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Exempting Food and Agriculture Products from U.S. Economic Sanctions: Status and Implementation

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FOR MORE INFORMATION, PLEASE SEE THE FOLLOWING CRS PRODUCT:

CRS Report RL32730, *Cuba: Issues for the 109th Congress*, by Mark P. Sullivan.

Exempting Food and Agriculture Products from U.S. Economic Sanctions: Status and Implementation

SUMMARY

Falling agricultural exports and declining commodity prices in the late 1990s led farm groups and agribusiness firms to urge Congress to pass legislation exempting food from U.S. economic sanctions against certain countries. In completing action on the FY2001 agriculture appropriations bill, Congress codified the lifting of unilateral sanctions on commercial sales of food, agricultural commodities, medicine, and medical products to Iran, Libya, North Korea, and Sudan, and extended this policy to apply to Cuba (Title IX of H.R. 5426, as enacted by P.L. 106-387; Trade Sanctions Reform and Export Enhancement Act of 2000, or TSRA). Other provisions place financing and licensing conditions on sales to these countries. Those that apply to Cuba, though, are permanent and more restrictive. TSRA also gives Congress the authority in the future to veto a President's proposal to impose a sanction on the sale of agricultural or medical products.

Codifying the food and medical sales exemption for Cuba generated the most controversy. Exemption proponents argued that prohibiting sales to Cuba harmed the U.S. agricultural sector, and that opening up limited trade would be one way to pursue a "constructive engagement" policy. Opponents countered that an exemption would undercut U.S. policy to pressure the Castro government to make political and economic reforms. Though top Cuban officials initially stated that no purchases would be made with TSRA's conditions in place, food stock losses caused by a hurricane and a shift in Cuban strategy have led to almost \$1.2 billion in cash purchases by Cuba of U.S. food and farm commodities from December 2001 to February 2006. Agricultural sales to Iran, Libya, and Sudan under TSRA have totaled \$307 million.

Congressional opponents of TSRA's prohibitions on the private U.S. financing of agricultural sales, public financing of eligible exports, and tourist travel to Cuba introduced bills in the 107th and 108th Congresses to repeal these provisions. Though several amendments to repeal or relax certain TSRA provisions with respect to Cuba were adopted during committee markups or passed during floor debate, all were dropped in subsequent conference action. The Bush Administration's policy is to allow sales under TSRA, but not to change any aspect of the embargo until political and economic reforms occur in Cuba. Reflecting this stance, Administration officials have continually signaled to conferees they would advise the President to veto any bill that included any change in TSRA's prohibitions against Cuba.

In the 109th Congress, H.R. 719/S. 328, H.R. 1339/S. 634, S.Amdt. 281 and S.Amdt. 282 to S. 600, and identical House and Senate provisions in H.R. 3058 seek to respond to an OFAC rule which took effect in March 2005 defining "payment of cash in advance" as payment that must be received by the U.S. exporter prior to agricultural products being shipped from the U.S. port rather than before title and control is transferred to the Cuban buyer. Fearing lost sales, opposition to this rule by farm groups and some Members has led to ongoing debate on this issue. Responding to congressional pressure, OFAC on July 29, 2005, slightly revised this rule to allow for goods to be shipped from a U.S. port once a third-country bank receives payment for the U.S. exporter from the Cuban purchaser. In legislative action to date, conferees dropped the provision in H.R. 3058 prohibiting implementation of OFAC's initial rule, in light of a presidential veto threat.

MOST RECENT DEVELOPMENTS

In filing their conference report on November 18, 2005, conferees on the FY2006 Transportation-Treasury appropriations bill (H.R. 3058) dropped identical House and Senate provisions prohibiting the use of funds “to administer, implement, or enforce” a rule governing how sales of agricultural products to Cuba are to be paid. This language was dropped to avoid a threatened Presidential veto, despite reported widespread support among members in both chambers. This legislative initiative reflected an effort by congressional opponents to overturn a regulation issued by the Department of Treasury’s Office of Foreign Assets Control (OFAC) tightening the timing of when payments must be received by U.S. firms before U.S. agricultural exports can be shipped to Cuba. (For background, see “109th Congress - Debate over Cash in Advance Payment Definition”).

During a trade fair held in Havana in early November 2005, Cuba reportedly signed \$260 million in contracts to buy food and agricultural commodities from U.S. firms.

BACKGROUND AND ANALYSIS

1999-2001 Changes in U.S. Policy Allowing Agricultural Sales to Sanctioned Countries

The Clinton Administration on April 28, 1999, announced it would lift prohibitions on U.S. commercial sales of most agricultural commodities and food products to three countries — Iran, Libya, and Sudan. Moreover, it indicated that it would not include these products in announcing future sanctions on other countries. The Administration’s decision reflected its view that food should not be used as a foreign policy tool and officials’ acknowledgment that U.S. sanctions policy had hurt the U.S. farm economy. On July 27, 1999, the U.S. Department of Treasury issued country-specific export licensing regulations to exempt commercial sales of food and medical products by U.S. companies that meet specified conditions and safeguards to Iran, Libya, and Sudan. Licenses are issued by the Treasury’s Office of Foreign Assets Control (OFAC). Regulations issued June 19, 2000, to implement a White House decision announced in September 1999 now permit sales of agricultural products to North Korea without an export license. Licensed agricultural sales to Cuba under a policy announced in May 1999 were restricted only to private and non-governmental entities (but were broadened under a statutory change that went into effect in July 2001).

Since the Clinton Administration’s policy went into effect, Treasury has approved licenses that have resulted in U.S. sales of corn to Iran, durum wheat to Libya, and hard red winter wheat to Sudan. Also, President Clinton, in issuing executive orders in 1999 to impose U.S. economic sanctions on Serbia and the Taliban in Afghanistan, specifically exempted commercial sales of food and medical products from prohibitions imposed on all U.S. exports to these destinations.

The Trade Sanctions Reform and Export Enhancement Act of 2000 (Title IX of H.R. 5426, as enacted by P.L. 106-387 on October 28, 2000; referred to below as TSRA) codified the lifting of U.S. sanctions on commercial sales of food, agricultural commodities, and medical products to Iran, Libya, North Korea, and Sudan, and extended this policy to apply

to Cuba. Such sales are subject to export licensing procedures laid out in regulations. In a significant policy move, this act also gives Congress veto power over a President's proposal to impose a unilateral agricultural or medical sanction in the future.

