AGRICULTURAL TRADE WITH CUBA

HEARING

BEFORE THE

SUBCOMMITTEE ON TERRORISM, NONPROLIFERATION, AND TRADE

OF THE

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AGRICULTURAL TRADE WITH CUBA

WEDNESDAY, SEPTEMBER 9, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TERRORISM, NONPROLIFERATION, AND TRADE,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:05 p.m., in room 2200, Rayburn House Office Building, Hon. Ted Poe (chairman of the subcommittee) presiding.

Mr. POE. This subcommittee will come to order. Without objection, all members may have 5 days to submit statements, questions, and extraneous materials for the record, subject to the limitations in the rules.

In 1962, President John Kennedy first imposed the trade embargo on Cuba after Communist dictator Fidel Castro took over. Fifty years later, Cuba is still Communist, and the Castros are still in control. They continue to imprison political dissidents. They do not respect the human rights of their own people. And among other things, there are at least 6,000 claims of Americans who had their properties stolen by the Castro brothers and are not resolved, totaling about $8 billion.

This past December, the President announced that he would move to normalize relations with Cuba. Last month, the U.S. Embassy in Havana reopened for the first time in 54 years. News agencies are now reporting that the President plans to unilaterally lift travel restrictions to Cuba.

This hearing on agricultural trade with Cuba comes at a time when a lot of change in our policy toward Cuba. And I will reiterate, the hearing is about trade with Cuba.

In 2000, Congress carved out of JFK's trade embargo agricultural commodities so our farmers could export to Cuba. Exports rose, hitting about $685 million in 2008, making up 42 percent of the Cuban market. Since then, exports have dropped, U.S. wheat and rice farmers went from providing over 40 percent of Cuba's supply to now not supplying any. The U.S. has not exported rice since 2009 and wheat since 2011. Cuba gets its wheat and rice from Vietnam, Venezuela, and Brazil. Sometimes it is difficult to understand why.

Some of this very well may be because the Communist Cuban Government is manipulating the market. Maybe the Castro brothers don't want to buy American rice even though it is cheaper and it is certainly better than rice from other places in the world. We

know the Cuban Government already discriminates against our farmers.

Unlike with other foreign competitors, the Cuban Government forces American farmers to sell their goods to a state-owned company called Alimport. This requirement by the Cuban Government raises the cost of doing business for U.S. farmers, makes them less competitive against their foreign counterparts. There are other hurdles that give our farmers a competitive disadvantage.

Unlike foreign competitors, U.S. exporters cannot offer terms of credit to Cuban buyers. That means Cuba has to make all payments upfront in cash. If the U.S. Government allowed our exporters to offer terms of credit to Cuba, maybe our exporters would understand that the U.S. Government will not—let me say that again. If the U.S. Government allowed our exporters to offer terms of credit, our exporters understand that the U.S. Government will not bail them out if Cuba does not pay its debt. If our farmers want take that risk, then maybe we should let them take that risk.

It is already U.S. policy that agricultural goods are not subject to the embargo, but that restriction we have left in place makes it hard for our farmers to trade at all.

This half in and half out trading environment doesn't make much sense to me. It is clear that the U.S. could be a strong contender in the Cuban market. Before the embargo, Cuba was typically the largest commercial market for U.S. long grain rice exports. Cuba often took more than half the U.S. annual long grain sales and almost one-third of our total rice exports.

In my home State of Texas, I have represented many rice farmers. They grow long grain rice as they do in, I believe, Arkansas as well. When I got to Congress, I thought rice came in a box. So there is long grain rice; there is short grain rice. The markets for long grain rice were Iran, Iraq, and Cuba. Bummer. So they are looking for markets. Many rice farmers have literally gone out of business, and they are doing something else with their land.

U.S. exporters have an advantage over foreign competitors because of the distance between the United States and Cuba. It is about 100 miles. That means lower shipping costs and transit times, which are especially important when shipping perishable goods. Ports like Mobile, Alabama; Miami; New Orleans; and Houston will have an opportunity to being a major export. The Port of Houston is a natural gateway for trade with Cuba, because it has a lot of products that Cuba needs. Exporting to Cuba would also require no infrastructure because American exporters have a strong foothold in the Caribbean and the Latin American markets. The rice market has a lot of potential because U.S. exporters can provide high quality rice year round, other than suppliers like Vietnam.

It is clear our current policy when it comes to agricultural export to Cuba is not working. Cuba imports about 70 percent of its food. By law, our farmers have the freedom to export to Cuba, but in practice, the government seems to get in the way.

I look forward to hearing from our witnesses about how we can effectively implement already existing U.S. policy that allows agricultural exports to Cuba.

I will now yield to the ranking member from Massachusetts, Mr. Keating.

Mr. KEATING. Mr. Chairman, thank you for having this hearing. I also would like to thank our witnesses for being here today to discuss agricultural trade with Cuba, and it is fitting that we have representatives from the Department of Treasury, Agriculture, and Commerce with us this afternoon to give us their particular perspectives and on the benefits and opportunities that lay ahead of us.

This is obviously a time when the United States is reassessing its policy with Cuba. The administration has re-established diplomatic relationships with Cuba, removed Cuba's designation as a state-sponsored terrorism, and issued new regulations easing restrictions on travel, remittances, trade, and financial services.

The President has also stated he looks forward to engaging Congress in a debate about lifting the trade embargo. This is a debate to be met with optimism, restraint, and passion by supporters and opponents alike.

I understand the desire for a different relationship with Cuba and the excitement surrounding new commercial opportunities in the Cuban market. Currently, Cuba imports about 80 percent of its food; next to the European Union, China and Brazil are the countries that are the two highest suppliers. There is no denying that there are substantial opportunities for the United States businesses, particularly in the agricultural industry. However, I remain cautious with regard to how well-intended policies may impact those hurt most by the regime's policies, the Cuban people. Conditions on the island have not changed appreciably. The Cuban Government continues to jail political dissidents without just cause, engages in other human rights abuses, and fails to respect the rule of law. Fundamentally, we can agree that the Cuban Government does not afford Cuban people the political and economic freedom that they deserve.

My main concern with opening up agricultural trade is the same concern I have with respect to the possibility of increased trade with Cuba generally. Who benefits? While I look at our renewed relations with the island as an opportunity for new commercial endeavors, it is foremost an opportunity for the Cuban Government to demonstrate its commitment to reforms at home. And so I look forward to hearing from our witnesses concerning existing agricultural trade with Cuba, why U.S. agricultural exports to Cuba have decreased, and how the administration's recent policy and regulatory changes might impact agricultural trade with Cuba in the future.

Thank you, Mr. Chairman. I yield back.

Mr. POE. I thank the gentleman from Massachusetts.

The Chair is going to recognize other members that are present, even not on this subcommittee, but are here because of this hearing. The Chair will recognize each for 1 minute.

First will be the gentlelady from Florida, Ms. Ileana Ros-Lehtinen, the chair of the Middle East Subcommittee.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Chairman.

From an economic perspective, the very concept of trade and investment in Cuba is grounded in the misconception about how

business takes place on the island. In Cuba, every single foreign trade transaction has been with the Castro regime or individuals acting on behalf of the regime.

Since passage of the 2000 Trade Sanctions Reform and Export Enhancement Act, nearly $5 billion in U.S. agricultural and medical products have been sold to Cuba. It is an inconvenient truth, however, that all of those sales, all of them, by more than 250 privately owned U.S. companies were made to only 1 Cuban buyer, the Cuban regime.

According to our U.S. Department of Agriculture, itself, "The key difference in exporting to Cuba compared to other countries in the region is that all U.S. agricultural products must be channeled through one Cuban Government agency, Alimport." Exporting to Cuba is not about trading with small- or mid-sized farmers or businesses or manufacturers around the island, as some Americans would have you believe.

Little imported food or medicine ever makes it into the stores where Cubans shop, nor is it available on rationed cars. It is gobbled up by high-ranking officials inside the regime. And one last point, Mr. Chairman, the Castro regime has proven time and time again that it will not pay its bills. It has not paid its creditors, and it has not paid U.S. certified claim holders. And so we have put in place this cash-in-advance provision to protect U.S. agricultural industry and to ensure that U.S. businesses are paid. And I have a series of questions when I am allowed to ask our witnesses.

Thank you so much for the opportunity, Mr. Chairman.

Mr. POE. I thank the gentlelady.

The Chair will recognize Mr. Emmer from Minnesota for opening statement.

Mr. EMMER. Thank you, Chairman Poe and Ranking Member Keating. Thank you for holding this hearing, and I appreciate your leadership on this issue and allowing me to join my former committee to discuss an issue that I care about deeply.

My State of Minnesota was one of the first to send a delegation to Cuba after Congress made exceptions to the embargo for agricultural commodities in medical supplies in 2000. Cuba, who imports, as you heard, nearly 80 percent of its food is a natural market for American agricultural products. On a recent trip to Cuba, I met with several Cuban citizens and private business owners who want to increase trade with the U.S. because they are convinced this will create more opportunity for the Cuban people as a whole.

While your topic today involves a discussion of regulatory barriers to agricultural trade and the actions of government, this discussion and today's hearing is really about people, Americans and Cubans alike, who see renewed opportunities in expanding trade.

I thank the witnesses for their time and expertise, and I look forward to their testimony.

Thank you, again, Mr. Chairman. I yield back.

Mr. POE. The gentleman yields back.

The Chair recognizes the gentleman from Arkansas, Mr. Crawford.

Mr. CRAWFORD. Thank you, Chairman Poe and Ranking Member Keating for allowing me to join this subcommittee as a guest today.

Chairman Poe and I work closely together to identify opportunities for engagement with Cuba particularly as is applies to ag trade and specifically rice, as he mentioned. A little more than a year ago, we authored a letter to Treasury and OFAC requesting an easing of cash in advance for trade restrictions on exports to Cuba. I would like to thank Mr. Smith and your team for doing exactly what we asked in taking steps toward making U.S. ag more competitive in a country that is so close to our shores and imports about 80 percent of its food supply. While we have made progress on the executive level, I believe there is a lot more we can do, we can be doing here in Congress to further expand trade opportunities and permit travel.

As a member from the district where ag is the number one industry, I am focused on removing barriers to ag trades, so this hearing is very relevant to those efforts. And, again, I thank the chairman and ranking member.

Mr. POE. The gentleman yields back his time.

Without objection, all the witnesses' prepared statements will be made part of the record. And I would ask that each witness please keep your presentation to no more than 5 minutes. There is a light in front of you that will indicate that you can talk, you can slow down, and you can quit.

