

Statement of  
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United States Department of the Treasury  
before the  
Committee on Foreign Relations  
United States Senate  
Hearings on Travel and Trade with Cuba  
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{PRIVATE }I. Introduction{tc \l 1 "I. Introduction"}

Chairman Lugar, Members of the Committee,

Thank you for the opportunity today to address issues concerning travel and trade with Cuba. As you know, the Treasury Department's Office of Foreign Assets Control ("OFAC") is currently responsible for implementing, administering and enforcing 27 economic sanctions programs pursuant to Presidential and Congressional mandates in furtherance of the foreign policy and national security objectives of the United States. These programs are primarily directed at countries and groups of individuals, such as terrorist and narcotics traffickers, who engage in activities that are inimical to U.S. interests. Sanctions programs may be either comprehensive or selective, using the blocking of assets and/or trade or investment restrictions to accomplish their objectives.

The embargo on Cuba is one of the oldest, most comprehensive, complicated and challenging programs we administer, and one that generates considerable interest on the part of the public. The embargo continues to serve as an important part of the Administration's policy to support and encourage a peaceful transition to democracy and a free market in Cuba. OFAC plays a crucial role in the implementation, administration and enforcement of this policy. OFAC's jurisdiction extends to transactions by persons subject to U.S. jurisdiction, wherever in the world located, involving property in which Cuba or a national thereof has any interest whatsoever, direct or indirect. Such transactions are normally prohibited absent OFAC authorization. Because OFAC's role is focused primarily on its regulation of transactions involving persons subject to U.S. jurisdiction, and not on our multilateral and bilateral relations, I defer to my colleague from the State Department to address issues arising in that context.

In February of last year, I testified before the Subcommittee on Treasury and General Government Appropriations, Committee on Appropriations of the United States Senate, on the administration and enforcement of restrictions on travel to Cuba (the "2002 Hearings"). Since then, the Administration, and OFAC in particular, have instituted a number of additional measures

to facilitate authorized travel to Cuba and ensure that the prohibitions against unauthorized travel are properly enforced.

In the first instance, these measures involve our efforts across the board to promote the transparency, consistency and efficiency of our administrative process. In that regard, we have published two comprehensive sets of guidelines. The first sets forth criteria for submitting license applications to travel to Cuba pursuant to the eleven categories of activities for which licenses may be issued. The second sets forth enforcement procedures governing OFAC's response to violations of our sanctions programs, including those involving travel to Cuba.

We have also taken measures to implement current foreign policy initiatives, both with respect to the President's stated commitment to facilitate humanitarian aid to Cuba and in order to curb the abuse of licenses issued for travel related to non-accredited educational exchanges, where travelers were engaging primarily in tourist activities. A decision was made to eliminate this provision. Finally, we have made progress in carrying out certain statutory mandates to facilitate travel relating to the export of agricultural commodities to Cuba and to initiate hearings before an administrative law judge on the imposition of civil penalties for engaging in unauthorized travel-related transactions.

I am submitting for the record our brochure on Cuba entitled: "What You Need to Know About the U.S. Embargo," which covers all facets of this economic sanctions program, as well as an historical overview and chronology demonstrating how the policy has shifted in the past with respect to Cuba travel.

## II. Travel and Trade - Statutory Underpinnings

The Regulations prohibit most imports into the United States of Cuban-origin goods, as well as transactions by persons subject to U.S. jurisdiction wherever in the world located involving trade between third-countries and Cuba. My remarks, however, will center primarily on the issue of travel, since in this program, the Department of Commerce retains licensing jurisdiction over most export and reexport transactions from the United States directly to Cuba. OFAC's primary role in this regard is to regulate the manner of financing of such exports and license travel-related transactions relating to exports of the kind authorized by the Department of Commerce.

When I speak about travel during the course of this testimony, I refer specifically to restrictions on "*transactions* related to travel," rather than simply to "restrictions on travel." OFAC's jurisdiction under the Trading With the Enemy

Act ("TWEA") is to prohibit or regulate commercial or financial transactions, not travel *per se*.

The licensing criteria set forth in the Cuban Assets Control Regulations, 31 CFR Part 515 (the "Regulations"), implemented under the authority of this statute, address transactions incident to travel. OFAC's jurisdiction under TWEA to regulate these classes of transactions has withstood judicial review and been confirmed by the United States Supreme Court in *Regan v. Wald*, 468 U.S. 222 (1984).