Debate on Agricultural and Food Exports in U.S. Economic Sanctions Policy

Farm organizations, agricultural commodity associations, and agribusiness firms have favored changing U.S. policy to exempt export sales of agricultural commodities, food products, and agricultural inputs from the broad economic sanctions currently imposed on targeted countries. They argued that prohibitions only hurt U.S. farmers and business, undermine this country's reputation as a "reliable supplier," and do not change targeted countries' behavior. In recent years, these groups joined with firms in the pharmaceutical and manufacturing sectors to call for a comprehensive review of the economic impact of these sanctions and for limits on the executive branch's use of sanctions to restrict trade.

Opposition to exempting sales of agricultural commodities and food products from U.S. sanctions policy has been somewhat more diffuse. Opponents argued that current law gives the President sufficient flexibility to permit food to be shipped for humanitarian reasons, and that U.S. foodstuffs, if sold, could be misused by foreign governments or not made available to those in need. Some objected to the loosening of trade restrictions with certain countries, such as Cuba. Coming largely from the foreign policy and defense community, they viewed sanctions as a "legitimate and effective" policy tool, and drew little distinction between prohibiting sales of food and prohibiting exports of all other products.

Provisions Enacted in 2000 to Exempt Food and Medical Products from U.S. Economic Sanctions

Overview of TSRA. The most significant policy change made by the Trade Sanctions Reform and Export Enhancement Act of 2000 exempts commercial sales of agricultural and medical products to Cuba from the longstanding U.S. trade embargo on that country. At the same time, TSRA made permanent a prohibition on Cuba's access to U.S. private and other public financing to purchase exempted products. Though press coverage suggested that the debate was solely over a Cuba-specific measure, this act codified an exemption for sales of agricultural and medical products in the conduct of U.S. sanctions policy with respect to five countries and the terms under which this exemption operates. It further codified Clinton Administration policy (based on existing law) that prohibited making available U.S. government credits, credit guarantees, and other financial assistance to facilitate agricultural and medical product sales to certain sanctioned countries. Also, TSRA made changes to the food and medical products exemption-from-sanctions policy exercised administratively by the Executive Branch since mid-1999. This act (1) broadens the exemption to allow sales of non-food agricultural commodities and fertilizers, and (2) streamlines the process U.S. exporters follow to obtain licenses to sell exempted products to sanctioned countries.

Other TSRA provisions require the President to secure future congressional approval before he can impose for foreign policy or national security reasons a restriction or prohibition on the sale of agricultural and medical products, and limit the duration of any such approved sanction to not more than two years unless Congress approves an extension.

Status of Implementation. TSRA provisions with respect to countries subject to U.S. unilateral sanctions at the time took effect on February 25, 2001. However, interagency differences between the Department of Commerce’s Bureau of Industry and Security (BIS) — then known as the Bureau of Export Administration (BXA) — and Treasury’s OFAC over how to interpret these provisions were not resolved until considered by the White House’s National Security Council. Both agencies issued their interim rules to reflect TSRA’s statutory changes on July 12, 2001; these took effect on July 26, 2001. From August 2001 through February 2006, U.S. exporters sold almost \$1.5 billion in agricultural products to Cuba, Iran, Libya, and Sudan under TSRA provisions.¹ The \$60 million in agricultural exports to North Korea, and also most shipments to Sudan, most likely were food donations and not commercial sales.

Extension of Food and Medical Exemption to Cuba. TSRA allows licensed commercial sales of agricultural and medical products to Cuba. This policy change reflects the law’s requirement that the President “terminate any unilateral agricultural sanction or unilateral medical sanction” 120 days after enactment. This provision effectively supersedes statutory provisions in the Cuban Liberty and Democratic Solidarity Act of 1996 (P.L. 104-114). That law codified the-then regulatory prohibitions on all U.S. export/import and other transactions under the U.S. embargo imposed on Cuba in the early 1960s. Under this embargo, commercial sales of U.S.-origin agricultural products (and medical products at times) to Cuba generally were prohibited. Separately, the Cuban Democracy Act of 1992 allows some commercial sales of U.S. medical products to Cuba, but under tight conditions.

Though the Clinton Administration announced sanctions policy changes in 1999 and in 2000 to allow sales of agricultural and medical products to Iran, Libya, Sudan, and North Korea, it did not have legal authority to do the same with respect to Cuba. This explains why most of the congressional debate leading up to TSRA’s passage revolved around whether this same exemption should be statutorily extended to apply also to Cuba. As House debate and a compromise unfolded in early summer 2000, those opposed to this opening in trade with Cuba succeeded in adding a number of Cuba-specific provisions.

Under TSRA, agricultural and medical sales to Cuba are now subject to various conditions and restrictions that are similar to those already in effect on similar product sales to the other sanctioned countries. U.S. exporters must follow an export licensing process before any product can be shipped. Further, a permanent prohibition is in place against the use of any U.S. government export program or financing provided by U.S. private banks or state and local governments to facilitate licensed sales.

Cuba-Related Regulations Issued. BIS’s interim rules continue pre-2001 policy that requires medical product exports to Cuba be licensed, establish an expedited process for handling agricultural product sales to Cuba, and waive the restriction on the direct shipment of eligible products now permitted to be sold to Cuba.

Codification of Food/Medical Exemption. TSRA enacts as U.S. policy the principle that commercial sales of food, other agricultural products, medicine, and other

¹ This total amount excludes commercial agricultural sales made to Libya after broad U.S. economic sanctions were lifted in April 2004.

medical products shall not be used as a tool to conduct foreign policy or to address national security objectives (see “Definition of Products Covered by Exemption”). This law stipulates that this principle apply to all countries now subject to U.S. unilateral sanctions; and require that a President in the future justify to Congress why sales of these products to a sanctioned country or foreign entity should be limited, and obtain congressional approval before taking such action. Limits on agricultural sales are defined to be “any prohibition, restriction, or condition on carrying out ... any commercial export sale of agricultural commodities” or on using any U.S. Department of Agriculture (USDA) program authorized under four specified statutes or any U.S. government export financing (“including credits or credit guarantees”) to facilitate such sales. For medical product sales, such limits are defined to be “any prohibition, restriction, or condition on exports of, or the provision of assistance consisting of, medicine or a medical device.”

In immediate and practical terms, TSRA: (1) codified earlier Clinton Administration decisions to allow agricultural and medical product sales to four countries (Iran, Libya, North Korea, and Sudan) and (2) amended the laws and related regulations authorizing the U.S. embargo on Cuba to allow commercial sales of agricultural and medical products.

