appropriations Act of 2009.

¹⁶The limit on authorized expenditures for family travelers in Cuba was changed from \$50 per day to the Department of State's maximum per diem for licensed travelers in Havana, which was \$179 per day as of June 1, 2009.

Remittances

Implementing presidential directives to remove restrictions on remittances to family members in Cuba, Treasury made the following changes, among others, in the CACR:

- Authorized remittances to close relatives, provided no remittances are authorized to prohibited Cuban government officials or Cuban Communist Party officials.
- Removed limitations on the amount and frequency of remittances.
- Authorized family travelers to Cuba to carry up to \$3,000 in remittances.
- Authorized banks and other depository institutions to forward remittances under a general license.
- Increased emigration-related remittances¹⁷ to Cuban citizens for travel to the United States to a total of \$2,000.

Gift parcels

Implementing presidential directives to expand the scope of humanitarian donations eligible for export to Cuba through license exceptions, Commerce made the following changes, among others, in the EAR:

- Restored to the list of items eligible for inclusion in gift parcel donations: clothing, personal hygiene items, seeds, veterinary medicines and supplies, fishing equipment and supplies, soap-making equipment, and items normally exchanged as gifts by individuals in “usual and reasonable” quantities.
- Allowed any individual to donate gift parcels.
- Expanded the scope of eligible gift parcel recipients to include (1) individuals other than Cuban government or Communist Party officials already prohibited from receiving gift parcels and (2) charitable, educational, or religious organizations not administered or controlled by the Cuban government.
- Increased gift parcels’ value limit for nonfood items to \$800 (food sent in a gift parcel continues to have no value limit).

¹⁷Emigration-related remittances are remittances sent to Cuban nationals to enable the payees to emigrate from Cuba to the United States. Coverage of these remittances includes any preliminary expenses associated with such emigration, purchase of airline tickets, and payment of exit or third-country visa fees or other travel-related fees.

Telecommunications

Implementing presidential directives to authorize greater telecommunications links with Cuba, Treasury made the following changes in the CACR:

- Authorized licensed persons subject to U.S. jurisdiction to activate and pay U.S. and third-country service providers for telecommunications, satellite radio, and satellite television services provided to individuals in Cuba, so long as these services are not provided to certain Cuban government or Communist Party officials.
- Authorized licensed U.S. telecommunications service providers to enter into, and operate under, roaming service agreements with Cuba's telecommunications service providers.
- Authorized licensed U.S. satellite radio and satellite television service providers to engage in transactions necessary to provide services to customers in Cuba.
- Authorized telecommunications network providers to enter into agreements to establish fiber-optic cable and satellite telecommunications facilities linking the United States and Cuba.
- Authorized, with certain conditions, travel-related transactions needed to implement licensed telecommunications transactions or to facilitate participation in telecommunications-related professional meetings.

Also implementing the presidential directives regarding telecommunications links with Cuba, Commerce made the following change in the EAR:

- Created a license exception authorizing, consistent with national security concerns, the export or re-export of donated personal communications devices such as mobile phone systems, computers and software, and satellite receivers.

Travel-related transactions incident to TSRA sales

Implementing section 620 of the Omnibus Appropriations Act of 2009, which amended section 910(a) of TSRA, Treasury made the following change in the CACR regarding travel-related transactions incident to agricultural and medical sales under TSRA.

- Authorized, under a general license, with certain conditions, travel-related transactions directly incident to the commercial marketing, sales negotiation, accompanied delivery, or servicing in Cuba of agricultural commodities, medicine, or medical devices that appear consistent with Commerce's export or reexport licensing policy.

President Has Discretion to Further Ease Embargo Restrictions

The President has discretion to further ease CACR and EAR restrictions implementing the embargo. For example, the President can further ease restrictions on travel, remittances, and gift parcels beyond the changes recently implemented and can ease

embargo restrictions on agricultural exports and vessels engaging in trade by taking the following actions:

Travel

- Authorize travel to Cuba under a general license for travelers currently permitted to travel only under a specific license. Such travelers include, for example, freelance journalists; professional researchers undertaking research or professionals attending professional meetings and not qualifying for a general license; and enrolled students and full-time employees of academic institutions participating in educational activities.
- Authorize a further increase in allowed daily expenditures for travelers visiting family in Cuba.

Remittances

- Authorize a further increase in family remittances beyond the \$3,000 that travelers may now carry to Cuba.
- Authorize a further increase in emigration-related remittances to Cuban citizens for travel to the United States, to the extent that any such increases reflect, in compliance with section 1706(c) of the CDA, “reasonable costs” associated with travel by Cubans to the United States.

Gift parcels

- Further expand the list of items eligible for inclusion in gift parcels sent to Cuba.
- Further increase the value of gift parcels.

Vessels engaging in trade

- Authorize, under a general license, entry into a U.S. port by vessels that have entered a Cuban port within the previous 180 days to load or unload approved freight.¹⁸

¹⁸This change would be consistent with section 1706(b) of the CDA, which prohibits a vessel trading with Cuba from entering a U.S. port to load or unload freight for 180 days after leaving a Cuban port except under a Treasury license (without specifying whether the license should be general or specific).

President Can Suspend, or Must End, the Embargo if Cuba Makes Certain Political Reforms

Although the President is able to further ease the CACR and EAR embargo restrictions, under LIBERTAD he cannot suspend or completely eliminate the CACR and EAR restrictions without determining that a transition government or a democratically elected government is in power in Cuba. Section 204(a) of LIBERTAD authorizes the President to suspend the embargo, including the CACR and EAR restrictions as well as certain embargo-related statutory provisions, if he determines that a transition government is in place in Cuba. In addition, section 204(c) of the act requires the President to end the embargo and provides generally for automatic termination of embargo-related statutory provisions if the President determines that a democratically elected Cuban government is in power.¹⁹

- *Determination of a transition government.* Section 204(a) of LIBERTAD provides that if the President determines that a transition Cuban government is in power, he is authorized to take steps to suspend the economic embargo, including suspending enforcement of the CACR restrictions. In taking steps to suspend the embargo, he also may suspend enforcement of the following provisions:
 - Sections 620(a) and (f) of the Foreign Assistance Act, which prohibit U.S. assistance to the “present” Cuban government and also to Cuba as a Communist country.
 - Sections 1704, 1705(d), and 1706 of the CDA, which authorize sanctions against countries providing assistance to Cuba; require verification by onsite inspection and other appropriate means that exports of medicines and medical supplies to Cuba are used for the purposes intended and only for the benefit of the Cuban people; restrict the licensing of trade between U.S. foreign subsidiaries and Cuba; restrict entry into U.S. ports of vessels trading with Cuba; and restrict remittances for financing travel by Cuban nationals to the United States.
 - Section 902(c) of the Food Security Act of 1985, which disallows any U.S. sugar import quota to any country that cannot verify that it does not import Cuban sugar for re-export to the United States.

Under section 204(a) of LIBERTAD, the President is not required to suspend the embargo, the CACR restrictions, or the specified statutes; he also is not required to adhere to a specified time frame if he chooses to make any such suspensions. In this regard, it appears that the President has considerable discretion under section 204(a)

¹⁹The CDA also contains provisions, similar in certain respects to those in LIBERTAD, concerning presidential determinations and assistance regarding Cuba. However, these CDA provisions may have been superseded by the more explicit provisions of sections 202, 203, and 204 of LIBERTAD, which authorize U.S. assistance to Cuba and specify the reforms that Cuba must undertake to have in place a transition or democratically elected government before the embargo can be lifted and Cuba can receive such assistance. According to Commerce, none of these measures would result in the complete elimination of EAR restrictions on Cuba, since EAR restrictions apply in some manner to all countries in the world.

to suspend the embargo in a phased, incremental manner as he so determines, if he makes the requisite findings.

