

GAO

Report to the Honorable
Dan Burton, Chairman, Committee on
Government Reform and Oversight
House of Representatives

December 1998

CUBAN EMBARGO

Selected Issues Relating to Travel, Exports, and Telecommunications





**United States
General Accounting Office
Washington, D.C. 20548**

**National Security and
International Affairs Division**

B-281123

December 1, 1998

The Honorable Dan Burton
Chairman, Committee on Government
Reform and Oversight
House of Representatives

Dear Mr. Chairman:

In 1962, the United States imposed an economic embargo against Cuba that has been modified over the years by legislation and presidential actions. At your request, we reviewed the implementation and monitoring of certain embargo provisions affecting travel, telecommunications, and trade. Specifically, we examined (1) whether the decision of the Department of the Treasury's Office of Foreign Assets Control (OFAC) to allow authorized U.S. travelers to fly indirectly to Cuba by taking chartered aircraft that touched down and changed flight numbers in third countries and then flew on to Cuba was consistent with U.S. law; (2) whether a telecommunications agreement between International Telephone and Telegraph (ITT) and STET International (an Italian telecommunications company) was consistent with U.S. law; (3) how U.S. products can be available in Cuba; and (4) how U.S. agencies license and monitor U.S. travelers and companies, including licensed air carrier providers, and exports that are affected by the embargo's restrictions. You also asked that we determine whether the executive branch's changes to the embargo in 1998 were consistent with U.S. law. As requested, we are also providing information on the telecommunications provisions of the Cuban Democracy Act of 1992 (CDA), Cuba's imports, and U.S. restrictions on imports containing Cuban components in appendixes I-III.

Background

To implement the embargo, the Treasury Department, in 1963, issued the Cuban Assets Control Regulations (CACR),¹ under the authority of the Trading With the Enemy Act of 1917, as amended,² which confers broad authority on the President to impose embargoes on foreign countries. The CACRs prohibit U.S. persons from engaging in any financial transactions

¹31 C.F.R. pt. 515.

²50 U.S.C. app. § 5(b).

with Cuban entities, including those related to travel and exports.³ In recent years, Congress has added other embargo measures—enacting the CDA of 1992⁴ and the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (also known as the Helms-Burton Act).⁵ The CDA restricts U.S.-owned or -controlled firms in third countries from exporting to Cuba and authorizes humanitarian and telecommunications exports. The Helms-Burton Act codified the embargo in effect on March 1, 1996, and added other provisions related to the rights of U.S. citizens whose property has been confiscated by the Cuban government.

In March 1998, the President announced (1) the restoration of direct charter flights between the United States and Cuba for authorized U.S. travelers, (2) a plan to streamline and expedite licensing procedures for medical exports, and (3) the reinstatement of family remittances up to \$300 per quarter from persons in the United States to their families in Cuba. Subsequently, OFAC added the requirement that “fully hosted”⁶ travelers must, when requested, supply proof that costs associated with their travel to Cuba were paid for by a non-U.S. entity.

Results in Brief

The President’s broad authority under section 5(b) of the Trading With the Enemy Act allows the executive branch a great deal of discretion in making changes to embargo restrictions. Both flight procedures used by the Department of the Treasury and the Department of Commerce—those for indirect flights between February 1996 and May 1998 and those for direct flights adopted in 1998 for passengers and cargo—were consistent with existing U.S. laws. In addition, the executive branch’s 1998 change that further monitors fully hosted travel is also consistent with existing U.S. law.

We also believe that the agreement between ITT and STET International regarding ITT’s confiscated property in Cuba is consistent with the applicable statutory language of the Helms-Burton Act. ITT has agreed to

³For this report, the term “U.S. persons” refers to “persons subject to U.S. jurisdiction.” Under the CACRs, this term includes (1) U.S. citizens or residents, (2) any person actually within the United States, and (3) corporations organized in the United States or any U.S. state or territory. 31 C.F.R. §15.329.

⁴22 U.S.C. §§ 6001 and following.

⁵*Id.* §§ 6021 and following.

⁶Fully hosted travelers refer to U.S. persons who make no currency transfers to Cuba before, during, or after their travel to Cuba. All their travel expenses in Cuba are paid for by other individuals or entities, including payments to Cuban air carriers. See 63 Fed. Reg. 27350 (May 18, 1998). Fully hosted travelers continue to be prohibited from taking direct flights between the United States and Cuba.

let STET use ITT's confiscated property in Cuba over the 10-year period of the agreement, and STET provided substantial compensation to ITT.

Some U.S. goods such as humanitarian items like food, clothing, and medicines, can legally be exported to Cuba. In most instances, U.S. goods can also be legally exported to Cuba by non-U.S. firms in third countries if the U.S. supplier has no knowledge that the buyer intends to sell them to Cuba. However, no reliable data are available on the amount of such trade. Exports may also reach Cuba illegally if businesses deliberately circumvent the embargo restrictions. According to U.S. officials, few countries cooperate with U.S. enforcement of the embargo.

The executive branch's 1998 changes that expedite procedures for medical exports to Cuba and permit licensed medical and pharmaceutical sales representatives to travel to Cuba are consistent with the 1992 CDA, which specifically authorizes medical exports, and OFAC's licensing authority under the CACRS.

OFAC is primarily responsible for implementing the Cuba embargo, the Commerce Department's Bureau of Export Administration (BXA) licenses exports, and the Customs Service enforces the embargo at U.S. borders. Customs seizes contraband—both goods and currency—and refers potential civil violations to OFAC and potential criminal violations to the Justice Department. Justice officials told us they have not prosecuted many Cuba embargo cases partly due to the difficulty of proving specific intent to violate the law. They also indicated that the lack of significant monetary impact of Cuban embargo cases and jury appeal where humanitarian issues may be present are factors to be considered in these cases. Justice has prosecuted 10 cases related to export and travel violations in the last 6 years.

In 1998, the executive branch, citing humanitarian reasons, changed family remittance procedures to allow U.S. persons to send general family remittances of up to \$300 per quarter to relatives in Cuba. Because these changes will likely result in increased transfers of currency to Cuba, they do not appear to further the general purpose of the embargo—that is, to limit the flow of hard currency from the United States to Cuba. However, the President's broad authority over the conduct of foreign affairs as well as that under section 5(b) of the Trading With the Enemy Act allows the executive branch a great deal of discretion in making changes to embargo restrictions. In addition, the CACRS provide specific authority to the Treasury Secretary to modify the restrictions in the CACR "by means of

regulations, rulings, instructions, licenses, or otherwise.” Consequently, based on our review of all the applicable statutory language, we believe OFAC had the authority to make the family remittance changes under its general licensing authority.

Over the course of its implementation, the Cuba embargo has both been strengthened by the law and regulations, including the Helms-Burton Act, and loosened to allow humanitarian assistance. Although we were not able to quantify illegal trade to Cuba, these laws and regulations have afforded a measure of control over the movement of people and goods from the United States to Cuba.

Indirect and Direct Flights to Cuba Are Consistent With U.S. Law

We believe that OFAC’s decision to permit U.S.-licensed air carrier service providers to charter foreign aircraft that landed in a third country, changed flight numbers, and then flew on to Cuba independent of the U.S. carrier service provider was consistent with its legal authority. We also believe that the executive branch’s decisions to restore direct U.S. flights to Cuba of both persons and cargo and to further monitor fully hosted travel to Cuba were consistent with the existing law.