I will introduce each witness and then give them time for their opening statements. John Smith is Acting Director of the Office of Foreign Assistance Control at the Treasury Department, which is responsible for administering economic and trade sanctions. Prior to joining OFAC, Mr. Smith served as an expert to the United Nations and was a trial lawyer with the Department of Justice.

Mr. Karsting is an Administrator of the Foreign Agricultural Service, U.S. Department of Agriculture. Previously served more than 22 years on Capitol Hill working on appropriations, agriculture, and development issues.

Mr. Matt Borman is Deputy Assistant Secretary of the Bureau of Industry and Security at the Department of Commerce. Mr. Borman joined the Commerce Department in 1992 and has spent his career largely focusing on export implementation and enforcement.

Mr. Smith, we will start with you, and you have 5 minutes.

STATEMENT OF MR. JOHN SMITH, ACTING DIRECTOR, OFFICE OF FOREIGN ASSETS CONTROL, U.S. DEPARTMENT OF THE TREASURY

Mr. SMITH. Thank you, sir. Good afternoon Chairman Poe, Ranking Member Keating, and distinguished members.

Thank you for the invitation to appear before you today to discuss potential opportunities to expand agricultural trade with Cuba. I will be addressing key regulatory amendments made by Treasury's Office of Foreign Assets Control, or OFAC, in January to implement changes to U.S. policy toward Cuba announced by the President in December as well as the restrictions that remain in place.

The regulatory changes are intended to create opportunities for increased agricultural exports to Cuba among other benefits to U.S. business. These changes ease Cuba sanctions within the continuing

constraints of the embargo while advancing the administration's policy to further engage and empower the Cuban people.

The January rule changes benefit American exporters in at least five key respects. First, OFAC expanded the financing provisions of the regulations to allow America's agricultural exporters to be more competitive in selling their wares to Cuba. Second, OFAC broadened the ability of U.S. financial institutions to provide services and effectuate payments for exporters and others authorized to engage in trade with Cuba. Third, OFAC authorized trade delegations and exporters satisfying the conditions of our regulations to travel to Cuba and engage in associated authorized transactions without the need to apply to OFAC for a specific license.

Fourth, OFAC expanded certain humanitarian projects in Cuba, including those related to agricultural and rural development that promote independent activity.

And, finally, OFAC eased restrictions to better provide efficient and adequate telecommunication services between the United States and Cuba and to increase access to telecommunications in Internet-based services for the Cuban people.

I will talk about a few of these in more detail. As an initial matter, OFAC, as has been mentioned, modified the regulatory interpretation of the term, "cash in advance," which describes the financing requirement for agricultural trade between the United States and Cuba.

In addition, to improve the speed, efficiency, and oversight of authorized payments between the United States and Cuba, OFAC authorized U.S. banks to establish correspondent accounts at financial institutions in Cuba. This change was intended to ease the flow of authorized payments and eliminate the need for third-country payment structures, which should benefit U.S. exporters to Cuba.

Another of our changes is related to travel. OFAC's Cuba sanctions program is our only sanctions program that restricts travel to a country. The January regulatory amendments eased the travel restrictions by authorizing certain additional travel within the 12 existing categories of travel in our regulations without the need to apply for a specific license from OFAC.

Travel to Cuba for tourist activities, though, remains prohibited. The additional and expanded general licenses for travel were intended to make it easier for Americans to interact with the Cuban people and for trade delegations and authorized exporters to travel to Cuba to promote their products. Even with these changes that I have described, most transactions between the United States and Cuba, including most imports, exports, and other activities, remain prohibited.

As OFAC implements these regulatory changes, we will continue to enforce the Cuban sanctions program and take actions against violators as appropriate. The President's December announcement laid out a new course for our relations with Cuba, driven by a hope for a more positive future for the Cuban people. Our regulatory amendments to our Cuban assets control regulations in concert with the regulatory amendments that were issued by the Commerce Department mark significant changes to our Cuban sanctions that implement the new policy announced by the President. These changes are intended to benefit the Cuban people and help

them to freely determine their own future as well as to support U.S. business and American exporters to Cuba.

Thank you, and I would be happy to answer any questions.

[The prepared statement of Mr. Smith follows:]

Written Testimony on OFAC's Cuba Regulatory Changes of John E. Smith,
Acting Director of the Office of Foreign Assets Control,
United States Department of the Treasury

United States House of Representatives Committee on Foreign Affairs:
Subcommittee on Terrorism, Nonproliferation, and Trade
September 9, 2015

Good afternoon, Chairman Poe, Ranking Member Keating, and distinguished members of the subcommittee. Thank you for the invitation to appear before you today to discuss potential opportunities to expand agricultural trade with Cuba. I will be addressing key regulatory amendments made by Treasury's Office of Foreign Assets Control (OFAC) in January to implement changes to U.S. policy toward Cuba announced by the President, as well as the restrictions that remain in place. The regulatory changes are intended to create opportunities for increased agricultural exports to Cuba, among other benefits to U.S. businesses. These changes ease Cuba sanctions within the continuing constraints of the embargo while advancing the Administration's policy to further engage and empower the Cuban people.

Context for Change

On December 17, 2014 the President announced a number of significant policy changes regarding our relationship with Cuba. To implement the sanctions policy changes, OFAC amended the Cuban Assets Control Regulations (CACR), and our colleagues at the Department of Commerce amended the Export Administration Regulations (EAR), on January 16. These amendments ease sanctions related to Cuba in a number of key areas, including trade, financial services, travel, and remittances. These changes are intended to have a direct and positive impact on the lives of the Cuban people. They are also aimed at enhancing both commerce and communications between the United States and Cuba, and helping the Cuban people to freely determine their own future.

Trade that Benefits Americans and Cubans

The President's policy announcement highlighted the need to advance political and economic freedom in Cuba through enhanced commerce and trade between the United States and Cuba. OFAC and the Commerce Department's Bureau of Industry and Security (BIS) authorize agricultural exports to Cuba, consistent with the provisions of the Trade Sanctions Reform and Export Enhancement Act (TSRA) of 2000, and American farmers, particularly those in the southeastern United States, have been capitalizing on this authorization to export poultry, soybeans, and corn, among other items, to Cuba. The January regulatory changes were intended to ease the export process, thereby facilitating increased U.S. agricultural and other authorized exports to Cuba, benefitting American farmers and approximately 11 million potential Cuban consumers.

The January rule changes benefit American exporters in at least five key respects; we anticipate as more U.S. businesses engage in the Cuban market, these benefits will be further expanded. First, OFAC expanded the financing provisions of the regulations to allow America's agricultural exporters to be more competitive in selling their wares to Cuba. Second, OFAC broadened the ability of U.S. financial institutions to provide services and effectuate payments for exporters and others authorized to engage in trade with Cuba. Third, OFAC authorized trade delegations and exporters satisfying the conditions of its regulations to travel to Cuba and engage in associated authorized transactions – without the need to apply to OFAC for a specific license – and expanded the ability of airlines and other U.S. travel and carrier service companies to offer more reliable and potentially cheaper travel and carrier services with far less paperwork. Fourth, OFAC authorized certain humanitarian projects in Cuba, including those related to agricultural and rural development that promotes independent activity. Finally, OFAC eased restrictions to better provide efficient and adequate telecommunications services between the United States and Cuba and to increase access to telecommunications and internet-based services for the Cuban people. I will talk about each of these rule changes in more detail.

Facilitating Trade Through Regulatory Change

As an initial matter, OFAC modified the regulatory interpretation of the term "cash in advance," which describes a financing requirement for agricultural trade between the United States and

Cuba that is imposed by statute. This term dictates when authorized U.S. exporters to Cuba must receive payment for their goods. Previously, OFAC had interpreted that statutory term to mean that the U.S. exporter had to receive payment from the Cuban importer prior to the goods leaving U.S. shores – an interpretation that American exporters said made their products less competitive than those from other countries. OFAC has since revised its interpretation of the term to mean that payment is required prior to transfer of title to and control of the goods to the Cuban purchaser. This change provides a more efficient, less expensive means for Cuban importers to purchase American-produced agricultural, medical, and other authorized products. This, in turn, may make authorized U.S. agricultural exports more competitive in the Cuban market. Since Cuba imports approximately 70-80 percent of its food, according to the World Food Program, there is a sizable market available for U.S. businesses to cultivate. U.S. exporters, however, continue to face barriers, including that all U.S. agricultural goods are imported via ALIMPORT (Empresa Cubana Importadora de Alimentos), a Cuban state-run entity. Also, U.S. exporters continue to be prevented by statute from offering financing inducements, such as loans, for authorized agricultural exports. We understand from U.S. exporters that this statutory limitation prevents U.S. exporters from being as competitive in the Cuban market as third-country companies.

Increasing Access to Financial Services

With respect to the second key regulatory change, to improve the speed, efficiency, and oversight of authorized payments between the United States and Cuba, OFAC authorized U.S. banks to establish correspondent accounts at financial institutions in Cuba. This change is intended to ease the flow of authorized payments and eliminate the need for third-country payment structures, which should benefit U.S. exporters to Cuba. Also, travelers to Cuba are now authorized to use their credit and debit cards there, a change that is intended to ease the flow of authorized payments and facilitate authorized travel. These changes will support those individuals and businesses engaged in authorized agricultural and other trade with Cuba by facilitating authorized financial transactions.

Easing Travel Restrictions

With respect to the third key regulatory change, it is important to note that OFAC's Cuba sanctions program is our only sanctions program that restricts travel to a country. The January changes to the Cuba travel rules build on modifications previously made in 2009 and 2011.

The January regulatory amendments ease travel restrictions further by generally licensing certain additional travel within the 12 existing categories of travel in OFAC's regulations, without the need for a specific license from OFAC. This means that travelers who satisfy the criteria of the general licenses set forth in OFAC's regulations may travel to Cuba and conduct travel-related transactions there without requesting individual authorization from OFAC. The 12 categories of travel are those referenced by Congress in TSRA. Travel to Cuba for tourist activities, which the TSRA statute defines as any activity outside of these 12 categories, remains prohibited.

These 12 categories of authorized travel are:

1. family visits;
2. official business of the U.S. government, foreign governments, and certain intergovernmental organizations;
3. journalistic activity;
4. professional research and professional meetings;
5. educational activities;
6. religious activities;
7. public performances, clinics, workshops, athletic and other competitions, and exhibitions;
8. support for the Cuban people;
9. humanitarian projects;
10. activities of private foundations or research or educational institutes;
11. exportation, importation, or transmission of information or information materials; and
12. certain authorized export transactions.