- *Determination of a democratically elected government.* Section 204(c) of LIBERTAD provides that if the President determines that a democratically elected Cuban government is in power, he “shall take steps to terminate the economic embargo,” including the CACR restrictions. Once he makes such a determination, the previously mentioned provisions of the Foreign Assistance Act, the CDA, and the Food Security Act of 1985 are automatically repealed or amended.²⁰ Although a presidential determination under section 204(c) requires the President to begin ending the embargo, section 204(c) leaves to his discretion the specific actions to be taken (other than the automatic repeal of certain statutory provisions) and the timing of the embargo’s termination.

It should be noted that none of the provisions of TSRA, which was enacted after LIBERTAD, are among the specified statutes that the President is authorized to suspend or that are automatically repealed upon a presidential determination of a transition Cuban government or a democratically elected Cuban government. Therefore, TSRA and other statutory provisions not specifically mentioned in sections 204(a) and (c) of LIBERTAD would presumably not be affected by any such presidential determinations.

Absent Presidential Determination, Congressional Actions Are Required to End the Embargo

Absent a presidential determination of a democratically elected Cuban government, as provided under section 204(c) of LIBERTAD, the President could end the embargo only if Congress were to amend or repeal LIBERTAD and other embargo-related statutes, including the following key provisions in the Foreign Assistance Act, the Food Security Act of 1985, the CDA, the Omnibus Appropriations Act of 1999, and TSRA.

Foreign Assistance Act

- Section 620(a)(1), which prohibits the furnishing of U.S. assistance to the “present government” of Cuba, and authorizes the President to establish a total embargo on trade with Cuba as a means of carrying out the assistance prohibition.
- Section 620(a)(2), which denies Cuba’s right to a quota for importing sugar into the U.S. or any other benefit under U.S. law until the President determines that Cuba has taken appropriate steps under international law standards to return confiscated property to U.S. persons or provide equitable compensation.

²⁰Section 620(f) of the Foreign Assistance Act is not repealed but amended, by removing Cuba from the list of Communist countries prohibited from receiving U.S. assistance.

- Section 620(f), which specifically lists Cuba as a Communist country prohibited from receiving U.S. assistance.²¹

Food Security Act of 1985

- Section 902(c), which prohibits any sugar import quota to a country that cannot verify that it does not import Cuban sugar for re-export to the United States.

Cuban Democracy Act of 1992

- Sections 1705(c) and (d), which require that exports of medicines or medical supplies, instruments, or equipment to Cuba meet the following conditions:
 - (1) they must be made under a specific license;
 - (2) they must not be restricted except to the extent permitted under Section 5(m) of the Export Administration Act or Section 203(b)(2) of the International Emergencies Economic Powers Act (IEEPA);²²
 - (3) there must be no reasonable likelihood that they will be used for torture or other human rights abuses or be re-exported;
 - (4) they cannot be used in the production of any biotechnological product; and
 - (5) the U.S. government must be able to verify, by onsite inspection and other appropriate means, their use for intended purposes and for the benefit of the Cuban people (except humanitarian donations of medicines to nongovernmental organizations in Cuba).
- Section 1705(e), which authorizes telecommunications facilities of a quantity and quality as may be necessary to provide “efficient and adequate” telecommunications services between the United States and Cuba and clarifies that CDA does not authorize any U.S. person to invest, either directly or indirectly, in the domestic telecommunications network in Cuba.
- Section 1706(a), which prohibits the issuance of licenses for certain transactions involving foreign produced goods being sent to Cuba from abroad by foreign companies that are U.S. owned or controlled (except donations of food, exports of medicines and medical supplies, instruments, or equipment, and the exportation of

²¹Other examples of restrictions on foreign assistance to Cuba in the Foreign Assistance Act can be found in sections 620(e), 620(t), and 620A. According to State, other authorities in the Foreign Assistance Act that could permit some forms of assistance to Cuba include sections 104(c)(4), 481(a)(4), and 491(b).

²²The Export Administration Act of 1979, as amended, controls dual-use exports that may be used for either civilian or military purposes and is administered by Commerce. The act authorizes export controls to be used only after full consideration of the impact on the economy and only to the extent necessary to, among other things, restrict the export of goods and technology where necessary to further U.S. foreign policy. Although the Export Administration Act was allowed to expire on August 21, 2001, its provisions and the EAR issued under the act have been maintained in force under the IEEPA by Executive Order 13222 of August 17, 2001.

telecommunications equipment necessary for efficient and adequate telecommunications services between the United States and Cuba under sections 1705 and 1707).

- Sections 1706(b),²³ which prohibits a vessel trading with Cuba from entering a U.S. port to load or unload freight for 180 days after leaving a Cuban port and prohibits a vessel carrying goods or passengers to or from Cuba from entering a U.S. port, unless either such vessel is authorized by a specific license.
- Section 1706(c), which requires the President to establish strict limits on emigration remittances to ensure that they reflect the “reasonable costs” associated with travel by Cubans to the United States.

Omnibus Appropriations Act of 1999

- Section 211, which prohibits U.S. courts from considering or enforcing trademark claims of Cuban nationals or their successors in interest regarding property confiscated by the Cuban government.

Trade Sanctions Reform and Export Enhancement Act of 2000

- Section 906, which allows the export of agricultural commodities to Cuba as a state sponsor of terrorism, but only where such exports are authorized under 1-year licenses for contracts entered into during the 1-year period of the contract and shipped within the 12-month period beginning on the date the contract is signed.
- Section 908(b)(1), which requires “payment of cash in advance”²⁴ or third-country financing for exports to Cuba of agricultural commodities.
- Section 910(b), which prohibits persons subject to U.S. jurisdiction from traveling to Cuba for tourist activities.

²³According to Treasury, the amendment or repeal of this section could remove any ambiguity regarding the restrictions intended by Congress related to vessel transactions. Treasury believes, however, that because section 1706(b) explicitly grants Treasury licensing authority, as a technical legal matter, these transactions could be authorized without congressional action.

²⁴TSRA does not define “payment of cash in advance,” and both the Bush and Obama administrations have interpreted the phrase to mean that payment of sales of agricultural commodities to Cuba must be received by the seller or the seller’s agent prior to shipment of the goods from the port at which they are loaded. During the Bush administration, Treasury amended the CACR in 2005 to clarify the meaning of the term in response to a 2004 request by U.S. financial institutions for Treasury guidance on the meaning of “payment of cash in advance” under TSRA. (See 70 Federal Register 9225, February 25, 2005.) Congress attempted to prevent further implementation of Treasury’s 2005 regulatory clarification by enacting section 622 of the 2009 Omnibus Appropriations Act, which prohibited any funds made available under the act from being “used to administer, implement, or enforce” the 2005 regulatory clarification. However, in March 2009, Treasury took the position that section 622 referred only to the regulatory clarification and did not amend TSRA’s statutory language requiring cash in advance. On March 16, 2009, H.R. 1531 was introduced in the 111th Cong. 1st Sess., to clarify the meaning of “payment of cash in advance” under TSRA by defining that phrase to mean “the payment by the purchaser of an agricultural commodity or product and the receipt of such payment by the seller prior to (i) the transfer of title of such commodity or product to the purchaser; and (ii) the release of control of such commodity or product to the purchaser.”

Enclosure II provides a detailed listing of the key legal and regulatory authorities for the U.S. embargo on Cuba. Enclosure III lists selected GAO and Congressional Research Service products related to the U.S. embargo on Cuba.