As you are aware, over the years, Congress has been actively involved in the formulation of policy with regard to Cuba. In 1992, the Cuban Democracy Act (the "CDA") added civil penalty authority and required the creation of an administrative hearing process for civil penalty cases and the establishment of an OFAC office in Miami to assist in administering and enforcing the Cuba program. The Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 (the "Libertad Act") required that the underlying prohibitions set forth in the Regulations are to remain in place until there is a transition to a democratically-elected government in Cuba.

Most recently, in 2000, Congress passed the Trade Sanctions Reform and Export Enhancement Act (the "TSRA"), providing for the licensing of agricultural commodities, medicine and medical supplies to countries against which the United States maintains

trade prohibitions. TSRA also restricts the President's discretionary authority to authorize travel-related transactions to, from, or within Cuba. Under section 910 of the TSRA, that authority is restricted to travel-related transactions related to activities ". . . expressly authorized in paragraphs (1) through (12) of section 515.560 of title 31, Code of Federal Regulations, or in any section referred to in any of such paragraphs (1) through (12) (as such sections were in effect on June 1, 2000)." Any activity falling outside of these twelve categories is defined in this section of the TSRA as "tourism" and may not be the basis for issuing a license. A synopsis of these twelve categories of activities for which travel-related transactions are authorized pursuant to a general license or that may be authorized upon the issuance of a specific license is found at page nine of OFAC's *Comprehensive Guidelines for License Applications to Engage in Travel-Related Transactions Involving Cuba (the "Comprehensive Application Guidelines")*, a copy of which is being submitted for the record. I will also describe these categories shortly when I discuss how license applications are processed.

### III. Administrative Process

#### A. Licensing

Following through on a commitment I made at the 2002 Hearings, OFAC published the *Comprehensive Applications Guidelines* on its website on April 29 of this year, providing clearly articulated criteria for applying for licenses pursuant to each of the eleven categories of activities for which specific licenses may be granted. Examples are often included to provide additional guidance to applicants in furtherance of our goal to promote transparency and understanding by the public of OFAC's administrative process. The criteria set forth in the *Comprehensive Application Guidelines* seek to ensure that existing policy is clear and properly carried out through OFAC's licensing process. In addition, the *Comprehensive Application Guidelines* seek to eliminate the abusive practice of allowing unaffiliated persons to travel under a license issued to another party, and ensure that there exists a sufficient nexus between the qualifications of persons traveling under the authority of a license and the full-time agenda of authorized activities they will engage in while in Cuba.

*The Miami Office:* The largest volume of license applications processed by OFAC has traditionally involved travel to Cuba, and by far the largest portion of those applications - more than 90% - relates to visits to close relatives. The manual processing of these applications is time-consuming and often perfunctory because of the volume of submissions and the

policy in support of licensing family reunification, which is considered humanitarian *per se*. This category of travel is handled by OFAC's Miami office, which processed nearly 20,000 such applications during 2002. Again, because of the humanitarian nature of these travel requests, that office handles such requests promptly, usually completing and mailing the licensing response within 24 hours of receipt.

Another of the Miami office's primary responsibilities is to regulate certain activities of 202 entities nationwide, which are currently licensed to: (1) provide travel and carrier services to authorized travelers; and (2) remit funds to Cuban households on behalf of individuals who are subject to U.S. jurisdiction in the amounts and frequency authorized under the Regulations. Almost two-thirds of these licensed entities are headquartered in Miami.

Integral to this regulatory program is the licensing and compliance oversight of the direct charter flights to Cuba currently authorized from Miami, Los Angeles and New York to carry authorized travelers. The Miami office also investigates alleged violations of the Regulations and processes enforcement referrals from the U.S. Customs Service and the U.S. Coast Guard. I am submitting for the record a copy of OFAC's most recently issued *Circular*, setting forth guidelines applicable to the service providers.



*The Washington Office:* The remaining categories of travel-related license applications are processed at OFAC's main office in Washington, DC, and involve: 1) free-lance journalism; 2) professional research and attendance at professional meetings not covered by the general license; 3) educational exchanges involving academic study pursuant to a degree program; 4) religious activities; 5) participation in a public performances, clinics, workshops, athletic or other competitions, or exhibitions in Cuba; 6) support for the Cuban people as provided in the CDA; 7) humanitarian projects; 8) information collection activities of private foundations or research or educational institutes; 9) informational materials, agricultural and medical exports and other exports authorized by the Department of Commerce; and 10) exports of medicine or medical supplies and certain telecommunications equipment or reexports of U.S.-origin agricultural commodities from a third country to Cuba. The Washington office also processes all non-travel license applications involving Cuba, from blocked estates to international corporate acquisitions.