While certain previous general licenses authorized some travel within the 12 categories of travel, the additional and expanded general licenses are intended to lessen the burden on authorized

travelers, making it easier for Americans to interact with the Cuban people, and for trade delegations and authorized exporters to travel to Cuba to promote their products. Specifically, OFAC has issued new general licenses and expanded existing authorizations for travel-related transactions and other transactions incident to the exportation to Cuba of authorized goods, such as agricultural products, for the conduct of market research, commercial marketing, sales negotiation, or accompanied delivery or servicing in Cuba of items consistent with the Commerce Department's export licensing policy. OFAC's general license authorizing professionals in the agricultural and other sectors to engage in professional meetings in Cuba, provided certain conditions are satisfied, is supporting U.S. exporters in coordinating with their Cuban counterparts. We have already heard support for these changes from U.S. agricultural exporters across the country and seen trade missions capitalize on the changes to build and expand American business relationships with Cuban entities to facilitate authorized trade.

The January regulatory amendments also authorize U.S. airlines to provide air carrier services to, from, and within Cuba in connection with authorized travel. Air carriers wishing to provide these services still need to secure regulatory approvals from other concerned U.S. Government agencies, including the Departments of Transportation and Homeland Security. Along with the Department of Commerce, OFAC also has licensed passenger ferry service to Cuba. Persons subject to U.S. jurisdiction, such as travel agents and tour group operators, also may now provide travel services in connection with authorized travel. These changes are intended to make authorized travel easier and less expensive by reducing the paperwork burden for, and increasing competition among, those providing travel and carrier services.

Increasing Access to Remittances

With respect to the fourth key regulatory change, and to help strengthen Cuban civil society, OFAC eased certain restrictions on remittances to Cuba, following similar actions taken in 2009 and 2011. In the January amendments, OFAC increased the quarterly limitation on non-family remittances from $500 to $2,000 per person per quarter. OFAC also generally authorized remittances to certain individuals and independent non-governmental organizations in Cuba for humanitarian projects, including those related to agricultural and rural development, support for

the Cuban people, and the development of private businesses in Cuba, with no limitation on the amount. These changes are intended to facilitate the flow of authorized funds directly to the Cuban people. This increased access to funds should significantly benefit the Cuban people, as remittances are one of the primary sources of income for many Cubans. Increased remittances will afford individual Cubans with increased financial resources with which to purchase American-produced agricultural goods and develop more private economic activity.

Telecommunications and the Free Flow of Information

Our final key area of regulatory change is telecommunications. Cuba has an internet penetration of approximately five percent – one of the lowest in the world. Coupled with the exorbitant costs of both personal telecommunications devices and internet access, this has severely limited the ability of Cubans to communicate with each other and the outside world. In order to better facilitate the free flow of information to, from, and among the Cuban people, in accordance with the President's announcement, OFAC eased restrictions to better provide efficient and adequate telecommunications services between the United States and Cuba and to increase access to telecommunications and internet-based services for the Cuban people. Among other things, these changes should support Cubans in increasing their knowledge of the United States, its democratic traditions, and the quality and availability of U.S. exports, and help American exporters better connect with more potential Cuban consumers.

Observation

We expect that it will continue to take time for the impact of the regulatory changes to take effect, both among the private sector and the public more broadly, and the impact continues to be somewhat dependent on the Government of Cuba and its receptiveness to these changes. Following the publication of our January regulatory changes to implement the sanctions policy changes announced by the President in December, we focused significant efforts on facilitating and clarifying the implementation of these regulatory changes. To assist with this, OFAC has been actively engaged in regular outreach to help the public and private sector better understand the changes, and how best to avail themselves of the benefits of these changes. Specifically,

OFAC has addressed queries from and provided briefings to trade groups as well as the Chamber of Commerce, and a number of Industry Trade Advisory Committees (ITACs) under the auspices of the Department of Commerce and the Office of the U.S. Trade Representative, among others. Also, OFAC has published a number of Frequently Asked Questions (FAQs) on its website to address questions regarding the implications of the January regulatory amendments. OFAC has issued subsequent FAQs to provide further clarification as needed, and will continue to do so.

Conclusion

In conclusion, I should make one point absolutely clear: Even with these changes I've described, most transactions between the United States and Cuba – including most export, import, and other activities – remain prohibited. As OFAC implements these regulatory changes, we will continue to enforce the Cuba sanctions program vigorously and take actions against violators, as appropriate.

The President's December 17, 2014 announcement laid out a new course for our relations with Cuba, driven by a hope for a more positive future for the Cuban people. OFAC's regulatory amendments to the Cuban Assets Control Regulations, in concert with the regulatory revisions my colleague at Commerce will highlight, mark significant changes to our Cuba sanctions that implement the new policy announced by the President. These changes are intended to directly benefit the Cuban people and help them to freely determine their own future, as well as to support U.S. businesses and American exporters to Cuba.

Thank you. I welcome your questions.

Mr. POE. Thank you.
Mr. Karsting.

STATEMENT OF MR. PHIL KARSTING, ADMINISTRATOR, FOREIGN AGRICULTURAL SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. KARSTING. Chairman Poe, Ranking Member Keating, and members of the subcommittee and special guests, I am pleased to come before you today to discuss agricultural trade with Cuba. As President Obama announced last December, the administration is charting a new course with Cuba in its drive to further engage and empower the Cuban people. The measures being taken also expand opportunities for America's farmers and ranchers.

In January, the Treasury Department published regulatory changes, including the revised interpretation of the term "cash in advance" and authorization for U.S. banks to establish correspondent banking accounts at Cuban banks. These changes had been sought by members of the U.S. agricultural community. Also, after more than half a century of isolation, the United States reopened its Embassy in Havana on July 20.

USDA and many of its stakeholders are excited about this new chapter in U.S.-Cuba relations. Fifteen years ago Congress lifted the band on agricultural exports to Cuba that had been in place for decades. Despite that opening, U.S. Government agencies, including USDA, remain statutorily prohibited from providing export assistance and any credit or guarantees for exports to Cuba. As Secretary Vilsack has said, he cannot currently use a single dollar of trade promotion funding for our trade with Cuba. These restrictions apply to the Foreign Agricultural Service's successful market development programs, like the Market Access Program and the Foreign Market Development Program.

Though the policy changes announced and implemented by the President are significant, we still have legislative hurdles to cross and USDA stands ready to provide technical assistance to you and other Members as Congress considers further changes.

If remaining statutory limitations were removed, we could be poised to become a major trading partner with Cuba. Cuba depends heavily on imports to feed its 11 million citizens.

According to the World Food Programme, Cuba imports between 70 to 80 percent of its food, which means the potential for our producers is significant. The United States has potentially huge structural advantages in exporting to Cuba, chief among them is location. We are less than 100 miles away, meaning lower shipping costs and transit times, especially compared to our current top competitors, Brazil and Europe.

In Fiscal Year 2008, U.S. agricultural exports to Cuba reached $658 million. However, by the end of last fiscal year, they had fallen by more than half, to $300 million. Yet, at the same time, global agricultural exports to Cuba have doubled over the past decade to more than $2 billion. Last year, the largest U.S. agricultural exports to Cuba were poultry, soybean meal, soybeans, and corn. I am confident the U.S farmers, ranchers, and exporters are poised to capture the markets in Cuba, but I don't want to minimize the obstacles.

In addition to those I mentioned a moment ago, we bear in mind two overarching factors: First, Cuba is a country of limited foreign exchange; and second, U.S. companies are behind our foreign competitors in market development.

Another impediment to trade is Cuba's tightly controlled import policy requiring that all U.S. agricultural imports be channeled through one state corporation.

The recent changes in U.S. policy toward Cuba are just one example of opportunities for USDA and Congress to support America's farmers and ranchers as they build on a record of agricultural exports. In Fiscal Year 2014, global exports of U.S. food and agricultural products reached a record $152.5 billion and supported more than 1 million American jobs. The potential for U.S. agricultural exports around the globe is considerable. It is also critically important that we have trade agreements that support and create U.S. jobs by helping American agriculture to compete even more successfully. For example, USDA trade negotiators are currently working with USTR to advocate on behalf of U.S. agriculture in two major negotiations, the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership. Once these agreements are in place, U.S. agricultural producers will enjoy improved access to markets representing two-thirds of the global economy.

In conclusion, there is significant potential in extending U.S. agricultural exports to Cuba. Reestablishment of diplomatic relations and reopening our Embassy is simply the first step of a longer normalization process between the United States and Cuba.

Agriculture has long served as a bridge to foster cooperation, understanding, and the exchange of ideas among people. And I have no doubt that American agriculture will play an important role as we expand our relationship with the Cuban people.

[The prepared statement of Mr. Karsting follows:]

Statement by Phil Karsting
U.S. Department of Agriculture

Before the House Committee on Foreign Affairs
Subcommittee on Terrorism, Non-Proliferation, and Trade
September 9, 2015

Hearing: Agricultural Trade with Cuba

Chairman Poe, Ranking Member Keating, and Members of the Subcommittee, I am pleased to come before you today to discuss agricultural trade with Cuba. The Administration's new approach to Cuba is significant for U.S. agricultural producers, processors, and exporters. There are major opportunities for U.S. agriculture in Cuba, but significant challenges remain to doing business there.

Charting a New Course on Cuba

As President Obama announced last December, the Administration is charting a new course with Cuba in its drive to further engage and empower the Cuban people. The changes are aimed at giving Cuban citizens new opportunities to gain greater control over their own lives. The measures also seek to expand opportunities for America's farmers and ranchers. After more than a half a century of isolation, the United States reopened its embassy in Havana on July 20. Though the embassy will operate in a restrictive environment, as some U.S. embassies around the world do, and decisions on a possible USDA presence in Cuba have not yet been made, USDA and many of its stakeholders are excited about this new chapter in U.S.-Cuba relations.

Less than a month after the President's announcement, the Treasury Department's Office of Foreign Assets Control (OFAC) published amendments to the Cuban Assets Control Regulations to implement certain policy measures. These amendments removed certain technical barriers between our two countries and created a more efficient, less burdensome payment process for sales of U.S. agricultural products to Cuba. These changes – which include a revised interpretation of the statutory term "cash-in-advance" as well as authorization for U.S. banks to establish correspondent accounts at banks in Cuba – should improve the speed, efficiency, and oversight of authorized payments between the United States and Cuba. These changes had been sought by members of the U.S. agricultural community. Our belief is that,

ultimately, these changes will help lead to expanded choices for Cuban consumers and an expanded customer base for America's farmers and ranchers. Additionally, it is our hope that increased limits on remittances to individual Cubans will enable them to purchase more U.S. goods, including agricultural products.