Agency Comments and Our Evaluation

We provided a draft of this correspondence to the Departments of Commerce, Homeland Security, State, and the Treasury, which provided legal and technical corrections. We incorporated these corrections as appropriate.

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this correspondence until 30 days after the date of this correspondence. At that time, we will send copies of this correspondence to the Secretaries of Commerce, Homeland Security, State, and the Treasury and interested congressional committees. This correspondence will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this correspondence, please contact me at (202) 512-3149 or gootnickd@gao.gov. Contact points for our offices of Congressional Relations and Public Affairs may be found on the last page of this correspondence. GAO staff who made significant contributions to this correspondence are listed in enclosure IV.



David Gootnick
Director, International Affairs and Trade

Enclosure I: Scope and Methodology

To help identify laws and regulations establishing the embargo, we reviewed congressional reports as well as studies by academic and policy research institutes addressing the legal framework of the embargo. Based on this review, as well as our past work and independent research, we compiled a list of key laws, proclamations, and regulations that form the legal basis of the embargo. We presented this list to the Departments of Commerce, Homeland Security, State, and the Treasury for verification and for discussion with the agencies' attorneys and policy staff regarding the agencies' respective roles in implementing the embargo. We also conducted a legal analysis of the key statutes and regulations to identify further actions that the President may take to ease the embargo and actions that Congress may take to terminate the embargo absent certain statutorily required presidential determinations. We asked each agency to identify any gaps in our discussion of the embargo and to raise any concerns about our analysis of potential presidential and congressional actions. The agencies provided legal and technical corrections to a draft version of this document, which we incorporated in the document as appropriate.

In conducting our work, we recognized that the U.S. embargo on Cuba encompasses legal and regulatory restraints on a wide range of U.S.-Cuba relations, including trade, diplomacy, foreign assistance, and immigration. We also recognized that the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 defines the term "economic embargo of Cuba" as referring to all restrictions on trade or transactions with Cuba; travel to or from Cuba; and transactions in property in which Cuba or Cuban nationals have an interest, that were in effect as of March 1, 1996, and imposed under various statutes. Based on these considerations and discussions with congressional staff, our correspondence focuses on specific statutes, regulations, and executive actions imposing comprehensive restrictions on trade, travel, and financial transactions between persons subject to U.S. jurisdiction and Cuba or Cuban nationals. We did not review agency performance or provide recommendations to the agencies.

We conducted our work from January to September 2009 and in accordance with all sections of GAO's Quality Assurance Framework that are relevant to our objectives. The framework requires that we plan and perform the engagement to obtain sufficient and appropriate evidence to meet our stated objectives and to discuss any limitations in our work. We believe that the information and data we obtained, and the analysis we conducted, provide a reasonable basis for any findings and conclusions in this product.

Enclosure II: Key Legal and Regulatory Authorities for U.S. Embargo on Cuba

Legal and regulatory authority	Sanctions or restrictions
<p>Trading With the Enemy Act of 1917 (TWEA), section 5(b)</p>	<p>Conferred broad authority on the President to impose comprehensive embargoes on foreign countries during states of war (as originally enacted) or presidentially declared national emergency (as subsequently amended); allows the President great discretion in making changes to embargo restrictions.</p> <p>Section 5(b) of TWEA was further amended in 1977 by the International Emergency Economic Powers Act (IEEPA) to again limit the President's authority to impose embargo only in times of war, but allowed continuation of President's national emergency authority as exercised with respect to the current embargo of Cuba (i.e., "grandfathered" in). (50 USC App. 5(b))</p>
<p>Foreign Assistance Act of 1961 (FAA), as amended, section 620(a)</p>	<p>Prohibited furnishing any U.S. foreign assistance to the "present government" of Cuba and authorized the President to establish a total embargo on trade with Cuba as a means of carrying out assistance prohibition. (22 USC 2370(a)(1))</p> <p>Except as deemed necessary by the President in the interests of the United States, prohibited assistance to "any government" of Cuba and denied Cuba's right to quota for importing sugar into the United States or any other benefit under U.S. law until the President determines Cuba has taken appropriate steps under international law standards to return confiscated property to U.S. persons or provide equitable compensation. (22 USC 2370(a)(2))</p>
<p>Presidential Proclamation 3447, issued pursuant to section 620(a) of FAA</p>	<p>Proclaimed an embargo on trade between the United States and Cuba by</p> <ul style="list-style-type: none"> • prohibiting the import of Cuban goods and goods imported through Cuba into the United States and directing the Treasury Secretary to implement the prohibition; and • directing the Secretary of Commerce, under the Export Control Act, to continue carrying out the prohibition on U.S. exports to Cuba, and continue making, modifying, or revoking exceptions to the prohibition.
<p>Food Security Act of 1985, section 902(c)</p>	<p>Required the President to not allocate any sugar import quota to a country unless it verifies to the President that it does not import Cuban sugar for re-export to the United States. (7 USC 1446 note)</p>
<p>Cuban Democracy Act of 1992 (CDA)</p>	<p>Allowed sanctions to be imposed against countries that provide assistance to Cuba. (Section 1704(b), 22 USC 6003(b))</p> <p>Allowed exports of medicines or medical supplies, instruments, or equipment under specific licenses to Cuba, and requires the ability for U.S. verification,</p>

Legal and regulatory authority	Sanctions or restrictions
	<p>through on-site inspection and other means, that such items are used for purposes intended and for the benefit and use of the Cuban people. (Section 1705(c) and (d); 22 USC 6004(c) and (d))</p> <p>Prohibited restrictions on exports to Cuba of donations of food to nongovernmental organizations (NGOs) or individuals and lifted on-site verification requirements for licenses authorizing the export of donated medicines to NGOs for humanitarian purposes. (Section 1705(b) and (d); 22 USC 6004(b) and (d))</p> <p>Authorized telecommunications services between the United States and Cuba, and telecommunications facilities as necessary to provide efficient and adequate telecommunications services between United States and Cuba (but as of 1996, clarified that this was not an authorization for U.S. persons to invest in the Cuban domestic telecommunications network); allowed the licensing of payments to Cuban government for such services. (Section 1705(e); 22 USC 6004(e), as amended by section 102(g) of Public Law 104-114 (03/12/96) and implemented by 15 CFR 746.2(b)(2))</p> <p>Prohibited the issuance of licenses for certain transactions involving foreign produced goods being sent to Cuba from abroad by foreign companies that are U.S. owned or controlled (except for donations of food, exports of medicines and medical supplies, and the exportation of telecommunications equipment necessary for efficient and adequate telecommunications services between the United States and Cuba under sections 1705 and 1707). (Section 1706(a); 22 USC 6005(a), and implemented by 31 CFR 515.559)</p> <p>Prohibited, unless licensed by Treasury, any vessels trading with Cuba from loading or unloading freight at U.S. ports for 180 days after leaving a Cuban port. (Section 1706(b)(1); 22 USC 6005(b)(1))</p> <p>Prohibited, unless licensed by Treasury, any vessels from entering U.S. ports if carrying goods or passengers to or from Cuba or if carrying goods in which Cuba otherwise has an interest. (Section 1706(b)(2); 22 USC 6005(b)(2))</p> <p>Prohibited use of ship stores general license to export commodities to vessels carrying goods or passengers to and from Cuba, or carrying goods in which Cuba or a Cuban national has an interest. (Section 1706(b)(3); 22 USC 6005(b)(3))</p> <p>Required the President to establish strict limits on remittances to Cuba for purposes of financing travel by Cuban nationals to the United States. (Section 1706(c); 22 USC 6005(c))</p>