Travel Restrictions in the CACR

No U.S. statute currently establishes overall restrictions on travel to Cuba. The restrictions on travel are regulatory and are set forth in the CACRS. These restrictions do not prohibit travel to Cuba itself but do preclude most U.S. persons from spending money on travel to Cuba. The primary purpose of the travel restrictions is to stop the flow of hard currency from the United States to Cuba.

The CACRS allow limited categories of U.S. persons to spend money on travel to Cuba without seeking OFAC approval. These include (1) official government travelers; (2) journalists; and (3) once per year, persons traveling to visit close relatives in Cuba under circumstances of extreme humanitarian need. In addition, U.S. persons whose expenses are fully paid by a non-U.S. person, including a Cuban or the Cuban government, may also travel to Cuba without OFAC approval. Additional categories of U.S. persons may travel to Cuba if they obtain a specific license from OFAC to do so.⁷

⁷Examples include (1) people traveling more than once a year to visit close relatives in Cuba under circumstances of extreme humanitarian need, (2) recognized human rights organizations that are investigating human rights violations, and (3) companies negotiating the performance of telecommunications agreements for service between the United States and Cuba.

Authorized travelers to Cuba may spend no more than \$100 per day in Cuba for items directly related to travel. Travelers may also bring back to the United States a maximum of \$100 worth of Cuban merchandise purchased for personal use, but only once every 6 consecutive months. These travelers may also pay for all transportation-related transactions involving travel to and from Cuba, but no more than \$500 may be paid to Cuba in any 12-month period for fees imposed by Cuba.

Indirect Flights to Cuba During 1996-98

Prior to February 1996, the United States permitted authorized carrier service providers to arrange direct flights between the United States and Cuba. Following the shutdown of two “Brothers to the Rescue”⁸ aircraft on February 26, 1996, the President suspended all direct flights between the United States and Cuba. OFAC then notified authorized carrier service providers that they could arrange indirect flights provided that U.S. responsibility for such flights ended in the third country. Authorized travelers could travel to Cuba by changing flights in the third country and flying on to Cuba. Under this procedure, responsibility for the second leg of the flight had to be assumed by a non-U.S. tour sponsor using non-U.S. aircraft and flight crews. Moreover, at that time, the requirement to change flights meant a change of aircraft.

According to OFAC, several problems arose regarding air carrier service to third countries. First, OFAC became aware that most air service between the third-country destinations and Cuba was provided by a Cuban airline. Since authorized travelers had to pay the airline for tickets, additional U.S. currency was provided to Cuba. Second, authorized travelers’ need to carry currency to meet expenses in third countries significantly complicated Customs’ outbound search in the United States for excess currency going to Cuba. Third, since all travelers to Cuba—both legal and illegal—were going through third countries, Customs had to deal with assertions by some travelers that their final destination was the third country and not Cuba. Thus, Customs could not act with certainty about how much U.S. currency each passenger could legitimately take. And finally, travelers’ need to change aircraft in the third country often resulted in substantial delays or overnight stays for passengers awaiting connecting flights, thereby necessitating the possession of additional funds.

To address these problems, OFAC informed all carrier service providers by letter dated July 9, 1996, that they could permit authorized travelers to remain on board the non-U.S. aircraft for a continuing flight to Cuba from

⁸A Miami Cuban group.

a third country, provided that the flight number was changed and the U.S. service provider's responsibility for the second leg of the flight ended in the third country.

We find OFAC's July 9 change in procedure to be consistent with its authority under section 5(b) of the Trading With the Enemy Act, which conferred broad authority on the President and, by delegation to OFAC, to implement comprehensive embargoes against foreign countries. This change is consistent with section 102(h) of the Helms-Burton Act. Section 102(h) states that "the economic embargo of Cuba, as in effect on March 1, 1996, including all restrictions under part 515 of title 31, Code of Federal Regulations, shall be in effect upon the enactment of this Act, and shall remain in effect, subject to section 204 of this Act." Under 31 C.F.R. § 515.201, financial transactions with Cuba, which include travel expenses, are generally prohibited except as specifically authorized by the Secretary of the Treasury by regulations, licenses or otherwise. Section 204 requires a presidential determination that a transition government in Cuba is in power before the economic sanctions can be either suspended or terminated.

The conference report accompanying the act explains that section 102(h) was not intended to prohibit executive branch agencies from amending existing regulations to tighten economic sanctions on Cuba or to otherwise implement Helms-Burton. According to OFAC, two of the principal purposes of the July 9 procedure were to afford greater U.S. control over flights and passengers, and to reduce currency transfers to Cuba resulting from authorized travelers flying from third countries to Cuba on a Cuban airline.

Direct Flights to Cuba Are Consistent With U.S. Law

In May 1998, the executive branch released its regulations for the resumption of direct passenger charter flights between Miami, Florida, and Havana, Cuba, effective June 15, 1998. Under the revised procedures, U.S.-licensed carrier service providers can arrange direct flights to Cuba, using either U.S. or non-U.S. aircraft and flight crews. The executive branch also restored direct humanitarian cargo flights between the United States and Cuba and imposed additional monitoring procedures on fully hosted travel to Cuba. Regarding the latter, it established a presumption that U.S. persons who travel to Cuba without authorization have engaged in prohibited travel-related transactions. Fully hosted travelers can rebut this presumption by giving federal enforcement agencies, upon request,

relevant supporting documentation showing that they have not engaged in prohibited transactions.

According to OFAC, restoration of direct flights between the United States and Cuba is likely to give U.S. enforcement agencies—primarily Customs and OFAC—greater control over U.S. persons and humanitarian cargo than they had on flights routed through third countries. Enhanced control also appears to reduce, to some extent, the potential for illegal transfers of currency into Cuba.

We concur with OFAC’s position regarding the executive branch’s authority to restore direct flights. We also believe that it is within OFAC’s authority to strengthen the monitoring procedures on fully hosted travel to Cuba. Among other things, this restriction is intended to make it more difficult for travelers to spend money in Cuba.⁹ Since all these changes will assist Customs and OFAC in enforcing the embargo by providing greater control over travel to Cuba, they are consistent with the embargo as codified by Helms-Burton.

Agreement on Use of Confiscated Property Is Consistent With U.S. Law

A number of provisions in the 1996 Helms-Burton Act relate to U.S. property confiscated by the Cuban government. Title III of the Helms-Burton Act establishes a private right of action for U.S. persons or entities against others who knowingly and intentionally have trafficked in property confiscated by the Cuban government on or after January 1, 1959. Under title III, the term “traffics” includes a broad range of activities undertaken without the authorization of the U.S. national who holds a claim to the property. Title IV of the act authorizes the Secretary of State to deny a visa to, and the Attorney General to exclude from the United States, an alien that the Secretary determines has confiscated or trafficked in property owned by a U.S. national. For title IV sanctions to apply, the trafficking had to occur on or after March 12, 1996.¹⁰

After enactment of Helms-Burton, the State Department began an investigation of STET International, an Italian firm, which benefits from the use of ITT property confiscated in Cuba. Before State concluded its investigation on July 15, 1997, ITT and STET entered into an agreement

⁹See 63 Fed. Reg. 27350-51 (May 18, 1998). OFAC officials, however, have indicated that enforcement cases may be difficult to prove under this new restriction.