Permitted Agricultural Sales to Cuba

As this subcommittee knows, the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) lifted the ban on agricultural exports to Cuba that had been restricted under the embargo for decades. Despite that opening, U.S. government agencies – including USDA – remain statutorily prohibited from providing export assistance and any credit or guarantees for exports to Cuba. As Secretary Vilsack has said, he cannot currently use a single dollar of trade promotion funding for our trade with Cuba. These restrictions apply to the Foreign Agricultural Service's successful cooperative market development programs like the Market Access Program and the Foreign Market Development Program.

Though the policy changes announced by the President earlier this year are significant, we still have legislative hurdles to cross. Legislation has been introduced to further open agricultural trade with Cuba, and USDA stands ready to provide technical assistance to you and other Members as Congress considers further changes.

Cuba as a Potential Export Market

If remaining statutory limitations were removed, American agriculture could be poised to become a major trading partner with Cuba. Cuba depends heavily on imports to feed its 11 million citizens and growing numbers of foreign visitors. According to the World Food Program, Cuba imports between 70 and 80 percent of its food, which means the economic potential for our producers is significant. Unfortunately, Cuba is plagued with outdated infrastructure, a depleted resource base, lack of agricultural inputs, and has been subjected to devastating hurricanes. Relative to our agricultural competitors, the United States has potentially huge structural advantages in exporting to Cuba. Chief among them is location. We are less than 100 miles away, meaning lower shipping costs and transit times, especially when compared to our current top competitors – Brazil and Europe. Moreover, 11 million Cuban consumers desire food products that the United States can supply and American agriculture wants to sell to Cuba.

Agricultural commodities are among the types of goods that may be exported to Cuba

under the longstanding U.S. embargo and American farmers have been taking advantage of that opportunity. Prior to passage of TSRA, agricultural sales to Cuba were zero. By fiscal year 2008, U.S. agricultural exports to Cuba had reached a peak of $658 million. However, by the end of last fiscal year, they had fallen by more than half, to $300 million. Yet, at the same time, global agricultural exports to Cuba have doubled over the past decade to more than $2 billion.

In FY 2014, the largest U.S. export to Cuba was poultry products, with exports valued at $148.3 million. This made Cuba the eighth-largest export market for U.S. poultry. Other top U.S. exports last fiscal year included soybean meal (valued at nearly $75 million), rice (valued at more than $29 million), bulk soybeans (valued at more than $29 million), and bulk corn (valued at more than $28 million).

While I am confident U.S. farmers, ranchers, and exporters are poised to capture markets in Cuba, I don't want to minimize the obstacles. In addition to those I mentioned a moment ago, we bear in mind two overarching factors. First, Cuba is a country with limited foreign exchange. And second, U.S. companies are behind our foreign competitors in market development.

Another impediment to trade is Cuba's tightly controlled import policy requiring that all U.S. agricultural import be channeled through one state corporation, called Alimport. Many of our competitors have additional options of trading with other Cuban agencies, but Alimport is the exclusive agent for the Cuban government on buying decisions and negotiating agricultural purchases from U.S. firms. Alimport not only negotiates contracts for purchase with U.S. firms, but it arranges for payment, takes control of the imports at the Cuban port, and manages the distribution process within Cuba.

Enhancing Export Opportunities around the Globe

The recent changes in U.S. policy toward Cuba are just one example of opportunities for USDA and Congress to support America's farmers and ranchers as they build on record agricultural exports. In FY 2014, global exports of U.S. food and agricultural products reached a record $152.5 billion and supported about one million American jobs. The potential for U.S. agricultural exports around the globe is considerable and USDA is taking action to help producers secure and expand market access for American agricultural products. It is also critically important that we have trade agreements that support and create U.S. jobs while helping American agriculture to compete even more successfully. For example, USDA trade negotiators are currently working with the Office of the U.S. Trade Representative to advocate

on behalf of U.S. agriculture in two major negotiations, the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (T-TIP). Once these agreements are in place, U.S. agricultural producers will enjoy improved access to markets representing two-thirds of the global economy.

Conclusion

Let me conclude by saying that, over time, there is significant potential for expanding U.S. agricultural exports to Cuba. Re-establishment of diplomatic relations and reopening of our embassy is simply the first step of the longer normalization process between the United States and Cuba. It's a complex process, involving bilateral engagement and dialogue that will continue for some time. The Administration is eager to engage with Congress in an honest and serious discussion about what we can do to promote positive change in Cuba. Throughout history, agriculture has served as a bridge to foster cooperation, understanding, and the exchange of ideas among people. I have no doubt that agriculture will have an important role to play as these conversations continue and we expand our relationship with the Cuban government and Cuban people in the coming years.

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Mr. POE. Thank you.
Mr. Borman.

STATEMENT OF MR. MATT BORMAN, DEPUTY ASSISTANT SECRETARY, BUREAU OF INDUSTRY AND SECURITY, U.S. DEPARTMENT OF COMMERCE

Mr. BORMAN. Good afternoon, Mr. Chairman, Ranking Member Keating, members and guests of the subcommittee. Thank you for the opportunity to appear before the subcommittee today to address the role of Department of Commerce with regard to regulating agricultural trade with Cuba.

As you know, on December 17, 2014, the President announced the most significant shift in Cuban policy in more than 50 years. As you noted, these changes are intended to create more opportunities for the American and Cuban people by increasing commerce, authorized travel, and the free flow of information. To implement aspects of the President's new approach, the Bureau of Industry and Security of the Department of Commerce has amended the Export Administration Regulations twice—first, on January 16, and then again on July 22. The January 16 amendments created a new license exception, which is our equivalent of the Department of Treasury's general license, called Support for the Cuban People, which was focused on allowing U.S. exporters to send certain items to Cuba for private sector economic activity and civic society without an individual license.

We also expanded the scope of our license exception for gift parcels and humanitarian donations and revised our license exception for consumer communication devices, all to facilitate the movement of those goods to Cuba. The July 22 amendment to the regulations implemented the Secretary of State's decision to remove Cuba from the State Sponsors of Terrorism list.

Specifically to exports of agricultural products, the measures that were announced by the President and implemented in both of our regulations did not change the Export Administration Regulations with regard to BIS authorization of exports of agricultural commodities. The Trade Sanctions Reform and Export Enhancement Act of 2000, TSRA, governs how we regulate the export of agricultural commodities to Cuba. To implement TSRA, we created a license exception, agricultural commodities, AGR, which is really an expedited individualized licensing process. This allows agricultural commodities to go to Cuba under an expedited process. Exporters have to provide prior notice. We review those prior notices with the Department of State and typically give an answer to the exporter within 12 business days.

Consistent with TSRA, this expedited review process includes screening the ultimate consignor, the customer in Cuba, to ensure that the recipient does not promote international terrorism and that the transaction does not raise proliferation concerns. If the transaction meets the terms and conditions of the license exception AGR, exporters may proceed with the transaction once we confirm that neither reviewing agency has raised an objection.

In addition, exports of agricultural commodities must be made pursuant to a written contract and must take place within 1 year of the signing of a contract unless the export is a commercial sam-

ple or a donation; in that case, the contract requirement doesn't apply.

During calendar year 2014, BIS processed 56 agricultural export notifications valued at about $2.4 billion, and we had an average processing time of 10 days. Multiple shipments may be made pursuant to a single notification, and you should keep in mind that the dollar value, the $2.4 billion, reflects the proposed export, not a value of actual exports.

As you heard from Mr. Karsting, the dollar value of actual exports last year was just a little bit under $300 million. But in any event, in 2014, exporters made 600 shipments of agricultural products to Cuba. In Cuba, only state-run companies are authorized to engage in foreign trade transactions and often a whole category of commodities imported from the United States is channeled through specific companies depending on the sector. And, of course, folks have already mentioned Alimport in the agricultural arena.

That really summarizes how we at Commerce regulate the export of agricultural commodities to Cuba, and with my fellow panelists, I will be happy to answer questions. Thank you.

[The prepared statement of Mr. Borman follows:]

Statement of

Matthew S. Borman
Deputy Assistant Secretary of Commerce for Export Administration

before the

Subcommittee on Terrorism, Nonproliferation, and Trade
Committee on Foreign Affairs
United States House of Representatives

September 9, 2015

Mr. Chairman, Ranking Member Keating, Members of the Subcommittee:

Thank you for the opportunity to appear before the Subcommittee today to address the role of the Department of Commerce with regard to regulating agricultural trade with Cuba. As you know, on December 17, 2014, the President announced the most significant shift in Cuba policy in more than fifty years. As he noted, these changes are intended to create more opportunities for the American and Cuban people by increasing commerce, authorized travel, and the free flow of information.

To implement aspects of the President's new approach, the Department of Commerce's Bureau of Industry and Security (BIS) amended the Export Administration Regulations (EAR) on January 16, 2015, to expand the authorization for exports and re-exports of certain categories of items to Cuba. That amendment created License Exception Support for the Cuban People (SCP) and expanded the scope of License Exception Gift Parcels and Humanitarian Donations (GFT). License exceptions facilitate trade by authorizing specified exports without individual licenses as long as the terms of the exception are followed. License Exception SCP authorizes the export of certain categories of items including building materials for use by the Cuban

private sector for the construction or renovation of privately-owned buildings, and tools and equipment for private sector agricultural activity. It also authorizes exports of tools, equipment, and supplies to private sector entrepreneurs, including restaurateurs and other food service providers. License Exception GFT now authorizes consolidated shipments of multiple gift parcels, which may contain an unlimited quantity/dollar value of food. Individuals who wish to send food in gift parcels no longer have to search for a party that has received a license from BIS authorizing consolidated shipments to Cuba.

Other provisions of the January 16 amendment to the EAR facilitate the export of certain telecommunications items intended to improve the free flow of information to, from, and among the Cuban people, as well as items necessary for the environmental protection of U.S. and international air quality, waters and coastlines.

On July 22, 2015, BIS amended the EAR to implement the Secretary of State's decision to rescind Cuba's designation as a State Sponsor of Terrorism. That amendment eliminated references to Cuba as a State Sponsor of Terrorism and removed "anti-terrorism" controls on exports and re-exports to Cuba, but-- despite that removal-- maintained the preexisting license requirements for all items subject to the EAR unless authorized by a license exception. Pursuant to the rescission, the July 22 amendment also made Cuba eligible for a general 25 percent *de mimimis* level and portions of four license exceptions.

