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# CRS Report for Congress

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## **Cuba: U.S. Economic Sanctions Through 1996**

**Updated November 21, 1996**

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# Cuba: U.S. Economic Sanctions Through 1996

## Summary

This report first provides an overview of U.S.- Cuba relations and U.S. policy toward Cuba. It then examines the history and legislative and executive authorities of the various components of U.S. sanctions against Cuba, including aid, trade, and other restrictions through 1996.

U.S.-Cuba relations deteriorated sharply in the early 1960s when Fidel Castro began to build a repressive communist dictatorship and moved his country toward close relations with the Soviet Union. Since then, U.S. policy has consisted largely of isolating Cuba through a comprehensive economic embargo. The often tense nature of the U.S.-Cuba relationship is illustrated by: the ill-fated April 1961 Bay of Pigs invasion; the October 1962 Cuban missile crisis; Cuba's support for insurgencies and revolutionary governments abroad; the 1980s Mariel boatlift; the 1994 exodus of Cubans to the United States; and Cuba's February 1996 shutdown of two U.S. civilian planes.

There was some movement toward normalization of relations in the 1970s, but Cuba's military involvement and support for revolution abroad impeded improved relations. Under the Reagan Administration in the 1980s, U.S.-Cuba relations remained tense because of Cuba's military involvement in Africa and its increasing support for revolutionary movements and governments. In the 1990s, the breakup of the Soviet Union effectively ended Cuba's client-state relationship with that nation and resulted in rapid deterioration of the Cuban economy. As this deterioration was taking place, Congress tightened sanctions on Cuba in 1992 through passage of the Cuban Democracy Act, although this Act also included measures of support for the Cuban people. And Cuba's action of shooting down two U.S. civilian planes in February 1996 prompted President Clinton to support congressional approval of the Cuban Liberty and Democratic Solidarity Act, an initiative containing additional sanctions on Cuba.

Since the early 1960s, the United States has imposed a range of economic sanctions on Cuba, the most prominent of which is a comprehensive embargo prohibiting trade with Cuba. Other sanctions include a prohibition on U.S. bilateral assistance to Cuba, a prohibition on U.S. economic assistance to countries or international organizations and programs supporting Cuba, a prohibition on U.S. arms sales or arms transfers to Cuba, a prohibition on Cuban sugar imports, and a prohibition on U.S. Export-Import Bank activities in Cuba. In addition, the Cuban Assets Control Regulations of the Treasury Department's Office of Foreign Assets Control set forth detailed and comprehensive restrictions on the blocking of Cuban assets in the United States and the transfer of assets to Cuba. The Cuban Liberty and Democratic Solidarity Act of 1996 contains additional potential sanctions, including most prominently, a provision holding any person or government that traffics in U.S. property confiscated by the Cuban government liable for monetary damages in U.S. federal court.

# Contents

Introduction .....	1
U.S.-Cuba Relations: Background .....	1
Castro's Rise to Power .....	2
U.S.-Cuba Tensions Escalate .....	3
U.S.-Cuban Relations from the Ford To the Bush Administration .....	3
Policy under the Clinton Administration .....	4
Migration Crisis in 1994 .....	5
Easing of Some Restrictions in 1995 .....	6
Cuba's Downing of Two U.S. Civilian Aircraft .....	6
Helms/Burton Legislation .....	7
Expulsion of Diplomats .....	9
Cuba: Map and Basic Social and Economic Statistics .....	10
U.S. Sanctions Against Cuba .....	11
Prohibiting U.S. Economic Foreign Aid to Cuba (U.S. Bilateral Assistance) .....	12
Prohibiting U.S. Economic Aid to Countries or International Organizations/programs Supporting Cuba (U.S. Multilateral Assistance) .....	14
Prohibiting Arms Sales or Arms Transfers to Cuba .....	16
Prohibiting Commercial Trade with Cuba .....	17
Prohibiting Cuban Sugar Imports .....	19
Blocking Cuban Assets in the United States And Transfer of Assets to Cuba .....	20
Prohibiting U.S. Export-Import Bank Activities in Cuba .....	23
Prohibiting Transactions Related to Confiscated Property in Cuba .....	23

# Cuba: U.S. Economic Sanctions Through 1996

## Introduction

This report first provides an overview of U.S.- Cuban relations and U.S. policy toward Cuba since Fidel Castro established a communist dictatorship in the early 1960s. It then examines in detail the various components of U.S. sanctions against Cuba, including aid, trade, and other restrictions through 1996.

## U.S.-Cuba Relations: Background<sup>1</sup>

In the early 1960s, U.S.-Cuban relations deteriorated sharply when Fidel Castro began to build a repressive communist dictatorship and moved his country toward close relations with the Soviet Union. The often tense and hostile nature of the U.S.-Cuban relationship is illustrated by such events and actions as: U.S. covert operations to overthrow the Castro regime in the ill-fated April 1962 Bay of Pigs invasion; the October 1962 missile crisis in which the United States confronted the Soviet Union over its attempt to place offensive nuclear missiles in Cuba; Cuban support for guerrilla insurgencies and military support for revolutionary governments in Africa and the Western Hemisphere; the 1980 exodus of around 125,000 Cubans to the United States in the so-called Mariel boatlift; the more recent 1994 exodus of more than 30,000 Cubans who were interdicted and housed at U.S. facilities in Guantanamo and Panama; and the February 1996 shutdown by Cuban fighter jets of two U.S. civilian planes flown by four crew members of the Cuban American group Brothers to the Rescue.

Since the early 1960s, U.S. policy has largely consisted of isolating the island nation through a comprehensive economic embargo. U.S. sanctions were tightened in 1992 with congressional passage of the Cuban Democracy Act (CDA) and in August 1994 President Clinton announced additional measures to augment economic pressure against Cuba. While the Administration announced several measures in October 1995 to ease some U.S. restrictions on travel and other activities with Cuba, the February 1996 Cuban shutdown of the two U.S. civilian planes prompted the Administration to work with Congress for swift passage of the Cuban Liberty and

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<sup>1</sup>Prepared by Mark P. Sullivan, Foreign Affairs and National Defense Division. This section draws substantially from: Economic Sanctions Imposed by the United States Against Specific Countries: 1979 Through 1992, by Erin Day, CRS Report 92-631, August 10, 1992, pp. 469-487; and Cuba-Issues for Congress, by Mark P. Sullivan, CRS Issue Brief IB94005 (updated regularly).

Democratic Solidarity Act, a congressional initiative that imposed additional sanctions on Cuba.

It should be noted that in addition to sanctions, the Clinton Administration also emphasizes a second track or aspect of U.S. policy, termed "support for the Cuban people," which includes the provision of humanitarian assistance. The CDA provided for several measures, including improvement in U.S.-Cuban telephone links and expanded direct mail contacts. The Clinton Administration has stressed the importance of sustaining both tracks of its policy toward Cuba.

## Castro's Rise to Power

In 1956, Castro and his small "26th of July Movement"<sup>2</sup> returned to Cuba from exile in Mexico to actively oppose the dictatorship of Fulgencio Batista through a guerrilla campaign. The Batista government at first refused to take the revolutionaries seriously, but later reacted very strongly against Castro and other anti-Batista groups. This strong reaction elicited the increased hostility of wider sectors of the population and pressure from the United States government for Batista to leave office. In March 1958, as a reaction to the repressive steps of the Batista government, the United States declared an embargo on the shipment of arms and ammunition to Cuba. Batista fled the country on December 31, 1958.

The first revolutionary government in Havana--which was based upon a broad front of anti-Batista groups and led by Castro's 26th of July Movement--was quickly recognized by the United States on January 6, 1959. A series of trials and public executions of Batista collaborators immediately took place. Over the next 7 months, Castro supporters gradually displaced members of other less radical groups in the highest government positions. In May, an agrarian reform program, involving the expropriation of some foreign property, was undertaken. In June, Castro sponsored unsuccessful expeditions to Nicaragua, Haiti, and the Dominican Republic to overthrow their governments.