Legal and regulatory authority	Sanctions or restrictions
	<p>Allowed food, medicine, and medical supplies to be available for Cuba for humanitarian purposes under FAA and the Agricultural Trade Development and Assistance Act of 1954, if the President determines and certifies to certain congressional committees that the government in power in Cuba (1) has made public commitment to free elections for a new government within 6 months and is proceeding to implementation; (2) has made 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 another country seeking violent overthrow of that country’s government. (Section 1707; 22 USC 6006)</p> <p>Provided that the President may waive requirements in Section 1706 (22 USC 6005) concerning prohibitions on exports by U.S. foreign subsidiaries, entry of vessels, and amounts of emigration-related remittances, if he determines and reports to Congress that Cuban government (1) has held internationally observed free and fair elections, (2) permitted ample time for opposition parties to organize and campaign, and permitted all candidates full access to media, (3) is showing respect for Cuban citizens’ basic civil liberties and human rights, (4) is moving toward establishing free market economic system, and (5) has committed to constitutional change that ensures regular free and fair elections. (Section 1708(a); 22 USC 6007(a))</p> <p>Provided that where the President makes a determination under Section 1708(a), the President shall, with respect to a freely and fairly elected Cuban government, (1) encourage admission or re-entry of such government to international organizations and international financial institutions; (2) provide emergency relief to Cuba during its transition to a viable economic system; and (3) “take steps to end the United States trade embargo of Cuba.” (Section 1708(b); 22 USC 6007(b))</p> <p>Required the Treasury Secretary to exercise TWEA authorities in enforcing the CDA, and authorizes the Secretary to impose civil penalties on TWEA violators. (Section 1710; 22 USC 6009)</p>
<p>The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 or Helms-Burton Act)</p>	<p>Defined and codified the embargo as including all restrictions on trade and transactions with Cuba imposed by the Cuban Assets Control Regulations (CACR), section 620(a) of the FAA, section 5(b) of TWEA, CDA, and section 902(c) of the Food Security Act. (Section 4(7) and 102(h); 22 USC 6023(7) and 6032(h))</p> <p>Increased civil penalties under the TWEA for violations of licenses, orders, rules, or regulations implementing the embargo. (Section 102(d); 22 USC 6032(d))</p>

Legal and regulatory authority	Sanctions or restrictions
	<p>Clarified that the CDA’s authorization for telecommunication facilities was not an authorization for U.S. persons to invest in the domestic telecommunications network within Cuba. (Section 102(g), amending section 1705(e) of the CDA (22USC 6004(e)(5))</p> <p>Allowed U.S. nationals whose property was confiscated by the Cuban government a right of action to seek compensation in federal court from those who “traffic” in such property. (Title III, sections 301-306; 22 USC 6081-6085) The President may suspend the right to bring such suits for a successive 6 month periods if he determines such suspensions to be in the U.S. national interest and will expedite Cuba’s transition to democracy (the President has exercised this suspension since LIBERTAD’s enactment). (Section 306; 22 USC 6085)</p> <p>Authorized the Secretary of State to deny any visas to, and the Attorney General to exclude from the United States, any alien the Secretary determines has confiscated or “trafficked” in property owned by a U.S. national. (Section 401; 22 USC 6091)</p> <p>Codified the embargo, directing that it should remain in effect, subject to Section 204, which authorized the President to take steps to suspend the embargo after making a determination that a transition government is in power in Cuba. Also requires the President to take steps to terminate the embargo after determining that there is a democratically elected Cuban government. (Section 102(h); 22 USC 6032(h))</p> <p>Prohibited U.S. citizens, permanent residents, and agencies from financing any transaction in Cuba involving confiscated property of a U.S. national. This prohibition (1) may be suspended by the President upon determination that a Cuban transition government is in power or (2) terminates when the embargo is terminated as provided in Section 204. (Section 103; 22 USC 6033)</p> <p>Authorized the President to take steps to suspend the embargo only after making determinations to appropriate congressional committees that a transition government (which does not include either Fidel or Raul Castro) is in power; such steps include suspending enforcement of sections 620(a) and (f) of the FAA and sections 1704, 1705(d), and 1706 of the CDA, as well as the CACR restrictions; Congress retained right to overturn the President’s suspension by passing a joint-resolution. (Section 204(a), (b), (e); 22 USC 6064(a), (b), (e). See also Section 205(a)(7); 22 USC 6065(a)(7))</p> <p>Required the President to take steps to terminate the embargo after making determinations to appropriate congressional committees that a democratically elected Cuban government is in power; steps to terminate the embargo</p>

Legal and regulatory authority	Sanctions or restrictions
	include: terminating CACR restrictions; upon such determination, section 620(a) of the FAA; sections 1704, 1705(d), and 1706 of the CDA; and section 902(c) of Food Security Act of 1985 are automatically repealed; and section 620(f) of the FAA is automatically amended to remove Cuba from list of communist countries prohibited from receiving U.S. assistance. (Section 204(c) and (d), 22 USC 6064(c) and (d))
Omnibus Appropriations Act, 1999, Section 211	<p>Prohibited U.S. courts from considering or enforcing trademark claims of Cuban national, or their successors in interest, regarding property confiscated by the Cuban government.</p> <p>CACR provides general license authorizing transactions related to registration and renewal of patents, trademarks, and copyrights in which the Cuban government or a Cuban national has interest. The scope of general license is limited, and Treasury’s Office of Foreign Assets Control (OFAC) retains authority to issue specific license should facts and circumstances and current U.S. policy militate in favor of authorizing a transaction that does not qualify for general license. (31 CFR 515.527(a),(b))</p>
The Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA)	<p>Prohibited the President, by its terms, from imposing new unilateral agricultural and medical sanctions against Cuba unless approved by a congressional joint resolution, and required termination of existing unilateral agricultural or medical sanctions (but leaving the CDA medical export requirements in place) unless continued by a congressional joint resolution, as requested by President. (Sections 903, 905; 22 USC 7202,7204)</p> <p>Authorized, by its terms, exports of agricultural commodities, medicine, and medical devices to Cuba and to other countries designated as state sponsors of terrorism, pursuant to one-year license and other licensing requirements. (Section 906(a)(1), 22 USC 7205(a)(1), as implemented by 31 CFR 515.533 and 15 CFR 740.12, 740.18 and 746.2(b)(1),(4))</p> <p>Note: According to Treasury and Commerce, due to phrasing of TSRA, it does not affect medical exports to Cuba under the CDA since it did not amend or supersede the CDA’s export licensing requirements. Therefore, medical exports are not eligible for export or re-export to Cuba under TSRA procedures and require licenses authorized under the CDA. <i>See</i> 66 Federal Register 36678, July 12, 2001.</p> <p>Prohibited U.S. government assistance for financing exports to Cuba. (Sections 908(a)(1), 22 USC 7207(a)(1))</p> <p>Prohibited U.S. private commercial payments or financing for sale of agricultural commodities or products to Cuba, except where payment is cash-</p>

