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**CHANGING CUBA POLICY—IN THE
UNITED STATES NATIONAL INTEREST**

**STAFF TRIP REPORT
TO THE
COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE**

**ONE HUNDRED ELEVENTH CONGRESS
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LETTER OF TRANSMITTAL

FEBRUARY 23, 2009.

DEAR COLLEAGUES: From January 11–14, 2009, I directed my senior Senate Foreign Relations Committee (SFRC) staff member for Latin America, Carl Meacham, to evaluate U.S. policy towards Cuba. Mr. Meacham traveled to Cuba at the invitation of the Lexington Institute on official U.S. Government business under a general license for travel, as provided by the Cuban Assets Control Regulations (31 C.F.R. Part 515 Section 101 *et seq.*). Peter Quilter, Senior Staff on the House International Relations Committee, was also on the delegation.

During this trip, staff met with government officials, foreign diplomats, members of the clergy, international media representatives, Cuban entrepreneurs, and other Cuban citizens in a variety of informal settings outside the apparent presence of Cuban Government officials (Appendix 1).

The proclamation by Cuba's National Assembly making Raúl Castro President of Cuba on February 24, 2008, the election of Barack Obama as President of the United States, on November 4, 2008, and the fiftieth anniversary of the Cuban Revolution on January 1, 2009, have generated much discussion about U.S. policy towards the island. This debate is important because it has implications for security interests in the Straits of Florida, broader U.S.-Latin American relations, and global perceptions of U.S. foreign policy. Despite uncertainty about Cuba's mid-term political future, it is clear that the recent leadership changes have created an opportunity for the United States to reevaluate a complex relationship marked by misunderstanding, suspicion, and open hostility.

Economic sanctions are a legitimate tool of U.S. foreign policy, and they have sometimes achieved their aims, as in the case of apartheid South Africa. After 47 years, however, the unilateral embargo on Cuba has failed to achieve its stated purpose of "bringing democracy to the Cuban people," while it may have been used as a foil by the regime to demand further sacrifices from Cuba's impoverished population. The current U.S. policy has many passionate defenders, and their criticism of the Castro regime is justified. Nevertheless, we must recognize the ineffectiveness of our current policy and deal with the Cuban regime in a way that enhances U.S. interests.

Mr. Meacham's report provides significant insight and a number of important recommendations to advance U.S. interests with Cuba. I hope you find the report helpful. We look forward to work-

ing with you on these issues and welcome any comments you may have on this report.

Sincerely,

RICHARD G. LUGAR,
Ranking Member.

CHANGING CUBA POLICY—IN THE UNITED STATES NATIONAL INTEREST

INTRODUCTION

We anticipate a review of U.S. policy regarding Cuba and look forward to working with members of the Committee and other members of Congress as we move forward to the consideration of appropriate steps to take to help advance U.S. interests and values in the context of relations with Cuba.—Hillary Clinton¹

Secretary of State Clinton responded to Senator Lugar's questions for the record with this pledge to conduct a review of U.S. policy towards Cuba. Echoing President Obama's campaign position, she also wrote that the Administration intends to lift restrictions on Cuban-American travel and remittances to Cuba while maintaining the U.S. trade and investment embargo. She left the door open for bolder policy changes, however, by expressing support for U.S.-Cuban cooperation in drug interdiction and suggesting a willingness to engage with Cuba on issues of mutual concern.

Staff believes that the promised review of Cuba policy will reveal at least four weaknesses in current policy. First, because of Cuba's symbolic importance to Latin America, U.S. policy towards the island nation remains a contentious subject with many countries in the region. Chilean President Michelle Bachelet's February 2009 visit to Havana,² and Cuba's admission in December 2008 to the Rio Group of more than 20 Latin American and Caribbean countries demonstrate the region's convergence around a policy of engagement with Cuba, in sharp contrast to the U.S. policy of isolation. U.S. policy is also a source of controversy between the U.S. and the European Union, as reflected in the perennial transatlantic debate over sanctions versus engagement, as well as in the United Nations, which has passed a widely supported resolution condemning the embargo for the past 17 years.

Second, the United States Government (USG) hurts broader national security interests by impeding cooperation with Cuba on matters of shared concern, such as migration and counternarcotics, among others. There is a precedent for such bilateral cooperation, yet the broad outcome of the last eight years was a near-total

¹This statement was provided on January 12, 2009, as the response to the following two questions: (1) Cuba has been on the State Department's State Sponsors of Terrorism list since 1982. Please provide your views regarding why Cuba should or should not remain on the State Department's State Sponsors of Terrorism list; (2) Please provide your views on U.S.-Cuban cooperation on energy security and environmentally sustainable resource management, especially as Cuba begins deep-water exploration for potentially significant oil reserves.

²This is the first visit by a Chilean leader to Cuba since President Salvador Allende visited in 1972.

breakdown in official interaction between the two governments; coordination of drug interdiction, for example, is where most official interaction occurs with Cuba, and only on a limited, case-by-case basis, while semi-annual U.S.-Cuba migration talks were suspended in 2004.