The Cuban government moved toward close relations with the Soviet Union in 1960, an action which caused U.S.-Cuba relations to deteriorate markedly. In February, the government signed a trade agreement with the Soviet Union, in which the Soviets promised to buy significant quantities of Cuban sugar over the next 4 years. On May 7, 1960, Cuba and the Soviet Union reestablished full diplomatic relations -- relations broken by Batista after his March 1952 coup. In June, U.S. and British oil refineries in Cuba refused to process crude oil sent by the Soviet Union, and the Cuban government retaliated by seizing the refineries. In July, President Eisenhower suspended most of the unused portion of the 1960 Cuban sugar quota for exports to the United States. Cuba responded by nationalizing the property of U.S. citizens and companies. By the end of August, the Castro government had seized all American-owned private property in Cuba.

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<sup>2</sup>The movement was named after the date of a 1953 attack by an armed opposition group led by Castro against the Moncada army barracks in Santiago, Cuba.

## **U.S.-Cuba Tensions Escalate**

In 1961 and 1962, tensions in U.S.-Cuba relations escalated. The United States broke diplomatic relations with Cuba on January 3, 1961, in response to a Cuban demand to decrease within 48 hours the size of the U.S. Embassy staff in Havana to 18 people. The Eisenhower Administration, however, also declared that the termination of diplomatic relations did not constitute abrogation of treaty rights regarding the U.S. naval station at Guantanamo Bay. (Cuba agreed to lease the base to the United States in 1903. Under a 1934 treaty which remains in force today, the U.S. presence can only be terminated by mutual agreement or by abandonment by the United States, according to the Department of State.)

U.S.-Cuba relations continued to deteriorate under the Kennedy Administration. In April 1961, the Administration sponsored the ill-fated Bay of Pigs invasion by anti-Castro Cuban exiles. In December, Fidel Castro publicly declared himself to be a Marxist-Leninist. In February 1962, the Kennedy Administration imposed a comprehensive trade embargo because of the Castro regime's expropriation of U.S. property, because of Cuba's export of revolution, and because of its increasing ties to the Soviet Union. Tensions between the United States and the Soviet Union also intensified in October 1962 when the United States confronted the Soviet Union over its attempts to place offensive nuclear missiles in Cuba. After the United States imposed a naval blockade on Cuba, the crisis ended with a Soviet decision to withdraw the missiles in exchange for assurances from the United States that it would not invade Cuba.

## **U.S.-Cuban Relations from the Ford To the Bush Administration**

In the 1970s, there was some movement toward normalization of relations following Cuba's deemphasis of exporting revolution. Under the Ford Administration, the United States modified its regulations on Cuba to permit U.S. subsidiaries in foreign countries to trade with Cuba with export licenses provided on a case-by-case basis. The measure was taken following action by the Organization of American States (OAS) which allowed each member state to determine for itself the nature of its relations with Cuba. (In 1964, the OAS had voted to suspend trade relations with Cuba because of its support for subversive activities in Venezuela.) U.S.-Cuba talks about the normalization of relations also began in 1975, but ended when Cuba sent thousands of troops to Angola to back the leftist faction in conflicts following that nation's independence.

The Carter Administration renewed efforts to improve relations and the two countries established "interests sections" in each other's capital in 1977. In the late 1970s, however, Cuba's military involvement in Angola and Ethiopia and its support for revolution in the Caribbean and Central America impeded improved relations with the United States. Moreover, the Mariel exodus of 1980, in which 120,000 Cubans flooded south Florida also strained U.S.-Cuba relations. U.S. officials were furious that criminals and mental patients, so-called "excludables," were among the Cuban exiles that Castro "encouraged" to leave.

Under the Reagan Administration, U.S.-Cuba relations remained tense because of Cuba's military involvement in Africa and its increasing support for revolutionary movements and governments in the Caribbean and Central and South America. In 1982, under the authority of the Export Administration Act of 1979, the Secretary of State added Cuba to the list of countries supporting international terrorism, an action which added further legislative restrictions to a range of potential trade and economic benefits to Cuba. The U.S.-led intervention in Grenada in October 1983 was a setback to Cuba's expanding involvement in the Caribbean. In 1984, the United States and Cuba reached an agreement for the return of Cuban "excludables" from the Mariel boatlift, but Cuba suspended the agreement in 1985 following the beginning of Radio Marti, U.S. Voice of America (VOA) radio programming designed to expand the flow of information to the Cuban people. In November 1987, when Cuba announced that it was going to allow the return of "excludables" to resume, riots broke out at a U.S. Federal prison holding Cuban inmates, but the policy of repatriation continued.

Under the Bush Administration, the United States began operating TV Marti, transmitting television programming to Cuba in the early morning hours, although Cuba has jammed the telecast since its inception. In the late 1980s and early 1990s, Cuba ended its military involvement in Angola and Ethiopia and its support of insurgencies in Central America. In January 1992, Castro announced that his government would no longer support such activities; instead, Cuban policy would focus on solving the nation's domestic problems.

The breakup of the Soviet Union effectively ended Cuba's client-state relationship with that nation and resulted in rapid deterioration of the Cuban economy. As this deterioration was taking place, Congress tightened sanctions on Cuba in 1992 through passage of the Cuban Democracy Act of 1992 (CDA), contained in the FY1993 defense authorization measure (P.L. 102-484, Title XVII). The law prohibits U.S. subsidiaries in third countries from trading with Cuba, and prohibits entry into the United States for any vessel to load or unload freight if it has engaged in trade with Cuba within the last 180 days. The Bush Administration had opposed the measure at first, but ended up supporting it after a bipartisan coalition in Congress backed the measure, and after Presidential candidate Clinton endorsed the bill. The Act also includes measures of support for the Cuban people, including provisions for improvement in phone service and direct mail delivery between Cuba and the United States.

### **Policy under the Clinton Administration<sup>3</sup>**

Under the Clinton Administration, the United States has essentially continued the policy of isolating the island nation politically and economically. The objective is to ensure that basic human rights are respected and democratic reforms enacted. The principal tool of U.S. policy remains a wide range of economic sanctions, including most prominently a comprehensive trade embargo that was tightened with the 1992 congressional approval of the CDA. President Clinton also tightened sanctions in

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<sup>3</sup>For information on U.S. policy toward Cuba and current legislative initiatives, see Cuba: Issues for Congress, CRS Issue Brief IB94005, by Mark P. Sullivan, updated regularly.

August 1994 in the midst of an exodus of Cubans fleeing to the United States. Cuba's shootdown of two U.S. civilian planes in February 1996 resulted in the Administration working with Congress for enactment of the Cuban Liberty and Democratic Solidarity Act, a legislative initiative containing a range of additional sanctions.

In addition to sanctions, the Clinton Administration has stressed the importance of a second track of U.S. policy toward Cuba, support for the Cuban people. The CDA, for example, also included measures of support such as direct U.S.-Cuban telephone links and the licensing of private humanitarian assistance. According to the Administration, the two-track policy of isolating Cuba, but reaching out to the Cuban people, meets both U.S. strategic and humanitarian interests. In October 1995, President Clinton announced initiatives designed to strengthen civil society in Cuba, including authorizing transactions for actives of human rights or nongovernmental organizations. In addition to the CDA, U.S. radio and television broadcasting to Cuba--Radio and TV Marti--also fall under the rubric of support for the Cuban people.

**Migration Crisis in 1994.** In August 1994, in the face of a dramatic escalation in the number of Cubans fleeing to the United States, the Clinton Administration made two policy changes regarding Cuba. First, on August 19, the President announced that Cubans fleeing to the United States would be interdicted and sent to the U.S. naval base at Guantanamo Bay.<sup>4</sup> Until the change in policy, most Cubans that arrived in the United States were able to adjust to permanent resident status after one year at the discretion of the Attorney General under the terms of the Cuban Adjustment Act of 1966. Second, on August 20, President Clinton announced four measures designed to limit the ability of the Cuban government to accumulate foreign exchange and to enable the United States to expand the flow of information to the Cuban people.<sup>5</sup> Most significantly, the President announced that cash remittances to Cuba would no longer be permitted. Previously, U.S. citizens could provide up to \$300 quarterly to their relatives in Cuba. Some reports estimate that these remittances have amounted to as much as \$400-500 million annually and were an important source of hard currency for the Cuban economy. The President's three other measures were: to restrict charter flights between Havana and Miami to those designed "to accommodate legal migrants and travel consistent with the purposes of the Cuban Democracy Act"; to use all appropriate means to increase and amplify U.S. broadcasts to Cuba; and to continue to bring before the U.N. and other international organizations evidence of human rights abuses.