The measures announced by the President did not, however, result in amendments to the EAR with regard to BIS authorization of exports of agricultural commodities. The Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) governs how BIS regulates exports of agricultural commodities. To implement TSRA, BIS created License Exception

Agricultural Commodities (AGR) for exports of agricultural commodities from the United States to Cuba provided that they are designated as EAR99 (subject to the EAR but not on the Commerce Control List). To be eligible for License Exception AGR, exporters must provide prior notice to BIS through our online application system. BIS and the Department of State's Bureaus of Economic and Business Affairs and Western Hemisphere Affairs review notices on an expedited basis (generally within 12 business days). Consistent with TSRA, this expedited review process includes screening the ultimate consignee to ensure that the recipient does not promote international terrorism and that the transaction does not raise proliferation concerns. If the transaction meets the terms and conditions of License Exception AGR, exporters may proceed with the transaction once BIS confirms that neither reviewing agency has raised an objection. Exports of agricultural commodities must be made pursuant to a written contract and must take place within one year of the signing of a contract unless the export is a commercial sample or donation (in which case the contract requirement does not apply).

During 2014, BIS processed 56 AGR notifications, valued at $2.4 billion, with an average turnaround of 10 days. Multiple shipments may be made pursuant to a single notification. The dollar value reflects proposed exports, not actual exports. During 2014, exporters made 600 shipments of agricultural products to Cuba. Commerce's Census Bureau reports the value of U.S. agriculture exports to Cuba in calendar year 2014 at about $287 million.

In Cuba, only state-run companies are authorized to engage in foreign trade transactions, and often a whole category of commodities imported from the United States is channeled through specific companies, depending on the sector. Shipments of agricultural commodities (specifically food) made under License Exception AGR are consigned to ALIMPORT (Empresa

Cubana Importadora de Alimentos), a state-run company with the Cuban Ministry of Foreign Trade as its largest shareholder.

The President's announcement did result in new regulatory guidance issued by the Department of the Treasury pursuant to the Cuban Assets Control Regulations regarding "cash in advance" as it pertains to the export of agricultural commodities. My colleague from Treasury's Office of Foreign Assets Control will discuss the regulatory reinterpretation of "cash in advance."

Thank you, once again, for the opportunity to appear before the Subcommittee today. I would be pleased to answer any questions Members may have.

Mr. POE. The Chair recognize itself for questions.

How come we are exporting less rice to Cuba than we were in 2009? What is the reason?

Mr. KARSTING. I think it is hard to get inside the mind of Alimport to find out what kind of buying decisions they are making. That is one of the reasons I think it is important for us to ramp up our interaction there.

From 1941 to 1961, we had an agricultural attache in Havana. And all across the globe, we have people in 100 different offices in 87 different countries where that is their job to understand what is going on regarding buying decisions within a country. Alimport is obviously opaque, but we would like to know a little bit more about that too because we would like to sell more rice.

Mr. POE. My concern is the exporting of rice. What is good for the United States? What is good for American businesses with this question? As I mentioned in my opening statement, we grow that long grain rice. There are no markets for the long grain rice. Cuba is a primary market. And my rice farmers—and we ship it right out of a Port of Houston, which is an export port right out of Cuba. Because of the financing or lack of financing involved in it, why not let the exporter assume the risk as opposed to the government being involved in prohibiting credit? I will hear from all three of you on that.

Mr. SMITH. I mean, I can start.

Mr. POE. Sure. Mr. Smith.

Mr. SMITH. To the extent that we hear from exporters, and I am sure you all hear from exporters as well, we can speculate on why trade may have gone up or down, but probably the primary thing that we hear from exporters at least on the Treasury side is the lack of availability of financing or credit that they can get. They tell us that their competitors in other countries can get either private financing or government financing, and we are restricted by statute from allowing that.

Mr. POE. So if we change the statute, we would have to change the statute to allow the exporter to assume the risk of whether Cuba pays or not? We have already heard that they don't pay their bills, but could we—why not let the exporter assume that risk?

Mr. SMITH. I think that is a decision for Congress to make——

Mr. POE. Okay.

Mr. SMITH [continuing]. Within the statute.

Mr. POE. Anybody else want to weigh in on that?

Mr. BORMAN. In the statute, yes.

Mr. POE. How does the state-run government company put U.S. exporters at a disadvantage, Alimport? How does that put us at a disadvantage?

Mr. KARSTING. Clearly, they have been making purchasing decisions since 2009 where both a variety of the exports as well as dollar value have gone down. So they are making purchasing decisions to go with other suppliers. A lot of the other suppliers have been in the country for some time developing relationships, helping to create demand, presumably, and that is what I think a lot of our stakeholders in the agricultural community are looking for as we look to this new relationship, that same sort of advantage.

Mr. POE. Mr. Borman, any comment?

Mr. BORMAN. I don't really have anything to add to that.

Mr. POE. I have a constituent, Ms. Rogers, who claims that she is owed more than $40 million from the Cuban Government; her grandfather brought John Deere and Caterpillar to Cuba. She is one of maybe 6,000 claimants against the Cuban Government for their actions 50 years ago. What is the status of those claims as a whole, the claims against the Cuban Government for confiscation of property and assets belonging to others?

Mr. Keating—I mean, Mr. Smith.

Mr. SMITH. Obviously, I think the State Department has primary jurisdiction. I think they have ongoing discussions or planned discussions that are outside of the Treasury Department expertise.

Mr. POE. Do either Mr. Karsting or Bowman know any status of any of those claims?

Mr. KARSTING. No.

Mr. POE. There is a political issue. It has become a political issue, has it not, in the overall discussion of whether or not we should open up to Cuba or Cuba open up to the United States? Is that a fair statement, Mr. Smith?

Mr. SMITH. I mean, it is certainly an issue for the administration and for Congress to weigh. We still have, in our Treasury regulations, the provisions from the statute that do not allow any financing or other credit to be provided involving transactions for confiscated property. So we still have that restriction in our regulations that is in the statute. I think when you are talking about any further discussions involving those claims, I think that is very much a matter for the diplomatic side of our Government along with Congress to consider.

Mr. POE. I will yield to the ranking member, Mr. Keating, for questions.

Mr. KEATING. Thank you. I think at least a couple of you mentioned in your testimony that the intent to benefit the Cuban people or its the hope that some of these changes would benefit the Cuban people. What can we do to ensure more that this will actually benefit the Cuban people, not just the regime? It is not in these regulations or enforcing some of these new changes.

Mr. SMITH. I think for the Treasury Department—and I think Commerce has had a similar philosophy when we looked at the regulatory changes that we made, we looked to see how they could impact and help the Cuban people, and how we could restrict the government from benefiting. Where we may allow increased remittances for example, we excluded the Government of Cuba or Cuban Communist Party officials. So we tried to focus it on what might be individuals and moving it away from the government. When we talked about increasing travel from U.S. persons, it is our philosophy that Americans are the best Ambassadors for America to actually get the message to the Cuban people about how a democracy works. And so when you go down each one of our changes, each one of the categories, we try to focus on how we could help the Cuban people. And I think that is what we continue to look at.

Mr. KEATING. How is that working, or is it working? Do you have any——

Mr. KARSTING. I would say just on the point of having Americans that are Ambassadors for change, American farmers, American ag-

riculture have been doing that for a long time in our farmer-to-farmer exchange program. And that cohort of people that are primarily my stakeholders are very anxious to get on with that task, and I think farmers talking to farmers is a great way to reinforce those changes.

Mr. BORMAN. Sir, we have seen a significant number of exports made under the license exceptions; for example, the donations, which I think we are fairly confident would actually go to the intended recipients, in part because the people who make the donations would learn if their intended recipients didn't receive them. And we continue to try to educate U.S. exporters who would like to make these exports to the private sector, to specific groups in Cuba, on how to make sure that they identify who those foreign parties, different parties are, to make sure that they are going to the authorized end users.

Mr. KEATING. Well, realizing that you are not advocating in your official capacities for any particular change in the future, can you at least share with us some thoughts you might have heard from others, if they are not even your own personal feelings about what changes, further changes, we can make to try and enhance our ability to help the Cuban people directly? And I realize you are not speaking for your own opinion or for the Department.

Mr. KARSTING. I think a lot of our stakeholders have made clear that the ability to have a little bit more flexibility with regard to our Market Promotion Program (MAP), Market Access Program, Emerging Markets Program, those things that help us focus on trade missions, reverse trade missions, those sorts of things—I think they would say would be really valuable to us.

Mr. KEATING. Trade promotion area too.

One of the new regulations provides that certain goods produced by independent Cuban entrepreneurs are eligible to be imported into the U.S. Can you define that term, "independent Cuban entrepreneurs," for me and give me an idea what you anticipate would be imported with this new change in turn?

Mr. SMITH. The State Department has put out a list of what would constitute independent Cuban entrepreneurs. I think the way they did it is they took categories that they thought would not be appropriate that traditionally were not small business or entrepreneurs that were really state controlled. They put that on the list, and they said other things could be allowed. But this is a State Department function and we authorize what the State Department puts on its list. So that is a State Department expertise.

Mr. KEATING. And, lastly, you mentioned how tourism changes can help some of the agricultural business. Could you just comment on how that can happen, some personal observations or some thoughts as how that would translate?

Mr. KARSTING. I think any number of countries, there are lots of different markets within one country. You know, we think of bulk commodities, wheat, rice, corn, soy, going to one group. But there is also significant hotel-restaurant trade in different countries, and the potential for tourism and restaurant trade in Cuba is significant. I think there were 2.8 million last year, up to 3 million this coming year. That is a little different market, one that will seek different products.

Mr. KEATING. Mr. Chairman, I yield back.

Mr. POE. I thank the gentleman.

The Chair recognizes the gentleman from South Carolina, Mr. Wilson.

Mr. WILSON. Thank you, Mr. Chairman, and thank you very much for having this hearing.

I appreciate, Chairman, Judge Ted Poe for his leadership.

And this is so important about agricultural trade with Cuba. President Obama has thrown the Cuban Communist dictatorship a lifeline by restoring diplomatic relations. I don't believe this is in the interest of the people of Cuba.

In fact, this dictatorship had as a patron the Soviet Union. Then it had as a patron Hugo Chavez. And both of those experiences have proven Margaret Thatcher correct, that socialism will exist until you run out of spending other people's money.

