

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

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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 minimis* 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.