On September 9, 1994, after more than a week of negotiations on the migration crisis, the United States and Cuba signed an agreement that stemmed the flow of Cubans fleeing to the United States by boat. In the agreement, the United States and Cuba agreed to facilitate safe, legal, and orderly Cuban migration to the United States, consistent with the 1984 migration agreement. The United States agreed to ensure that total legal Cuban migration to the United States will be a minimum of 20,000

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<sup>4</sup>Weekly Compilation of Presidential Documents. August 22, 1994. Vol. 30. No. 33. The President's News Conference (August 19, 1994). Pp. 1682-1683.

<sup>5</sup>Weekly Compilation of Presidential Documents. August 29, 1994. Vol. 30, No. 34. Statement on Cuba (August 20, 1994). Pp. 1696-97.



each year, not including immediate relatives of U.S. citizens. In a change of policy, the United States agreed to discontinue the practice of granting parole to all Cuban migrants who reach the United States, while Cuba agreed to take measures to prevent unsafe departures from Cuba.

In early May 1995, the Clinton Administration announced that it had reached another accord with Cuba under which the United States would parole the more than 30,000 Cubans housed at Guantanamo into the United States, but would intercept future Cuban migrants attempting to enter the United States by sea and would return them to Cuba. The two countries would cooperate jointly in the effort, and according to the Administration, "migrants taken to Cuba will be informed by United States officials about procedures to apply for legal admission to the United States at the U.S. Interests Section in Havana." Both countries also pledged to ensure that no action would be taken against those migrants returned to Cuba as a consequence of their attempt to immigrate illegally. The new accord provoked protests in Florida's Cuban American community, and some Members of Congress criticized the Administration's new policy strongly. (By January 31, 1996, the Department of Defense announced that the last of some 32,000 Cubans intercepted at sea and housed at Guantanamo had left the U.S. Naval Base, most having been paroled into the United States.)

**Easing of Some Restrictions in 1995.** In early October 1995, President Clinton announced several measures to ease some U.S. restrictions on travel and other activities with Cuba, with the overall objective of promoting democracy and the free flow of ideas. The new measures included: authorizing U.S. news media to open bureaus in Cuba; licensing U.S. nongovernmental organizations to provide assistance to Cuban nongovernmental organizations; and authorizing general licenses for transactions relating to travel to Cuba for Cuban Americans to visit close relatives once a year in humanitarian cases. Since the August 1994 restrictions, Cuban Americans wishing to travel for emergency reasons had to apply for a specific license from the Department of the Treasury, and an extensive backlog of cases had developed.

**Cuba's Downing of Two U.S. Civilian Aircraft.** Tensions in U.S.-Cuban relations escalated on February 24, 1996, when Cuban Mig-29 fighter jets shot down two Cessna 337s in the Florida Straits flown by four members of the Cuban American group Brothers to the Rescue. The group was known primarily for its humanitarian missions of spotting Cubans fleeing their island nation on rafts, but recently had become active in flying over Cuba and dropping leaflets. While the four crew members shot down were killed, two crew members from another plane with the group returned to Miami and claimed that their comrades had been shot down over international waters. Secretary of State Warren Christopher called the attack on a civilian plane a blatant violation of international law, and the United States called upon the U.N. Security Council to impose sanctions. Cuban spokesmen claimed that the incidents occurred within Cuban airspace and that the pilots were warned on this and many previous occasions. They claimed to have unequivocal proof in the form of debris from the wreckage, radio recordings, and information from Juan Pablo Roque (a former pilot with the group) that would demonstrate that the planes were in Cuban airspace. The Clinton Administration produced documents made by radar readings that the two Cessnas were over international water when they were shot down.

Cuba's downing of the two U.S. airplanes had an immediate and perhaps long-lasting impact on U.S. policy toward Cuba. President Clinton condemned the downing and the Administration worked to secure a February 27, 1996 U.N. Security Council statement strongly deploring Cuba's action. The statement noted that international law requires that states must refrain from the use of weapons against civil aircraft in flight and must not endanger the lives of persons on board and the safety of aircraft. It also requested the International Civil Aviation Organization (ICAO) to investigate the incident and reports its findings to the Security Council. (The ICAO completed its investigation in late June 1996, and concluded that the two planes were shot down over international waters.) Additionally, the President suspended all charter flights to Cuba indefinitely, imposed additional travel restrictions on Cuban diplomats in the United States, and limited visits by Cuban officials to the United States.

**Helms/Burton Legislation.** Most significantly, Cuba's downing of the airplanes resulted in the President working with Congress to secure passage of the Cuban Liberty and Democratic Solidarity Act, (P.L. 104-114, H.R. 927) a congressional initiative imposing additional sanctions on Cuba.

As signed into law March 12, 1996, the so-called Helms/Burton legislation on Cuba (so dubbed for its primary sponsors) contains three significant provisions. First, in **Title III**, the law allows U.S. nationals to sue for money damages in U.S. Federal court those persons that traffic in property confiscated by the Cuban government. It extends the right to sue to Cuban Americans who became U.S. citizens after their properties were confiscated. The President has authority to delay implementation for a period of six months at a time if he determines that such a delay would be in the national interest and would expedite a transition to democracy in Cuba. The title would first become effective August 1, 1996 unless the President exercised his suspension authority. The President is also authorized to suspend the right to file suits under Title III for six-month periods.

Second, **Title IV** of the law denies admission to the United States to aliens involved in the confiscation of U.S. property in Cuba or in the trafficking of confiscated U.S. property in Cuba. This includes corporate officers, principals, or shareholders with a controlling interest of an entity involved in the confiscation of U.S. property or trafficking of U.S. property. It also includes the spouse, minor child, or agent of aliens who would be excludable under the provision. Third, a provision in Title I, **Section 102(h)**, codifies all existing Cuban embargo regulations. No presidential waiver is provided for any of these codified embargo provisions, but the President is authorized to take steps to suspend the embargo (and the right to file suits) if he determines that a transition government is in power and that such steps contribute to democracy in Cuba. This provision is significant because of the long-lasting effect on U.S. policy options toward Cuba. In effect, the Clinton Administration and subsequent administrations will be circumscribed in any changes in U.S. policy toward Cuba.

In addition to the three provisions mentioned, Title I of the law has several other notable provisions. **Section 103** of the law prohibits loans, credits, or other financing by any U.S. national, U.S. agency, or permanent resident alien for financing transactions involving any property confiscated by the Cuban government, the claim to which

is owned by a U.S. national. **Section 106(d)** withholds U.S. assistance from Russia by an amount equal to the sum of assistance and credits provided (on or after the enactment of this provision) in support of the Russian intelligence facility at Lourdes, Cuba. However, the provision includes a presidential waiver if such assistance to Russia is in the U.S. national security interest, and if the President certifies that Russia is not sharing intelligence data collected at Lourdes with officials or agents of the Cuban government. **Section 104** requires the United States to vote against Cuba's admission to the international financial institutions (IFIs) until a democratic government is in power. It also reduces U.S. payments to any IFI if it approves a loan or other assistance to Cuba over the opposition of the United States. Finally, **Title II** of the law contains numerous conditions for determining when a "transition" government and a "democratic" government is in power in Cuba, conditions which would qualify Cuba for various types of U.S. assistance and would lead to suspension of U.S. trade sanctions on Cuba.

On July 16, 1996, President Clinton announced that he would allow Title III of the Cuban Liberty and Democratic Solidarity Act to go into effect on August 1, 1996, but at the same time he announced that he was suspending, for a six-month period (until February 1, 1997), the right of individuals to file suit against those persons trafficking in confiscated U.S. property in Cuba. According to U.S. officials, liability for trafficking would go into effect on November 1, 1996, and would put foreign companies in Cuba on notice that they face prospects of future lawsuits and significant liability in the United States. During the six-month period, President Clinton stated that his Administration would work to build support from the international community on a series of steps to promote democracy in Cuba, including the appointment of a special envoy. A month later, on August 16, 1996, the President announced that he had appointed Stuart Eizenstat, a Department of Commerce Undersecretary for International Trade, as a special envoy to engage U.S. allies over the next six months on concrete measures to advance democracy in Cuba. Eizenstat said the United States was looking for agreement on measures to pressure Castro to make political and economic reforms and respect human rights.