The businesses in Cuba are dominated by the Castro regime, a military mafia, stolen from the Cuban people. So as the oppressive regime that the benefits from trade go to is a mafia, not to the people of Cuba. I learned first hand of the appropriation in that—of stolen property from extraordinary constituents. A neighbor of mine was a businessperson in Cuba, a plumbing business. He was just a wonderful person, a dear family man with wonderful, four young daughters, and he knew that because he was an anti-Communist that he was going to be picked up. And so he went to the local department store back in 1959, and he got luggage, went back home. Before he got home, the secret police were there. And they said, what are you doing? And he said: Well, we are going to be visiting a sick aunt in New York. And so the children were told to pack whatever you can; we are not coming back. They didn't come back. But one of American success and dream, and in South Carolina, they then developed one of the largest plumbing businesses in our State. It is just horrific to think of rewarding people who have stolen property.

Mr. Smith, Cuba is one of the last remaining Communist dictatorships that is of Marxist Leninist theory of state ownership of the means of production in business.

But with the Communist allies now liberated, thank God, state ownership is shifted to the Cuban military. What percentage of business industry is owned by and operated by the Cuban military, and what percentage may be operated by the elite of the Communist Party?

Mr. SMITH. Sir, I don't have that statistic. I rely on the State Department for that. I know that—well, when we talk about what is owned by the Cuban Government, we are talking about an overwhelming majority. I have heard 75, 85 percent figures. But when you say the military itself, I don't have that statistic, versus government ownership.

Mr. WILSON. Actually, the numbers you gave are what I have heard, too, that at least 70 percent of all business would be with the Cuban military. But in between, you have, as has been in the post-Communist experience in other countries, a mafia developing.

Mr. Borman, it is hard to believe because of experience, that the increased trade will help the Cuban people. The evidence is clear, the Castro regime had 30 years of subsidized trade with the Soviet

Union and billions of dollars in European investment, yet none of the profits made its way to the Cuban people. What makes us think that adding the U.S. to the equation would be different except to prop up a corrupt dictatorship?

Mr. BORMAN. So the changes to our regulations we have made allow the export of items to the private sector in Cuba, and there are now about 200 categories of employment, private sector employment, that are legal in Cuba. So if someone wants to makes that export, it has to go to one of the private sector activities. These are not, with the exception of telecom, going to the Cuban Government. The telecom is to facilitate communications among the Cubans and the rest of the world.

Mr. WILSON. You say, private sector. Who would be the private sector?

Mr. BORMAN. So there are agricultural co-ops. For example, there are people who run small restaurants, auto repair shops, those kinds of things. And those kinds of activities are legal in Cuba now in the private sector. So one of the percentages I have heard is roughly 85 percent of the Cuban economy is currently government controlled and about 15 percent is in this space, several hundred thousand people.

Mr. WILSON. I would certainly look into that. Because I can—I had the opportunity, and I was really grateful, to be in Shanghai, and I saw these different businesses who were operating, and then somebody whispered to me, and they had beautiful logos, and it was impressive, I found out they were all state-owned. None were independently operated.

I yield back.

Mr. POE. I thank the gentleman.

The Chair recognizes the gentleman from Texas, Mr. Castro.

Mr. CASTRO. Thank you, chairman. And thank you all for your testimony, for being here with us today. Let me ask you, for whoever is appropriate to answer this, if there was trade between the two countries in agricultural, which specific States or regions of the country would benefit most from that?

Mr. KARSTING. I think we see a lot of opportunity in certain commodity sectors, rice, poultry, wheat, corn, and soy, so any State that produces those. Certainly, the States involved in processing and shipping those, our Port of Houston, Port of New Orleans, I imagine all of our ports. But at USDA, when I look at agricultural exports overall, I am sort of agnostic about where they come from, because we know that it helps all farmers, all producers, everywhere if we grow markets overseas. So, I think there are probably some localized improvements, but it is good for everybody if we sell more.

Mr. CASTRO. And let's imagine that you said today that we were going to have normalized trading relationship with Cuba. How long would it actually take to start that up, practically speaking?

Mr. BORMAN. Well, of course, that would be assuming that all the legislative barriers are taken away.

Mr. CASTRO. Right.

Mr. BORMAN. Then it is hard to say how long that would take because the Cuban economy, as you have heard, is still seemingly dominated by the government. To overcome many years of where

they have been, that would take quite a bit of time for them to develop markets and for U.S. companies to figure out what the markets were.

Mr. CASTRO. Right. I imagine the United States Congress was okay with it; what would be the time lag after that in your estimation?

Mr. KARSTING. I would say for the programs that I manage within the Foreign Agricultural Service, to treat Cuba like other countries with regard to Market Access Program, foreign market development, Emerging Market Programs, would not take very long at all to change the notice that goes out to our cooperators, the private sector groups we work with, to say: Okay, now you can do things in Cuba. We would still look at them with the same level of scrutiny that we look at all the things that come to us and say: We want to make sure they have got good plans, that they are spending resources wisely. But as a matter of turning the switch, it wouldn't take that long.

Mr. CASTRO. Okay. I apologize, I came in a little late, and I know some of this ground may have been covered but what is the annual loss in terms of trade for not being able to trade with Cuba?

Mr. KARSTING. It is kind of hard to quantify what we are losing. We went from a high of $658 million in 2009, we are now at about $300 million a year in agricultural trade. Meanwhile, their imports to other countries have grown to about $2 billion. So our market share has declined, and their market has grown in terms of an export destination.

Mr. BORMAN. Another way to look at it is, last year, we authorized about $2.4 billion in ag exports to Cuba, but only a small percentage, roughly $300 million, was actually made. So, clearly, the folks who came in seeking authorization saw a potential sale there, but the actual sales were far less than that.

Mr. CASTRO. Okay. Thank you.

I yield back, chairman.

Mr. POE. Thank you.

The Chair yields to the gentleman from Pennsylvania, Mr. Perry.

Mr. PERRY. Good to see you all.

Thank you, Mr. Chairman.

To tell you the truth, I am a bit disappointed there is not somebody here from State, and so my questions are kind of probably more involved than that. But in that interest, how much do any of you folks get involved with State's policy, with State's policy regarding the economy of the state of Cuba. How do we know as individuals and people who support exporters, regardless of where they are from in the United States, how do we track how those goods and services go to the Cuban people as opposed to enhancing the government? Is there any way to know that, and do you get involved in that? Anybody.

Mr. BORMAN. We at Commerce do. You have got two ways that goods subject to our jurisdiction go to Cuba. Either under an individual license, which means the exporter has to come in with an application to say who they are, who they want to sell to, and what the item is. And there is an interagency process that reviews that and determines, is that consistent with our policy. So, certainly, we would vet the end user, and in that scenario, you would have very

few circumstances where approvals would go if the item was to go to a government end user. There are some exceptions, like medical——

Mr. PERRY. But there is essentially one buyer, right?

Mr. BORMAN. Well, but then, from there, it depends what the product is. It might go to a government end user, like a hospital, because the government controls all the hospitals. But it could go to a retail store, which is eventually sold to any Cuban person off the street.

Then on the license exception side, the way we have created this is we have told people, you can make certain exports without individual licenses, which means we in the government don't review the end user, but you have to determine yourself that it is essentially in the private sector. And that is where we are continuing to try to educate U.S. companies and the U.S. exporters on who is in the private sector.

And then, on the back end, once items are in Cuba, I think it is very likely that if they don't go to the intended recipient, the U.S. exporter will let us know. If somebody sells something to a relative, say, who is running an auto repair shop, and they send them a tool kit and the tool kit doesn't make it, I am confident that the intended recipient will let their relative know that. So that is kind of the way we would look at that.

Mr. PERRY. I mean, does it get down to that level? I mean, how do you know? If you are talking about a tool kit, let's say you send a tap and die set—I don't know if they have the provisions to make that stuff like that in Cuba. I don't know what their capacity is. But let's just say you send that, and the recipient never gets it. I mean, are you going to find a $200 or $300 tool set in the scope of the kind of numbers you are talking, arguably be diminished by half?

Mr. BORMAN. You are also talking about an issue that is a general export control issue, not just Cuba. For example, one of the data points I have heard is that last year, there was about $2.6 billion of remittances that went from U.S. to Cuba, and over 50 percent of that probably went to small businesses. So, again, those typically are going to be from friends or relatives in the United States who have friends and relatives in Cuba running those businesses. So I think they would tell them, I am sending you X, you know, an auto repair kit or something, and when the intended recipient didn't receive it, they would let the sender know, and then they would likely contact us. So there are ways to try to monitor that.

Mr. PERRY. And then what is the penalty? What happens then?

Mr. BORMAN. One other thing. We also are continuing monitoring open source and classified information to see if there is anything significant that would come up in terms of unauthorized diversion of items. Penalties, they can be criminal penalties with jail time, they can be criminal fines, and also administrative fines and denial of export privileges. So they can be fairly significant.

Mr. PERRY. To the exporter?

Mr. BORMAN. Well, it can be to the exporter or to the foreign party, who would then go on a public denied persons list, which

would then mean nobody could send anything to them without authorization.

Mr. PERRY. And how often does that occur?

Mr. BORMAN. Well, it occurs a lot. We have a denied persons list which has dozens and dozens of foreign parties on it, and then we have other restricted lists that tell the public, you can't send to them without government approval.

Mr. PERRY. So from a strategic standpoint, how does our export, how does our trade policy, how does that comport with our aversion to the Communist Government in Cuba? How do we get to where we want to be to not have a Communist Government in Cuba through our export policy?

Mr. BORMAN. Well, I am not sure that it can get to that stage.

Mr. PERRY. Well, how does it enhance it, or how does it——

Mr. BORMAN. Well, certainly, the policy would be not to allow things that would go to the Communist Party or the Cuban Government or the military. Certainly, that is the policy that continues to be in place.

So, for example, the other thing to keep in mind is the items that are eligible for these license exceptions or general authorizations, they are very low-level items. They are not items controlled by the multilateral nonproliferation regimes. Those would still all need a license. So if somebody came in for a license for one of those items, like a big machine tool—5 axis machine tool—and they said we want it to go to the Cuban Ministry of Industry to produce aircraft, that would be denied. So that is the way we deal with that as well.

Mr. PERRY. Are there any provisions for marking or information that goes along with the goods or services?

Mr. BORMAN. Well, there are requirements that the documentation that goes with it lays out what—who they can or can't go to.

Mr. PERRY. Okay.

Mr. BORMAN. But for these low-level items, it is not clear to me that people would want to try to put tracking or other devices on them.

Mr. POE. The gentleman's time is expired.

Mr. PERRY. Thank you, Mr. Chairman.

Mr. POE. The Chair recognizes the gentlelady from Florida, Ms. Ileana Ros-Lehtinen.