Third, despite the ostensible goal of promoting a peaceful transition to democracy in Cuba, U.S. policy has instead provided the Government of Cuba (GOC) with both a convenient, though overblown, scapegoat for its economic difficulties and an external threat with which to justify its authoritarianism.

Finally, current U.S. policy ignores recent developments that have the potential to redefine relations with Cuba. The sanctions-based policy has significantly impeded the United States' ability to influence the direction of policy in Cuba or gain a broader understanding of events taking place on the island. By directing policy towards an unlikely scenario of a short-term democratic transition on the island and rejecting most tools of diplomatic engagement, the U.S. is left as a powerless bystander, watching events unfold at a distance.

FINDINGS

The Obama Administration's review of policy towards Cuba will occur during a complex period on the island and in the United States, while the onslaught of a global recession provides an unpredictable environment for foreign relations. The following sections provide background and staff's principal observations from travel to Cuba.

The Cuban regime is institutionalized

The Cuban government remains riddled with deep problems including resource constraints, inefficiency, and corruption, but it continues to function nonetheless. It exercises control over its territory, manages government functions such as taxation, policing, and delivery of social services, and engages in effective international diplomacy.

Though the Cuban Revolution first emerged as a popular movement, the process of institutionalization that began in the 1970s has strengthened and formalized the political structure to the extent that the island's institutions occupy an important role in the governance of Cuba. This process has been accelerated by Fidel Castro's retirement in 2008 and the accompanying departure from his charismatic but erratic leadership style. Under Raúl Castro, decision-making relies on more regularized and predictable channels such as the Cuban Communist Party, the National Assembly, and government ministries.

While a popular uprising against the government cannot be completely ruled out, staff concluded that a sudden collapse of the GOC is unlikely given the institutionalized nature of the regime and the absence of an external war or other catalyst. Moreover, the internal opposition does not appear sufficiently well developed to precipitate a negotiated transition, while external opposition efforts have been

proven peripheral.³ It is thus more likely that the post-Castro era will be led by factions of the current regime.⁴

Consequently, the basic premise of U.S. policy—that a liberal democracy will arise in the post-Castro era without political continuity from the current system—is unlikely. This is not to say that a democratic transition is either impossible or inevitable, but rather that Cuba's future leadership will not be a tabula rasa. By limiting engagement with Cuba's second-tier leaders, the USG forgoes the opportunity of establishing ties that might positively influence the advancement of U.S. interests in the near future.

Positive developments are occurring in Cuba but they should not be mistaken for structural reform

Change in Cuba cannot be assessed against a yardstick of full multi-party democracy, free-market capitalism, and civil rights. Nevertheless, since officially assuming the presidency in early 2008, Raúl Castro has introduced a series of modest reforms that are regarded on the island as a departure from the orthodox policies of his long-ruling brother, Fidel Castro. For example, Cubans may now purchase cell phones and computers and stay at hotels previously reserved for foreigners, though the vast majority of the population cannot afford to take advantage of these reforms. The GOC is granting new licenses to private taxi drivers, who set their own prices, for the first time in a decade. Most significantly, private farmers are now permitted to purchase their own equipment, and the government is proceeding with a plan to hand over unused state lands to private farmers and cooperatives under long-term leases, including more than 45,500 land grants approved in February 2009.

Raúl Castro has repeatedly acknowledged the need to increase efficiency and production, particularly in the agricultural sector, and his decisions have demonstrated a willingness to implement some reforms at a gradual pace, though it is not clear whether they will lead to structural change. He has also encouraged a series of town-hall meetings to publicly debate government programs, but he made it clear that decisions about changes would rest with the GOC, and many citizens feared retribution for expressing their real opinions.⁵

While limited economic opening is taking place, the government continues to ban most political activity that occurs outside the confines of the Cuban Communist Party. Opposition parties are illegal, virtually all media remain state controlled, and Cuba has the highest number of political prisoners of any country in the Americas.

³According to a report released by Freedom House in September 2008, the general Cuban public lacks familiarity and interest in dissident organizations. Staff suspects that this disinterest stems from several factors, namely the prioritization of economic concerns, political apathy, the opposition's lack of access to the mass media, and fear of the state's repressive apparatus.

⁴Cuba most closely parallels pre-1989 Bulgaria with its thin opposition movement. Unlike in Hungary or Czechoslovakia, the Bulgarian regime initiated and controlled the transition. Factionalization within the communist party led to a series of liberalizing steps and round-table talks coordinated and chaired by one of the party leaders of the internal coup. In Hungary, in contrast, the well-organized opposition set out firm principles of negotiation even before it agreed to enter talks, while in Czechoslovakia the established opposition groups headed a provisional government following regime collapse.

⁵Freedom House Special Report. (15 Sept. 2008). Change in Cuba: How Citizens View Their Country's Future.

Cuba regularly ranks at the bottom of most internationally recognized rankings on political and economic liberty, and the state controls most means of production.