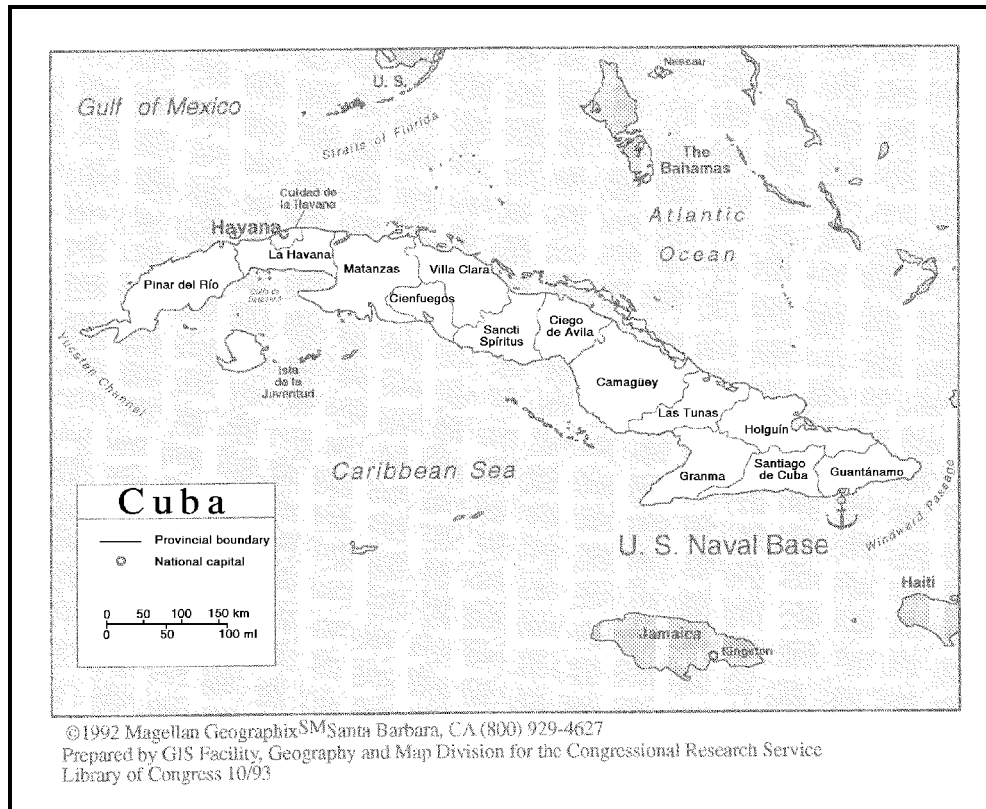
With regard to Title IV of the legislation excluding aliens from the United States who have confiscated or trafficked in confiscated U.S. property, the State Department sent letters in the summer of 1996 to several executives of *Sherritt International*, a Canadian mining company, and *Grupos Domos*, a Mexican telecommunications company. The letters stated that they would be excluded from entrance into the United States, effective in 45 days.

Many U.S. allies -- including Canada, Japan, Mexico, and European Union (EU) nations -- have strongly criticized the enactment of the Cuban Liberty and Democratic Solidarity Act. They maintain that the bill's provisions allowing foreign persons to be sued in U.S. court constitute an extraterritorial application of U.S. law that is contrary to international principles. U.S. officials maintain that the United States, which reserves to protect its security interests, is well within its obligations under NAFTA and the World Trade Organization (WTO). While EU and other U.S. allies welcomed the President's action in postponing lawsuits under Title III for a six-month period, concerns were still expressed about the possibility of future lawsuits and the visa restrictions in Title IV of the legislation. Canada and the EU have continued plans for countermeasures. In October 1996, EU members agreed to call for a dispute

settlement panel in the WTO, and the panel was created on November 20, 1996. The panel is expected to return its findings by mid-1997.

**Expulsion of Diplomats.** U.S.-Cuban tensions escalated in mid-August 1996 when Cuba expelled a U.S. diplomat in Havana. The diplomat, Robin Meyer, was the human rights officer for the U.S. Interests Section in Havana. She had close contacts with Cuban dissidents and human rights activists, and Cuba accused her of giving advice and support to the Cuban dissidents, including the distribution of anti-government literature. In response to Cuba's action, on August 19, 1996, the United States announced that it would expel a Cuban diplomat in the United States, Jose Luis Ponce.

## Cuba: Map and Basic Social and Economic Statistics



Population	10.9 million (1995)
Ethnic Composition	Mulatto 51%, European 37%, African 11%, Chinese 1% (1995)
GDP (purchasing power parity)	\$14.0 billion (1994)
Per Capita GNP	\$1,260 (1994)
Life Expectancy	76 (1994)
Adult Literacy	96% (1995)
Infant Mortality (per 1,000 live births)	65 (1960); 12 (1993)
Exports	\$5.4 billion (1989); \$1.4 billion (1994)
Imports	\$8.1 billion (1989); \$2.0 billion (1994)

Sources: Population, ethnic composition, GNP, and per capita GNP figures are drawn from the CIA's *World Factbook 1995*. Life expectancy and literacy rates are drawn from the World Bank's *World Development Report 1996*. Infant mortality rates are drawn from the United Nation Development Programme's *Human Development Report 1996*. Export and import figures are drawn from the CIA's *Cuba: Handbook of Trade Statistics, 1995* (November 1995).

## U.S. Sanctions Against Cuba<sup>6</sup>

Since the early 1960s, the United States has imposed a range of economic sanctions on Cuba, the most prominent of which is a comprehensive embargo prohibiting trade with Cuba. Other sanctions prohibit U.S. bilateral assistance to Cuba, prohibit U.S. economic assistance to countries or international organizations and programs supporting Cuba, prohibit U.S. arms sales or arms transfers to Cuba, prohibit Cuban sugar imports, and prohibit U.S. Export-Import Bank activities in Cuba. In addition, the Cuban Assets Control Regulations of the Treasury Department's Office of Foreign Assets Control (OFAC) set forth detailed and comprehensive restrictions on the blocking of Cuban assets in the United States and the transfer of assets to Cuba. These govern the prohibition on sending cash remittances to Cuba and restrictions on travel to Cuba.

The legislative and executive authorities implementing U.S. sanctions on Cuba have changed somewhat over time. Passage of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (P.L. 104-114; 22 U.S.C. 6021 *et seq.*), however, limited the President's discretion to lift the embargo when it stated that the economic embargo of Cuba, including the executive branch regulations that administer U.S. policy, would remain in effect until the President determined that a transition government was in power in Cuba and that incrementally lifting the embargo would contribute to a stable foundation for a democratically elected Cuban government [Sec. 102(h) of P. L. 104-114; 22 U.S.C. 6032(h)].

At the same time, the Cuban Liberty and Democratic Solidarity Act of 1996 also provides for U.S. assistance to a free and independent Cuba [Title II; 22 U.S.C. 6061-6067]. That law requires the President to develop a plan for infusing U.S. assistance into Cuba once either a transition government or a democratically elected government is in place. Such assistance would include food, medicine and medical supplies, and even military aid to help the Cuban military forces adjust to operating as part of a democratic state. The law provides for a post-transition establishment of a U.S.-Cuba Council to address bilateral trade issues. The law, most importantly, lays out the standards that must be met for the President to dismantle the entire sanctions regime the U.S. holds for Cuba today.

The discussion below briefly sets forth the history of authorities of these sanctions, including their current status.

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<sup>6</sup>Prepared by Dianne E. Rennack, Foreign Affairs and National Defense Division.

## Prohibiting U.S. Economic Foreign Aid to Cuba (U.S. Bilateral Assistance)

All assistance to Cuba was prohibited effective May 14, 1960 [Section 552 of the Mutual Security Act of 1954, as added by Section 401(m) of the Mutual Security Act of 1960].

Most sections of the Mutual Security Act were repealed with enactment of the Foreign Assistance Act of 1961 on September 4, 1961, and with subsequent passage in 1968 of the Foreign Military Sales Act (renamed the Arms Export Control Act). The restriction on assisting Cuba was continued, however, in section 620(a) of the Foreign Assistance Act [22 U.S.C. 2370(a)]. Section 620(a)(3) also prohibited aid to any other country found to be aiding the Government of Cuba; this latter restriction concerning third countries was repealed in 1977.