Legal and regulatory authority	Sanctions or restrictions
	<p>in-advance (before shipment leaves U.S. port) or financing is from 3rd country financing institutions (where financing may be confirmed or advised by U.S. financing institution). (Section 908(b)(1), 22 USC 7207(b)(1); 31 CFR 515.533(a)(2)). Regulation implementing cash-in-advance requirement remains unchanged, notwithstanding section 622 of the Omnibus Appropriations Act, 2009, which was intended to prohibit enforcement of regulatory requirement. According to Treasury, section 622, while prohibiting Treasury enforcement of regulation during fiscal year 2009, did not change TSRA’s statutory language requiring cash-in-advance.</p> <p>Required the Treasury Secretary to authorize travel by specific license to, from, and within Cuba for commercial export sale of agricultural commodities. (Section 910(a), 22 USC 7209(a), as implemented by 31 CFR 515.533(e)). Section 620 of the 2009 Omnibus Appropriations Act amended TSRA by requiring the Treasury Secretary to promulgate regulations authorizing such travel and travel-related transactions by general license.</p> <p>Prohibited licensing of travel to, from, and within Cuba for tourist activities, defined as any activity not expressly authorized in the 12 travel categories specified in section 515.560(a) of CACR. (Section 910(b), 22 USC 7209(b))</p>
<p>Cuban Assets Control Regulations, 31 CFR Part 515, regarding all transactions, including travel, trade, and financial transactions, related to Cuba (issued under authority of TWEA)</p>	<p style="text-align: center;">TRAVEL</p> <p><u>Family travel</u></p> <p>Section 621 of the Omnibus Appropriations Act, 2009, prohibits funds made available under the act from being used to administer, implement, or enforce certain CACR provisions implemented in 2004 that, among other things, required a specific license for travel to Cuba by persons subject to U.S. jurisdiction to visit “immediate family” members who are nationals of Cuba. On April 13, 2009, the President issued a policy directive to remove all restrictions on family travel to Cuba. On September 3, 2009, OFAC issued a final rule amending the CACR provisions to implement section 621 and the President’s directive.</p> <p>Under these regulatory changes, travel to Cuba is authorized under a general license for persons subject to U.S. jurisdiction to visit a “close relative” (defined as any individual related to the traveler by blood, marriage or adoption, who is no more than three generations removed from a common ancestor with the traveler) who is (1) a Cuban national or (2) a U.S. government employee assigned to the U.S. Interest Section in Havana. (31 CFR 515.61(a)(1),(2))</p>

Legal and regulatory authority	Sanctions or restrictions
	<p>Under the general license for a licensed family traveler or any individual accompanying a licensed traveler all transportation-related expenses incident to travel to and from (not within) Cuba are authorized; and the authorized expenditures within Cuba are the same as for a non-family traveler, which is the State Department per diem rate for Havana (currently \$179 as of June 1, 2009. (31 CFR 515.560(c)(1),(2) and 515.56(a)(1),(2))</p> <p>Travel is authorized by specific license on a case by case basis for a person subject to U.S. jurisdiction who shares a common dwelling with the licensed traveler to visit a “close relative” who is neither a Cuban national nor a U.S. government employee assigned to the U.S. interest section in Havana. All transportation-related expenses to and from Cuba are authorized, and expenditures in Cuba are the same as for a non-family traveler, which is the Department of State per diem rate for Havana. (31 CFR 515.561(b))</p> <p><u>Official government business</u></p> <p>Travel authorized under general license for officials of the U.S. Government, foreign governments, and certain intergovernmental organizations traveling to, from, and within Cuba on official business; travel-related expenditures at State Department per diem rate. (31 CFR §§ 515.560(a)(2) and (c) and 515.562)</p> <p><u>Journalistic activities</u></p> <p>Travel authorized under general license for persons regularly employed as journalists by a news reporting organization or by persons regularly employed as supporting broadcast or technical personnel; travel-related expenditures at State Department per diem rate.</p> <p>Travel under specific license allowed for freelance journalists; travel-related expenditures at State Department per diem rate. (31 CFR §§ 515.560(a)(3) and (c) and 515.563)</p> <p><u>Professional research and meetings</u></p> <p>Travel authorized under general license for full-time professionals conducting noncommercial, academic research in their professional areas that have substantial likelihood of public dissemination; full-time professionals attending professional meetings or conferences organized by international professional organizations that regularly sponsor such events in other countries; or employees of telecommunications service providers subject to U.S. jurisdiction, attending professional meetings for commercial telecommunications transactions.</p>

Legal and regulatory authority	Sanctions or restrictions
	<p>Travel under specific license allowed for professional researchers undertaking research or for professionals attending professional meetings and not qualifying for the general license. (31 CFR §§ 515.560(a)(4) and 515.564)</p> <p><u>Educational activities</u></p> <p>Travel under specific institutional license issued for up to a one-year period allowed for enrolled students and full-time employees of academic institutions to participate in educational activities, including structured educational programs (not less than 10 weeks in duration), noncommercial research regarding Cuba, participating in a formal course of study in Cuba for credit towards a degree at the licensed institution, or teaching. (31 CFR §§ 515.560(a)(5) and 515.565)</p> <p><u>Religious activities</u></p> <p>Travel under specific license allowed for members of U.S. religious organizations undertaking religious activities. For congregational organizations, the number of travelers or frequency of trips is not limited; non-congregational organizations are limited to 25 individuals per trip and one trip per calendar quarter. (31 CFR §§ 515.560(a)(6) and 515.566; OFAC Comprehensive Guidelines for License Applications to Engage in Travel-Related Transactions Involving Cuba, p. 40, as amended March 31, 2005.)</p> <p><u>Public performances, athletic and other competitions, and exhibitions</u></p> <p>Travel under specific license allowed for amateur and semi-professional athletes selected by U.S. sports federations to participate in competitions under the auspices of international sports federations, where the competition is open for attendance and, where relevant, participation by the Cuban public; for participation in public performances, athletic, and other competitions and exhibitions, which must be open for attendance and, in relevant situations, participation by the Cuban public and any profits must be donated to independent Cuban NGOs or U.S.-based charities. (31 CFR §§ 515.560(a)(7) & 515.567)</p> <p><u>Support for the Cuban people</u></p> <p>Travel under specific license allowed for activities of recognized human rights organizations; activities of independent organizations designed to promote the transition to democracy; and activities of individuals and NGOs that promote independent activity intended to strengthen civil society in Cuba. (31 CFR §§ 515.560(a)(8) and 515.574)</p>

Legal and regulatory authority	Sanctions or restrictions
	<p><u>Humanitarian projects</u></p> <p>Travel under specific license allowed to engage in humanitarian projects in or related to Cuba (and not otherwise covered by the CACR), such as medical and health-related projects, environmental projects, projects involving nonformal educational training, community-based grassroots projects, projects suitable for development of small-scale enterprise, projects related to agriculture and rural development, and projects to meet basic human needs. (31 CFR §§ 515.560(a)(9) & 515.575)</p> <p><u>Activities of private foundations or research or educational institutes</u></p> <p>Travel under specific license allowed for activities of private foundations and research or educational institutes with established interest in international relations to collect information related to Cuba for noncommercial purposes. (31 CFR §§ 515.560(a)(10) & 515.576)</p> <p><u>Exportation, importation, or transmission of information or informational materials</u></p> <p>Informational materials includes items such as publications, films, posters, photograph records, photographs, microfilm, microfiche, tapes, computer discs, CD ROMs, artworks, and newswire feeds. (31 CFR 515.332)</p> <p>Travel transactions related to the exportation, importation, or transmission of information or informational materials are allowed under specific license. Payments owed to Cuba resulting from telecommunications services also require authorization by specific license. (31 CFR §§ 515.560(a)(11) & 515.545), implementing sec. 5(b)(4) of TWEA, 50 USC App. 5(b)(4))</p> <p><u>Certain export transactions licensed under existing Department of Commerce regulations with respect to Cuba or engaged in by U.S.-owned or controlled foreign firms</u></p> <p>Travel allowed under specific license for persons involved in activities related to marketing, sales, negotiation accompanied by delivery, or servicing of exports to Cuba authorized by Commerce, or such activities allowed by U.S.-owned or controlled foreign firms. (31 CFR §§ 515.560(a)(12), 515.533 & 515.559)</p>