Still, recent developments in Cuba may indicate that the government while able and willing to exercise its machinery of repression, is showing some small signs of political moderation. According to the non-governmental Cuban Commission of Human Rights and National Reconciliation (CCDHRN), a respected domestic human rights group, Cuba had 316 political prisoners when Raúl Castro first took power on a provisional basis in July 2006, following the serious health setback suffered by his brother Fidel. By early 2008, when Raúl Castro formally assumed the presidency, that number had declined to 234. In February 2009, the CCDHRN reported that the number of documented political prisoners had dropped still further to 205.⁶ Raúl Castro has commuted most death sentences on the island, and the GOC signed two United Nations human rights treaties in February 2007.⁷ As a result, Cuba is about to undergo its first Universal Periodic Review in the United Nations Human Rights Council.

Due in part to these modest shifts, Cuba's ranking for civil liberties improved in 2008 from 7 to 6 (on a scale of 1 to 7, with 7 being the least free) on Freedom House's annual survey, *Freedom in the World*—still a very low ranking of “not free” but the first change since 1989. The GOC, however, has increasingly used the practice of arbitrary short-term detentions to intimidate and repress human rights and democracy activists. According to the CCDHRN, there were more than 1,500 such detentions in 2008. The government also employs surveillance and travel restrictions against political dissidents, and ordinary Cubans still do not have the right to travel abroad and return to Cuba.

While some positive developments have occurred, they do not appear to represent a long-term reform program, at least at this time. These changes are welcomed, but no one should be under the illusion that there might not be setbacks.

Popular dissatisfaction with Cuba's economic situation is the regime's vulnerability

Recent developments in Cuba respond to both urgent economic challenges and raised public expectations for economic change. Cuba has become increasingly reliant on food imports to feed its people, and most food crops show declining trends. Since mid-2008, the Cuban economy has suffered not only the impact of Hurricanes Gustav and Ike, which caused large crop losses and food shortages, but also the global financial crisis, with a resulting decline in credit, tourism revenues, remittance flows, and demands for nickel, the island's chief export. An additional vulnerability lies in the island's dependence on subsidized oil from Venezuela.

Among ordinary Cubans, moreover, staff found that the harshest complaints are directed at the stark disparity between incomes and prices. The average monthly wage of a Cuban worker is US\$17, but many goods are sold at prices equivalent to what they would cost

⁶Comisión Cubana de Derechos Humanos y Reconciliación Nacional. (2 Feb. 2009). “Cuba en el año 2009: La situación de derechos civiles políticos y económicos.”

⁷BBC News. (29 April 2008). “Cuba to commute death sentences.”

in the United States. This disparity is sustained through a dual currency system: local salaries are paid in pesos valued at about 25 to the dollar, and many food products and consumer goods are sold in prices marked in convertible pesos (CUC) valued at parity with the dollar. Staff visited CUC stores that sold items such as Nike, Adidas, and Reebok apparel, and they were full of Cubans purchasing goods at U.S. market prices, while the peso stores that staff visited showed a meager selection of low quality goods. Those who benefit from remittances or work in the tourism industry are able to purchase goods at CUC stores. This is in sharp contrast to the majority of Cubans who, because monthly wages are insufficient to purchase even basic foodstuffs, engage in illegal economic activities reflected in popular Cuban jargon like “resolver” (to make do), “inventar” (to invent), and “hacer las cosas por la izquierda” (to do things “on the left,” i.e. transactions in the underground economy).

Staff believes that popular dissatisfaction with the economic situation among Cuba’s youth is especially problematic for Raúl Castro. During an evening visit to the intersection of 23rd Street and “Calle G” (G Street, a popular gathering place for college students in Havana) staff observed young adults dressed in fashions similar to average American youth. The contemporary music that staff could hear played was Reggaeton, a form of Latin urban music that became popular with Latin American youth in the early 1990s. Yet even relatively successful young people expressed frustration with the limits placed by the state on their prospects for upward mobility. Staff concluded that this generation, which came of age after the collapse of the Soviet Union plunged Cuba into profound economic crisis in the 1990s, has high expectations when it comes to the economy but has only the most tenuous link with the Cuban Revolution in political terms.

Cuba’s economic challenges and vulnerabilities have important implications for U.S. interests, for they provide an incentive for the GOC to advance economic reforms that could provide commercial opportunities and markets for the United States.

The regime appears to be open to some bilateral dialogue and co-operation

Staff’s meetings with GOC officials revealed stark differences between Cuban and U.S. priorities in bilateral relations. Most of the U.S. policy reforms that are proposed in Washington center on liberalizing travel to the island, yet the GOC considers travel to be a domestic issue for the United States and therefore of less relevance to bilateral discussions. Most importantly, the GOC views the USG’s emphasis on conditionality (i.e., lifting U.S. economic sanctions in return for concrete movement toward democracy) as an unlikely starting point for future negotiations. When staff asked GOC officials about the human rights situation and the plight of

Cuban dissidents, GOC officials countered with Guantánamo,⁸ Abu Ghraib, and the case of the “Cuban Five.”⁹

When staff asked about what gestures the Cuban government would find positive, officials expressed concerns with programs by USAID intended to facilitate a transition to democracy in Cuba as well as Radio and TV Martí broadcasts from Miami, which are intended to provide an alternative source of information for the Cuban people. They view these programs as interventionist tools of the United States intended to bring about regime change.