Section 620(a)(1), as currently stated, provides that: "No assistance shall be furnished under this Act to the present government of Cuba." The section goes on to authorize the President "...to establish and maintain a total embargo upon all trade between the United States and Cuba." President Kennedy exercised this authority on February 3, 1962, when he proclaimed an embargo on trade between the United States and Cuba.<sup>7</sup>

Section 620(a)(2) of the Foreign Assistance Act, added by the Foreign Assistance Act of 1963, in part, forbids the provision of aid to Cuba until the President determines that property taken from U.S. citizens or commercial entities had been returned or that equitable compensation had been made for confiscated property.

Section 620(f) of the Foreign Assistance Act of 1961 [22 U.S.C. 2370(f)], added by the Foreign Assistance Act of 1962 on August 1, 1962, generally prohibits all assistance--except for American schools and hospitals abroad--to Communist countries, and currently identifies six countries as Communist, among them Cuba. The President is authorized to waive the restriction if he reports to Congress that: aid is vital to U.S. national security; the recipient country is not controlled by the international Communist conspiracy; or that aid would promote the country's independence from international Communism. Congress reaffirmed the President's authority to waive this prohibition in 1985 by rewriting section 620(f) and adding a paragraph that, in part, encourages the President to weigh whether the potential aid recipient is "...fostering the establishment of a genuinely democratic system, with respect for internationally recognized human rights." The 1962 foreign assistance appropriations act similarly restricted appropriations for Cuban assistance for that fiscal year, as did the annual foreign assistance appropriations acts for each fiscal year through FY 1970.

Section 620(t) of the Foreign Assistance Act of 1961 [22 U.S.C. 2370(t)], added by the Foreign Assistance Act of 1967 on November 14, 1967, prohibits aid to any country that has broken diplomatic relations with the United States or with which the United States has broken relations. The United States broke diplomatic relations with

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<sup>7</sup>Presidential Proclamation No. 3447, February 3, 1962 (27 F.R. 1085; 22 U.S.C. 2370 note).

Cuba on January 3, 1961, in response to Cuba's demands to cut dramatically the size of the U.S. Embassy staff in Havana on very short notice.<sup>8</sup>

Since 1974, funds for direct aid or reparations have been prohibited to certain countries by annual foreign assistance appropriations acts and continuing resolutions. Since 1989, Export-Import Bank loans, credits, insurance or guarantees have been included in the prohibition. Cuba was added to the list of restricted countries in 1977. The prohibition on direct assistance or reparations is continued through Fiscal Year 1997 in section 507 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1997 (Section 101(c) of Title I of P.L. 104-208).

On February 26, 1982, the Secretary of State added Cuba to the list of countries supporting international terrorists [under authority of section 6(j) of the Export Administration Act of 1979, as amended; 50 U.S.C. App. 2405(j)(1)(a)]<sup>9</sup> for its complicity with the M-19 Movement in Colombia. Being listed as a supporter of international terrorism excludes Cuba from consideration for bilateral assistance appropriated in annual foreign assistance appropriations acts--as required most currently in section 527 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Section 101(c) of Title I of P.L. 104-208). Identifying Cuba as a supporter of international terrorism, furthermore, invokes a prohibition on the wide range of foreign assistance options listed under section 620A of the Foreign Assistance Act of 1961 [22 U.S.C. 2371]--including assistance under the Peace Corps Act, the Agricultural Trade Development and Assistance Act of 1954 (P.L. 83-480), and the Export-Import Bank Act of 1945.

Section 109 of the Cuban Liberty and Democratic Solidarity Act of 1996 [22 U.S.C. 6039], however, waives all other provisions of law (except notification requirements in the Foreign Assistance Act of 1961 [22 U.S.C. 2394-12] and the annual foreign operations appropriations Acts) to authorize the President to provide support to individuals and independent nongovernmental organizations working to build democracy in Cuba. Such support may take the form of publications and informational materials, humanitarian assistance to victims of political repression and their families, assistance to democratic and human rights groups in Cuba, and the financing of visits and permanent deployment of independent international human rights monitors in Cuba.

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<sup>8</sup>Keesings Contemporary Archives, 1961-1962. P. 17910.

<sup>9</sup>47 F.R. 16623.



## Prohibiting U.S. Economic Aid to Countries or International Organizations/programs Supporting Cuba (U.S. Multilateral Assistance)

Foreign assistance appropriations acts as early as 1960 prohibited aid to third countries or to multilateral organizations found to be providing economic or military assistance to Cuba. The earliest version of section 620 of the Foreign Assistance Act of 1961 punished third countries for trading with Cuba. Most of this language was repealed, piece by piece, beginning in the mid-1960s. Today, third-country restrictions are couched in prohibitions on indirect aid, limitations on U.S. contributions to multilateral organizations and international financial institutions that aid Cuba or certain projects in Cuba, prohibitions on assistance to countries that, in turn, assist Communist countries or countries harboring and supporting international terrorists, or countries that assist particular projects in Cuba. Most recently, the Cuban Democracy Act of 1992 authorizes the President to deny foreign assistance to any country assisting Cuba [Section 1704(b) of the Cuban Democracy Act; 22 U.S.C. 6003(b)].<sup>10</sup>

The Secretary of State added Cuba to the list of countries supporting international terrorists in 1982 [pursuant to Section 6(j) of the Export Administration Act of 1979; 50 U.S.C. App. 2405]. Being listed as such excludes Cuba from consideration for international financial institutions' support under section 6 of the Bretton Woods Agreement Act Amendments, 1978 [22 U.S.C. 286e-11]. Section 551 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 [Section 101(c) of Title I of Public Law 104-208], further excludes third countries from consideration for U.S. foreign assistance if it is determined that they are supporting a country on the terrorism list under section 40(d) of the Arms Export Control Act [22 U.S.C. 2780], currently including Cuba.

Section 307 of the Foreign Assistance Act of 1961 [22 U.S.C. 2227], added in 1985, withholds the U.S. proportionate share to international organizations conducting programs in specific countries, among them Cuba.<sup>11</sup> Section 516 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1997, further authorizes the President to use his discretion in applying the prohibition

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<sup>10</sup>Assistance in this case includes any program authorized by the Foreign Assistance Act of 1961 and the Arms Export Control Act. The former encompasses development assistance, security-related economic assistance, narcotics control assistance, and military assistance including education and training. The latter includes U.S. government foreign military sales, credits, guaranties, and exchanges. The CDA also prohibits forgiveness or reduction of Cuba's debt to the U.S. government. The Cuban Liberty and Solidarity Act added a clause to the CDA to prohibit any exchange, reduction, or forgiveness of Cuban foreign debt in exchange for interest in any Cuban property, investment or operation.

<sup>11</sup>Section 109(b) of the Cuban Liberty and Democratic Solidarity Act [22 U.S.C. 6039], however, does require the President to encourage the Organization of American States (OAS) to establish a "special emergency fund for the explicit purpose of deploying human rights observers, election support, and election observation in Cuba," and apportsions not less than \$5 million of U.S. voluntary contributions to the OAS to be applied solely for this special fund.

provided in section 307 to Communist countries listed in section 620(f) of the Foreign Assistance Act of 1961. Foreign assistance appropriations acts have included this discretionary authority annually since 1985.

Congress first enacted a ban on indirect aid to Cuba in section 560 of the Foreign Assistance and Related Programs Appropriations Act, 1987. Since then, a ban has been incorporated into foreign assistance appropriations acts annually. Most recently, section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Section 101(c) of Title I of P.L. 104-208), prohibits the use of any funds appropriated under the Act for indirect assistance or reparations to Cuba and certain other countries unless the President certifies that the withholding of funds is contrary to the U.S. national interest. The President has issued such a certification annually since 1988 waiving this prohibition, though not particularly because of the restriction on Cuba.

Section 498A of the Foreign Assistance Act of 1961 [22 U.S.C. 2295a], added in 1992 and amended in 1996, conditions U.S. assistance to any government of an independent state of the former Soviet Union on that government's termination of all support for, withdrawal of troops from, and closing of military and intelligence facilities--including particularly those facilities at Lourdes and Cienfuegos--in Cuba. Effective in 1996, U.S. assistance may be reduced by an amount equal to any assistance or credit any former Soviet state provides to support intelligence facilities in Cuba. Also effective in 1996, U.S. foreign assistance--including agricultural and food assistance--may be withheld or reduced for any country that assists Cuba in the completion of its nuclear power facility at Juragua, an area deemed to be prone to earthquakes by the U.S. Geological Survey [Section 111(b) of the Cuban Liberty and Democratic Solidarity Act of 1996; 22 U.S.C. 6041].