Ms. ROS-LEHTINEN. Thank you, so much, Mr. Chairman.

I have questions for Mr. Smith and Mr. Borman, and I would appreciate if you could give me written responses as soon as possible.

Mr. Smith, the January 2015 OFAC rule permits persons to import into the United States goods from Cuba, including tobacco and alcohol, and permits U.S. persons to use credit and debit cards from U.S. financial institutions to pay for these transactions. Congress has prohibited U.S. financial institutions and persons to extend financing with respect to any transaction involving property confiscated by the Cuban regime. So if a credit card is used by a person to purchase alcohol or tobacco, such a transaction would involve the extension of a short-term loan or credit by a U.S. financial institution to consummate a transaction involving confiscated property. So I would ask you, how doesn't this new OFAC regulation not contravene U.S. law? And I would like that answer in writing.

And, secondly, a recent news story stated:

> "A $3-million yacht left Key West this week with two barbeque grills, 250 channels of satellite TV and a just-in-case plan for rescuing stranded Cuban rafters encountered in the Florida Straits. After 4 hours smooth sailing, the Still Water tied up at Havana's Hemingway Marina. The well-heeled passengers breakfasted on smoked salmon and pastries, then boarded an air-conditioned Cuban Government bus for a day of touring the city."

Surely, you are aware that tourism travel to Cuba is illegal, so how do these elite luxury yacht trips not constitute illegal tourist activities, or is your Department just looking the other way?

Mr. Borman, two questions for you, sir. The January 2015 BIS rule correctly cited the 1992 Cuban Democracy Act that is granting the Department of Commerce authorities to permit certain exports that promote telecommunication connections with Cuba. Yet the same rule remains conspicuously silent as to where BIS purportedly derived its statutory authority to create the Support for Cuban People license exemption for nontelecommunication items. So the Libertad Act explicitly ratified all these restrictions, codified a comprehensive trade embargo against Cuba. Thus, how do your regulations, these new BIS regulations, not contravene U.S. law? What gives you the power to do that?

And, lastly, Mr. Borman, in the past, you have acknowledged that exports under the Support for the Cuban People license exemption would have to go through a Castro-owned intermediary, these bogus companies, as the regime controls all foreign trade on the island, as we have discussed. Funneling exports through the Castro regime is inarguably in contravention of the foreign policy objectives of the U.S. as codified by statute.

So, again, I would ask you, Mr. Borman, how does this BIS regulation not contravene U.S. law?

And, Mr. Chairman, if I may, my answer to your question about the decrease in sales, the reality is that the Castro regime knows and understands the U.S. very well. And it is purposefully, I believe, dropping the amount of sales right now of U.S. agricultural products so that the ag industry falls with this ruse and advocates for loosening of sanctions. And more concessions to the Castro regime will not help the Cuban people, but will only fill the coffers of the monopolies that have been created by the regime.

And if I could just point to this—our local affiliate of NBC put out this tweet that is being followed live on Miami television, a sad scene that gets replayed every day. This is right off my congressional district, right off Key West. These are Cuban migrants trying to come to the United States. They did not get the memo about the paradise that is there in Cuba when all of these sanctions will be lifted, and there is a record number in recent history of Cuban rafters coming into the United States.

So maybe you have a statement that you could give me to tell these folks how things are going to get so much better for them once we lift all these restrictions.

And I was wondering if you knew that since the December 17 Obama announcement, there have been a record number of arrests

of dissident and opposition leaders in Cuba who are calling for freedom and human rights, and they did not get the memo of how everything but these ag products is going to improve their plight and their families' plight.

Thank you, Mr. Chairman. And I would appreciate if the gentlemen can give me those responses rapidly. Thank you.

Mr. POE. I thank the gentlelady.

Ms. ROS-LEHTINEN. Sorry for my voice.

Mr. POE. The four questions, that will be submitted in writing to you. I know you are trying to write them down. They will be submitted to you in writing, and return the answers not only to the gentlelady in Florida, but to the Chair as well.

Mr. POE. Thank the gentlelady. I hope you get to feeling better.

The Chair recognizes the gentleman from Minnesota, Mr. Emmer.

Mr. EMMER. Thank you, Mr. Chair.

And thank you, again, the witnesses for being here today.

I come from a State, Minnesota, that one of the two major drivers of our private economy is agricultural, and it is always about markets, not just in the United States but beyond our borders. And when it comes to Cuba, when the exception was made more than a decade ago, Minnesota was one of the first to send a delegation to Cuba and open up the relationship. It is important to our State when we are talking about export markets and growing trade opportunities.

And I think it was Mr. Karsting who testified that lifting the embargo would help farmers in general; it would help all farmers. And I guess I want to go from there.

What sectors, if you will—and whoever has the expertise or all of you—what sectors in our agricultural industry in this country are hurt most by the U.S. trade embargo?

Mr. KARSTING. I think we have seen losses in wheat and rice, and you can go down the laundry list of bulk commodities and look at who has gone up and who has gone down over time, and that would be sort of a rough way to look at it. I think wheat and rice are two of the principal ones. Poultry exports remain pretty strong. But in general, what we have seen from 2005 compared to today, is that Cuba used to buy a much greater variety of goods, and now that variety of goods has been diminished. There has also been a fundamental shift in U.S. agricultural exports in the last decade or two. We sell a lot more processed and intermediate products these days than we did a decade or two ago. So, there is probably potential opportunity in each one of those categories. It is hard for me to say exactly which one is going to shine. Ask me in 10 years, and maybe we will have some good numbers on that.

Mr. EMMER. Is there anything that maybe, again, I don't know which one of you this is most appropriate for, but we talk about—you have testified as to what the administration has done. There might be an argument if they are within their authority or not.

But is there more that can still be done, you believe, without congressional action to open up the Cuban marketplace?

Mr. KARSTING. I think the authority within my agency, you know, where we would go now does require action by Congress. Our principal export promotion programs that I mentioned before,

we can't use those. We can't spend a single dollar on any sort of export promotion.

So, you know, we would love to be an environment where we have a little more on-the-ground market intelligence in the country. When I say intelligence, I mean our ag attaches, those sorts of things, at some point. We currently run all of our Caribbean operations out of an office in Miami. So we will take it one step at a time.

Mr. EMMER. Mr. Smith you were talking about some of the things that have been done through this administration's actions, including broadening the ability of financial institutions to do more. And I think the gentlelady from Florida was referring to debit cards, et cetera. You had referred to U.S. banks, financial institutions, that can now have correspondent relationships in Cuba. How many of those exist at this moment? Has that started already?

Mr. SMITH. To my knowledge, there is only one financial institution that has opened a correspondent account in Cuba. I think Cuba is one of our toughest sanctions programs. The variety of requirements that we have under our sanctions and the penalties that we impose for violations—most people are aware of the major penalties that we instituted when we find that a financial institution has run afoul of our sanctions—lead banks to be very, very cautious.

And so I think if you ask me what my expectation would be is that until there is a greater interest for the banks, until there is more trade or interest from big American companies, you will have banks that are very cautious about getting in until the profit is greater for them.

Mr. EMMER. But taking that one step farther, it is not just that, but isn't it true that with the embargo still in place, they don't—there isn't going to be a rush of banks, financial institutions entering into Cuba?

Mr. SMITH. I think that is right. As I said at the beginning, even with these changes, most imports, most exports, and most other transactions remain prohibited between the United States and Cuba. Given that landscape, there is not that great of an incentive for financial institutions to rush in across the board.

Mr. EMMER. Lastly, could you expand on your testimony earlier that you said the administration through its actions have expanded certain humanitarian projects in Cuba.

Mr. SMITH. Sure.

Mr. EMMER. Could you expand on that?

Mr. SMITH. Sure. We issued a general license that is a regulatory authorization that allows U.S. persons to do certain activities within what we define as the humanitarian field. Within the humanitarian field, we define what we mean by that. So it may be certain medical or educational or other types of projects, including certain micro-financing type activities. And we also authorize in that area more remittances and an unlimited category where we might have restrictions in other categories. So we have been working in that area. We also allow travel for that purpose as well.

Mr. EMMER. And I think, lastly, with what little time I might have left, Mr. Karsting, you were talking about the farmer-to-farm-

er programs. Can you—for people that are here, can you tell us, how do those work?

Mr. KARSTING. We do a number of sort of educational exchange programs, and farmer to farmer can be one of them. Often, when we send trade missions overseas, U.S. producers will go and accompany their sales executives and that turns into a de facto farmer-to-farmer exchange.

We also have two other programs that we administer: There is the Norman E. Borlaug Exchange Program and the Cochran Exchange Program. The Borlaug relates more to graduate-level Ph.D. Research exchanges. The Cochran Program deals with a lot of very practical on-the-ground sort of this is the way you manage cold supply chain, you know, any number of sorts of things.

So we do exchange programs around the globe, but obviously not with Cuba unless there is a change in the law.

Mr. EMMER. Okay. Thank you.

I yield back.

Mr. POE. Thank the gentleman.

The Chair recognizes the gentleman from Arkansas, Mr. Crawford.

Mr. CRAWFORD. Thank you, Mr. Chairman.

This is a question perhaps best directed to the State Department, but since they are not part of this panel, I will direct it to any and all of you who can answer it. Are there any barriers in place that you know of that restrict Cuban ag customers and officials from coming to the United States for the purpose of developing business relationships or conducting quality control activities like safety and quality inspections?

Mr. KARSTING. We are not bringing in Cuban agricultural projects, so there would be no reason for them to——

Mr. CRAWFORD. I guess, maybe I should clarify what I am asking here. Can they come here to develop relationships as it applies to U.S. businesses accessing Cuba?

Mr. KARSTING. That is a question I would leave to State.

Mr. SMITH. I think that is more of a State Department visa issue.

Mr. CRAWFORD. All right. Thank you.

Mr. Karsting, some supporters of trade with Cuba have said that we need to keep the restrictions on FAS' market development programs to ensure that taxpayer money doesn't get into the hands of the Castro regime. Do you think that is a valid criticism, or are there enough safeguards in place that would prevent misappropriation?

Mr. KARSTING. Our use of these market development programs, just by way of background, is one of our signature public/private partnerships. So we cooperate with about 86 different groups out there, private sector groups that promote agricultural exports overseas. So our agreement is with them, and they submit to us their strategies for building markets overseas.

So I don't view that money as going directly into the coffers of any of their target countries. It is going into the hands and the control of U.S. producers and exporter groups for them to figure out, with our concurrence, what is the best strategy for growing and developing a market overseas. So, I think there are a couple layers of protection in there that give me comfort on that.