Exceptions to Exemption. TSRA provides four exceptions to this general principle. These are when the United States acts against a foreign country or entity to impose a sanction that includes these products pursuant to (1) its involvement in a multilateral sanctions regime or a mandatory decision of the United Nations Security Council; (2) a declaration of war, or specific statutory authorization for the use, or the imminent or actual involvement in hostilities, of U.S. armed forces; and (3) its export control to prevent potential military use under the Arms Export Control Act, the Export Administration Act, or other authority. President Bush tapped this exception authority in issuing Executive Order 13224 (September 23, 2001) to prohibit transactions with designated terrorists and their supporters. Section 4 states the determination that TSRA shall not affect the imposition or continuation of any unilateral agricultural or medical sanction on any individual or entity “determined to be subject to this order because imminent involvement of [U.S.] Armed Forces ... in hostilities is clearly indicated by the circumstances.”

Export Licensing Requirement. Under TSRA’s exemption, exports of agricultural and medical products to governments and other entities in sanctioned countries are allowed only under an approved export license. Section 906(a)(1) requires that this export licensing requirement apply to sales to those countries that the Secretary of State (exercising authority under three cited statutes) has determined “have repeatedly provided support for acts of international terrorism.” In practice, this means that sales of eligible products to governments of countries currently so designated (Cuba, Iran, and Sudan), or to any other entity in each of these countries, must be licensed before any shipment can be made. Though the Secretary of State has determined that the governments of North Korea and Syria also are sponsors of international terrorism, Section 906(a)(2) explicitly states that the license requirement does not apply to sales to these two countries. The Secretary has discretion to drop this licensing requirement for Iran, Libya, and Sudan if the determination is made that

its government no longer supports international terrorism.² No such discretion is permitted for Cuba, meaning this licensing requirement is made permanent for eligible sales to Cuba.

Relevant provisions in the act seek to streamline and simplify the type of license an exporter must obtain to sell permitted products to sanctioned countries. These address concerns expressed by U.S. agricultural exporters that the Treasury regulations governing the licensing of agricultural sales to Iran, Libya, and Sudan had been cumbersome and time consuming. Differences between the pre-2001 licensing rules and the relevant enacted provisions that modify the earlier rules are described below.

Previous Licensing Rules. For countries covered by the Clinton Administration's 1999 food and medical exemption policy (**Iran, Libya and Sudan**), the Department of Treasury's OFAC issued two types of export licenses — general and specific. The type required, and the relevant conditions and procedures that apply to each, depended on the nature of the product the exporter wanted to sell, the end user of the proposed sale, the details of the terms of a sales contract, the date of contract performance, and on how the sale would be paid for (see "Payment and Financing Terms of Exempted Sales" for important related conditions). A **general license** authorizes certain transactions without the need for an exporter to file an application providing all the details of each individual transaction. A **specific license** is issued on a case-by-case basis to an individual or company allowing an activity or transaction to take place.

OFAC's food exemption regulations set up two different procedures for obtaining licenses, depending on the product to be sold. The conditions that an exporter must meet varied according to which procedure is followed. An expedited licensing process applied to prospective sales of specified *bulk agricultural commodities*. A "specific license" authorized an exporter to enter into "executory contracts" (i.e., respond to requests for bids, enter into binding contracts, and perform against contract terms), and covered transactions over a specified time period. Certain conditions had to be met to obtain this license. For sales of all other *food products, medicines and medical equipment*, OFAC used a two-step licensing procedure to review each contract on a case-by-case basis. First, an exporter had to obtain a "general license" to enter into an executory contract that made performance contingent upon prior approval by OFAC, disclose all parties with an interest in the sale, and lay out all terms of the sale. Second, the exporter had to apply for a "specific license" permitting performance of the executory contract before the sale can be completed. OFAC issued these regulations under the authority of the Export Administration Act of 1979 (as extended) that requires a "validated license" to export any good to a country determined to be a sponsor of international terrorism.

For **Cuba**, Commerce's BIS through July 2001 administered different licensing rules applicable to shipments of eligible food and agricultural commodities, farm inputs, and medical products. Though various statutes and regulations prohibited most exports of U.S. origin to Cuba, these exceptions allowed for the donation and sale of food and agricultural

² In practice, the State Department under these statutes has rarely changed, or reversed, a "sponsor of international terrorism" determination made with respect to a foreign government. With the easing of most U.S. sanctions on Libya announced in April 2004, U.S. exporters of agricultural products do not need to secure licenses to sell to this country, even though it remains designated as a sponsor of state terrorism.

products to individuals, eligible non-governmental entities, and private businesses. TSRA as enacted effectively supersedes these provisions to now allow for the commercial sale of agricultural and medical products to Cuba under prescribed terms (see below).

TSRA's Changes to Licensing Rules. Section 906(a) of TSRA allows sales of exempted agricultural and medical products to sanctioned countries on terms that are less restrictive than under previous policy (see above). The law stipulates that such exports “shall only be made pursuant to one-year licenses ... for contracts entered into during the one-year period of the license and shipped within the 12-month period beginning on the date of the signing of the contract” and that “such one-year licenses shall be no more restrictive than license exceptions administered by the Department of Commerce or general licenses administered by the Department of Treasury.” The wording appears to require BIS and OFAC to consider license applications on a streamlined and less conditioned basis rather than on the present case-by-case and highly regulated basis. In other words, the apparent aim was to move away from a complex and time consuming process that may require an exporter to walk through a multiple step process to seek approval for the several transactions involved in completing one sale. The new law removes executive branch discretion in determining the time period that applies to transactions covered by an export license, by placing a defined time parameter on the period during which an approved license covers eligible product transactions. One related provision is intended to ensure that other licensing conditions and procedures cover multiple types of transactions (e.g., an exporter submits one application providing the information required for all of the sales transactions covered by a license). Another requires that regulations must ensure procedures that will deny licenses for exports to any entity, or “end user,” within an affected country that promotes international terrorism.

