

May 18, 2015

Cuba: President Obama's New Policy Approach

On December 17, 2014, President Obama announced major developments in U.S.-Cuban relations. First, he announced that the Cuban government had released USAID subcontractor Alan Gross on humanitarian grounds after five years imprisonment. Gross's imprisonment since 2009 was an impediment to an improvement in relations. The President also announced that, in a separate action, the Cuban government released "one of the most important intelligence assets that the United States has ever had in Cuba" in exchange for three Cuban intelligence agents who had been imprisoned in the United States since 1998.

Most significantly, in the aftermath of having secured the release of Gross and the U.S. intelligence asset, President Obama announced a major shift in U.S. policy toward Cuba, moving away from a sanctions-based policy aimed at isolating Cuba toward a policy of engagement and a normalization of relations.

In the most significant changes in our policy in more than fifty years, we will end an outdated approach that, for decades, has failed to advance our interests, and instead we will begin to normalize relations between our two countries. Through these changes, we intend to create more opportunities for the American and Cuban people, and begin a new chapter among the nations of the Americas.
President Barack Obama, December 17, 2014

The President outlined three major steps to move toward normalization:

Reestablishment of diplomatic relations. As U.S.-Cuban relations deteriorated in the early 1960s, relations were severed by the Eisenhower Administration in January 1961 in response to the Cuban government's demand to decrease the number of U.S. Embassy staff within 48 hours. In 1977, under the Carter Administration, both countries established Interests Sections in each other's capitals. Since January 2015, Assistant Secretary of State for Western Hemisphere Affairs Roberta Jacobson has participated in three rounds of talks with Cuba on reestablishing relations; another round will be held on May 21, 2015, in Washington. The talks have included the logistics of reopening embassies and embassy operations, such as giving diplomats privileges to carry out the full range of their roles as diplomats.

Review of Cuba's designation by the Department of State as a state sponsor of international terrorism. Cuba has been on the so-called terrorism list since 1982 because of its alleged ties to international terrorism and support for terrorist groups in Latin America. President Obama directed Secretary of State Kerry to review Cuba's designation "guided by the facts and the law." The State Department

completed its review on April 8, 2015, and on April 14, the President transmitted a report to Congress rescinding Cuba's designation as a state sponsor of terrorism pursuant to provisions in three statutes—Section 6(j) of the Export Administration Act of 1979; Section 620A of the Foreign Assistance Act (FAA) of 1961; and Section 40 of the Arms Export Control Act (AECA). According to those laws, the rescission is to take effect 45 days after the report is submitted. Of the three statutes, only the AECA has an explicit provision allowing Congress to block, via the enactment of a joint resolution, a removal of a country on the list within the 45-day period. The Administration's report to Congress maintained that Cuba provided assurances that it will not support acts of international terrorism.

Increase travel, commerce, and the flow of information to and from Cuba. The White House announced a number of policy changes to implement this third step. The changes build upon previous steps that President Obama took in 2009, when he lifted all restrictions on family travel and remittances to family members in Cuba, and in 2011, when he took action to increase purposeful travel to Cuba.

Just as in 2009 and 2011, the President's new initiative required changes to U.S. embargo regulations administered by the Department of the Treasury, Office of Foreign Assets Control (Cuban Assets Control Regulations; 31 C.F.R. Part 515) and the Department of Commerce, Bureau of Industry and Security (Export Administration Regulations; 15 C.F.R. Parts 730-774). Such changes fall within the scope of the President's discretionary licensing authority to make changes to the embargo regulations. On January 15, 2015, the two agencies issued the new regulations. These included:

- **Travel.** The regulations authorize a general license for the existing 12 categories of authorized travel, meaning that travelers who fall under these categories do not have to apply to the Treasury Department for permission as in the past when a specific license was required for a number of these categories. Both travel agents and airlines will also be able to provide services for travel to Cuba without the need to obtain a specific license. Authorized travelers can also bring back up to \$400 worth of goods from Cuba, with no more than \$100 for tobacco products and alcohol combined, and will be permitted to use U.S. credit and debit cards. The changes do not allow travel to Cuba for tourism, which remains prohibited by law.
- **Remittances.** The regulations increase the amount of permissible remittances by U.S. persons to Cuban nationals from \$500 to \$2,000 per quarter. Up to \$10,000 in remittances can be carried to Cuba by authorized travelers compared to \$3,000 before. Certain

remittances to individuals and independent nongovernmental organizations (NGOs) in Cuba are authorized without limit for humanitarian projects; the activities of recognized human rights organizations, independent organizations designed to promote a rapid peaceful transition to democracy, and individuals and NGOs that promote independent activity to strengthen civil society; and the development of private businesses.