In 1996, the conditionality in U.S. foreign assistance to former Soviet states laid out in section 498A of the Foreign Assistance Act was broadened also to require that the President determine and certify to Congress that any former Soviet state being considered for foreign assistance is not engaged in or providing assistance for nonmarket based trade with the Cuban government. "Nonmarket based trade" is broadly defined to include "exports, imports, exchanges, or other arrangements that are provided for goods and services..." as well as favorable trade terms, preferential tariff rates, grants, concessional prices, guaranties, insurance, subsidies, reduced or subsidized transportation costs, postponement of payment, or any forgiveness of debt.

The President is authorized to deny assistance under the Foreign Assistance Act, assistance or sales under the Arms Export Control Act [secs. 38 and 40: 22 U.S.C. 2778, 2780], and debt forgiveness or debt reduction, to any country assisting Cuba, pursuant to the Cuban Democracy Act of 1992 [Section 1704: 22 U.S.C. 6003]. In 1996, this Presidential authority was expanded to include denying foreign assistance to any country that enters into an exchange, reduction, or forgiveness of debt with Cuba where the country receives in return any interest in a property, investment, or operation of the Government of Cuba, or of a Cuban national.

The Secretary of the Treasury is required to instruct U.S. executive directors in international financial institutions<sup>12</sup> "to use the voice and vote of the United States to oppose the admission of Cuba as a member of such institution[s]..." until the President determines that Cuba is making a transition to democracy. The Secretary is further required to protest any time an international financial institution makes a loan or assistance grant to Cuba, by withholding an amount equal to the loan or grant in question from the United States' contribution to that bank [Section 104 of the Cuban Liberty and Democratic Solidarity Act; 22 U.S.C. 6034].

## Prohibiting Arms Sales or Arms Transfers to Cuba

Citing Cuba's armed incursions into various countries, the Department of State announced in a statement issued on October 27, 1959, that because of Cuba's actions "the United States was unable to return to its traditional policy of licensing the export of arms with the assurance that they would be employed solely for legitimate purposes of defense." In addition, the statement emphasized the policy decision was "not directed against the Government of Cuba; rather it [was] based solely on the obligation of the United States to help maintain peace in the area."<sup>13</sup> The 1960 restriction in exports under the Export Administration Act of 1949, the 1961 passage of restrictions in the Foreign Assistance Act, and the 1962 trade embargo declared by the President also blocked U.S. arms transfers to Cuba. In October 1962, the President further prohibited the delivery of offensive weapons to Cuba [Proclamation No. 3504; October 23, 1962; 27 F.R. 10401; 50 U.S.C. App. 1].

On August 27, 1986, section 40 was added to the Arms Export Control Act (AECA) [22 U.S.C. 2780] to prohibit access to certain munitions items--through sale, lease, loan, grant, or any other means--for any country that the Secretary of State identified as a supporter of international terrorism--including Cuba since 1982. Under the authority of several sections of the AECA, the Department of State regulates arms exports and promulgates the International Traffic in Arms Regulations [22 CFR 126.1]. Cuba is explicitly cited both as a country prohibited from consideration for arms export licensing (22 CFR 126.1(a)) and as supporter of international terrorism (22 CFR 126.1(d)), and therefore prohibited from consideration.

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<sup>12</sup>In this case, the law defines "international financial institution" as the International Monetary Fund, the Inter-American Development Bank, and the World Bank Group--the International Bank for Reconstruction and Development (World Bank), the International Development Association, the International Finance Corporation, the Multilateral Guaranty Agency.

<sup>13</sup>"U.S. Expresses Concern to Cuba Over State of Relations." Department of State Bulletin, vol. XLI, no. 1064, November 16, 1959. P. 717.

## Prohibiting Commercial Trade with Cuba

The United States responded to Cuba's nationalizing of property of U.S. citizens and companies and discriminatory trade practices in July 1960 by placing most U.S. exports to Cuba under validated license controls.<sup>14</sup> Certain nonsubsidized foods, medicines, and medical supplies, were excepted, under the authority of the Export Control Act of 1949. Subsequently, the Foreign Assistance Act of 1961 was enacted on September 4, 1961, wherein the President was authorized to impose an embargo against the island nation [Section 620(a)(1); 22 U.S.C. 2370(a)(1)]. Under the authority of that Act, the United States imposed a near total embargo on trade with Cuba effective February 7, 1962 [Presidential Proclamation No. 3447 of February 3, 1962; 22 U.S.C. 2370 note; 27 F.R. 1085].<sup>15</sup>

Certain foodstuffs, medicines, and medical supplies continued to be exempted from the embargo until May 14, 1964, when regulations allowing general licensing for such items were revoked.<sup>16</sup> Since then, validated licensing procedures for humanitarian shipments, medicine, some food, seeds, veterinarian supplies, and the exchange of informational materials, have required case-by-case consideration but still are generally allowed. Section 1705(d) of the Cuban Democracy Act (22 U.S.C. 6004(d)) requires that the President verify the use and recipients of medicines and medical supplies export from the United States, by means of on-site inspections in Cuba.

The Cuban Democracy Act further seeks to restrict Cuba's access to world goods or markets by imposing a 180-day denial of entry into U.S. ports for any vessel that had entered "a port or place in Cuba to engage in the trade of goods or services" [22 U.S.C. 6005].

Support for U.S. businesses investing abroad provided by the Overseas Private Investment Corporation (OPIC) is not available for investment in Cuba. OPIC insurance, guarantees and other forms of investment support are authorized in the Foreign Assistance Act of 1961, which generally prohibits most assistance from benefitting Communist countries, including Cuba [Section 620(f); 22 U.S.C. 2370(f)].

On May 24, 1962, the Tariff Classification Act of 1962 was signed into law, which declared Cuba to be a nation described in section 5 of the Trade Agreements Extension Act of 1951--that is, a nation "...dominated or controlled by the foreign government or foreign organization controlling the world Communist movement". Items grown, produced, or manufactured in Cuba, or goods imported from Cuba on or after May 24, 1962, therefore were not eligible for Most-Favored-Nation (MFN) status under section 350 of the Tariff Act of 1930. The Tariff Classification Act,

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<sup>14</sup>25 F.R. 10006; "United States Institutes Controls on Exports to Cuba," October 19, 1960. Department of State Bulletin, vol. XLIII, no. 1115, November 7, 1960. P. 715.

<sup>15</sup>U.S. President, 1961 - 1963 (Kennedy). "White House Statement Concerning the Embargo on Trade With Cuba," February 3, 1962. Public Papers of the Presidents. January 1 - December 31, 1962. Washington, U.S. GPO, 1963. P. 106.

<sup>16</sup>Department of Commerce amendment to 15 CFR 371.27 (29 F.R. 6381).

furthermore, made the 1902 Commercial Convention between Cuba and the United States inapplicable while Cuba fit the above description of Communist domination. The United States gave notice of its terminating the Convention on August 21, 1962, to be effective one year later, in keeping with the terms of the Convention.<sup>17</sup> [Section 401 of the Tariff Classification Act of 1962; 19 U.S.C. 1351 note. Section 350 of the Tariff Act of 1930, as amended; 19 U.S.C. 1351(b)].

United States trade policies were consolidated and overhauled with the enactment of the Trade Act of 1974 on January 3, 1975. The authority to deny MFN status to countries with nonmarket economies, in the Trade Agreements Extension Act of 1951, was continued in the Trade Act of 1974. Section 401 of the Trade Act of 1974 reaffirms the ineligibility of any country for nondiscriminatory trade treatment, if such ineligibility had been established earlier (i.e., in the case of Cuba, under the 1951 Act and the 1962 Act). Title IV of that Act [19 U.S.C. 2431 *et seq.*], furthermore, lays out what conditions a country must meet for a change in trade status--including liberalizing emigration policies and negotiating a 3-year renewable bilateral trade agreement with the United States.

Section 502(b) of the Trade Act of 1974 [19 U.S.C. 2462(b)] prohibits designating a country as a "beneficiary developing country"--granting eligibility for the generalized system of preferences (GSP)--if that country is Communist (unless MFN has been granted already, or other conditions are met); has nationalized, expropriated, or otherwise seized ownership or control of a U.S. citizen's property; aids or abets international terrorists; or denies internationally recognized workers rights.