I want to back up a little bit to your earlier question. You talked about people coming over here. This is probably a good point to talk about. An important part of USDA in many, many countries around the globe is not just for our FAS folks to have a presence there to figure out how we can grow opportunity for American agriculture, but also for our Animal and Plant Health Inspection Service team to be on the ground, to make sure that we protect American agriculture on the plant and animal health side of things.

So as we look down the road to a relationship with Cuba, it involves both of those elements.

Mr. CRAWFORD. Okay. Thank you.

And let me ask you, Mr. Karsting, would you say that Alimport is a concern in terms of quality of access in promoting U.S. products directly to consumers?

Mr. KARSTING. Ask that again.

Mr. CRAWFORD. Would you say that Alimport is a concern in terms of quality of access and promoting U.S. products directly to consumers?

Mr. KARSTING. Well, certainly a lot of our competitors don't go through Alimport, and it is a pretty opaque process. But you aren't able to change things unless you are there and able to build relationships hopefully with end-use customers.

Mr. CRAWFORD. What recommendations would you—or anybody on the panel can answer this if they want to—have in terms of policy shift that we could implement here that would enable producers to market directly into the Cuban market?

Mr. KARSTING. Like I mentioned before, the Secretary said we can't spend a single dollar of our MAP, EMP, or other marketing sorts of programs, in Cuba, and that is something that Congress is going to have to grapple with. We can't unilaterally take any action on that.

Mr. SMITH. And I think from a Treasury—oh, I am sorry.

Mr. BORMAN. We in Commerce are also statutorily prohibited from doing our normal range of trade promotion and market analysis activities in Cuba.

Mr. SMITH. And on the Treasury side, what we hear most from exporters are the cash in advance rules, meaning that they can't get private financing either. They have to go through this——

Mr. CRAWFORD. Okay. So that is what we can't do. So I guess what I am asking is recommendations from you for what we could do. And if I am hearing you right, you think we could take some action to lift that?

Mr. SMITH. That restriction is in the statute; it is in the Trade Sanctions Reform and Export Enhancement Act that doesn't allow private financing or government financing. So that is——

Mr. CRAWFORD. Which would be an essential piece to this anyway, so you would recommend that that would be a starting point?

Mr. SMITH. If Congress wanted to look at that, that is the place to go.

Mr. CRAWFORD. Okay.

Mr. BORMAN. And TSRA also has the restrictions on export assistance, which is what we were talking about in our——

Mr. CRAWFORD. Okay. Thank you.

I yield back.

Mr. POE. Thank the gentlemen. Thank all out of our witnesses for being here.

I thank our Members of Congress, especially the ones not on the committee for being here today as well.

And the subcommittee is adjourned.

[Whereupon, at 3:14 p.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Record

SUBCOMMITTEE HEARING NOTICE
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-6128

Subcommittee on Terrorism, Nonproliferation, and Trade
Ted Poe (R-TX), Chairman

TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend an OPEN hearing of the Committee on Foreign Affairs, to be held by the Subcommittee on Terrorism, Nonproliferation, and Trade in Room 2200 of the Rayburn House Office Building (and available live on the Committee website at http://www.ForeignAffairs.house.gov):

DATE: Wednesday, September 9, 2015

TIME: 2:00 p.m.

SUBJECT: Agricultural Trade with Cuba

WITNESSES: Mr. John Smith
Acting Director
Office of Foreign Assets Control
U.S. Department of the Treasury

Mr. Phil Karsting
Administrator
Foreign Agricultural Service
U.S. Department of Agriculture

Mr. Matt Borman
Deputy Assistant Secretary
Bureau of Industry and Security
U.S. Department of Commerce

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.

COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF SUBCOMMITTEE ON *Terrorism Nonproliferation and Trade* HEARING

Day *Wednesday* Date *September 9, 2015* Room *2200*

Starting Time *2:05 p.m.* Ending Time *3:14 p.m.*

Recesses [ ] (to) (to) (to) (to) (to) (to)

Presiding Member(s)

Chairman Ted Poe

Check all of the following that apply:

Open Session [✓]
Executive (closed) Session [ ]
Televised [✓]

Electronically Recorded (taped) [✓]
Stenographic Record [✓]

TITLE OF HEARING:

"Agricultural Trade with Cuba"

SUBCOMMITTEE MEMBERS PRESENT:

Reps. Poe, Wilson, Perry, Keating, Castro

NON-SUBCOMMITTEE MEMBERS PRESENT: *(Mark with an * if they are not members of full committee.)*

Reps. Ros-Lehtinen, Emmer, Crawford**

HEARING WITNESSES: Same as meeting notice attached? Yes [✓] No [ ]
(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: *(List any statements submitted for the record.)*

QFRs - Rep. Ros-Lehtinen

TIME SCHEDULED TO RECONVENE _____
or
TIME ADJOURNED *3:14 p.m.*

Subcommittee Staff Director

Questions for the Record
Submitted by the Honorable Ileana Ros-Lehtinen

To Mr. John Smith, Acting Director of the Office of Foreign Assets Control, U.S. Department of the Treasury

1. The January 2015 OFAC rule permits persons to import into the United States goods from Cuba including tobacco and alcohol and permits U.S. persons to use credit and debit cards from U.S. financial institutions to pay for such transactions.

Congress has prohibited U.S. financial institutions and persons to extend financing with respect to any transaction involving property confiscated by the Cuban regime.

If a credit card is used by a person to purchase alcohol or tobacco, such a transaction would involve the extension of a short term loan or credit by a U.S. financial institution to consummate a transaction involving confiscated property.

- Thus, how doesn't this new OFAC regulation contravene U.S. law?

RESPONSE:

The authorization for U.S.-issued credit and debit card use by travelers in Cuba is consistent with applicable law. Section 103 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, which has been implemented in section 515.208 of the Cuban Assets Control Regulations (CACR), prohibits United States nationals, permanent resident aliens, and United States agencies from knowingly making a loan, extending credit, or providing other financing for the purpose of financing transactions involving confiscated property the claim to which is owned by a United States national, except for financing by a United States national owning such a claim for a transaction permitted under United States law. Nothing in the CACR—which also implements the new rule that you reference—authorizes any transaction that violates this prohibition. In general, OFAC does not consider goods purchased by travelers in Cuba to be subject to this prohibition, unless the goods themselves are known to have been confiscated and to be subject to a claim owned by a United States national.

2. A recent news story stated that "a $3 million yacht left Key West this week with two barbeque grills, 250 channels of satellite TV and a just-in-case plan for rescuing stranded Cuban rafters encountered in the Florida Straits. After four hours smooth sailing, the Still Water tied up at Havana's Hemingway Marina. The well-heeled passengers breakfasted on smoked salmon and pastries, then boarded an air-conditioned Cuban government bus for a day of touring the city."

Surely, you are aware that tourism travel to Cuba is illegal.

- So how do these elite luxury yacht trips not constitute illegal tourist activities?

RESPONSE:

OFAC has authorized carrier service by vessel in connection with authorized travel only. Consistent with the Trade Sanctions Reform and Export Enhancement Act of 2000, OFAC does not authorize travel

to Cuba for tourist activities, which remains prohibited. We note that the same news story observes: "Tourism per se remains illegal under the embargo. Yacht broker Paul Madden received Obama administration permission last month to operate yacht charters for 'people-to-people' trips with U.S. and Cuban government guides jointly shepherding groups through daylong activities on shore meant to foster interaction between U.S. citizens and Cubans." The means of transportation to Cuba does not affect a traveler's legal obligation to ensure that his or her travel is authorized.

To Mr. Matt Borman, Deputy Assistant Secretary of the Bureau of Industry and Security,

U.S. Department of Commerce

3. The January 2015 BIS rule correctly cited the 1992 Cuban Democracy Act (CDA) as granting the Department of Commerce authorities to permit certain exports that promote telecommunications connections with Cuba.

Yet, the same rule remained conspicuously silent as to where BIS purportedly derived its statutory authority to create the Support for the Cuban People (SCP) license exception for non-telecom items.

The LIBERTAD Act explicitly ratified all restrictions and codified the comprehensive trade embargo against Cuba.

- Thus, how doesn't this new BIS regulation contravene U.S. law?

RESPONSE:

BIS issued License Exception Support for the Cuban People (SCP) consistent with the Cuban embargo and the goals of United States policy.

Libertad codified the embargo against Cuba and requires that the embargo remain in effect subject to a provision related to the suspension or termination of the embargo upon a determination that a transition to democracy is underway, or has taken place, in Cuba. The embargo requires U.S. government authorization for virtually all trade with Cuba. Except for specific statutory restrictions, however, Presidents have discretion to authorize certain transactions within the context of the embargo. As a result, the Commerce Department has the authority to issue a license for a particular export or to issue a general authorization, referred to in the EAR as a license exception, for the export of an identified category of items under stated conditions.

On December 17, 2014, the President announced that the United States was taking steps to chart a new course in bilateral relations with Cuba and to further engage and empower the Cuban people. The President explained that these steps build upon actions taken since 2009 that have been aimed at supporting the ability of the Cuban people to gain greater control over their own lives and determine their country's future.

Consistent with the President's policy objectives and the embargo as it remains in effect, BIS issued License Exception SCP to allow for the export and reexport to Cuba of items intended to support the Cuban people by improving their living conditions and supporting independent economic activity;

strengthening civil society in Cuba; and improving the free flow of information to, from and among the Cuban people.

The controls implemented by BIS through the EAR are fully consistent with the relevant laws enacted by the Congress.

4. In the past you have acknowledged that exports under the Support for the Cuban People license exemption would have to go through a Castro-owned intermediary company, as the regime controls all foreign trade on the island.

Funneling exports through the Castro regime is inarguably in contravention of the foreign policy objectives of the U.S., as codified by statute.

- Thus, once again, how doesn't this BIS regulation contravene U.S. law?

RESPONSE:

The presence of Cuban government intermediaries in authorized transactions with Cuba does not contravene U.S. law. Even at the time Libertad codified the embargo, authorized transactions required the involvement of Cuban government intermediaries, such as in the case of gift parcels, humanitarian donations, and later with agricultural commodities. For instance, U.S. agricultural exports must go through the Cuban government agency Alimport, which is the sole buying agency for U.S. agricultural products. The U.S. policy objective to empower and engage the Cuban people with License Exception Support for the Cuban People (SCP) requires some level of Cuban government involvement in particular transactions, much like other authorized transactions with Cuba, where the presence of Cuban government intermediaries has not been considered inconsistent with the embargo as codified.

○