¹⁰The President may suspend the provisions of title III for successive 6-month periods and President Clinton has done so since enactment of Helms-Burton. Unlike title III, however, the provisions of title IV cannot be suspended.

under which ITT (1) allowed STET to use its confiscated property and (2) waived its right to bring any action against STET for such use, for a 10-year period. ITT also agreed to cooperate with STET in contacts with State to help ensure that no STET personnel would be excluded from the United States under title IV. In exchange, STET agreed to make a substantial one-time payment to ITT. In July 1997, State terminated its investigation. Subsequently, STET paid ITT the agreed-upon amount. State said that the agreement constituted a major step forward in the enforcement of Helms-Burton, reinforced the principle of respect for the property rights of U.S. citizens, and would serve as a disincentive to other foreign firms currently operating in or considering investment in confiscated U.S. property in Cuba without authorization of the U.S. claimant.

In reviewing the agreement, State determined that as long as it is implemented in accordance with its terms, for the 10-year period covered, STET's use of ITT's confiscated property will not constitute "trafficking." The term traffics does not apply when U.S. nationals authorize other parties to make use of confiscated property for which they have claims. According to State, claimants may waive the title III private right of action. State also pointed out that the amount STET agreed to pay ITT was not insubstantial and, as such, suggests that the agreement was not a subterfuge for avoiding the intent of titles III and IV.

We have reviewed the agreement and State's analysis and find the agreement consistent with the language and intention of titles III and IV of Helms-Burton. The agreement would appear to preclude STET from being considered a trafficker in ITT's confiscated property, at least for the 10-year period covered by the agreement.

Embargo Restrictions on U.S. Exports to Cuba

The embargo against Cuba prohibits the export of U.S. goods and technology to Cuba, with limited exceptions. The exceptions include gift parcels, food and agricultural items, medicines and medical equipment, items donated by recognized charities, and certain non-humanitarian goods. Commerce's BXA licenses some items while some items qualify for exceptions to BXA licensing requirements.¹¹

¹¹OFAC has the authority to license exports from foreign subsidiaries of U.S. firms and U.S. firms abroad. However, as mentioned above, the CDA specifically precludes U.S.-owned or -controlled foreign firms in third countries from exporting to Cuba.

Licensed Exports

BXA licenses exports that are made in the United States or that are made by foreign firms and contain certain percentages of U.S. components. Limited categories of goods can be exported to Cuba only after the exporter has sought a license. The CDA specifically authorizes exports of medicines, medical supplies, instruments and equipment, and pharmaceuticals, and BXA licenses these exports.¹² BXA also reviews and licenses exports on a case-by-case basis of (1) certain telecommunications commodities; (2) nonstrategic, foreign-made products that contain insubstantial proportions of U.S.-origin materials, parts, or components; (3) certain commodities and software used by human rights organizations or individuals and nongovernmental organizations that promote independent activity intended to strengthen civil society in Cuba; and (4) certain commodities and software to U.S. news bureaus in Cuba.

Unlicensed Exports

The two major categories of goods that can be exported to Cuba without a BXA license are gift parcels and humanitarian donations. Gift parcels may include only food, vitamins, seeds, medicines, medical supplies and devices, hospital supplies and equipment, equipment for the handicapped, clothing, personal hygiene items, veterinary medicines and supplies, fishing equipment and supplies, soap-making equipment, and receive-only radio equipment and necessary batteries for reception of commercial and/or civil AM/FM and short-wave, publicly available frequency bands.¹³ Except for gift parcels of food, which are unrestricted, only one gift parcel valued at no more than \$200 may be sent from the same donor to the same recipient in any 1 calendar month.

Humanitarian donations to meet basic human needs may also be exported to Cuba without a license.¹⁴ However, donors must be U.S. charitable organizations with an established record of involvement in donor programs. They must also have experience in maintaining and verifying a system of distribution in Cuba to ensure delivery to the intended beneficiaries.

¹²The CDA authorizes medical exports to Cuba unless (1) restricted by pertinent provisions of the Export Administration or the International Emergency Economic Powers Acts; (2) there is a reasonable likelihood they will be used for torture or other human rights abuses or will be reexported; (3) they could be used in the production of any biotechnological product; or (4) the U.S. Government is unable to verify, by on-site inspection or other means, that the item will be used for the purpose for which it is intended and only for use and benefit of the Cuban people. (22 U.S.C. § 6004(c) and (d); subsection (a) also states that its provisions, including those authorizing medical exports to Cuba, apply notwithstanding any other provision of law.)

¹³BXA authorizes exports of gift parcels by an individual donor for the use of the donee or the donee's immediate family.

¹⁴Some donations of medicines and medical items must be specifically licensed.

The majority of U.S. humanitarian exports to Cuba are donated medicines licensed by BXA. Actual U.S. humanitarian exports to Cuba in 1997 totaled \$9.3 million, of which \$7.4 million was donated medicinal and pharmaceutical products, as reported by Commerce's Bureau of the Census. Table 1 shows official data for U.S. exports to Cuba for 1993-97. (See app. II for data on Cuban imports.)

Table 1: U.S. Exports to Cuba, 1993-97

U.S. dollars in millions					
Commodity	1993	1994	1995	1996	1997
Medicinal & pharmaceutical, donated	\$1.0	\$3.4	\$3.6	\$4.4	\$7.4
Articles donated for relief	0.1	0.6	1.2	0.8	1.3
Wearing apparel, donated	1.0	0.1	0.1	0.1	0.4
Telecommunication apparatus	0	0	0.1	0.1	0
Commingled food exports	0.1	0.1	0	0	0.1
Other	0.3	0.2	0.8	0	0
Total^a	\$2.6	\$4.4	\$5.8	\$5.5	\$9.3

^aTotal may not add due to rounding.

Source: Department of Commerce, Bureau of the Census.

Legal and Illegal Exports Through Third Countries

In addition to the goods excepted from the ban on exports, other U.S. goods can reach Cuba by being lawfully sold to buyers in third countries who then reexport them to Cuba without the knowledge of the U.S. exporter. Complicating the picture somewhat is the presence in Cuba of goods bearing U.S. trademarks. These goods can be produced in third countries under licensing arrangements with the U.S. owner of the trademark and subsequently exported to Cuba. This may or may not be a violation of U.S. law, depending on whether the U.S. owner of the trademark knows that the licensee plans to market the trademarked goods in Cuba.

Exports may also reach Cuba illegally if businesses deliberately circumvent the embargo restrictions. It is difficult for U.S. agencies to detect illegal exports once they have left the United States because few countries cooperate with U.S. enforcement of the embargo. Most countries trade freely with Cuba, and some have enacted legislation to ensure that their firms do not cooperate with the U.S. embargo. For example, under

Canadian law, judgments under Helms-Burton are not to be recognized or enforced in Canada.

New Guidelines Intended to Streamline Medical Exports Are Consistent With U.S. Law

On May 14, 1998, BXA issued guidelines describing expedited procedures for licensing medical exports to Cuba. The guidelines indicated that BXA will work with exporters on the monitoring of and on-site verification requirements for medical sales or donations to Cuba.¹⁵ The guidelines also provided a number of clarifications about how to fill out the required license application forms. As part of the May 1998 changes, OFAC also added sales representatives from pharmaceutical and medical companies to the categories of U.S. persons that could travel to Cuba under a specific license. This travel must be in connection with permitted sales of health care products to Cuba.