During calendar year 2002, OFAC's Washington, DC staff handled more than 1,000 license applications for travel in these various categories with support from OFAC's Office of Chief Counsel. With the advent of our *Comprehensive Application Guidelines*, new streamlined processing procedures and the

assignment of additional staff, we are now able to process most license applications not requiring interagency review within ten days of receipt, doing better than the goal of two weeks I set at the 2002 Hearings.

## B. Enforcement

By far the majority of OFAC's enforcement actions with respect to the Cuba embargo concern individuals who engage in unauthorized travel transactions related to Cuba tourism. There are a few organizations and individuals who view travel to Cuba as an act of civil disobedience, and there are passionate constituencies on both sides of this issue. We are often contacted by individuals concerned that OFAC take enforcement action against what they view as U.S. tourist travel to Cuba, as well as those who believe that any travel-related restriction is an infringement of their constitutional rights.

OFAC has worked closely with the U.S. Customs Service over the years in an effort to enforce Cuba travel restrictions. As returning Cuba travelers are identified by Customs agents and inspectors at ports of entry in the United States or at U.S. Customs Preclearance Facilities in Canada or the Bahamas, those travelers who do not claim a general or specific license from OFAC to engage in Cuba travel-related transactions are routinely referred to OFAC for investigation and civil penalty action.

*Enforcement Guidelines:* Regardless of the motivation underlying a travel violation, OFAC endeavors to enforce the law evenly and consistently in accordance with our responsibilities under the law. On January 29 of this year, we published in the *Federal Register* our *Economic Sanctions Enforcement Guidelines* (the "*Enforcement Guidelines*"), enhancing the transparency of OFAC's administrative process by providing in a public document a procedural framework for the enforcement of economic sanctions programs administered by OFAC. I am submitting for the record a copy of the *Federal Register* notice containing the *Enforcement Guidelines*.

The *Enforcement Guidelines* include a schedule of proposed civil monetary penalties for certain violations of the Regulations, including those involving unauthorized tourist travel-related transactions with Cuba. A schedule of proposed civil monetary penalties for unauthorized transactions involving the provision of travel, carrier and remittance services to Cuba is also set forth.

In addition to the *Enforcement Guidelines*, OFAC also published in the *Federal Register* on February 11, 2003, disclosure guidelines involving civil penalties. Since April, 2003, information on civil penalty proceedings against individuals is routinely provided on our website on an aggregate

basis, encompassing individuals who have engaged in unauthorized travel-related transactions involving Cuba.

*Enforcement Procedures:* Investigative findings are referred for civil penalty consideration with an administrative record containing evidence of transactions involving Cuba. OFAC has, in September of this year, revised its administrative penalty procedures to afford travelers to Cuba additional opportunities to present mitigating factors for consideration before a final penalty ensues. Administrative law judges will preside at the review of the penalty assessments if the right to an administrative hearing has been invoked.

I am submitting for the record a chart that depicts the number of Cuba travel cases opened for investigation and referred for civil penalty enforcement action from January 1996 through June 2002. As shown, 6,398 travel cases were opened for investigation and 2,179 cases were referred for civil penalty enforcement action.

Typical penalty assessments for unauthorized travel range from \$3,000 to \$7,500, but the majority of cases are settled in amounts reflecting the mitigation range outlined in the *Enforcement Guidelines*. A number of persons who are the subject of penalty proceedings, however, request administrative hearings, often with the assistance of public interest legal organizations.

#### IV. Humanitarian Aid and Educational Tourism

On May 20, 2002, President Bush announced the *Initiative for a New Cuba*, which is intended to encourage the Cuban regime to undertake fundamental political and economic reforms, and to provide additional support to Cuba's nascent civil society, so that Cuba can take its place in the Western Hemisphere's community of democracies. In announcing the Initiative, the President said that the "Administration will ease restrictions on humanitarian assistance by legitimate U.S. religious and other non-governmental organizations that directly serve the needs of the Cuban people and will help build Cuban civil society." This announcement followed the President's statement in January of 2002, affirming the continued enforcement of travel restrictions while calling for increased outreach to the Cuban people.