Debate over Proposed Licensing Regulations. BXA and OFAC had in early 2001 drafted licensing rules to implement the new law's exemption. These, reportedly, differed in some key respects. BXA proposed for the countries under its jurisdiction (Cuba, North Korea, and Syria) an “arrangement” to allow companies during a one-year period to export eligible products without the need to secure an individual license for each shipment. BXA reportedly would have granted a “license exception” if a company agrees to monitor sales of eligible products using a prescribed set of parameters. Under this exception, sales would still be subject to a government audit. OFAC proposed for all affected countries (Cuba, Iran, Libya, North Korea, Sudan, and Syria) a case-by-case licensing system that includes end use verification. Its proposal was similar to rules already in effect for Iran, Libya, and Sudan. This two-step licensing process would involve first approving a license to allow an exporter to enter into negotiations to make sales, and then issuing another license to cover actual shipments. The reported differences in these draft regulations reflected conflicting views on how to interpret TSRA's provisions as well as language that some observers suggested was unclear and contradictory. As these differences became known during February 2001, Members of Congress and interest groups weighed in with their views.

Regulations Published. BIS's rule allows for the sale of eligible agricultural products to Cuba without an export license (subject, though, to a review of a written contract) if other federal agencies do not object within 11 days. In other words, BIS will administer a licensing exception with respect to only those products that are covered by the regulation's definitions of agricultural and medical products. OFAC's rule requires an exporter to obtain a one-year export license for sales of agricultural and medical sales to Iran and Sudan. If a reviewing agency objects within 11 days, the license application is denied;

if a “concern” is raised, OFAC has 30 more days to review the license request. Under the Bush Administration’s Libyan sanctions policy change announced April 23, 2004, most U.S. exports to Libya no longer require an export license.

Some agricultural exporters have since expressed concern that the requirement to have OFAC check each time that the end user (e.g., buyer) in Iran and Sudan is not involved in promoting international terrorism slows down the licensing process. They have urged that OFAC change its rules to reflect the more flexible licensing system implemented under Clinton’s 1999 executive order.

Payment and Financing Terms of Exempted Sales. U.S. policy seeks to ensure that sanctioned countries do not receive any financial benefit from permitted, or licensed, transactions. It also prohibits such countries from accessing bank accounts and other assets that their governments, or organizations or firms in these countries, hold in the United States. The new law does not change current policy, meaning that U.S. banks cannot offer trade financing to facilitate export sales of exempted products to such countries. With respect to Cuba, TSRA codifies two of the three types of financial transactions that OFAC regulations permit to facilitate licensed food and medical product sales to Iran and Sudan. Other provisions prohibit U.S. government support of such sales to all sanctioned countries (see “Prohibition on U.S. Government Assistance for Export Sales”).

Current Prohibition and Restrictions. OFAC regulations specifically prohibit U.S. banks from extending financing to countries subject to U.S. unilateral economic sanctions. This policy is reflected in the current payment and financing rules that apply to licensed sales of agricultural and medical products to Iran and Sudan laid out initially by Clinton Administration policy, and to Cuba under embargo regulations. With respect to the first two countries, OFAC regulations allow only for payment of cash in advance to be made to the U.S. seller for a sanctioned country’s purchase of exempted products. The two permitted trade financing, or credit, terms are (1) sales on open account³ with certain limitations, and (2) financing by third country banks that are neither an overseas office of a U.S. bank nor entities of the governments of these three countries.⁴ U.S. banks are permitted to advise or confirm letters of credit⁵ issued by third country banks, but are prohibited from providing any trade financing. An exporter must obtain a general license from OFAC for each of these payment or credit terms. OFAC also will consider an application from U.S.

³ Sales on open account refers to a transaction in which goods are released to a buyer prior to payment, or a promise of payment. Because the exporter bears all the risk of non-payment by the buyer, this type of transaction requires a high level of established trust between both parties. An exporter, however, may view sales on these terms as providing entry to a potential market that outweighs such risk. Such terms allow a buyer to delay payment until the imported products have been examined.

⁴ An example of third country financing would be a French bank providing trade finance for a U.S. exporter’s sale of wheat to Iran. This bank must not be an affiliate of a U.S. bank nor of any Iranian state financial institution.

⁵ A *letter of credit* (L/C) is used when the importer/buyer’s ability to pay is uncertain, or when the exporter/seller needs it to obtain financing. A L/C gives the buyer the financial backing of an issuing bank, which makes payment within a specified time period to the seller via the seller’s bank upon presentation of certain documents (e.g., those that reflect the carrying out of a sales contract’s terms).

banks for a specific license to participate in financing sales on a case-by-case basis, where such financing arrangements would not undermine overall compliance with U.S. sanctions.

Prohibition on U.S. Financing of Agricultural Sales to Cuba. Section 908(b) of TSRA prohibits the financing of agricultural sales “to Cuba or any person in Cuba” by U.S. banks, any state or local government, the federal government, or any other U.S. private person or entity. This prohibition effectively codifies a provision in the Cuban embargo regulations (31 CFR 515.533(f)) that does not allow trade financing for the commercial sale of food or agricultural commodities to non-governmental entities in Cuba that BIS is authorized to license under a 1999 policy change. TSRA language stipulates that licensed sales can occur only if paid in “cash in advance,” or if financed by a third country bank. In codifying this financing prohibition, the Executive Branch no longer has discretion to revise the financing rules should it determine the nature of the U.S.-Cuban relationship is changing. In practical terms, this financing policy treats Cuba no different than other sanctioned countries under pre-2001 regulations with respect to licensed sales. (See also “109th Congress - Debate over Cash in Advance Payment Definition”).

Prohibition on U.S. Private Financing of Licensed Exports to Other Countries. Though the issue of prohibiting any U.S. private financing of agricultural exports to Cuba received much attention during the legislative debate, none of TSRA’s provisions require any change in OFAC regulations that prohibit U.S. private financing of agricultural and medical product sales to Iran and Sudan.⁶ With respect to these two countries, OFAC will continue to implement its current policy prohibiting U.S. private financing of licensed sales. Though some thought that TSRA would allow these countries to take advantage of U.S. private financing despite the statutory prohibition imposed on Cuba, no provision in the act explicitly addressed this issue in a way that would require a change to be made to existing regulations. Members supportive of the financing exemption argued that since Congress did not place in the law any restrictions on commercial financing for these countries, new administrative regulations should not include restrictions that run counter to the congressional intent to eliminate sanctions on those tools (e.g., credit) that can facilitate eligible commercial sales. OFAC’s reported view was that since the thrust of U.S. policy is to restrict currency flows to sanctioned countries, it would be burdensome to set up a mechanism to allow for the financing of agricultural and medical product sales, and thus better not to permit it.