We believe that BXA's expediting and streamlining procedures for medical exports to Cuba properly implement the provision in the CDA specifically authorizing medical exports to Cuba. We also believe that OFAC's licensing authority under the CACRS covers its addition of sales representatives to the categories of persons that can travel to and spend money in Cuba. This furthers the specific provision in the CDA authorizing medical exports to Cuba.

Roles in Implementation and Monitoring

Although the State Department plays a pivotal role in policy matters, OFAC is primarily responsible for implementing the embargo and BXA licenses exports. Under their licensing authority, they define and limit the frequency and extent of financial transactions related to travel and exporting. However, both agencies must rely to a great extent on Customs, which has the primary role of enforcing the embargo at U.S. borders.

OFAC licenses transactions for travel—whether direct or indirect— by U.S. persons and by U.S. service providers who provide transportation services to authorized travelers. OFAC's small enforcement division works closely with Customs, especially in the application of the regulations to specific situations. It monitors the air carrier providers' operations, including their financial transactions with Cuba and their business travel to Cuba. According to OFAC, its Miami office, established at the direction of Congress in 1995 to strengthen enforcement, is better able to coordinate with U.S. Customs in Florida on potential criminal cases and is working

¹⁵According to BXA, entities that could help comply with end-use monitoring include, but are not limited to, representatives of the license applicant, religious or charitable groups, third country diplomats, and international nongovernmental organizations.

closely with Customs on several current cases. It also provides a local presence for licensing travelers and educating the public about the embargo's requirements.

OFAC Monitors Air Carrier Service Providers

Under the CACRS, OFAC licenses travel and air carrier service providers to arrange travel and/or provide travel services to authorized passengers visiting Cuba. In authorizing service providers, OFAC licenses companies that meet OFAC's compliance requirements, which focus on service reliability, financial integrity, and the ability to provide OFAC with documentary evidence of compliance. OFAC requires the service providers to submit annual reports on the number of passengers transported and the total amount of money transferred to Cuba.

At the time of our review, OFAC had not reviewed the carriers' contracts with Cuban entities or used the information submitted by the service providers for analysis or follow up. OFAC officials stated that, during the time period covered by this report, existing resources were being devoted to other enforcement matters, such as monitoring the operational requirements for all service providers and issuing humanitarian licenses for travel. OFAC officials also noted that the availability of further resources would result in enhanced oversight of the regulated community.

We reviewed OFAC files pertaining to licensing, reporting, and other routine matters for the three carrier service providers actively flying authorized passengers to third countries in 1997. We found that some data related to currency transfers to Cuba seemed inconsistent with the number of passengers transported to Cuba. For example, one carrier's report of currency transfers to Cuba during 1997 included a significant amount for passengers actually transported in 1996, but the carrier reported the number of passengers transported in 1997 only. Thus, we were not able to compare the amounts of currency transferred to Cuba per passenger by the three air carriers, although we noted certain apparent differences in total amounts transferred.

We questioned OFAC about the difficulty in assessing the currency transfers to Cuba reported by the three air carrier service providers. OFAC pointed out that it requires only the total currency transfer to Cuba during the year and does not request information about liabilities incurred. OFAC subsequently conducted an on-site check during April 1998 and verified that Cuba charges each carrier service provider the same amount per ticket sold. OFAC told us that the differences could be explained partly by

other fees, such as visa fees, and partly by differences among the service providers in the timing of their payments.

OFAC officials told us that they found other accounting problems with two of the service providers during their review. OFAC suspended indefinitely the two air carriers' authorizations to provide services to Cuba, effective September 28, 1998, with the provision that each may engage in travel transactions through October 14, 1998, in order not to strand authorized passengers who departed the United States prior to September 30 aboard flights originated by either air carrier.

BXA's Role in Monitoring Authorized Exporters

Because of the difficulty in monitoring all goods exported, both OFAC and BXA rely on exporters' voluntary adherence to export regulations. In addition, humanitarian organizations are permitted to self-certify their eligibility to export to nongovernmental organizations in Cuba without seeking BXA approval. According to BXA officials, BXA does require enhanced record-keeping measures, but it only occasionally monitors these organizations.

For goods that are licensed, BXA specifies a ceiling on the amount of exports that the licensee may export, but exporters have used only a small proportion of the total authorized amount. For example, actual 1997 exports to Cuba amounted to \$9.3 million, according to Customs, but the total value of potential exports that BXA licensed in 1997 was about \$341 million. Tables 2 and 3 indicate the authorized and actual amounts of exports for humanitarian donations and for medicine and medical equipment for 1993-97.

Table 2: U.S. Authorized and Actual Humanitarian Donations to Cuba, 1993-97

U.S. dollars in millions						
Data	1993	1994	1995	1996	1997	Total
Authorized exports	\$559.8	\$517.5	\$526.3	\$538.6	\$340.7	\$2,482.9
Actual exports	\$2.6	\$4.4	\$5.8	\$5.5	\$9.3	\$27.6

Source: Department of Commerce, Bureau of Export Administration and Bureau of the Census.

Table 3: U.S. Authorized and Actual Medicine and Medical Equipment Exports to Cuba, 1993-97

U.S. dollars in millions						
Data	1993	1994	1995	1996	1997	Total ^a
Authorized exports	\$12.2	\$39.2	\$113.8	\$21.0	\$88.7	\$274.8
Actual exports	\$1.0	\$3.4	\$3.6	\$4.4	\$7.4	\$19.8

^aTotal may not add due to rounding.

Source: Department of Commerce, Bureau of Export Administration and Bureau of the Census.

Customs Monitors Travelers and Exports

Although BXA and OFAC rely on Customs to enforce their regulations at U.S. borders, Customs officials told us that demands on its resources prevent it from examining all departing passengers and cargo destined for Cuba, given its multiple enforcement priorities. The Customs Service office in Miami, Florida, monitors departing passengers and shipments at random and, during fiscal year 1996, Customs made 20 seizures of currency totaling \$256,158 that was being transported in violation of the CACRS. During fiscal year 1997, Customs made 14 seizures totaling \$109,376. Customs refers criminal violations to the Justice Department or civil violations to OFAC if warranted. Customs officials said they refer few cases to the Justice Department because violations tend to be insignificant in value and thus do not meet the criteria for prosecution. According to the U.S. Attorney's Office in Miami, the minimum for prosecuting a currency violation is generally \$10,000.

The U.S. Attorneys' offices have brought few prosecutions for violations of restrictions on travel and exports to Cuba over the 36 years of the embargo's history. Officials of the U.S. Attorney's Office in Miami told us that this situation is partly due to the difficulty in accumulating the required proof that persons suspected of a violation had both knowledge of the embargo and the specific intent to violate it. They also told us that the lack of significant monetary impact of Cuban embargo cases and jury appeal where humanitarian issues may be present are factors to be considered in these cases. Nevertheless, they said that their office has begun to put more emphasis on violations of the embargo. One recent export case involving the illegal export of up to \$400 million in goods resulted in several convictions and the imposition of significant fines. The discovery of this violation came from informants, rather than any monitoring done by OFAC, BXA, or Customs. Table 4 summarizes the roles of key agencies that implement the embargo against Cuba.