Legal and regulatory authority	Sanctions or restrictions
	<p>Section 620 of the 2009 Omnibus Appropriations Act, which amended section 910(a) of TSRA, required OFAC to authorize by general license travel to, from, and within Cuba for the marketing and sale of U.S. agricultural and medical goods. To implement section 620, Treasury amended the CACR at 31 CFR 515.533(e).</p> <p>Based on these changes, travel-related transactions directly incident to the commercial marketing, sales negotiation, accompanied delivery, or servicing in Cuba of agricultural commodities, medicine, or medical devices that appear consistent with the export or re-export licensing policy of Commerce are authorized by general license under certain conditions. (31 CFR 515.533(e); see also 31 CFR 515.560(c).)</p> <p><u>Travel-related transactions incident to the provision of telecommunications services</u></p> <p>Treasury amended various provisions of the CACR to implement the President’s April 3, 2009, directives related to increasing the flow of information to the Cuban people by authorizing certain telecommunications services, contracts, related payments, and travel-related transactions.</p> <p>All transactions by a telecommunications service provider subject to U.S. jurisdiction are authorized by general license. Such transactions include payments incident to (1) the provision of telecommunications between the United States and Cuba; (2) the provision of satellite television services to Cuba; and (3) entry into, and performance under, roaming service agreements with telecommunications service providers in Cuba. (31 CFR 515.543(b))</p> <p>All persons subject to U.S. jurisdiction are authorized by general license to enter into, and make payments under, contracts (including contracts for cellular telephone services) with non-Cuban telecommunications service providers or particular individuals in Cuba, provided such individual owning and using a phone subject to the service contract is not a Cuban government or Communist Party official. (31 CFR 515.543(c))</p> <p>Transactions incident to the establishment of facilities to provide telecommunications services linking the United States and Cuba, including fiber-optic cable and satellite telecommunications service are authorized by general license. (31 CFR 515.542(d)(1))</p> <p>Transactions incident to the establishment of facilities to provide telecommunications services linking third countries to Cuba may be authorized by specific license, provided such facilities are necessary to provide efficient and effective telecommunications services between the United States and Cuba. (31 CFR 515.542(d)(2))</p>

Legal and regulatory authority	Sanctions or restrictions
	<p>Travel-related transactions directly incident to participation in professional meetings for the commercial marketing of sales negotiations for, or performance under contracts for the provision of telecommunications services or the establishment of facilities to provide such services, is authorized under general license. (31 CFR 515.564(a)(3))</p> <p>Travel-related transactions directly incident to the commercial marketing, sales negotiation, accompanied delivery, or servicing in Cuba of telecommunications-related items authorized for commercial export or re-import to Cuba by Commerce, are authorized by general license under certain conditions. (31 CFR 515.533(f))</p> <p><i>See also</i> Commerce’s recently revised licensing policy regarding telecommunications, implemented to carry out the President’s April 13, 2009 directive to increase the flow of information between the United States and Cuba through satellite radio and television services to customers in Cuba. (15 CFR 746.2(b)(2))</p> <p><u>Tourism</u></p> <p>Prohibited by law, under section 910(b) of TSRA, and defined as any activity not expressly authorized in the travel categories specified in section 515.560(a) of CACR. (31 CFR 515.201 contains a general prohibition which implements the ban on engaging in tourist-related travel activities.)</p>
Cuban Assets Control Regulations (31 CFR 515 et seq.)	<p style="text-align: center;">REMITTANCES</p> <p>The President’s memorandum of April 3, 2009 directed the Secretary of the Treasury to take necessary steps to remove restrictions on remittance in a number of ways to implement the President’s directive. The Secretary amended various provisions of the CACR affecting the amount and frequency of household remittances, emigration-related remittances, and remittance forwarders.</p> <p><u>Family and household remittances</u></p> <p>Persons subject to U.S. jurisdiction are authorized under a general license to make remittances without limitations on amount or frequency to Cuban nationals who are “close relatives,” if such remittances are not made (1) from blocked accounts, (2) to prohibited Cuban government or Communist Party officials, or (3) for immigration-related purposes. (31 CFR 515.570(d))</p> <p>The total of all family household remittances that a licensed traveler is authorized to carry to Cuba may not exceed \$3000. (31 CFR 515.560(a)(4)(i))</p>

Legal and regulatory authority	Sanctions or restrictions
	<p><u>Emigration-related remittances</u></p> <p>Two one-time emigration-related remittances of up to \$2,000 in total are authorized.</p> <ul style="list-style-type: none"> • \$1,000 to cover preliminary expenses for emigrating from Cuba to the United States before receiving an approved visa • \$1,000 to cover expenses for emigrating from Cuba to the United States after receiving a valid visa, 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 after the payee has received a valid visa or other approved U.S. immigration documents. (31 CFR 515.570(b)) <p><u>Remittances from blocked accounts</u></p> <p>Unlimited remittances from inherited blocked accounts in banking institutions in the United States are authorized if the account holder is a “close relative” of the deceased individual from whom the account was inherited (decedent). (31 CFR 515.570(c)(1)(i))</p> <p>Emigration-related remittances may be made from inherited blocked accounts in banking institutions in the United States to a Cuban national if that person is an account holder and is not a prohibited Cuban government or Communist Party official. Such remittances must be consistent with the criteria governing the two one-time emigration-related remittances in 31 CFR 515.570(b), noted above. (31 CFR 515.570(c)(1)(ii))</p> <p>Remittances of up to \$300 in any consecutive 3-month period may be made from any blocked account to a Cuban national in a third country in whose name, or for whose beneficial interest, the account is held (31 CFR 515.570(c)(2)). Such remittances exceeding the \$300 limit may be authorized by specific license on a case-by-case basis (31 CFR 515.570(d)(2)).</p> <p><u>Remittances for humanitarian purposes</u></p> <p>Remittances by persons subject to U.S. jurisdiction to persons in Cuba may be authorized by specific license for nonimmigrant travel to the United States where humanitarian need is demonstrated. (31 CFR 515.570(d)(3))</p> <p><u>Remittances by other U.S. persons</u></p> <p>U.S. nongovernmental organizations and individuals without family connections in Cuba may send remittances under specific license to independent nongovernmental entities in Cuba (i.e., pro-democracy groups, civil society groups, and religious organizations) and to members of such entities. (31 CFR 515.570(d)(1))</p>

Legal and regulatory authority	Sanctions or restrictions
	<p><u>Remittances carried by Cuban nationals from the United States</u></p> <p>The amount of funds received as remittance that a Cuban national departing the United States may carry to Cuba may not exceed \$3,000. (31 CFR 515.560(d)(2))</p> <p><u>Remittance forwarders</u></p> <p>Banks and other depository institutions are authorized under general license to collect and forward remittances. Such licensed remittance forwarders are required to collect from users of their services information showing compliance with relevant provisions of the CACR. (31 CFR 515.572(a)(3))</p> <p><u>Baggage</u></p> <p>No Limitation: The President’s memorandum of April 13, 2009, directed the Secretaries of the Treasury and Commerce to remove the 44-pound limitation on accompanied baggage per traveler to Cuba, as referred to in 31 CFR 515.560(f). Commerce revised 15 CFR 740.14(g) to implement President’s directive.</p> <p style="text-align: center;">TRADE</p> <p style="text-align: center;"><u>Import activities</u></p> <p><u>Generally prohibited</u></p> <p>Prohibits importation into the United States of (1) goods of Cuban origin, (2) goods located in or transferred through Cuba, or (3) goods made or derived in whole or in part of any article which is the growth, produce, or manufacture of Cuba, <u>except</u> as specifically authorized otherwise by the Secretary of the Treasury “by...regulations, rulings, instructions, licenses, or otherwise.” (31 CFR 515.204)</p> <p>Authorized travelers prohibited from importing into the United States any merchandise purchased or otherwise acquired in Cuba—including cigars and alcohol—whether as accompanied baggage or otherwise. An “across the board ban,” whether items acquired in Cuba or third countries, given as gift, or offered for sale over Internet or through catalogue mail purchase. (31 CFR 515.204, 515.560(c)(3); OFAC Comprehensive Guidelines for License Applications to Engage in Travel-Related Transactions Involving Cuba, p.8 (Rev.09/30/04); and OFAC “Cuban Cigar Update” (09/30/04))</p>