On issues of national security and commerce, however, the GOC indicated a willingness to cooperate with the United States where mutual interests exist, echoing previous statements by Raúl Castro on his desire for dialogue with the USG. Since assuming power in 2006, he has made several overtures to engage in dialogue with the United States with the condition that the dialogue is based on the principles of equality, reciprocity, non-interference, and mutual respect.¹⁰ According to State Department sources, the USG has also made overtures over the last 18 months to discuss narco-trafficking and current restrictions on travel for diplomats in Havana and Washington, but these efforts have proven unsuccessful thus far.

RECOMMENDATIONS

According to a recently published book on U.S. policy towards Cuba, only three avenues of regular official communication exist with the GOC: monthly meetings between U.S. and Cuban military officers at the Guantánamo Bay Naval Base, occasional cooperation between the U.S. and Cuban coast guards on drug enforcement and migration matters (through a U.S. Coast Guard attaché at the U.S. Interests Section in Havana), and frequent contact between U.S. and Cuban meteorologists who track hurricanes in the Caribbean.¹¹

Given these precedents and the current state of U.S.-Cuban relations, staff concluded that progress could be attained by replacing conditionality with sequenced engagement, beginning with narrow areas of consensus that develop trust. A steady series of gradual measures has significant confidence-building potential and could ultimately create the conditions for effective dialogue over more contentious issues. By sequencing this process of engagement with Cuba, the USG would have the opportunity to continually reassess progress towards the advancement of national interests. In other words, a pragmatic, phased approach would allow the USG to halt the engagement process at any point if U.S. interests were no longer being served.

Staff recommends assessing the viability of reinstating discussions on drug interdiction and migration, and incremental steps in other areas, in order to address issues of concern for both countries. These measures should build upon each other to establish

⁸ Following staff's trip, President Obama signed an executive order to close the Guantánamo detention camp. Fidel Castro has demanded a return of the base to the GOC.

⁹ The Cuban Five are five Cuban unregistered intelligence agents who infiltrated South Florida exile groups in the 1990s and have been imprisoned in the United States since 2001.

¹⁰ Sullivan, Mark P. (3 Feb. 2009). “Cuba: Issues for the 111th Congress.” Congressional Research Service.

¹¹ Erikson, Daniel P. (2008). *The Cuba Wars: Fidel Castro, the United States, and the Next Revolution*. New York: Bloomsbury Press.

new foundations for dialogue. Initially, increased communication and cooperation between the GOC and USG can take place within the framework of the existing embargo, though staff suggests consideration of several exceptions to U.S. sanctions as talks progress, as detailed below.

As an initial unilateral step, staff recommends fulfilling President Obama's campaign promise to repeal all restrictions on Cuban-American family travel and remittances before the Fifth Summit of the Americas in Trinidad and Tobago on April 17–19, 2009. The timing of this gesture would signal an important change and would improve goodwill towards the United States from Latin American countries, as the USG seeks regional cooperation on a wide range of issues. Congressional action to lift all current U.S. travel restrictions should be considered as an effort along these lines, as well.

Staff suggests that efforts to lift current travel restrictions on the Cuban Interests Section personnel in Washington, whose diplomats may not venture beyond the Beltway without explicit permission from the USG, be supported. Such a move would encourage a reciprocal lifting of GOC restrictions on the ability of U.S. diplomats to travel outside of Havana, improving the USG's ability to understand conditions on the entire island.

In addition, staff recommends a review of the effectiveness of several components of U.S. policy in both the legislative and executive branches: first, the Cuban Democracy Act of 1992 and the Cuban Liberty and Democratic Solidarity Act of 1996; and, the policy recommendations of the 2004 and 2006 reports of the Commission for Assistance to a Free Cuba, an inter-agency commission established in 2003 that was tasked with developing recommendations to "hasten" a transition to democracy in Cuba.¹²

Beyond these immediate unilateral measures, the timing of policy reforms and elimination of embargo restrictions would depend on the evolution of negotiations, which should be spearheaded by the U.S. Assistant Secretary of State for Western Hemisphere Affairs. The following are additional areas of reform for consideration in the short and mid-term:

The resumption of bilateral talks on drug interdiction and migration

Cuba's geographic position makes it key to halting the rapid increase in drugs flowing through Caribbean routes to the United States. Yet anti-narcotics cooperation between the USG and GOC presently occurs on only a limited, case-by-case basis, despite the GOC's expressed interest in signing a formal agreement with the USG.

Staff encourages the USG to undertake comprehensive counter-narcotics cooperation with Cuba, including the provision of needed equipment and technical assistance. Working more closely with Cuba to combat the growth of drug trafficking would protect vital U.S. security interests in the region and would put the United States in a better position to help thwart any future strategies by

¹²Commission for Assistance to a Free Cuba. Retrieved from <http://www.cafc.gov>.

international drug traffickers to use Cuba as a transit point for drug shipments to the United States.

Regarding migration, staff recommends the revival of U.S.-Cuban biannual migrations talks, which have been suspended since 2004. These talks provide an important venue for discussing the shared problem of illegal migration. The USG should remain committed to fully implementing its agreements under the 1994 Joint Communiqué and the 1995 Joint Statement (collectively known as the U.S.-Cuba Migration Accords) as effective tools for promoting safe, legal, and orderly migration.