Table 4: Roles of Key Agencies in Implementing the Cuban Embargo

Agency	Activity	Exceptions	Restrictions	Enforcement
State	Coordinates U.S. foreign policy for Cuba	Not applicable	Not applicable	Not applicable
Treasury/OFAC and Customs	OFAC licenses individuals' travel to Cuba	U.S. government officials, journalists, and persons visiting close relatives in Cuba once per year for humanitarian reasons, and fully hosted travelers	License is valid for a specified time period; U.S. currency is limited to \$100/day, on departure all passengers make declaration to Customs as to amount of currency they are taking.	Customs enforces at U.S. borders and checks about 20 percent of departing flights going to Cuba from the Miami, Florida, airport.
Treasury/OFAC	Licenses (1) travel service providers and (2) carrier service providers	None	Must meet OFAC criteria and maintain adequate records to ensure OFAC that all regulations and directives are being followed.	Ad hoc compliance reviews in Aug./Sept. 1997 and Apr. 1998; Customs and OFAC coordinate enforcement actions.
Treasury/OFAC	Authorizes family remittances	Amounts under \$300 per quarter permitted	\$300 per quarter to a close relative	Customs enforces at U.S. borders. Remittance forwarders are required to maintain records and report summary data to OFAC.
Treasury/OFAC	Takes action on civil violations	Determined on a case-by-case basis	Not applicable	OFAC takes penalty action, including assessing and collecting fines, as appropriate.
Commerce/BXA; Customs	BXA licenses consolidators of gift parcels ^a	None	Consolidator may export up to the total dollar amount authorized by the BXA license. Individual may send one per month to same recipient, \$200 maximum, except for food, which is not restricted.	Consolidators are responsible to ensure that parcels contain allowable items, that the value does not exceed \$200, and that individuals send only one parcel per month. Commerce does not regularly monitor. One BXA audit since 1996 found only minor problems. Customs generally examines exports on a random basis and collects export documents to provide Census with export data.

(continued)

Agency	Activity	Exceptions	Restrictions	Enforcement
Commerce/BXA; Customs	BXA licenses medicine, medical equipment	No specific license needed when sent in a gift parcel ^a	Exporter may send no more than the total dollar amount authorized by the BXA license, which is valid for 2 years.	BXA does not track amount of authorized exports actually shipped; Customs generally examines U.S. exports on a random basis, and collects export documents to provide Census with data.
Commerce/BXA; Customs	BXA licenses food/agriculture	No specific license needed when sent in a gift parcel ^a	Exporter may send no more than the total dollar amount authorized by the BXA license, which is valid for 2 years.	BXA does not track amount of authorized exports actually shipped; Customs generally examines U.S. exports on a random basis, and collects export documents to provide Census with data.
Commerce/BXA; Customs	BXA licenses non-humanitarian ^b exports	None	Exporter may send no more than the total dollar amount authorized by the BXA license, which is valid for 2 years.	BXA does not track amount of authorized exports actually shipped; Customs generally examines U.S. exports on a random basis, and collects export documents to provide Census with data.
Commerce/BXA; Customs	BXA authorizes exports of donations by recognized charities	No specific license needed	Organization self-certifies that it meets all BXA criteria, including ensuring that goods reach intended beneficiaries.	BXA occasionally reviews export documents filed by Customs and may audit the organizations at any time; Customs generally examines U.S. exports on a random basis, and collects export documents to provide Census with data.
Justice/U.S. Attorneys' Offices	Prosecutes criminal violations referred by Customs	Decisions to prosecute are determined on a case-by-case basis.	Not applicable	Not applicable

^aPermitted items are limited to food, which has no limits on the value, vitamins, seeds, medicines, medical supplies and devices, hospital supplies and equipment, equipment for the handicapped, clothing, personal hygiene items, veterinary medicines and supplies, fishing equipment and supplies, soap-making equipment, and receive-only radio equipment and necessary batteries for reception of commercial and/or civil AM/FM and short-wave, publicly available frequency bands. It should also be noted that shippers of these parcels are licensed by BXA.

^bIncludes telecommunications, weather, air traffic control, scientific, news bureau, and pro-democracy items, and medicines and medical equipment sales.

President's 1998 Changes to Family Remittance Regulations

The changes in the general family remittance procedures will likely result in increased transfers of currency to Cuba. Although these changes may have been made for humanitarian reasons, they do not appear to further the general purpose of the embargo—that is, to limit the flow of hard currency from the United States to Cuba. However, the President's broad authority over the conduct of foreign affairs as well as that under section 5(b) of the Trading With the Enemy Act allows the executive branch a great deal of discretion in making changes to embargo restrictions.

History of Family Remittances

Between October 1991 and August 30, 1994, the CACRs permitted U.S. persons aged 18 years or older to make general family remittances¹⁶ to close family members in Cuba in amounts not exceeding \$300 in any consecutive 3-month period.¹⁷ On August 20, 1994, however, the President announced steps to limit the ability of the Cuban government to accumulate foreign exchange, and on August 30, 1994, new family remittances regulations were issued.¹⁸ Under these regulations, U.S. persons could send money to close relatives in Cuba only if they first obtained a specific license from OFAC and the remittances were being made under circumstances of extreme humanitarian need. Notwithstanding this limited authority, according to OFAC, its general operating policy was not to grant licenses for these remittances.

Effect of 1998 Changes

The 1998 changes to the family remittance regulations substantially reinstated the regulations that were used between October 1991 and August 30, 1994. They allow a U.S. person at least 18 years of age to make remittances of up to \$300 in any consecutive 3-month period to a close relative in Cuba. By eliminating the requirements that a specific license be obtained and that remittances be made only under circumstances of extreme humanitarian need, the changes will likely result in increased transfers of currency to Cuba.

¹⁶See 63 Fed. Reg. 27348 (May 18, 1998). The executive branch stated that there had been no change in the authorization permitting emigration remittances of up to \$1,000 on a one time basis to close relatives in Cuba. Sections 515.563(b) and 564(c) of the CACRs authorize U.S. persons to make remittances of \$500 to close family members for purposes of enabling them to emigrate from Cuba to the United States, and an additional \$500 for travel-related emigration costs. U.S. persons who are not close family members can only make remittances to Cubans of \$500 for travel-related emigration costs.

¹⁷56 Fed. Reg. 49847 (Oct. 2, 1991).

¹⁸59 Fed. Reg. 4884 (Aug. 30, 1994).

According to OFAC, each of the economic sanctions programs it implements and administers, including the Cuba embargo, has been structured to impose broad restrictions, leaving reasonable administrative flexibility through licensing authority to ensure that the programs serve the foreign policy objectives for which they were imposed. Furthermore, OFAC considers the executive branch's changes to the remittance procedures a proper exercise of the President's constitutional authority to conduct the foreign affairs of the United States.

As we discussed earlier, section 102(h) of Helms-Burton codified the economic embargo of Cuba as it was in effect on March 1, 1996, including all restrictions under 31 C.F.R. part 515. OFAC believes that the restrictions referred to in section 102(h) include the exercise of licensing authority. Specifically, OFAC refers to 31 C.F.R. § 515.201, which prohibits remittances to Cuba "except as specifically authorized by the Secretary of the Treasury . . . by means of regulations, rulings, instructions, licenses, or otherwise." This encompasses the authority to amend the CACRS to modify license requirements. Thus, OFAC believes that its licensing authority allowed it to change the family remittance regulations as a reasonable means of adjusting the terms of the embargo.