<p>Legal and regulatory authority</p>	<p>Sanctions or restrictions</p>
	<p>Exceptions (importation into the United States allowed)</p> <p>Information and informational materials—publications, films, posters, phonograph records, photographs, tapes, compact discs, and certain art works. (31 CFR 515.206 and 515.332, implementing section 525 of Free Trade in Ideas Act (50 USC App. 5(b)(4)), which amended TWEA to restrict President’s authority to regulate import and export of certain informational materials.)</p> <p>Goods/commodities, under specific license, including:</p> <ul style="list-style-type: none"> • goods claimed by importer as a bona fide gift • goods brought from Cuba by a person entering U.S., as a bona fide gift, if goods are of small value and there is no reason to believe there is or has been since July 8, 1963, any direct or indirect benefit to Cuba or Cuban national from the importation (31 CFR 515.544(b)) • Cuban-origin commodities for bona fide research in sample quantities only (31 CFR 515.547)
<p>Export Administration Regulations (EAR), 15 CFR 746.1, 746.2, and Part 740</p>	<p style="text-align: center;"><u>Export Activities</u></p> <p>General prohibition</p> <p>Prohibition on export from the United States to Cuba of goods, technology, or services. Certain items allowed to be exported to Cuba without a license (under License Exceptions of the EAR) where certain terms and conditions are met; and certain items allowed to be exported under specific licenses. Most items requiring license are subject to general policy of denial. (15 CFR 746.1(a)(1), 746.2(a)(1),(2); <i>See also</i> 31 CFR 515.201, which contains a general prohibition that also prohibits such exports)</p> <p>The following categories of items may be exported to Cuba without a license:</p> <p>Gift parcels</p> <p>The President’s memorandum of April 13, 2009, directed the Secretary of Commerce to make certain changes to the EAR regarding gift parcels and humanitarian donations. To implement the President’s directive, Commerce revised 15 CFR 740.12(a).</p>

Legal and regulatory authority	Sanctions or restrictions
	<p>Based on these changes, gift parcels are allowed to be sent to Cuba by U.S. individuals where the following criteria are met:</p> <ul style="list-style-type: none"> • Eligible items include food (including vitamins); medicine; medical supplies and devices (including hospital supplies and equipment and equipment for the handicapped); receive-only equipment for commercial/civil AM/FM and short wave publicly available frequency bands and batteries for such equipment; clothing; personal hygiene items; seeds; veterinary medicines and medical supplies; fishing equipment and supplies; soap-making equipment; and nonsensitive items normally sent as gifts between individuals, including certain consumer communications devices, computers, and software listed in 15 CFR 740.19(b). • Limit of one gift parcel a month per donor per eligible donee. • The value of non-food items in the parcel is limited to \$800. • Eligible donors include any individual. • Eligible donees (recipients) include (1) individuals other than prohibited Cuban government or Communist Party officials or (2) charitable, educational or religious organizations not administered or controlled by Cuban government. • A donor may send one gift parcel per month to any eligible donee, although there is no frequency limit on gift parcels of food. • Parties seeking authorization to exceed the gift parcel frequency limit for compelling humanitarian concerns must submit appropriate license applications with complete justification.(15 CFR 740.12(a)) <p>Humanitarian donations by recognized U.S. charities to meet basic human needs; charities must have established record of involvement in donation programs and experience in maintaining verifiable system of distribution.</p> <p>Eligible items include health-related items, food, clothes, household goods, shelter, educational items, and basic support equipment and supplies to operate and administer the donor program.</p> <p>Ineligible items include medicines and medical devices if there is a reasonable likelihood they will be use for torture or other human rights abuses or that they will be re-exported, or used in the production of bio-technological products. (15 CFR 740.12(b))</p>

Legal and regulatory authority	Sanctions or restrictions
	<p data-bbox="440 338 570 369">Baggage</p> <p data-bbox="440 407 1474 548">No limitation. The President’s April 13, 2009 memorandum directed the Treasury and Commerce Secretaries to remove the 44-pound limitation on accompanied baggage to Cuba. Commerce revised the EAR at 15 CFR 740.14(g) to implement the directive. (<i>See also</i> 31 CFR 515.560(f)).</p> <p data-bbox="440 604 964 636">Consumer communication devices</p> <p data-bbox="440 657 1534 978">The President’s April 13, 2009 memorandum directed the Commerce Secretary to authorize, through a license exception and consistent with national security concerns, the export and re-export of donated personal telecommunications devices such as mobile phone systems, computers and software, and satellite receivers. To implement the directive, Commerce created a new license exception in 15 CFR 740.19 that authorizes the export and re-export to Cuba of donated consumers communications devices that are widely available for retail purchase and commonly used to exchange information and facilitate interpersonal communications.</p> <p data-bbox="440 999 1455 1066">Under this license exception, consumer communications devices may be exported to Cuba where the following criteria are met:</p> <ul data-bbox="440 1087 1520 1812" style="list-style-type: none"> <li data-bbox="440 1087 1520 1304">• eligible items include certain computers, disk drives, input/output control units, monitors, printers, modems, network access controllers and communications channel controllers, keyboard and similar devices, mobile phones (including cellular and satellite phones, memory devices, digital cameras and memory cards, television and radio receivers, batteries and chargers; <li data-bbox="440 1325 1003 1356">• exports or reexports must be to Cuba; <li data-bbox="440 1377 1133 1409">• items exported or reexported must be donated; <li data-bbox="440 1430 1520 1539">• eligible recipients must be (1) individual in Cuba other than prohibited Cuban government or Communist Party officials, or (2) independent NGOs in Cuba; <li data-bbox="440 1560 1520 1627">• donations may not be made to organizations administered or controlled by the Cuban government; <li data-bbox="440 1648 1520 1757">• U.S.-owned or -controlled entities in a third country are not authorized by the license exception to engage in reexports of commodities for which no license would be issued by Treasury under 31 CFR 515.559; and <li data-bbox="440 1778 1500 1812">• there is no limit on the value or frequency of the exports. (15 CFR 740.19)

Legal and regulatory authority	Sanctions or restrictions
	<p>Items in transit from Canada to the United States</p> <p>15 CFR 740.9(b)(1)(iv), 746.2(a)(1)(ix))</p> <p>Certain aircraft on temporary sojourn to Cuba are authorized to depart the United States. (15 CFR 740.15(a), 746.2(a)(1)(x))</p> <p>Agricultural commodities (as defined in 15 CFR 772.1) and certain re-exports of U.S.-origin agricultural commodities, classified as EAR 99. Export or re-export must be made under written contract, within 12 months of contract signing or 12 months of notification that no objections raised where no contract required (donations and commercial samples), and prior notification made to Commerce and its Bureau of Industry and Security (BIS).</p> <p>This regulation implements section 906(a) of TSRA requiring such exports to be made within 12 months of the signing of the contract. (15 CFR 740.18, 746.2(a)(1)(xii))</p> <p>Other items that may be exported to Cuba without a license include</p> <ul style="list-style-type: none"> • temporary exports and re-exports by news media (15 CFR 740.9(a)(2)(viii)); • operation technology and software (15 CFR 740.13(a)); • sales technology (15 CFR 740.13(b)); • software updates for legally exported software (15 CFR 740.13(c)); • parts for one-on-one replacement in certain legally exported commodities (15 CFR 740.10(a)); • certain exports to governments and international organizations (15 CFR 740.11); and • permissive re-exports of spare parts in foreign-made equipment (15 CFR 740.16(h)). <p>The following items must be exported by specific license and are not subject to policy of general denial:</p>