In addition, staff suggests an executive branch review of the “wet-foot, dry-foot policy.” Under this policy, Cubans who are intercepted at sea are sent back to Cuba or to a third country while those who make it to U.S. soil are allowed to remain in the United States. The review should assess whether this policy has led to the inefficient use of U.S. Coast Guard resources and assets as well as the potential to redirect these resources to drug interdiction efforts.

Investments in alternative energy

Energy security has vaulted to the top of both the U.S. and Cuban political agendas amid concerns about supply interruptions and rising prices, sparking a renewed search for viable alternative fuels. For the USG, an important element of an effective energy strategy from both cost and environmental perspectives lies in forging technological and open trading relationships in the Western Hemisphere.

For the GOC, upgrading the island’s decaying energy infrastructure and promoting alternative energy sources are national security priorities referred to as the “energy revolution.” GOC officials indicated to staff that they are particularly interested in wind power, while other renewable energy projects are receiving support from the United Nations Development Program, which maintains an office in Havana and finances, among other projects, household solar photovoltaics and hydro power for use in rural areas. In addition, the GOC is encouraging foreign investment to develop its oil fields, with probable hydrocarbon reserves of five billion barrels, according to estimates by the United States Geological Survey—significant for Cuban energy consumption and comparable to the oil reserves of Ecuador.

In staff’s meetings, GOC officials particularly welcomed U.S. participation in renewable energy development. If restrictions were lifted, U.S. technology could help ensure environmentally-sustainable development of Cuba’s energy sector. Most importantly, cooperation in this area would be consistent with long-term U.S. interests in energy security and efficiency in the region.

Agricultural trade

Since the Trade Sanctions Reform and Export Enhancement Act (TSRA) of 2000 lifted sanctions on sales of agricultural commodities, the U.S. has become Cuba’s most important food provider and its fifth largest overall trading partner. Yet many restrictions and licensing requirements remain in place, making it difficult for agricultural exporters to take full advantage of trade opportunities in Cuba. The TSRA denied exporters access to U.S. private commer-

cial financing or credit, and a 2005 regulation by the Treasury's Office of Foreign Assets Control (OFAC) redefined the sales terms set forth in TSRA, stipulating that cash payment must be received by the seller prior to the shipment of goods, rather than prior to transfer of title and control of the goods, as had been the practice until 2005.¹³ According to a 2007 Government Accountability Office report, smaller U.S. exporters have found OFAC's licensing process to be cumbersome, nontransparent, and time consuming, while other exporters have complained that Cuban purchasing officials are routinely denied visas to travel to the United States for inspections of U.S. processing and facilities.¹⁴

Easing these restrictions would benefit U.S. economic interests and expand an important source of dialogue and engagement between the two countries. According to staff's sources, the GOC welcomes this nascent trading relationship, due to the quality and proximity of U.S. goods, and the professionalism of U.S. exporters. This is especially true following Hurricanes Gustav and Ike, which badly depleted Cuban food stores, creating food shortages. Specifically, staff recommends assessing the viability of a combination of potential executive and legislative actions to: (1) review the "cash in advance" requirement; (2) authorize private financing for agricultural sales; (3) expand the types of products that may be sold to include agricultural machinery and supplies, which are especially needed for rebuilding in the wake of the recent hurricanes; (4) authorize general licenses for travel to Cuba for the marketing, negotiation, and delivery of agricultural goods; (5) facilitate the issuance of U.S. visas for Cuban officials to conduct activities, including sanitary inspections, related to such sales.

Medical trade

Because the Trade Sanctions Reform and Export Enhancement Act did not clearly repeal or supersede the relevant Cuban Democracy Act (CDA) provisions on medical items, the latter's requirements still apply. The CDA required the issuance of a specific license from the Department of Commerce as well as "proper end-use monitoring" to ensure that medical items would be used for their intended purpose.¹⁵ In contrast to U.S. agricultural exports, U.S. exports of medical products have not increased substantially since 2001 and remain a minor part of U.S. exports to the island.

Staff recommends reviewing the viability of authorizing private financing for medical sales as well as general licenses for travel to Cuba for the marketing and sale of these goods. Appropriate legislative action could also include a review of the current end-use monitoring requirement, which is why some U.S. companies do not export medical products to Cuba.

In addition, staff suggests reviewing the potential for legislative action to permit pharmaceutical imports from Cuba's rapidly developing biotech industry. Cuba has made important strides in bio-

¹³ U.S. International Trade Commission. (July 2007). U.S. Agricultural Sales to Cuba: Certain Economic Effects of U.S. Restrictions. Retrieved from <http://www.usitc.gov/publications/pub3932.pdf>.

¹⁴ U.S. Government Accountability Office. (Nov. 2007). Economic Sanctions: Agencies Face Competing Priorities in Enforcing the U.S. Embargo on Cuba.