Under current regulations, Cuba is denied MFN and GSP status, respectively, pursuant to General Headnotes 3(b) and 4(a) of the Harmonized Tariff Schedule of the United States (HTSUS). Cuba also is excluded from consideration for preferential treatment under the Caribbean Basin Economic Recovery Act by its absence in the law authorizing the beneficial trade consideration [Section 212 of the Caribbean Basin Economic Recovery Act, as amended; 19 U.S.C. 2702], and by its absence in General Headnote 7(a) of the HTSUS.<sup>18</sup>

The Secretary of State added Cuba to the list of countries supporting international terrorists in 1982. Certain trade relations, beneficiary developing country status, arms transfers, and other benefits are restricted for countries determined to be supporting international terrorism.

Executive branch regulations prohibiting exports to Cuba generally are promulgated by the Department of Commerce, Bureau of Export Administration, in the Export Administration Regulations [15 CFR 730 *et seq.*]. Under authority of section 6 of the Export Administration Act and the Trading With the Enemy Act,

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<sup>17</sup>Treaties and Other International Agreements of the United States of America, 1776-1949. Bevans. Department of State. 1971. P. 1106.

<sup>18</sup>Harmonized Tariff Schedule of the United States, reported by the U.S. International Trade Commission, pursuant to Section 1207 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3007).

licenses are required for exports to Cuba of virtually all items subject to Export Administration Regulations, excepting items addressed specifically by public law, such as informational materials and humanitarian donations. The Department of Commerce otherwise assumes a policy of license denial for export to Cuba. Medical supplies, specific telecommunications equipment, and exports from third countries to Cuba of non-strategic foreign-made products "that contain an insubstantial proportion of U.S.-origin components," however, are considered favorably on a case-by-case basis [15 CFR 746.2].

The export of technology, goods, services, materials, and training relating to nuclear energy (under the Atomic Energy Act) are overseen by the Nuclear Regulatory Commission of the Department of Energy [10 CFR 110.28 and 810.8]. Cuba is embargoed from all materials or technical support in this field on the basis of its links to international terrorists.

The Department of State issues licenses for the export of defense articles and services, under the authority of the Arms Export Control Act. Cuba is prohibited from receiving defense articles and services because of the Secretary's of State's determination as to its affiliation with international terrorists, and because of its inclusion on a list of certain countries for whom the United States denies "licenses, other approvals, exports and imports of defense articles and defense services" [22 CFR 126.1].

## Prohibiting Cuban Sugar Imports

An amendment in 1960 to the Sugar Act of 1948 authorized the President to determine the sugar quota for Cuba. President Eisenhower suspended most of the unused portion of the 1960 Cuban sugar quota,<sup>19</sup> citing the importance of diversifying U.S. supplies of sugar away from a nation which had "embarked upon a deliberate policy of hostility toward the United States."<sup>20</sup> A series of Presidential proclamations issued by Presidents Eisenhower and Kennedy suspended Cuba's sugar quota through mid-1962,<sup>21</sup> when restrictions under section 620(a) of the Foreign Assistance Act were put in place. Subsequent amendments to the Sugar Act of 1948 reduced the quota allocation to Cuba and, in some cases, extended authority to the President to set specific import amounts for Cuba.<sup>22</sup> The Sugar Act of 1948 expired at the end of 1974, and with it any quota for Cuba's importing sugar into the United States.

In 1963, the prohibition on Cuban sugar imports was placed in permanent law. Section 620(a) of the Foreign Assistance Act of 1961 was amended to forbid the

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<sup>19</sup>Presidential Proclamation 3355, July 8, 1960 (25 F.R. 6414).

<sup>20</sup>"President Reduces Cuban Sugar Quota for Balance of 1960." Department of State Bulletin, vol. XLIII, no. 1100, July 25, 1960. P. 140.

<sup>21</sup>Presidential Proclamations 3383 of December 21, 1960 (25 F.R. 13131); 3401 of April 6, 1961 (26 F.R. 2849); 3440 of December 7, 1961 (26 F.R. 11714).

<sup>22</sup>Public Law 86-592, 74 Stat. 330, July 6, 1960; Public Law 87-15, 75 Stat. 40, March 31, 1961; Public Law 86-535, 76 Stat. 158, July 13, 1962; Public Law 89-331, 79 Stat. 1271, November 8, 1965; and Public Law 92-138, 85 Stat. 381, October 14, 1971.

provision of aid or a sugar quota to Cuba until the President determined that property taken from U.S. citizens or commercial entities had been returned or that equitable compensation had been made for confiscated property [Section 620(a)(2) of the Foreign Assistance Act of 1961, as amended; 22 U.S.C. 2370(a)(2)].

The global annual sugar import quota is set by the Department of Agriculture in accordance with restrictions in current law. The Office of the U.S. Trade Representative (USTR) issues specific country allocations for sugars, syrups, and molasses; current guidelines exclude Cuba [15 CFR 2011; U.S. Note 3(a) and (b) to Chapter 17, HTSUS]. Beginning with the 1986-1987 quota year, and continuing today, quota allocations are denied to any country that is a net importer of sugarcane or sugar beets unless such country verifies that it does not import from Cuba to reexport to the United States [Section 902(c)(1) of the Food Security Act of 1985; 7 U.S.C. 1446g note].

## **Blocking Cuban Assets in the United States And Transfer of Assets to Cuba**

The most detailed and comprehensive restrictions, by far, are set out in the Cuban Assets Control Regulations of the Office of Foreign Assets Control (OFAC), Department of the Treasury. First directed by the President under Proclamation 3447 [February 3, 1962; 22 U.S.C. 2370 note; 27 F.R. 1085], pursuant to authority under section 5(b) of the Trading With the Enemy Act [50 U.S.C. App. 5(b)], and later also pursuant to section 101(b) of Amendments to the Trading With the Enemy Act [50 U.S.C. App. 5 note; December 28, 1977], the Secretary of the Treasury issued the Cuban Import Regulations on February 7, 1962.<sup>23</sup> These were superseded by a more comprehensive set of prohibitions--the Cuban Assets Control Regulations (CACR)--issued by the same office on July 9, 1963.<sup>24</sup> The CACR are updated continuously to reflect changes and adjustments in U.S. policy toward Cuba. Generally, the CACR block access to Cuban assets in the United States, prohibit U.S. individuals and businesses from conducting economic transactions with Cuba, and, since 1993, refuse port access to ships that are otherwise engaged in trade with Cuba [Cuban Assets Control Regulations, 31 CFR 515; port entry--Section 1706 of the Cuban Democracy Act; 22 U.S.C. 6005]. The Cuban Assets Controls Regulations have been extended annually since 1978, as required by the National Emergencies Act and Section 101(b) of Public Law 95-223 [50 U.S.C. App. 5 note].<sup>25</sup>

The CACR, until passage of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, could be adjusted--either tightening or easing the terms of the restrictions--to allow the President some discretion in administering U.S. policy toward Cuba. Section 102(h) of that Act, however, requires that the CACR, as they stood on March 12, 1996, remain in effect until the President determines that a

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<sup>23</sup>Cuban Import Regulations, 31 CFR 515, issued by Department of the Treasury, Office of Foreign Assets Control, February 6, 1962 (27 F.R. 1116).

<sup>24</sup>28 F.R. 6974.

<sup>25</sup>Current authority: Presidential Determination No. 96-43 of August 27, 1996 (61 F.R. 46529).

transition government is in power in Cuba and that incrementally lifting the embargo will contribute to a stable foundation for a democratically elected Cuban government [Section 102(h) of Public Law 104-114; 22 U.S.C. 6032(h)].

**Remittances.** Remittances--sending U.S. dollars to Cuba--and transactions incidental to travel to Cuba are regulated in the CACR. Dollar amounts permitted to be sent by family members or carried by travelers to Cuba have fluctuated over the years, but generally the trend has been to tighten and further restrict Cuba's access to U.S. hard currency. Throughout the late 1970s-early 1980s, family members could send up to \$500 to relatives in Cuba in each fiscal quarter. In 1991, this quarterly amount was reduced to \$300, and in 1994, remittances were disallowed altogether. Today, remittances require a specific license from OFAC, and "will be authorized only in circumstances where extreme humanitarian need is demonstrated, including terminal illness or severe medical emergency." One-time remittances of \$500 for fees and \$500 for travel may be made to close relatives for the purpose of emigrating to the United States [31 CFR 515.563, 515.564].