Prohibition on U.S. Government Assistance for Export Sales. Section 908(a) of TSRA prohibits making available any U.S. government assistance (including foreign aid, credit or guarantees, and export assistance) “for exports to Cuba or for commercial exports to Iran, Libya, North Korea, or Sudan.” Wording grants the President authority to waive this prohibition for humanitarian reasons, or if he determines it is in the national interest to do so with respect to Iran, Libya, North Korea, and Sudan. This waiver authority does not extend to Cuba. Statutory wording further differentiates among the 5 above-cited countries by applying this prohibition on all exports (and not just commercial exports) to Cuba. Clarifying language also stipulates that this U.S. government assistance prohibition does not “alter, modify, or otherwise affect” certain provisions of the Cuban Liberty and Democratic

⁶ Under the Bush Administration’s Libyan sanctions policy change announced April 23, 2004, TSRA requirements no longer apply with respect to how sales of agricultural and medical products are to be paid for.

Solidarity Act of 1996 that authorize the President “to furnish assistance and provide other support for individuals and independent nongovernmental organizations to support democracy-building efforts for Cuba” and that require the President to “take all necessary steps to ensure that no funds or other assistance is provided to the Cuban Government.”

In the regulations issued, the Bush Administration chose not to exercise Presidential waiver authority on this issue. Although some Members of Congress in 1999 and 2000 urged that credit guarantees be made available to facilitate agricultural sales to Iran, U.S. policy (reaffirmed by TSRA) is not to extend any government assistance in support of permitted commercial sales to a sanctioned country listed as a sponsor of international terrorism. This position is primarily based on the statutory prohibition found in Section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), which TSRA reaffirms.

Definition of Products Covered by Exemption. Compared to OFAC’s 1999 policy, TSRA broadens the types of *agricultural products* covered by the enacted exemption (Sections 775 and 902(1)). Such products are defined to include “any agricultural commodity, food, feed, fiber, or livestock,” and any derived product. Livestock is defined to include “cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food, fish used for food, ... other animals designated” by the Secretary of Agriculture, and insects. Conferees on October 5, 2000, accepted an amendment that added “fertilizer” and “organic fertilizer” to the definition of an agricultural commodity. Exports of these inputs are allowed, unless subject to export control under other specified statutes. Section 902(4) and (5) defines *medicine* and *medical devices* referring to terms used in statutes administered by the Food and Drug Administration.

Treasury regulations followed to implement the Clinton Administration’s 1999 policy governing sales to Iran, Libya, and Sudan listed the bulk agricultural commodities and some food products eligible to be licensed. OFAC’s list encompassed most of the products covered by the 2000-enacted definition, but did not allow for sales of non-food commodities like cotton (a fiber), tobacco, and wood products. Treasury’s stated rationale for excluding these non-food commodities was that they could be used for military purposes. OFAC’s regulations did not detail the other food products nor specify any medical product that could be sold, and thus required an exporter to apply for a license to ascertain whether a product could be sold. Concern about the use of fertilizer and agri-chemicals for military purposes was reflected also in OFAC regulations, which did not allow sales of these items (including insecticides and pesticides) as agricultural products to sanctioned countries.

Definitions in TSRA Regulations. Both BIS and OFAC agreed upon common definitions for agricultural and medical products in implementing their respective new export licensing exceptions and requirements. Based on the statutory language, the rules spell out that agricultural commodities include food commodities, feed, fish, shellfish and fish products; beer, wine, and spirits; soft drinks; livestock; fiber, including cotton, wool, and other fibers; tobacco and tobacco products; wood and wood products, including lumber and utility poles; seeds for food; reproductive materials such as fertilized eggs, embryos and semen; vitamins and minerals; food additives and supplements; and bottled drinking water. This definition also includes fertilizers and organic fertilizers, but *excludes* furniture made from wood; clothing manufactured from plant or animal materials; agricultural equipment (whether hand tools or motorized equipment); pesticides, insecticides, or herbicides; and

cosmetics (unless derived entirely from plant materials). Both agencies require sales of three products to meet stringent export control rules: fertilizer, western red cedar, and live horses.

Congressional Role in Future Sanctions on Exempted Products. TSRA, in effect, gives Congress veto power over a President's proposal to impose a unilateral agricultural or medical sanction in the future. Section 903(a) requires a President to first secure congressional approval before he can restrict or prohibit the sale of agricultural and medical products on a targeted country for foreign policy or national security reasons. It requires the President report to Congress not later than 60 days *before* he plans to impose a sanction, describing the proposed sanction and the activities by the foreign country or entity that justify the sanction. Section 904 specifies that the requirement for the President to report to Congress on a proposed sanction does not apply when the United States is at war or involved militarily against a target country, when the sanctioned product is controlled under specified export control laws or could be used to facilitate the development or production of a chemical, biological, or nuclear weapon, or when it is imposed as part of a multilateral sanctions regime or a mandatory decision of the United Nations Security Council. Section 905 provides that any unilateral agricultural or medical sanction approved by Congress (described above) automatically ends not later than two years after it goes into effect. The President may request that Congress extend the sanction for another two years.

Sales to Cuba under TSRA's Policy

Though sales to Iran, Libya, and Sudan under the Clinton Administration's 1999 exemption policy were small relative to their total agricultural imports, U.S. farmers, commodity groups, and agribusiness eyed Cuba as a promising market. Calling for a broadening of U.S. policy to also exempt food from sanctions in Cuba, they argued that U.S. agriculture had lost out to foreign competitors in making sales to a sizable, nearby market.

Cuban agricultural imports averaged about \$800 million annually in the 2000-2002 period, according to the Food and Agriculture Organization. Leading commodities imported in 2002 were rice, chicken meat and products, wheat and flour, whole dry milk, lentils and corn. Food and agricultural imports in recent years have represented 17% of total Cuban merchandise imports, and have declined as a share of total imports since the early 1990s. Top suppliers in 2002 (as Cuba took advantage of the U.S. embargo exemption under TSRA) based on preliminary data were Canada, the United States, France, China, and Brazil. In addition, Cuba's tourism industry reportedly imports an additional \$100 to \$250 million in food products to cover the needs of visiting tourists.