¹⁵ U.S. Department of State. Fact Sheet: Medical Sales to Cuba. Retrieved from <http://www.state.gov/p/wha/rls/fs/2001/fsjulydec/2612.htm>.

technology, including the production of meningitis and hepatitis B vaccines, and U.S. scientists have called for enhanced research cooperation with their Cuban counterparts.¹⁶ In 2004, the Treasury Department allowed California's CancerVax Corporation to conduct clinical trials of three cancer vaccines in conjunction with Cuba's Center for Molecular Immunology, yet the embargo prohibits importation of medical products, and there is no permanent program of cooperation between Cuban and U.S. research institutions.

Bipartisan commission and a multilateral framework

In sum, increased dialogue through appropriate channels, coupled with looser trade terms, would lay the groundwork for more substantial discussions between the USG and GOC. Staff believes that the USG should begin treating Cuba as it does other nations with whom it has fundamental disagreements but where engagement advances broader interests.

In the short-term, staff recommends the targeted sequencing of U.S. unilateral options in addition to the pursuit of a multilateral approach to Cuba. No U.S. strategy to reform its relationship with Cuba will be fully successful if it is pursued unilaterally. With this goal, the Administration should consider establishing a bipartisan commission to forge a new, multilateral strategy with Latin American and European Union partners. Just as the bipartisan Iraq Study Group proposed important recommendations based on a comprehensive policy review, a Cuba Study Group could complement the State Department's ongoing policy review with a road map for future policy direction.

A multilateral component of this road map could include re-engagement with Cuba in international institutions. In the medium-term, the USG could review dropping opposition to Cuban participation in the International Monetary Fund, the World Bank, and the Inter-American Development Bank. Cuban membership of these financial institutions would increase the GOC's accountability to the international community and encourage free-market reforms consistent with U.S. commercial interests.

In addition, a member country of the Organization of American States (OAS) could call for the reincorporation of Cuba as a member of the OAS. This would require a resolution by the OAS General Assembly to revoke the 1962 decision that suspended the GOC's membership privileges because it was concluded that Cuba was a Marxist-Leninist country, whose government was incompatible with the inter-American system. In the event of such a development, the GOC would be required to sign the Inter-American Democratic Charter in order to be considered a full member.

On the diplomatic front, staff recommends the consideration of a mechanism for regular information-sharing and coordinated action between the USG and other countries that have a bilateral human rights dialogue with the GOC, including members of the European Union, Japan, Brazil, Mexico, Chile, and Canada. An appropriate model is provided by the Berne Process in Beijing, which has afforded a framework for dialogue among diplomats in China, including from the USG, to enhance cooperation with other diplomatic

¹⁶U.S.-Cuban Scientific Relations. (17 Oct. 2008). *Science*. Vol. 322.

missions interested in engaging the Government of China on sensitive human rights issues. A similar process should be considered as a framework for our diplomats in Havana.

CONCLUSION

Cuba is important for the United States because of proximity, intertwined history, and culture. Cuba is important in Latin America because it is a romanticized symbol of a small country that stood up to the most powerful country in the world. The Cuban Revolution legitimizes some of the passions that fuel the outrage that many Latin Americans feel regarding the inequality of their own societies, and for 50 years, rightly or wrongly, Cuba has ably portrayed itself as having fought this fight for them, as well as for the downtrodden around the world.

During the visit, a Cuban official stated to staff that “U.S. foreign policy towards Latin America goes through Cuba.” With the end of the Cold War, however, the GOC does not represent the security threat to the U.S. that it once did. The USG still has significant grievances with the GOC—mostly, its human rights practices and the stifling of political pluralism and property rights as well as the lack of adequate compensation for expropriated assets of U.S. firms and individuals. The remaining security issues, on the other hand, are limited to the potential for a migration crisis provoked by political or economic instability on the island. While Cuba’s alliance with Venezuela has intentions of influencing regional affairs, the GOC has not been positioned to ably export its Revolution since the collapse of the Soviet Union forced an end to Cuba’s financial support for Latin American guerrilla movements. The GOC’s program of medical diplomacy, which exports doctors to developing countries, bolsters the island’s soft power, but does not represent a significant threat to U.S. national security. Given current economic challenges, any revenue gained from economic engagement with the United States would likely be used for internal economic priorities, not international activism.

For these reasons, the United States’ relationships with Brazil, Mexico, Colombia, and Chile, have taken priority in Latin America. Cuba, too, has demonstrated that relations with the United States, though advantageous, are not necessary to its survival, having forged closer relationships around the globe. Venezuela, China, and Canada are Cuba’s top three trading partners, and recent economic agreements with Brazil and Russia are examples of Cuba’s resourcefulness in this regard. As one GOC official told staff, “We’ve endured much harsher conditions during the Special Period. We can survive with or without the United States.”¹⁷

In hindsight, the U.S. embargo has not served a national security agenda since Cuba ceased to be an effective threat to the security of the United States. In the immediate post-Cold War era, the cost of maintaining this policy was negligible in comparison to the domestic political benefit derived from satisfying Cuban-American groups in the United States. The USG justified the embargo policy as an incentive or inducement for negotiations with the Cuban gov-

¹⁷The Special Period refers to the economic crisis caused by the 1991 collapse of the Soviet Union and the resulting loss of economic subsidies.

ernment, the rationale being that the U.S. would lift the embargo, or parts of it, in response to reform on human rights and democracy. This narrow approach, however, has not furthered progress in human rights or democracy in Cuba and has come at the expense of other direct and regional strategic U.S. interests.

