

**Written Testimony on OFAC's Cuba Regulatory Changes of John E. Smith,
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Subcommittee on Terrorism, Nonproliferation, and Trade
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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.