U.S. agricultural interests argued that exempting agricultural exports from the U.S. embargo on Cuba would result in an opening that yields substantial sales. Various studies projected annual sales could range from \$100 million to over \$1 billion, depending on the time frame looked at and the extent of liberalization that occurred in U.S.-Cuban trade. These interests also held that such a policy change will give U.S. exporters (particularly of rice and wheat) a competitive edge if Cuba takes advantage of its proximity to buy from its nearest supplier in order to save the cost of transporting commodities and food from its current suppliers (France, Canada, Argentina) located much farther away. Cuba reportedly could save up to \$100 million in transportation costs if officials decided to buy primarily from U.S. agricultural exporters.

Expectations in 2000 of large immediate U.S. sales to the island were viewed as unrealistic, according to other analysts. Analysts pointed to Cuba's limited financial resources, its reliance on barter and credit transactions to finance agricultural imports, its denial of access to U.S. government programs and to all U.S. public and private financing, and the possible application of other restrictive rules under current embargo regulations that could hamper such sales. They also suggested that it was uncertain that Cuba would purchase from the United States, pointing out there may be pressure to maintain trade ties with some of its "socialist partners" supplying such key commodities as rice, as well as resistance to relying on just one single supplier. Some also observed that the Cuban government may not be prepared for or interested in taking advantage of this possible U.S. trade opening. Top Cuban officials, including Castro himself, initially rejected the enacted measure. They strongly criticized its financing, travel, and other prohibitions as "unworkable" and "insulting," viewing it as a tightening rather than an easing of the embargo, and stated that Cuba will not buy any U.S. product with such conditions in place.

Sales Activity to Date. Notwithstanding this position, the Cuban government on November 13, 2001, signaled interest in buying U.S. agricultural commodities to quickly rebuild food reserves damaged or lost due to the devastation caused by Hurricane Michelle. This move followed an earlier U.S. government offer of humanitarian assistance, to which Cuba responded on November 8 with a request that the United States temporarily suspend TSRA's licensing requirements to purchase foodstuffs and allow Cuban vessels to transport them from U.S. ports. The State Department agreed only to speed up the licensing process, and noted some problems might arise if Cuban ships were used.

Negotiations between several U.S. agribusiness firms and Alimport, Cuba's food import agency, in late November and early December 2001 led to the signing of contracts to sell U.S. wheat, corn, soybeans, soymeal, soyoil, poultry, and rice and other food products valued at \$35 million. The first shipment of corn and poultry arrived in Havana on December 13, 2001. U.S. farm groups, agribusiness firms, and anti-embargo groups hailed these sales under the new sanctions policy, and hoped they would lead to additional sales and represent a symbolic beginning of a changing relationship, respectively. Though top Cuban officials initially stated these cash purchases were a one time event, this stance changed in the following months. Additional export sales occurred in spring 2002, and have since continued on a regular basis. Altogether, from December 2001 through February 2006, U.S. exporters have shipped to Cuba \$1.175 billion in agricultural and food products. See "109th Congress - Debate over Cash in Advance Payment Definition" for details in the latest policy developments and congressional debate on U.S. sales policy.

Legislative Developments

107th Congress

Members introduced several bills and amendments in 2001 and 2002 to revise U.S. policy on how food products are handled in sanctions regimes. Most sought to repeal the export financing and travel prohibitions imposed on Cuba by TSRA; conferees dropped one such provision included in the Senate's 2002 farm bill. The Bush Administration continued to reiterate that any bills with provisions that relax the Cuban trade embargo would be vetoed. Two bills revisited the broader issue of the parameters and process to be followed to exempt agricultural sales in U.S. sanctions policy. Bush Administration's efforts to amend

TSRA in light of the September 11th terrorist attacks were reflected in compromise language included in anti-terrorism legislation.

Cuba-Specific Bills and Provisions. Proposals varied in approach and in scope. H.R. 173 and Section 335 of S. 1731 (the Senate Agriculture Committee's farm bill) simply would have repealed the prohibition on private U.S. financing of agricultural sales to Cuba. Seven measures (Section 2(h) of H.R. 174; H.R. 797/S. 402; Section 3(f) of H.R. 798/S. 400; Titles I and II of H.R. 2138/S. 1017; Section 1(f) of H.R. 2662; S. 171; and S. 239) were broader in their coverage, proposing to drop 3 provisions in TSRA. These are (1) the requirement that eligible exports to Cuba be licensed in advance, (2) the prohibitions on U.S. government assistance/financing of food and medical product sales and on private financing of agricultural sales to Cuba, and (3) the prohibition on tourist travel to Cuba. Some bills would have repealed specific provisions; S. 239 broadly stated that irrespective of TSRA, "the prohibition or restriction on trade or financial transactions with Cuba shall not apply" to the export of agricultural and medical products, or to travel related to the sale or delivery of these products, to Cuba. Additional language found only in H.R. 797/S. 402; H.R. 798/S. 400; and S. 239 effectively would have repealed the current restriction that ships entering Cuba cannot enter a U.S. port for six months. This would allow such vessels to transport U.S. agricultural and medical shipments to Cuba. Some bills would have retained restrictions or prohibitions on agricultural/medical product exports to Cuba to meet broader export control and national security objectives. In most of these bills, the referenced provisions were part of broader legislative efforts to modify or terminate some or all aspects of the U.S. embargo on Cuba. Among other recommendations offered to change U.S. policy toward Cuba, the bipartisan House Cuba Working Group on May 15, 2002, proposed (1) allowing the private financing of U.S. agricultural and medical exports, and (2) repealing the statutory ban on any ship that visits Cuba from calling on an American port for 180 days.

Debate on Farm Bill Provision. The Bush Administration "strongly opposed" the Senate-passed farm bill provision (Section 355 of S. 1731) that would have repealed the prohibition on private U.S. financing of U.S. sales of agricultural commodities to Cuba. The Administration based its stance on its view that Cuba continues to deny basic civil rights to its citizens and rejects global efforts to combat terrorism. Reflecting this perspective, Senator Smith during floor debate offered an amendment to require the President to certify to Congress that Cuba's government is not involved in supporting acts of international terrorism before the Cuba-specific prohibition is repealed. A second-degree amendment offered by Senator Torricelli to also require Presidential certification that all convicted felons living in Cuba have been returned to the United States before the prohibition is removed fell when the Senate on December 18, 2001 tabled the Smith amendment (61-33). The Senate provision was a contentious issue in the subsequent farm bill conference held to resolve differences with the House measure, which did not contain a comparable provision. With reports surfacing that the House leadership would make the final decision on this matter, Representative Dooley (one conferee from the House Agriculture Committee) on April 17, 2002, offered a motion to instruct House conferees to accept the Senate position. Following debate on the motion on April 18, the House on a roll call vote of 273-143 agreed to this motion to instruct (non-binding on conferees) on April 23. In final action, Senate conferees receded to the House position, leaving the private financing prohibition in place.