It is clear that the President's broad foreign affairs authority,¹⁹ as well as that under section 5(b) of the Trading With the Enemy Act, allows the executive branch a great deal of discretion in making changes to embargo restrictions.²⁰ We believe that OFAC has the authority to make the family remittance changes under its general licensing authority, which was included in the codification of the embargo under section 102(h). Moreover, section 112 of Helms-Burton specifically addresses the reinstatement of general licenses for family remittances. This section expressed the sense of Congress that prior to such reinstatement, the President should insist that the Cuban government take steps to foster economic freedoms for small businesses in Cuba, among other conditions. Congress further suggested that if a general license was reinstated, the administration should continue to require specific licenses for amounts over \$500. In our view, section 112 clearly indicates that, even after section 102(h) of Helms-Burton codified the embargo in effect on March 1, 1996, the administration retained the authority to reinstate a general license for family remittances.

¹⁹United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936).

²⁰See generally, Udall v. Tallman, 380 U.S. 1, 16 (1965); Chevron U.S.A., Inc., v. Natural Resources Defense Council, 467 U.S. 837 (1984).

In their comments on this report, both OFAC and the Department of State noted that the administration carefully considered the sense of Congress, but determined that it was important to institute the changes promptly after the Pope's visit to Cuba in January 1998. This was deemed necessary to expand the flow of humanitarian assistance to Cuba. The comments specifically stated the view that the issue of family remittances was a matter "subject to Presidential discretion in weighing the humanitarian purpose of allowing U.S. residents and citizens to support family members in Cuba against the resulting flow of hard currency to Cuba." Nevertheless, because these changes will likely result in increased transfers of currency to Cuba, they do not appear to further the general purpose of the embargo to limit such transfers.

Conclusions

The U.S. embargo of Cuba has been in place for over 36 years. Under the embargo, the U.S. government has formulated regulations that balance policy objectives of the embargo with humanitarian needs of Cuban-Americans with family ties to Cuba. The embargo has been adjusted a number of times. Some changes tightened the embargo to further restrict transfers of hard currency to Cuba, one of the embargo's principal purposes, and others have loosened it in furtherance of humanitarian considerations.

The executive branch has broad authority under U.S. law to make changes in the embargo as circumstances dictate. Overall, the changes discussed in this report are consistent with this broad authority. The changes in the regulations that permit general family remittances to Cuba may serve a humanitarian purpose, but they do not appear to further the U.S. objective of limiting currency transfers to Cuba.

In some respects, the embargo has not been easy to enforce. It is difficult for U.S. enforcement agencies to monitor people and goods once they leave U.S. borders, and most foreign countries do not cooperate with U.S. embargo restrictions. Furthermore, there have been relatively few prosecutions of travel and export cases because of difficulties of proof, lack of jury appeal in cases where humanitarian issues may be present, and the relatively small amounts of goods or currency that are involved.

Agency Comments and Our Evaluation

The Treasury Department's OFAC and the State Department provided written comments on a draft of this report. The Treasury's Office of Customs, the Commerce Department's BXA, and the Department of Justice

also provided technical comments that have been incorporated where appropriate. OFAC and State did not agree that the President's decision to reinstitute the authorization for family remittances was inconsistent with the fundamental purpose of the embargo. OFAC and State stated that the issue of family remittances is a matter of presidential discretion in weighing the humanitarian purpose of allowing U.S. residents and citizens to support family members in Cuba against the resulting flow of hard currency to Cuba. OFAC and State also noted that Helms-Burton does not prohibit OFAC from making reasonable adjustments to the family remittance licensing regime. (See app. IV for their comments.)

As discussed in our report, we recognize that OFAC has the authority to make reasonable adjustments to the family remittance procedures. We did not intend to imply otherwise, and we have revised the report to remove any confusion. Our intent was to make Congress aware that the 1998 changes to the family remittance procedures would permit larger transfers of U.S. currency to Cuba.

Scope and Methodology

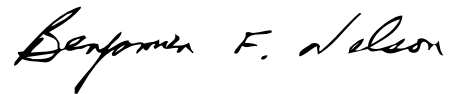
In order to assess the consistency of executive branch policy with U.S. laws and regulations, we met with U.S. officials at the Departments of State, Commerce's Bureau of Export Administration, Justice, and the Department of the Treasury's Office of Foreign Assets Control. We also reviewed the relevant laws, regulations, court decisions, directives by the President, and legislative histories of the CDA of 1992 and the LIBERTAD Act of 1996 (Helms-Burton). In order to describe how U.S. goods can be available in Cuba, we consulted specialists, including the U.S. Customs Service and the U.S. Attorney's Office. For a more detailed description of our objectives, scope, and methodology, see appendix V.

We conducted our review between July 1997 and August 1998 in accordance with generally accepted government auditing standards.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issuance date. At that time, we will provide copies of the report to interested congressional committees; the Departments of the Treasury, State, Commerce, and Justice; and the Director, Office of Management and Budget. We will also make copies available to others on request and include it on our database of reports at our Internet site.

Please contact me at (202) 512-4128 if you have any questions concerning this report. Major contributors to this report are listed in appendix VI.

Sincerely yours,

A handwritten signature in black ink that reads "Benjamin F. Nelson". The signature is written in a cursive style with a large initial 'B' and a long, sweeping underline.

Benjamin F. Nelson, Director
International Relations and Trade Issue

Contents

Letter	1
Appendix I Provisions Governing Telecommunications Services	24
Appendix II Major Exports to Cuba	26
Appendix III Restrictions on Imports Containing Cuban Components	28
Appendix IV Comments From the Departments of State and the Treasury	29
Appendix V Scope and Methodology	32
Appendix VI Major Contributors to This Report	34
Tables	
Table 1: U.S. Exports to Cuba, 1993-97	10
Table 2: U.S. Authorized and Actual Humanitarian Donations to Cuba, 1993-97	13

Contents

Table 3: U.S. Authorized and Actual Medicine and Medical Equipment Exports to Cuba, 1993-97	14
Table 4: Roles of Key Agencies in Implementing the Cuban Embargo	15
Table II.1: Cuba's Imports from Major Trading Partners and the United States, 1992-97	26
Table II.2: Medicine Exports to Cuba By Major Trading Partners and the United States, 1995-96	27

Abbreviations

AT&T	AT&T Corporation
BXA	Bureau of Export Administration
CACR	Cuban Assets Control Regulations
CDA	Cuban Democracy Act
FCC	Federal Communication Commission
ITT	International Telephone and Telegraph
LIBERTAD	Cuban Liberty and Democratic Solidarity
MCI	MCI Communications
OFAC	Office of Foreign Assets Control

Provisions Governing Telecommunications Services

The Cuban Democracy Act (CDA) authorizes telecommunications services and facilities between the United States and Cuba.¹ It allows telecommunications facilities in such quantity and quality as are necessary to provide efficient and adequate telecommunications services between the two countries. The Helms-Burton Act (Helms-Burton) limited the CDA telecommunications provision by prohibiting any U.S. person from investing either directly or indirectly in the domestic telecommunications network within Cuba. Helms-Burton also required the President to submit to Congress a semiannual report detailing payments made to Cuba by U.S. persons providing telecommunications services to Cuba.

