



## U.S.-CUBA TRADE: ENDING RESTRICTIONS WILL PROMOTE OUR ECONOMY AND REFLECT U.S. INTERESTS AND VALUES

### 1. What is the current status of U.S. agricultural sales to Cuba?

- In 2000, the U.S. Congress passed the Trade Sanctions Reform and Export Enhancement Act (TSRA), which authorized the export of U.S. agricultural commodities to Cuba. Signed by President Clinton in October 2000, the first shipment of U.S. goods arrived in Cuba in December 2001. Despite regulatory and bureaucratic impediments, the total value of purchases from Cuba reached \$536 million in 2008.
- U.S. sales to Cuba could be significantly higher. The United States – because of our location and the quality of our products – is Cuba’s natural supplier, but our regulatory and statutory restrictions cause Cuba to take much of its business to U.S. competitors such as Canada, China, Vietnam, Europe, and Brazil.
- Cuba’s need for imported agricultural goods is likely to increase in the near term, because the island’s domestic food production capabilities were ravaged by three major hurricanes in the summer of 2008 that resulted in \$9 billion worth of damage to crops, infrastructure, industry and investments.


### 2. Who is currently selling to Cuba and what are they selling?

- **Wheat, rice, corn, animal feed, and soybeans are the top five commodities sold to Cuba in terms of total sales.** Cuba is America’s twelfth largest market for wheat, the eighth largest market for chicken, and the **third largest market for rice.**
- 168 U.S. companies in 35 states have sold goods to Cuba. Twenty-three U.S. ports have participated in export shipments to Cuba.

### 3. What kinds of restrictions apply to the sale of U.S. agricultural goods to Cuba?

- **Although agricultural sales were legalized by Congress, restrictions do remain, including cumbersome regulations and licensing restrictions imposed by the executive branch limit current sales, and increase the transaction costs of sales to Cuba.**

**What can be sold:** Approximately 300 different types of products are sold to Cuba. Traditional agriculture products authorized under TSRA include: wheat, corn, rice, soybeans, frozen poultry, and live cattle.



Under TSRA, the term “agricultural commodities” also includes products such as wooden picture frames, cigarettes, wallpaper base, organic and non-organic fertilizers, lumber, paper, dietary supplements, pet food, and many others. *(TSRA defines agricultural commodities by reference to Section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. §5602).*

**Restrictive cash sales requirements:** TSRA requires that sales to Cuba be done either by cash in advance or through a third-country letter of credit. TSRA prohibits the use of U.S. private or government credit for these sales. The Cuban assets control regulations also prohibit, unless licensed by the Treasury Department, direct payments from Cuban banks to U.S. banks. In February 2005, the Office of Foreign Assets Control (OFAC) of the Department of the Treasury announced a stricter interpretation of the cash in advance payment method with respect to Cuba: requiring cash payments be made to the U.S. seller before goods leave a U.S. port for Cuba, rather than after shipment and before transfer of title and control of the goods. **The U.S. government does not impose cash in advance payment requirements on international trade deals with any other country in the world.**


Provisions contained within the 2009 Omnibus Appropriations Act prohibit OFAC from enforcing the more narrow 2005 interpretation of the term “cash in advance”. This is consistent with findings of the Congressional Research Service (CRS) in a March 2005 legal analysis of the term “**payment of cash in advance**”.

In the March 2005 memo, CRS found “a reviewing court could find OFAC’s interpretation to be unreasonable in light of the fact that it appears possible to structure international trade transactions in such a way that cash payments are received by the exporter after the goods have been shipped without violating either the statutory requirements or the legislative intent of TSREEA.”

- **These regulatory measures, more restrictive than what Congress envisioned, reduce U.S. sales, raise the transactional costs of U.S. exports to Cuba, and subject banks across the world to regulatory threats.**

**Licensing requirements:** In the 2009 Omnibus Appropriations Act contained a provision that allows travel by businesspersons for the purposes of “marketing and sale” of agricultural and medical goods under a general license. This allows qualified travelers to travel to Cuba without seeking specific prior authorization, as was previously required.

American farmers and businessmen must still request Commerce Department licenses for each of the products they want to sell to Cuba and apply for a license for each of the goods they want to ship to Cuba.



#### 4. What do these restrictions mean for the future of U.S. agricultural sales to Cuba?

- Due to the cumbersome restrictions on U.S. exports, Cuba's national import agency, ALIMPORT, lacks confidence in the reliability of the U.S. as a supplier, limiting the growth potential of U.S. sales.
- Today, U.S. exporters are unlikely to increase their market share in Cuba as long as current regulations remain in effect.

*Prepared by the Center for Democracy in the Americas, [www.democracyinamericas.org](http://www.democracyinamericas.org), the Latin America Working Group, [www.lawg.org](http://www.lawg.org), the Lexington Institute, [www.lexingtoninstitute.org](http://www.lexingtoninstitute.org), the New America Foundation, [www.newamerica.net](http://www.newamerica.net), and Washington Office on Latin America [www.wola.org](http://www.wola.org)*