Amendment to FY2003 Treasury Appropriations Bill. Representative Jerry Moran on July 23, 2002, proposed an indirect approach to relax the prohibitions and

stipulations on private commercial agricultural and medical product sales to Cuba. His amendment (Section 646 to H.R. 5120, FY2003 Treasury Appropriations), accepted by voice vote, would have effectively cut off funding for one year to Treasury's OFAC for administering only those tasks involving the private financing prohibition and current shipping restrictions, among other Cuban embargo regulations that apply to agricultural and medical product sales. It would not apply to TSRA's licensing requirements that cover agricultural sales to Cuba, because they are administered by Commerce's BIS which is not funded by the Treasury appropriations bill. Final action on this measure did not occur before Congress adjourned. In the 108th Congress, House and Senate leadership dropped the OFAC provision in H.J.Res. 2, the omnibus spending bill that also funded Treasury operations in FY2003, in sending this measure to the floor for action in January 2003.

Administration's Position. President Bush on May 20, 2002, in a major Cuba policy speech reiterated his opposition to any repeal of the prohibition on private financing of agricultural sales, stating it "would just be a foreign aid program in disguise, which would benefit the current regime." Bush stated he would veto legislation that relaxes the embargo in any way until the Cuban government introduced a series of specified reforms. Secretary of State Powell and Treasury Secretary O'Neill followed up in a July 11, 2002, letter to House appropriators to state they would recommend a presidential veto of any bill that eased restrictions on trade and travel to Cuba.

Bill Dealing with Other Sanctioned Countries. One measure seeking to amend TSRA was broader in the range of countries to be covered. S. 171 would have repealed the TSRA's prohibition on U.S. government assistance and financing of sales not just with respect to Cuba, but also with respect to Iran, Libya, North Korea, and Sudan.

Proposed Changes to Overall Food Sanctions' Exemption Policy. Three measures addressed broad U.S. policy on the issue of exempting agricultural exports from export control or sanctions regimes. Title IV of S. 149, as introduced, proposed to exempt agricultural commodities, medicine, and medical supplies from export controls imposed for foreign policy reasons. Language specified that this exemption would not apply to any such items subject to national security export controls imposed under Title II of this bill or listed on the U.S. Munitions List, nor to their export to a country against which an embargo is in effect under the Trading With the Enemy Act (Cuba and North Korea). During Senate Banking Committee markup on March 22, 2001, all of Title IV was deleted. Concerned the Executive Branch might exercise the bill's broad authorities in ways that undercut TSRA's intent to exempt food and medical products from unilateral sanctions, Senator Roberts succeeded in including language in a manager's amendment that addressed this issue. Section 603 (as adopted by the Senate in early September 2001) stated that S. 149 does not authorize export controls on food for national security purposes. It also stated that such controls cannot be used to restrict food exports for foreign policy reasons, unless Congress in advance approves such action following TSRA's provisions, and explicitly stated that nothing in S. 149 authorized the exercise of authority to restrict agricultural and medical product exports contrary to any TSRA provision.

Amendments to TSRA in Anti-Terrorism Legislation. The package of anti-terrorism measures (P.L. 107-56; H.R. 3162) signed into law on October 26, 2001 amended some TSRA provisions. The compromise struck between the Bush Administration and key Senators modified one circumstance under which TSRA's food/medical exemption would

not apply, codified that agricultural and medical product sales to the Taliban-controlled area of Afghanistan are subject to TSRA's export licensing requirements that apply to Cuba and to governments of other countries determined to be sponsors of international terrorism, and expressly allows eligible export sales to be made also to any other entity in Syria or North Korea without the need for an exporter to secure a license. Other provisions stated that no TSRA provision limits the application of criminal or civil penalties on those who unlawfully engage in the export of agricultural and medical products to designated foreign organizations, groups, persons, or entities, nor affects the statutory prohibitions against providing material support or resources to designated foreign terrorist organizations.

108th Congress

Members introduced seven measures, and offered amendments to spending bills, to relax TSRA's Cuba-applicable provisions in the 2003-2004 period. Conferees dropped two provisions in FY2005 spending bills that would have relaxed TSRA restrictions.

Cuba-Specific Bills. H.R. 187 proposed to repeal TSRA's prohibition on the use of private financing for agricultural and medical product exports to Cuba. H.R. 188 and S. 403 were broader in scope, repealing the private financing prohibition, ban on travel, and licensing requirement provisions, among numerous provisions intended to end the U.S. trade embargo on Cuba. H.R. 1698 and H.R. 3422 would have repealed or superseded all TSRA provisions that apply to Cuba, respectively. H.R. 4457/S. 2449 proposed to terminate TSRA's restrictions with respect to Cuba (among other features of the U.S. embargo on Cuba) unless Congress passes a resolution to renew them.

Opponents of liberalizing trade with Cuba introduced H.R. 3670 to penalize U.S. exporters and others who sell products or services to Cuba if such trade is explicitly conditioned on their lobbying Congress to remove trade and travel restrictions on Cuba. The bill's intent is to address a U.S. farm organization reportedly agreeing in a memorandum of understanding⁷ to press Congress to engage with Cuba and to seek repeal of these restrictions in return for Cuban purchases of \$15 million worth of agricultural products from Indiana-based businesses. Other members indicated their intent to introduce related bills, or offer amendments, to amend TSRA to (1) allow farm machinery sales to Cuba on a cash-only basis, and (2) repeal U.S. travel restrictions (viewed by U.S. agricultural groups among others as a way for Cuba to generate dollar earnings to purchase U.S. food products). For additional information on legislative efforts to amend TSRA's restrictions on travel to Cuba, see CRS Report RL31139, *Cuba: U.S. Restrictions on Travel and Remittances*, by Mark P. Sullivan.

Provisions in Appropriations Bills. Conferees on the FY2004 agriculture appropriations measure (H.R. 2673), part of the FY2004 omnibus spending package, in mid-November 2003 dropped a Senate amendment (Section 760 of S. 1427) that would have facilitated the process of securing permission to travel to Cuba under TSRA to promote and sell U.S. agricultural and medical products there. The amendment was added by voice vote on July 17, 2003, during Senate Appropriations Committee markup of this spending bill;

⁷ *Cuba Trader*, "House Members Seek to Punish Trade-for-Lobby Deals Between Cuba and U.S. Entities," December 8, 2003.