##### A. Humanitarian Aid

As a consequence of the President's policy direction to ease restrictions on humanitarian aid and to facilitate support for civil society in Cuba, OFAC has refined and updated its licensing procedures as reflected in the *Comprehensive Applications Guidelines*. OFAC has also prioritized this

category of license application over other travel categories and has dedicated staff for the purpose of ensuring rapid processing of these applications.

OFAC considers applications for humanitarian assistance both with regard to projects conducted in Cuba on an ongoing basis and with regard to the accompanied delivery of donated goods. Licenses are granted that involve the participation of government-affiliated organizations where the applicant can substantiate that the particular organization has demonstrated a degree of independence, and when the organizations can provide humanitarian assistance in an accountable and verifiable way directly to the Cuban people. More intense monitoring by the licensee, with a detailed plan for accountability and follow-up, will be necessary when considering involvement with government-affiliated organizations. Direct transfers of funds to the Cuban regime or its agencies to conduct activities generally will not be licensed, but payments such as hotel expenses, the purchase of essential project commodities in state stores, and customs duties are examples of expenditures that would normally be permitted.

## B. Educational Tourism

Tourism, in whatever form, is both inconsistent with current policy and prohibited by section 910 of the TSRA. OFAC's enforcement of the ban on tourist travel recently extended to the rescission of a regulatory provision implemented in 1999. This provision had originally been designed to allow structured, non-accredited educational exchanges to take place that promoted substantive people-to-people contact between U.S. and Cuban nationals. Our experience over the past few years, however, demonstrated that persons traveling to Cuba under the authority of these licenses were engaging primarily in tourist activities that consisted at best of "educational tours" designed to afford Americans an opportunity to see Cuba, involving minimal substantive contact with Cuban nationals.

This provision was part of a larger category of licensable educational activities under which OFAC continues to authorize academic study in Cuba pursuant to a degree program at an accredited U.S. academic institution. To date, OFAC has issued 760 two-year specific licenses to accredited U.S. colleges and universities for this purpose, as well as numerous licenses to individual undergraduate and graduate students seeking to pursue academic study in Cuba where their academic institution has not applied for an institutional license. OFAC will continue to

license educational exchanges pursuant to accredited academic activities.

Non-accredited educational exchanges taking place outside the structured curriculum of an accredited degree program, however, too often devolved into tourism. This was made evident when parties sought renewals of their licenses and reported on activities undertaken, as well as from information received from other sources and in the press. Licensed organizations typically advertised their trips on their websites, emphasizing the climate, music and dance, and seeing the art and architecture of Cuba. Very few ads focused on educational exchanges with the Cuban people. Press articles portrayed this category of travel as tantamount to tourism, and OFAC was increasingly in the position of having to justify its authorizations of activities that OFAC never intended to take place. I have only to cite to an article issued last Sunday in the travel section of the *Washington Post* in this regard, recommending that people act fast if they want to see Cuba by traveling under remaining licenses that have not yet expired. I am submitting this article and others like it for the record.

In addition, the original policy underlying this provision was undercut by restrictions imposed by the Cuban government on substantive and open interactions between U.S. and Cuban nationals. In 2002, we confirmed reports that groups traveling



to Cuba under these licenses were particularly vulnerable to Cuban government requirements for approval of their schedules and assignment of a tour guide or escort to the group. Contacts between members of these groups and Cuban nationals were casual at best, and were often limited to Cubans employed in government positions in the tourism industry. This practice subverted access to the Cuban people and diluted any meaningful educational exchange.

While many of the activities undertaken pursuant to these licenses could not necessarily be viewed as violations of the terms of those licenses, they were addressed through denials of renewal requests or tighter restrictions in new licenses. This resulted in lengthy and time-consuming exchanges with applicants, many of whom had developed expectations that they had a right to continue promoting tours of Cuba on the part of alumni associations and other interest groups.

In an effort to communicate our licensing policy and correct this situation, we issued application guidelines that characterized people-to-people contact as activity that would normally entail direct interaction between U.S. and Cuban individuals not affiliated with the Cuban government, and would normally not involve meetings with Cuban government officials. Pursuant to these guidelines, OFAC would evaluate, among other things, whether the U.S. program is structured to result in

direct and individual dialogue with the Cuban people and whether the proposed activities with the Cuban people are educational in nature, such as participation in joint activities that may include seminars, lectures and workshops. OFAC also evaluated whether each traveler would be fully participating in all of the proposed people-to-people activity.