Today it is clear that a reform of our policy would serve U.S. security and economic interests in managing migration effectively and combating the illegal drug trade, among other interests. By seizing the initiative at the beginning of a new U.S. Administration and at an important moment in Cuban history, the USG would relinquish a conditional posture that has made any policy changes contingent on Havana, not Washington.

Reform of U.S.-Cuban relations would also benefit our regional relations. Certain Latin American leaders, whose political appeal depends on the propagation of an array of anti-Washington grievances, would lose momentum as a centerpiece of these grievances is removed. More significantly, Latin Americans would view U.S. engagement with Cuba as a demonstration that the United States understands their perspectives on the history of U.S. policy in the region and no longer insists that all of Latin America must share U.S. hostility to a 50-year-old regime. The resulting improvement to the United States' image in the region would facilitate the advancement of U.S. interests.

If reform in U.S.-Cuba policy were to occur in the direction of sequenced engagement, the impact on the region would be swift and to the benefit of the security and prosperity of the United States. In due order, we must correct the failures of our current policy in a way that enhances U.S. interests.

APPENDIX I

Contributor

Kezia McKeague, Legislative Assistant, Committee on Foreign Relations, United States Senate

MEETINGS WITH INDIVIDUALS IN CUBA

U.S. diplomats

Jonathan Farrar, Principal Officer, U.S. Interests Section, and country team members

Cuban government officials

Vice Minister for Economy and Planning, Alfonso Casanova
Vice Minister for Foreign Relations, Dagoberto Rodriguez
Advisor to the President of the Cuban National Assembly, Miguel Alvarez
Advisor to the President of the Cuban National Assembly, Ana Mayra Alvarez
Alimport representatives
Center for Molecular Immunology representatives
Ministry of Basic Industries representatives
Cupet (Cuban oil company) representatives

Foreign diplomats

Manuel Cacho Quesada, Spanish Ambassador to Cuba
Susan McDade, United Nations Resident Coordinator for Cuba
Bernardo Pericas, Brazilian Ambassador to Cuba

Catholic Church

Orlando Marquez, advisor to Cardinal Jaime Ortega and editor of archdiocesan monthly Palabra Nueva

Foreign correspondents

Gerardo Arreola, *La Jornada*
Maurico Vicent, *El País*

Other individuals

Omar Everlenny Pérez, Cuban economist
Cuban farmers in private cooperative in Managua, Cuba
Cuban citizens in Santa María del Rosario

APPENDIX II

Staff's recommendations rely on actions by both the executive and legislative branches of the USG. For this reason, staff requested the following information from the Congressional Research Service (CRS). It summarizes the potential actions the executive branch could take on its own to move towards normalization of U.S.-Cuban relations versus actions that would require congressional action.

POTENTIAL PRESIDENTIAL ACTIONS

Travel restrictions

The President has the authority to ease U.S. restrictions on travel to Cuba that are in place today. Restrictions on travel are set forth in the Cuban Assets Control Regulations (CACR) (31 CFR, Part 515), the main body of Cuba embargo regulations administered by the Department of Treasury that set forth 12 categories of permissible travel. The embargo regulations do not ban travel itself, but place restrictions on any financial transactions related to travel to Cuba, which effectively result in a travel ban. Under the CACR, certain categories of travelers (such as journalists and full-time professional researchers) may travel to Cuba under a general license, which means that there is no need to obtain special permission from the Treasury Department's Office of Foreign Assets Control (OFAC), which implements the Cuba embargo. In addition, a wide variety of travelers engaging in family visits, and educational, religious, humanitarian, and other activities may be eligible for specific licenses. Applications for specific licenses are reviewed and granted by OFAC on a case-by-case basis.

There have been various changes to the travel restrictions over time. For example, the Clinton Administration tightened family travel restrictions in 1994 by requiring a specific as opposed to a general license, and subsequently reversed this action in 1995. In 1999, the Clinton Administration announced a number of changes to the travel regulations that allowed people-to-people exchanges in a variety of areas. In contrast, the Bush Administration tightened travel restrictions in 2003 by prohibiting people-to-people exchanges unrelated to academic coursework, and in 2004 restricted family travel in various ways. This included requiring a specific license, limiting such travel to once every three years with no exceptions, allowing visits only to immediate family (grandparents, grandchildren, parents, siblings, spouses, and children) for a period not to exceed 14 days, and reducing the amount that can be spent while in Cuba to \$50 daily (from the State Department per diem rate of \$179).

Just as President Bush tightened travel restrictions, President Obama could ease the restrictions by amending the CACR travel regulations. As a presidential candidate, Obama vowed to change U.S. policy toward Cuba by allowing unlimited family travel, which would require changes to the licensing procedures in the CACR. The 12 categories of permissible travel are defined in law, but within those categories the Administration has the authority to make changes to licensing procedures. For example, the President could choose to change the CACR travel regulations back to as they were during the first two years of the Bush Administration. This would include easing restrictions on travel for family visits, people-to-people educational activities, academic educational activities (including for secondary schools), and participation in amateur or semi-professional sports competitions.