In July 1993, the State Department set forth the executive branch's general policy guidelines for implementing the telecommunications provision of the CDA. Under these guidelines, the Department of the Treasury's Office of Foreign Assets Control (OFAC) is responsible for licensing travel by U.S. companies to Cuba to discuss possible contractual arrangements and payment terms. Commerce is responsible for licensing the export of U.S. telecommunications commodities to Cuba for approved telecommunications projects to the extent that the exports are necessary to deliver a signal to an international gateway to Cuba. The Federal Communications Commission (FCC) is responsible for licensing circuits and is to consult with the appropriate agencies regarding proposals involving new modes of communication. And State, in consultation with Treasury and Commerce, was to review U.S./Cuba telecommunication policy within 12 to 18 months.²

The FCC informed us that it authorizes and has approved only gateway-to-gateway services between the United States and Cuba. It has allowed AT&T to upgrade its old undersea cable, but only to facilitate gateway-to-gateway services.

Undersea Cable Project Dropped

In 1996, AT&T Corporation (AT&T) and MCI Communications (MCI) considered entering into an arrangement to replace AT&T's undersea telephone cable between Florida and Cuba with a fiber-optic cable. This proposal was being considered because the existing cable, installed in 1989, had been repaired at least once and was outdated. However, according to AT&T and MCI officials, the project was dropped for a number

¹22 U.S.C. § 6004(e).

²The review was to determine whether additional circuits should be authorized to keep the service efficient and adequate and to assess whether to allow improvements in domestic infrastructure to improve U.S. access to the Cuban market. This review, however, was never completed.

**Appendix I
Provisions Governing Telecommunications
Services**

of reasons, including congressional concerns about a counterintelligence security risk posed by Cuba's possible access to fiber-optic technology.

As a general matter, upgrade of the undersea cable would appear to be possible under the CDA, as amended by Helms-Burton, and the executive branch guidelines. These guidelines, in essence, direct the FCC to approve proposals utilizing modes of communications already in place between the United States and Cuba and cite the undersea cable as an example. The guidelines also contemplate the possibility that the FCC will approve proposals involving new modes of communications, such as fiber-optic cable, so long as they are approved by the appropriate agencies.

Major Exports to Cuba

From 1992 to 1996, the International Monetary Fund reported that exports to Cuba increased from about \$1.5 billion to \$3.0 billion. The top six exporters to Cuba were Spain, Russia, Mexico, France, Canada, and China. In contrast, U.S. exports remained low throughout this period. (See table II.1.) The major products exported to Cuba were fuels, food, and machinery and equipment.

Table II.1: Cuba's Imports From Major Trading Partners and the United States, 1992-97^a

U.S. dollars in millions						
Country	1992	1993	1994	1995	1996	1997
Spain	\$219	\$209	\$320	\$457	\$513	\$522
Russia	^b	113	272	261	508	312
Mexico	129	69	191	391	350	^b
Canada	103	113	63	194	187	266
China	220	195	162	161	111	172
France	99	138	148	163	217	233
United States	1	3	5	6	6	10
Total^c	\$1,517	\$1,561	\$1,873	\$2,645	\$3,010	\$2,637

^aCuba's imports are International Monetary Fund estimates based on reporting countries' exports.

^bData not available.

^cTotal does not add because data reported are for selected exporters.

Source: International Monetary Fund [Direction of Trade Statistics](#).

Given the recent congressional interest in the export of medicine to Cuba, we have included data reported to the United Nations by Cuba's major trading partners on their export of medicines and pharmaceuticals. We also include U.S. Census data of U.S. exports of medicine and pharmaceuticals to Cuba. The United States ranked third in 1995 (the most recent year for which the United Nations has comprehensive commodity trade data), after China (\$31.4 million) and Spain (6.4 million). (See table II.2.)

Appendix II
Major Exports to Cuba

Table II.2: Medicine Exports to Cuba by Major Trading Partners and the United States, 1995-96

U.S. dollars in millions		
Country	1995	1996
China	\$31.4	\$18.1
Spain	6.4	^a
United States	3.6	4.4
Netherlands	1.0	3.5
Italy	1.1	2.0
Mexico	0.7	2.0
France	1.3	1.6
Canada	0.2	1.2
Argentina	0.2	0.4

^aData not available.

Source: United Nations and U.S. Department of Commerce trade data.

Restrictions on Imports Containing Cuban Components

The CACRS ban imports from Cuba if the commodities (1) are of Cuban origin; (2) are or have been transported from or through Cuba; or (3) are made or derived in whole or in part from any article that is grown, produced, or manufactured in Cuba. With minor exceptions, the import ban applies to all items that contain anything that is made in Cuba and extends to all Cuban agricultural products, including raw and refined sugar. Furthermore, the ban does not allow de minimis exceptions for goods that contain even negligible amounts of Cuban origin materials.

Over the course of the embargo, Congress has enacted legislation specifically dealing with sugar imports from Cuba. In 1963, Congress amended the Foreign Assistance Act of 1961¹ to preclude Cuba from receiving any quota authorizing the import of Cuban sugar into the United States until the President determines that Cuba has taken appropriate steps either (1) to return to U.S. citizens and entities the properties taken by Cuba on or after January 1, 1959, or (2) to provide equitable compensation for their confiscation. The President can waive this requirement pursuant to a national interest determination.

Helms-Burton stated that protection of essential U.S. security interests required assurances that sugar products that enter the United States or are withdrawn from warehouses for consumption in the United States are not Cuban products. Furthermore, any country that desires to be allocated a U.S. import quota for either refined or raw sugar and is a net importer of sugar must certify to the President, through the State Department, that its sugar exports to the United States do not contain any sugar produced in Cuba. According to State Department officials, written verification was required before October 1, 1997, to ensure that shipments under the fiscal year 1998 quota would not be unnecessarily delayed. State monitors the certifications and told us that all countries complied with this requirement.

¹22 U.S.C. § 2370(a)(2).

Comments From the Departments of State and the Treasury



United States Department of State

Chief Financial Officer

Washington, D.C. 20520-7427

October 19, 1998

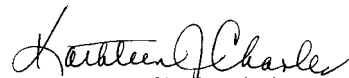
Dear Mr. Hinton:

We appreciate the opportunity to review your draft report, "CUBAN EMBARGO: Selected Issues Relating to Travel, Exports, and Telecommunications," GAO/NSIAD-99-10, GAO Job Code 711301.

Regarding the section on family remittances, the Department does not believe that this action was inconsistent with the fundamental purpose of the embargo. Enclosed are joint detailed comments from the Departments of State and Treasury.

If you have any questions concerning this response, please contact Mr. Michael Ranneberger, Coordinator, Office of Cuban Affairs, at (202) 647-9273.

Sincerely,


Kathleen J. Charles, Acting

Enclosure:

As stated.

cc:

GAO/NSIAD – Ms. Hughes
STATE/ARA/CCA – Mr. Ranneberger

Mr. Henry L. Hinton, Jr.,
Assistant Comptroller General,
National Security and International Affairs,
U.S. General Accounting Office.