Senator Dorgan's intent was to address such situations as OFAC's decision in June 2003 to deny the license application of a firm seeking to organize a food and agribusiness exhibition in Havana in January 2004. The White House opposed this provision, arguing that it would weaken current sanctions imposed against the Cuban government. Its position, laid out in its "Statement of Administration Policy" on S. 1427, is that "travel to Cuba should be further policed to ensure that those traveling [there] are doing so for legal purposes and not simply using legal categories to disguise travel for other purposes."

An identical provision was included in the FY2005 agriculture appropriations bill (Section 776 of S. 2803). Introduced by Senator Dorgan during markup, this amendment was adopted by the Senate Appropriations Agriculture Subcommittee by voice vote on September 8. Language would require the Treasury's OFAC to give "general licenses" for U.S. exporters and others seeking to travel there on eligible business. Current policy requires them to apply for a "specific license" for each prospective trip. Amendment supporters argued that the Bush Administration has used the rules to delay or to refuse to issue travel licenses to those seeking to make farm sales in Cuba. Seeking to head off a possible similar initiative in the House in June when its agriculture appropriations was considered, the Administration stated the bill would be vetoed if this provision was included. Administration officials argue the current licensing process "helps to ensure that travel to Cuba serves appropriate purposes and that sales to Cuba are done within the boundaries of the law." Just before conferees completed work in November 2004, the Director of the White House Office of Management and Budget signaled that including in the omnibus appropriations measure (H.R. 4818) any provision to weaken existing sanctions against Cuba (such as restrictions on commercial exports of agricultural and medical goods) would result in a presidential veto. In final action, appropriators dropped this provision from the bill.

An amendment to the FY2005 transportation/treasury spending bill (Section 649 of H.R. 5025), adopted by the House during floor debate on September 22, 2004, would have prohibited the use of appropriated funds to implement any U.S.-imposed sanction on private commercial sales of agricultural commodities to Cuba. Representative Waters, its sponsor, stated that TSRA's financing restrictions on these sales "make trade ... unnecessarily expensive, bureaucratic and complicated" and argued that with their removal, small businesses would be in a better position to increase U.S. market share. An opponent acknowledged that since U.S. agricultural sales are now legal, exporters have indicated they like to be paid under the current policy in place. Allowing financing for such sales would simply "reward the dictatorship," he argued. Conferees also dropped this provision from the same FY2005 omnibus spending package considered during the November 2004 lame duck session.

109th Congress

Debate over Cash in Advance Payment Definition. Concerned that some reported late payments from Cuba constituted a form of financing and possibly violated TSRA's financing prohibition, Treasury's OFAC on November 12, 2004, instructed U.S. banks to stop all transfers of Cuban payments to U.S. exporters while it investigated recent sales transactions. OFAC subsequently released some payments on a case-by-case basis, which allowed banks to forward funds to exporters. The Bush Administration also indicated plans to announce new rules on the payment issue by late December 2004. In letters to the Secretary of Treasury and Secretary of State in late November and early December 2004,

some Members of Congress questioned or expressed opposition to the Administration's plans. They noted that the change being considered to require a seller to receive payment before a shipment leaves a U.S. port would be much more restrictive than current practice and would "impede" agricultural sales to Cuba. One Senator argued that a more restrictive rule would constitute a new sanction that in itself would require congressional approval under TSRA provisions in order to take effect. Separately, a coalition of agricultural groups and businesses in a December 8, 2004, letter to President Bush stated that U.S. exporters have "followed explicitly both the letter and spirit of the law" in selling food products to Cuba. They argued the proposed restrictive guideline would "run counter to the norms of international trade," which simply require payment to be received prior to the shipment's release to the buyer (e.g., payment before transfer of title to the buyer, even if the ship is docked in Havana).

To signal continued opposition to the Administration's intent to change the timing of payment for U.S. agricultural product sales to Cuba and to amend certain TSRA provisions, some Members of the House and Senate introduced identical measures (H.R. 719/S. 328) in early February 2005. Section 5 would clarify that "payment of cash in advance" means payment by the purchaser (e.g., the Cuban government) and the seller's receipt of such payment, before the product's title and control is transferred and released, respectively, to the purchaser. H.R. 1339/S. 634 would only redefine this term, using language identical to Section 5 in H.R. 719/S. 328. With Treasury's publication on February 25, 2005, of the rule to require payment before shipment from a U.S. port (with an effective date of March 25), some Members responded they would explore all available options to change this policy or to block Senate consideration of significant Treasury nominees. One legislative initiative to accomplish this (in S.Amdt. 281 and S.Amdt. 282) is pending in Senate consideration of S. 600 (Foreign Affairs Authorization Act for FY2006 and FY2007). Also added as an amendment to the FY2006 Transportation-Treasury appropriations bill (Section 945 of H.R. 3058 as passed by the House, and Section 721 as passed by the Senate) was a prohibition on using funds to implement OFAC's rule. With the White House threatening to veto the bill if included, conferees dropped this provision in the final enacted measure. This occurred after almost 40 House members urged conferees to retain it. Five of the 23 Senate conferees signed the conference report, noting their opposition to dropping the Cuba trade language.

Farm groups and agribusiness firms in a letter to four House members on June 27, 2005, called for restoring the option to allow receipt of payment before title is transferred. They presented data on the decline in U.S. agricultural sales this year compared to 2004 because of the OFAC rule, and detailed the loss of sales of rice and other commodities to such other countries as Vietnam and China.

OFAC's announcement on July 29, 2005, allowing for the shipment of goods once the seller's agent (if located in a third country) receives payment from the Cuban buyer could make it slightly easier for some U.S. sellers to make sales, according to some analysts. Others question whether this clarification will make any difference. Opponents of the rule have signaled their intent to continue to work with Congress to overturn it. This slight shift in policy prompted Senator Baucus to lift his hold on six Treasury nominees, who were then confirmed by the Senate later that day. Though exports in the first four months after OFAC's rule change (April to July 2005) were below 2004 levels, exports since August 2005 have been higher each month compared to year-earlier levels. This may be attributable to OFAC's

rule modification in late July 2005 and a reported willingness by Alimport to work with U.S. exporters under these new payment procedures.