- **Trade and Telecommunications.** The regulations expand commercial exports to Cuba of certain goods and services to empower Cuba's nascent private sector, including authorization for certain building materials for private residential construction, goods for use by private-sector Cuban entrepreneurs, and agricultural equipment for small farmers. The regulations also revise the definition of "payment of cash in advance" for authorized trade with Cuba to specify that it means "cash before transfer of title" for payment. Certain goods produced by independent Cuban entrepreneurs (as determined by the State Department) are eligible to be imported into the United States.

The regulations permit the commercial export of certain consumer communication devices, related software, applications, hardware, and services, and items for the establishment and update of communications-related systems. They also permit the export of items for telecommunications, including access to the Internet, use of Internet services, infrastructure creation, and upgrades. An expanded general license authorizes transactions to provide commercial telecommunications services in Cuba or link third countries and Cuba. An updated general license allows for U.S. persons to make payments to a telecommunications operator located in Cuba for services provided to Cuban individuals.

- **Financial Services.** The regulations permit U.S. financial institutions to open correspondent accounts at Cuban financial institutions to facilitate the processing of authorized transactions.

Embargo Remains

The President acknowledged that he does not have the authority to lift the embargo because it is codified into law. However, the President maintained that he looks forward to engaging Congress in a debate about lifting it. The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (P.L. 104-114) ties the lifting of the embargo to conditions in Cuba, including that it has a democratically elected government. Lifting the overall economic embargo would require amending or repealing the LIBERTAD Act as well as other statutes that have provisions impeding normal economic relations with Cuba, such as the FAA, the Cuban Democracy Act (CDA) of 1992 (Title XVII of P.L. 102-484), and the Trade Sanctions Reform and Export Enhancement Act (TSRA) of 2000 (P.L. 106-387). For example, the CDA prohibits U.S. subsidiaries from engaging in trade with Cuba. TSRA denies U.S. exporters access to U.S. government support or U.S. private commercial financing or credit; requires that all transactions be conducted in cash in advance or with

financing from third countries; and also prohibits travel to Cuba related to tourist activities.

Continued Human Rights Concerns

The President maintained that the United States would continue to speak out on human rights and democracy issues, but stressed that more could be done to support the Cuban people through engagement. The President welcomed Cuba's decision to release a substantial number of prisoners that his Administration raised directly with the Cuban government. On January 12, 2015, the State Department announced that Cuba had released 53 prisoners that had been drawn up on a list by the United States. Observers point out that in recent years Cuba has shifted to using short-term detentions and harassment to repress dissent. The Havana-based Cuban Commission on Human Rights and National Reconciliation reported 8,899 such detentions in 2014, almost 39% higher than in 2013. On March 31, 2015, U.S. and Cuban delegations met in Washington to discuss how they would proceed on a future human rights dialogue.

Summit of the Americas

President Obama and Cuban President Raúl Castro held a historic meeting on April 11, 2015, on the sidelines of the seventh Summit of the Americas in Panama. President Obama stated that "there are still going to be deep and significant differences between our two governments," with the United States continuing to raise concerns around democracy and human rights and Cuba raising concerns about U.S. policy. He maintained, however, that "what we have both concluded is that we can disagree with the spirit of respect and civility, and that over time it is possible for us to turn the page and develop a new relationship in our two countries."

Congress has played an active role in shaping policy toward Cuba over the years. Some Members of Congress lauded the President's new policy approach toward Cuba as in the best interest of the United States and a better way to support change in Cuba, while other Members strongly criticized the President for not obtaining concessions from Cuba to advance human rights. Legislative initiatives have been introduced to further ease or lift the embargo altogether, while initiatives have also been introduced to block some of the Administration's efforts toward normalization.

For additional information, see CRS Report R43926, *Cuba: Issues for the 114th Congress*; CRS Report R43888, *Cuba Sanctions: Legislative Restrictions Limiting the Normalization of Relations*; CRS Report RL31139, *Cuba: U.S. Restrictions on Travel and Remittances*; and CRS Report R43835, *State Sponsors of Acts of International Terrorism—Legislative Parameters: In Brief*.

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