**Travel to Cuba.** Licenses for travel and the value of items permitted to be carried into Cuba became more restrictive over the same time period--either in determining the amount allowable to be spent per travel day, or in defining goods to be carried into Cuba. Changes in the regulations pursuant to the authority in the Cuban Democracy Act restricted transactions incidental to travel since 1992 to only those with humanitarian, religious, artistic, or educational agendas.<sup>26</sup> In 1994, travel terms were further restricted, requiring issuance of a specific license to travellers. Currently, travel to Cuba is permitted under general license (but still with severe limitations on one's ability to use U.S. dollars) to U.S. and foreign government and international organization employees traveling on official business, regularly employed journalists, and persons visiting close relatives in Cuba "in circumstances of extreme humanitarian need." The latter hardship cases may travel only once every 12 months. Specific licenses are still required for hardship cases to travel more often, for persons accompanying humanitarian donations, human rights investigators, those involved in the export or import of information or informational materials, and for those traveling for professional research, educational or religious activities [31 CFR 515.415-419].

After Cuba shot down two civilian aircraft traveling from the United States in 1996, President Clinton suspended all charter flights--including those carrying U.S. government officials--between the two countries. OFAC regulations currently provide guidance for "travel service providers" only to arrange for non-scheduled flights or voyages to, from or within Cuba [31 CFR 515.566]; the President's ban on such flights, however, is still in effect.

Unlicensed travel to Cuba is still possible through a third country, however, if a non-Cuban carrier is used, if arrangements are made with agents from third countries or with U.S. agents authorized by the Treasury Department, and if the traveler is "fully hosted" -- that is, spends no U.S. dollars that may end up in Cuba.

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<sup>26</sup>58 F.R. 34711.



**Other Travel Restricted.** Effective March 12, 1996, the Secretary of State is required to deny visas to enter the United States to individuals who the Secretary has determined to be involved in confiscated U.S. property in Cuba. Visas are denied to those who have confiscated property, as well as those who have trafficked in or converted confiscated property for personal gain. The policy is applicable to corporate officers, principals, or majority shareholders of an entity engaged in confiscated property. The policy also reaches spouses, children and agents of any excludable person [Title IV of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996; 22 U.S.C. 6091].<sup>27</sup> As noted above in the "Helms/Burton Legislation" section, the State Department sent letters in the summer of 1996 to several executives of two foreign companies, *Sherritt International* and *Grupos Domos*, stating that they would be excluded from entrance into the United States.

**Travel-related Transactions.** Travel-related transactions will be considered and licensed on a case-by-case basis, for "cases involving extreme humanitarian need to persons or persons living in the same household, who seek to travel to visit close relatives in Cuba..." more than once a year. Specific licenses may also be granted for only those persons "...for humanitarian reasons based on a demonstrated compelling need to travel, for professional research and similar activities..., for free lance journalism..., for clearly defined educational activities..., for religious activities, for activities of recognized human rights organizations investigating human rights violations, or for purposes related to the exportation, importation, or transmission of information or informational materials".<sup>28</sup> These licensed travelers are held to travel expenses of no more than \$500 in a calendar year, expenses of \$100 per day, and may return to the United States with purchases not to exceed \$100 [31 CFR 515.569]. Specific licenses may be issued on a case-by-case basis to authorize transactions exceeding limits otherwise laid out in the CACR for educational exchange participants from both Cuba and the United States [31 CFR 515.573], and for human rights organizations and individuals and nongovernmental organizations engaged in activities "intended to strengthen civil society in Cuba..." [31 CFR 515.574].

**Establishment of U.S. News Bureaus in Cuba.** United States news services have not had news bureaus resident in Cuba since 1969, when Associated Press was expelled. Section 114 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 [22 U.S.C. 6044] could change that. The section authorizes the President to establish and implement a reciprocal exchange of news bureaus between the United States and Cuba. The following conditions must be met: the exchange must be fully reciprocal; the Cuban government must agree not to interfere with U.S. journalists while in Cuba; the Cuban government must further agree not to interfere with hiring or assignment decisions of the U.S. news bureaus in Cuba; the U.S. Department of the Treasury must ensure, through licensing, that only accredited

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<sup>27</sup>Department of State, Bureau of Inter-American Affairs, issued guidelines for the implementation of Title IV in Public Notice 2403 of June 12, 1996 (effective June 17, 1996) (61 F.R. 30655).

<sup>28</sup>31 CFR 515.560; 59 F.R. 44884. Related sections in the Code of Federal Regulations include: 31 CFR 515.416 [guidelines for professional research], 31 CFR 515.417 [guidelines for free-lance journalists], 31 CFR 515.418 [guidelines related to telecommunications], and 31 CFR 515.419 [guidelines related to educational activities].

journalists, regularly employed as such, travel to Cuba on behalf of U.S. news bureaus; and the Cuban government must agree not to interfere with any telecommunications transmissions or distribution of publications of U.S. news bureaus. To date, no news bureaus have in fact been established in either country under this section. Several U.S. news services have petitioned the Cuban government for access; Cable News Network (CNN) has been approved by the Cuban government to open a bureau in Havana and is awaiting authorization from the U.S. government.

## **Prohibiting U.S. Export-Import Bank Activities in Cuba**

The Export-Import Bank was prohibited from extending or guaranteeing credits for U.S. exporters to Communist countries, beginning in 1964 by annual foreign assistance appropriations acts, unless the President determined that it was in the national interest and so reported to Congress [Section 507 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995; August 23, 1994]. In 1968, the Export-Import Bank Act of 1945 was amended to include the ban and Presidential waiver authority at section 2(b)(2). In October 1986, section 2(b)(2) of that Act was restated and expanded to prohibit Export-Import Bank guarantees, insurance, or credits for any purchase by Marxist-Leninist countries, including Cuba [Section 2(b)(2) of the Export-Import Bank Act of 1945, 12 U.S.C. 635].

The Secretary of State added Cuba to the list of countries supporting international terrorists in 1982. Identifying Cuba as such invokes a prohibition on the wide range of transactions--including activities under the Export-Import Bank Act of 1945 [Section 620A of the Foreign Assistance Act of 1961, 22 U.S.C. 2371; as added by Section 303 of the International Security Assistance and Arms Export Control Act of 1976].

## **Prohibiting Transactions Related to Confiscated Property in Cuba<sup>29</sup>**

The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 seeks to discourage, and in some cases outright prohibit, investment in Cuba. The Act prohibits U.S. citizens, permanent resident aliens, and agencies from financing any transaction in Cuba that involves property on which another U.S. national holds a claim--that is, property that was confiscated by the current Cuban government. [Section 103; 22 U.S.C. 6033].

Title III of the Act [22 U.S.C. 6081-6085] allows U.S. nationals whose property in Cuba was confiscated on or after January 1, 1959 (the date of the assumption of power by Fidel Castro), to seek compensation for their property losses in federal court from those who traffic in such property.<sup>30</sup> Liability arises for trafficking that

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<sup>29</sup>This section was prepared by Jeanne J. Grimmer, Legislative Attorney, American Law Division.

<sup>30</sup>Section 302(a)(8) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of  
(continued...)

take place three months after Title III takes effect and thereafter. Defendants are subject to treble damages if (1) a U.S. national owns a claim to the property at issue that has been certified by the Foreign Claims Settlement Commission (FCSC) or (2) in the case of a plaintiff who does not have a certified claim, the plaintiff gives the potential defendant 30 days notice that a suit will be filed and the latter traffics in the subject property after this 30-day period. The statute prohibits certain individuals from filing Title III suits, including U.S. nationals who were eligible to file claims with the FCSC and failed to do so. United States nationals whose claim to property has not been certified by the FCSC may not bring a Title III action until March 13, 1998, two years after the date of enactment. While Title III generally went into effect August 1, 1996, the President exercised his authority under Section 306(c)(1) to suspend the right of individuals to bring Title III suits for six months, that is, until February 1, 1997. The President may suspend this right for additional six-months periods under Section 306(c)(2).

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<sup>30</sup>(...continued)

1996 [22 U.S.C. 6082(a)(8)] required the U.S. Attorney General to prepare a summary of the provisions under Title III. That report was filed on May 11, 1996, effective May 17, 1996, and may be found at 61 F.R. 24955.