Legal and regulatory authority	Sanctions or restrictions
	<p>Medicines and medical devices (as defined in 15 CFR 772)</p> <p>Applications to export such items will generally be approved, except where (1) restricted under certain provisions of EAA or IEEPA, (2) reasonable likelihood that the item will be used for torture or other human rights abuses, (3) the item will be re-exported, (4) item could be used in production of biotechnological product, or (5) the U.S. government is unable to verify by onsite inspection or otherwise that the item will be used for purposes intended and to benefit the Cuban people (excluding humanitarian medical donations to NGO's in Cuba). This regulation implements section 1705(c) of CDA. (15 CFR 746.2(b)(1))</p> <p>Nonstrategic foreign-made products exported from third countries</p> <p>Products containing an insubstantial proportion of U.S.-origin material, parts, or components will generally be considered favorably on a case-by-case basis if (1) local law or policy favors trade with Cuba, (2) the U.S.-origin content does not exceed 20 percent of the product's value, and (3) the exporter is not a U.S. owned or controlled entity in a third country. (15 CFR746.2(b)(3))</p> <p>Support for the Cuban people</p> <p>Including certain commodities and software to human rights organizations, or to individuals and NGOs promoting activities to strengthen Cuban civil society. Items must not give rise to U.S. national security or counter-terrorism concerns. Eligible items include fax machines, copiers, computers, software document scanning equipment, printers, typewriters, and other office communications equipment. (15 CFR 746.2(b)(4)(i))</p> <p>Aircraft or vessel on temporary sojourn</p> <p>Such vessels traveling to Cuba for delivery of humanitarian goods or services, or consistent with U.S. foreign policy interests. (15 CFR 746.2(b)(5); see also 15 CFR 740.15.)</p> <p style="text-align: center;"><u>Licensing Policy Regarding Telecommunications</u></p> <p>To implement the President's April 13, 2009, policy directive to increase the flow of information between the United States and Cuba through satellite radio and television services to customers in Cuba, Commerce amended the EAR at 15 CFR 746.2(b) to revise the scope of its licensing policy regarding telecommunications.</p>

Legal and regulatory authority	Sanctions or restrictions
	<p>Based on this revision, Commerce’s licensing policy now provides that the export of telecommunications commodities may be authorized on a case-by-case basis provided the commodities are part of an FCC-approved project and necessary to provide efficient and adequate telecommunications between the United States and Cuba, including links established through third countries, and including the provision of satellite radio and satellite television services to Cuba. (15 CFR 746.2(b)(2). <i>See also</i> 31 CFR 515.533(f), 515.542(d)(1) and (2), 515.543(b) and (c), and 515.546(a)(3).)</p> <p style="text-align: center;"><u>Activities of U.S. foreign subsidiaries</u></p> <p>Exceptions exist to statutory prohibition in section 1706(a) of CDA against licensing of certain transactions involving foreign produced goods being sent to Cuba from abroad by foreign companies that are U.S. owned or controlled (U.S. foreign subsidiaries). These exceptions permit trade with Cuba by allowing specific licenses for exports from a third country by such subsidiaries of (1) medicines or medical supplies or (2) certain telecommunications equipment. Donated food to individuals or nongovernmental organizations is exempt under section 1705(b).</p> <ul style="list-style-type: none"> • For medicines and medical supplies, exports cannot be restricted except (1) to the extent permitted under section 5(m) of Export Administration Act of 1979 or section 203(b)(2) of IEEPA if they are subject to these provisions; (2) where there is a reasonable likelihood that the item will be used for torture or other human rights abuses; (3) where there is a reasonable likelihood that the item to be exported will be re-exported; (4) where there is a reasonable likelihood that the item could be used in production of biotechnological products; and (5) where it is determined that the U.S. government is unable to verify, by on-site inspection or other means, that item will be used for the purpose for which it is intended and only for use and benefit of the Cuban people, except medicines and medical supplies donated for humanitarian purposes to NGOs in Cuba. • For telecommunications equipment, exports must be necessary for efficient and adequate telecommunications service between the United States and Cuba. <p style="text-align: center;">Note: The license exception in 15 CFR 740.19 authorizing exports or re-exports of certain consumer communications devices does not authorize U.S. foreign subsidiaries to engage in re-exports of foreign-produced commodities to Cuba for which no license would be issued by Treasury under 31 CFR 515.559.</p>

Legal and regulatory authority	Sanctions or restrictions
	<ul style="list-style-type: none"> • For donated food, the transaction must not qualify as a humanitarian donation under license exceptions in 15 CFR 740.12 or 740.18. (31 CFR 515.559(a); 15 CFR 746.2(b)(3)(iii)(D))

Enclosure III: Selected GAO and CRS Reports Related to the U.S. Embargo on Cuba

Selected GAO Reports

Product title	Product number	Publication date
<i>Broadcasting to Cuba: Observations Regarding TV Marti's Strategy and Operations</i>	<u>GAO-09-758T</u>	June 17, 2009
<i>Broadcasting to Cuba: Actions Are Needed to Improve Strategy and Operations</i>	<u>GAO-09-127</u>	Jan. 22, 2009
<i>Foreign Assistance: Continued Efforts Needed to Strengthen USAID's Oversight of U.S. Democracy Assistance for Cuba</i>	<u>GAO-09-165</u>	Nov. 24, 2008
<i>Broadcasting to Cuba: Weaknesses in Contracting Practices Reduced Visibility into Selected Award Decisions</i>	<u>GAO-08-764</u>	July 11, 2008
<i>Economic Sanctions: Agencies Face Competing Priorities in Enforcing the U.S. Embargo on Cuba</i>	<u>GAO-08-80</u>	Nov. 30, 2007
<i>Foreign Assistance: U.S. Democracy Assistance for Cuba Needs Better Management and Oversight</i>	<u>GAO-07-147</u>	Nov. 15, 2006
<i>Cuban Embargo: Selected Issues Relating to Travel, Exports, and Telecommunications</i>	<u>NSIAD-99-10</u>	Dec. 1, 1998

Selected CRS Products

Product title (author)	Product number	Publication date
<i>Cuba: Issues for the 111th Congress</i> (Mark P. Sullivan)	R40193	June 24, 2009
<i>Cuba: U.S. Restrictions on Travel and Remittances</i> (Mark P. Sullivan)	RL31139	Mar. 31, 2009
<i>Cuban Migration to the United States: Policy and Trends</i> (Ruth Ellen Wasem)	R40566	June 2, 2009

Enclosure IV: GAO Contact and Staff Acknowledgments

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The following staff made significant contributions to this report: Ernie Jackson, Senior Attorney; Mark Speight, Assistant General Counsel; Emil Friberg and Michael Rohrback, Assistant Directors; Avrum Ashery and Etana Finkler, Visual Communications Analysts; Reid Lowe, Communications Analyst; Brian Egger, Analyst; and Eugene Beye, Analyst-in-Charge.

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