Despite our efforts, the licenses continued to be used for tourism, plain and simple, with groups using their licenses to attract other unaffiliated parties to travel to sightsee in Cuba under the pretext of "educational exchange," a clear violation of § 910 of the TSRA. Moreover, the demand on OFAC staff generated by the administration of this one provision was interfering with other licensing responsibilities including the facilitation of humanitarian aid to Cuba. The provision was rescinded after lengthy consultations with and policy guidance from the State Department. I am submitting for the record a copy of the *Federal Register* notice amending the Regulations.

#### V. Agricultural Trade and ALJs

OFAC is in the process of carrying out two additional statutory mandates, one involving the facilitation of certain exports and the other the initiation of hearings before an administrative law judge on the imposition of civil penalties

for engaging in unauthorized travel-related transactions. Pursuant to the TSRA, OFAC issues licenses for the export of agricultural commodities, medicines and medical supplies to Iran, Sudan and Libya. The Department of Commerce, as I said earlier, authorizes the export of such goods to Cuba from the United States, but OFAC issues licenses for travel-related transactions in conjunction with exports to Cuba of the kind authorized by the Department of Commerce. I am pleased to inform you that we are current with respect to the processing of license applications to export these goods to Iran, Sudan and Libya as well as with respect to license applications to travel to Cuba in conjunction with sale of these goods that have been authorized by the Department of Commerce.

#### A. Agricultural Trade

Section 910 of the TSRA expressly provides for case-by-case review of license applications for travel in support of agricultural exports. Consistent with the TSRA, the Regulations provide that travel and other transactions that are directly incident to the "marketing, sales negotiation, accompanied delivery, or servicing of exports that appear consistent with the export licensing policy of the Department of Commerce" may be authorized by specific license.

Over the past twelve months, OFAC has issued over 200 licenses to travel to Cuba in conjunction with the sale of agricultural commodities, medicine and medical supplies on the part of producers, consultants, trade councils, state governments, seaport authorities, and cargo shipment services. Financing of these exports is restricted by the TSRA to payment of cash in advance or to financing by third-country financial institutions, except that such financing may be confirmed or advised by a United States financial institution. General transportation services relating to authorized exports are permitted by general license.

#### B. Administrative Hearings

Prior to 1992, OFAC lacked civil penalty authority to enforce the Cuban embargo. With the passage of the CDA in 1992, TWEA was amended to provide that civil fines of up to \$ 50,000 (now adjusted for inflation to \$55,000) could be levied for violations of the Regulations. The CDA also required that the Secretary of the Treasury impose such penalties "only on the record after opportunity for an agency hearing . . . with the right to pre-hearing discovery." In 1996, the LIBERTAD Act increased the number of categories of violations for which civil penalties may be sought to include all travel-related violations. Judicial review by Article III courts is available

once the Administrative Law Judge's civil penalty determination is made final.

An administrative review process has now been initiated with Administrative Law Judges ("ALJs") in place. The substantial majority of hearings concern Cuba travel-related violations by individuals. OFAC has contracted with two other federal agencies for the services of ALJs to conduct OFAC's civil penalty hearings.

As of today, I have forwarded more than 50 hearing requests to the Treasury Department's Office of General Counsel for hearings before these ALJs. I have also notified nearly 50 hearing requestors that I will sign Orders Initiating Proceedings in the near future. I will shortly sign Orders Initiating Proceedings with the cases en route to the ALJs. I have directed my staff to extend settlement offers in other cases pending acknowledgment of hearing requests where applicable criteria are met, including first and sole offenses and absence of aggravating factors.

Additionally, I have issued, in September 2003, revised regulations for the hearing process. These revised regulations increase over previous regulations the number of opportunities for U.S. persons to settle their penalty cases before final agency action.

## VII. Conclusion

OFAC currently has sufficient resources devoted to the Cuba program to ensure the timeliness of responses to license applications and the enforcement of the prohibitions with regard to unauthorized travel-related transactions. OFAC will continue to administer and enforce the restrictions on travel-related transactions involving Cuba in a manner that is timely, fair, and consistent with that law.

Thank you.