**Appendix IV
Comments From the Departments of State
and the Treasury**



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

OCT 16 1998

Dear Mr. Nelson:

This responds to your letter of September 28, 1998, to the Treasury and State Departments, enclosing your draft report on selected issues relating to travel, exports and telecommunications in the context of the administration of economic sanctions against Cuba. We have reviewed that portion of the report pertaining to matters administered by the Office of Foreign Assets Control ("OFAC"), and are providing the following comments concerning the President's decision to reinstitute the authorization for family remittances. We do not agree that this action was inconsistent with the fundamental purpose of the embargo, nor the conference report language explaining section 102(h) (codifying the economic embargo) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act (the "Act"), 22 U.S.C. 6032(h).

OFAC interprets section 102(h) to require that none of the prohibitions of the Cuban embargo as in effect on March 1, 1996, be lifted unless it is consistent with section 204 of the Act. The scope of these prohibitions is as stated in the text of the provisions of sections 515.201 through 515.208 of the Cuban Assets Control Regulations, 31 CFR Part 515 (the "CACR"). (Section 515.206 interprets the scope of the statutory exemption from regulation under Section 5(b)(4) of TWEA for information and informational materials, and is not a separate prohibition.) These prohibitions are clarified and modified by the provisions affecting OFAC licensing contained in the Cuban Democracy Act, 22 U.S.C. 6001-6010 (the "CDA"), as the text of these provisions was amended by the Act, and by the definitional and interpretive provisions of subparts C and D and the licensing authorities, procedures and statements of licensing policy in subpart E of the CACR and section 501.801 of the Reporting and Procedures Regulations, 31 CFR part 501 (62 *Federal Register* 45098, 45104 & 45106 (Aug. 25, 1997)). OFAC interprets section 102(h) of the Act to permit the continued exercise of reasonable licensing authority in OFAC's implementation of the prohibitions contained in the CACR as of March 1, 1996, and in the CDA and the Act.

The conference report language explaining section 102 (h) of the Act states the committee's intent that:

All economic sanctions in force on March 1, 1996, shall remain in effect until they are either suspended or terminated pursuant to the authorities provided in section 204 of the Act. . . . It is not the intent of this section to prohibit executive branch agencies from amending existing regulations to tighten economic sanctions on Cuba or to implement the provisions of this Act.

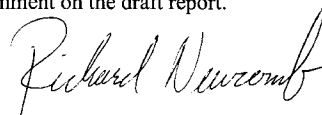
This language does not expressly address the issue of family remittances nor does it rule out reasonable adjustments to the licensing regime consistent with the limitations on suspension or termination as described above.

**Appendix IV
Comments From the Departments of State
and the Treasury**

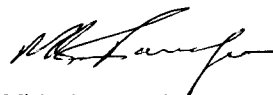
2

The issue of family remittances is dealt with explicitly in text adopted by the conference committee on page 19 of its report. The report reflects the sense of the Congress that the reinstatement of general licenses for family remittances be conditioned upon the advent of economic freedoms for small businesses in Cuba, among other conditions. The Administration carefully considered the sense of the Congress, but determined it was important to institute the changes promptly in response to the Pope's visit in January 1998, and to provide a measure of humanitarian support for the Cuban people. This matter remains subject to Presidential discretion in weighing the humanitarian purpose of allowing U.S. residents and citizens to support family members in Cuba against the resulting flow of hard currency to Cuba.

Thank you for the opportunity to comment on the draft report.



R. Richard Newcomb
Director
Office of Foreign Assets Control



Mr. Michael E. Ranneberger
Coordinator
Office of Cuban Affairs
Bureau of Inter-American Affairs
Department of State

Mr. Benjamin F. Nelson
Director, International Relations
and Trade Issues
United States
General Accounting Office
Washington, D.C. 20548

Scope and Methodology

To determine whether the Department of the Treasury's July 1996 travel procedures used for indirect flights by lawful U.S. travelers were consistent with the law, we researched and reviewed the laws that deal with the embargo against Cuba, including their legislative histories, applicable federal court decisions, the CACRS and official OFAC circulars. For information on Treasury's travel procedures, we consulted OFAC officials, including OFAC attorneys. We met with the three carrier service providers in Miami to discuss their perspectives on Treasury regulation and to gain an understanding of their business operations, including costs associated with direct flights in 1995 and indirect flights in 1997. We visited OFAC's Miami, Florida, office to review files and to observe the travel procedures in action. We met with Customs officials both in Washington, D.C., and Miami to learn more about their enforcement of travel regulations and how they assess whether to refer cases to Justice or OFAC. We also consulted Justice Department attorneys and the U.S. Attorney's Office in Miami to collect data on cases related to travel violations of the embargo.

To provide information about the availability of U.S. products in Cuba, we researched the legal requirements of the embargo's export restrictions and discussed with OFAC and Commerce Department attorneys their interpretations of the restrictions and how they work with Justice on developing evidence for legal cases. To gain an understanding of the regulation and transport of humanitarian gift packages to Cuba via third countries, we met with a gift consolidator in Miami who is authorized to accept parcels from around the country and to arrange for their transport to Cuba. We witnessed the inspection of individual packages, reviewed documentation of its inventory for shipment, and collected some financial data from the firm's owner. We met with Customs officials to discuss Custom's enforcement efforts. We discussed with the Department of Justice and the U.S. Attorney's Office in Miami, Florida, those cases involving potential violations of export restrictions, and we also reviewed and categorized Cuban embargo-related cases that were identified by the Justice Department.

To address questions about telecommunications, we reviewed the law and regulations pertaining to the embargo's telecommunications requirements and discussed them with State and FCC attorneys. We consulted two attorneys representing U.S. telecommunications firms about their firms' consideration of a proposal for upgrading the undersea cable between Florida and Cuba. In addition, we reviewed State Department documents related to the agreement between a U.S. telecommunications firm and an

Italian firm using the U.S. firm's property, which had been confiscated by the Cuban government. We reviewed the relevant law and met with State Department attorneys to discuss the matter.

For information on the May 1998 regulations, we relied on official correspondence from Treasury explaining the administration's position on the May 1998 changes and Federal Register explanations of the changes. We also consulted Commerce, State, and Treasury attorneys.

For information on Cuba's imports, we researched the law and regulations and reviewed databases available from the Department of Commerce, Bureau of Export Administration, and Bureau of the Census; the United Nations; and the International Monetary Fund. We also consulted the State Department on the question of U.S. imports from other countries of products potentially containing Cuban sugar.

Major Contributors to This Report

National Security and
International Affairs
Division, Washington,
D.C.

Virginia C. Hughes, Assistant Director
Judith K. Knepper, Evaluator-in-Charge
Juan Tapia-Videla, Senior Evaluator

Office of General
Counsel, Washington,
D.C.

Richard Seldin, Senior Attorney

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. VISA and MasterCard credit cards are accepted, also. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

**U.S. General Accounting Office
P.O. Box 37050
Washington, DC 20013**

or visit:

**Room 1100
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC**

Orders may also be placed by calling (202) 512-6000 or by using fax number (202) 512-6061, or TDD (202) 512-2537.

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (202) 512-6000 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

For information on how to access GAO reports on the INTERNET, send an e-mail message with "info" in the body to:

info@www.gao.gov

or visit GAO's World Wide Web Home Page at:

<http://www.gao.gov>

**United States
General Accounting Office
Washington, D.C. 20548-0001**

**Bulk Rate
Postage & Fees Paid
GAO
Permit No. G100**

**Official Business
Penalty for Private Use \$300**

Address Correction Requested