Remittances

The President has the authority to ease restrictions on remittances to Cuba. These restrictions are also set forth in the CACR and have changed over time. In June 2004, the Bush Administration tightened restrictions so that remittances may only be sent to nationals of Cuba who are members of the remitter's immediate family (spouse, child, grandchild, parent, grandparent, or sibling). Up to \$300 in remittances may be carried by an authorized traveler to Cuba. Prior to those changes, remittances were not restricted to members of the remitter's immediate family, but could be sent to any household in Cuba, provided the household did not include a senior-level Cuban government official or senior-level Communist Party official. Authorized travelers also could carry up to \$3,000 in cash remittances compared to \$300 now. Both before and after the June 2004 tightening, however, the level of remittances that can be provided per quarter remained the same, \$300 per household.

Gift parcels

Consistent with the U.S. embargo of Cuba, the Export Administration Regulations (EAR), implemented by the Department of Commerce, Bureau of Industry and Security, require a license for exports of all items subject to the EAR to Cuba, with only a limited number of license exceptions. The President has the authority to make changes to the EAR. For example, in June 2004, the Bush Administration tightened restrictions on items that may be included in humanitarian gift parcels sent to Cuba. The new regulations prohibited gift parcels from including seeds, clothing, personal hygiene items, veterinary medicines and supplies, fishing equipment and supplies, and soap-making equipment (15 CFR 740.12). The President could ease these restrictions on gift parcels. In June 2008, the Bush Administration added mobile phones and related accessories to the eligible list of gift parcel items, and increased the value of the gift parcel from \$200 to \$400 (which does not apply to the value of food sent in the parcel).

U.S. agricultural exports

The President has the authority to reverse the Treasury Department's February 2005 amendment to the CACR that provides a definition of the term "payment of cash in advance" for exporting

U.S. agricultural goods to Cuba. The Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA, P.L. 106–387, Title IX) allows for U.S. commercial agricultural exports to Cuba, but with numerous conditions and licensing requirements. TSRA requires that all transactions must be conducted by payment of cash in advance or financing by third country financial institutions. In February 2005, the Treasury Department amended the CACR to define the term “payment of cash in advance” to mean “that payment is received by the seller or the seller’s agent prior to the shipment of the goods from the port at which they are loaded.” This was in contrast to past practice whereby the seller would receive payment while the goods were in transit or before they arrived at a Cuban port. U.S. exporters and some Members of Congress objected to the amendment as a new sanction that violated the intent of TSRA. There have been various legislative initiatives over the past several years to ease sanctions on U.S. agricultural exports to Cuba by preventing the Treasury Department from implementing the February 2005 amendment defining payment of cash in advance.

Bilateral talks and agreements

The Executive Branch could choose to engage Cuba in bilateral talks in a range of areas or negotiate new bilateral agreements with Cuba. In 2002, Cuba proposed the negotiation of bilateral agreements on drug interdiction, terrorism, and migration issues. In the context of Fidel Castro’s departure from political power in 2006, some observers called for a policy of engagement with Cuba in these areas as well as on efforts to combat human trafficking and environmental cooperation.¹⁸

For example, the President could choose to restart the semi-annual U.S.-Cuban talks on the implementation of the 1994 and 1995 bilateral migration accords. The Bush Administration cancelled those talks in January 2004 before the 20th round, and no talks have been held since. The State Department maintained that they cancelled the talks because Cuba refused to discuss five issues: (1) the issuance of exit permits for all qualified migrants; (2) cooperation in holding a new registration for an immigrant lottery; (3) the need for a deeper Cuban port used by the U.S. Coast Guard for the repatriation of Cubans interdicted at sea; (4) the issue of Cuba’s responsibility to permit U.S. diplomats to travel to monitor returned migrants; and (5) Cuba’s acceptance of the return of Cuban nationals determined to be inadmissible to the United States.¹⁹ In response to the cancellation of the talks, Cuban officials maintained that the U.S. decision was irresponsible and that Cuba was prepared to discuss all of the issues raised by the United States.²⁰

Another example could be closer cooperation on anti-drug efforts or the negotiation of an anti-drug agreement with Cuba. Bilateral cooperation on anti-drug efforts has increased since 1999 when U.S. and Cuban officials met in Havana to discuss ways to improve anti-drug cooperation, and Cuba accepted the stationing of a U.S.

¹⁸ For a discussion of this approach, see CRS Report RL33622, *Cuba’s Future Political Scenarios and U.S. Policy Approaches*, September 3, 2006.

¹⁹ U.S. Department of State. *State Department Regular Briefing*, Richard Boucher, January 7, 2004.

²⁰ “Migration Talks Cancelled,” *Miami Herald*, January 8, 2004.

Coast Guard Drug Interdiction Specialist (DIS) at the U.S. Interests Section in Havana. In 2002, Cuba called for a bilateral anti-drug agreement with the United States, but the Bush Administration indicated at the time that cooperation would continue on a case-by-case basis, not through a bilateral agreement. More recently, Assistant Secretary of State for Western Hemisphere Affairs Tom Shannon maintained in an interview with Spain's *El País* newspaper in early January 2009 that a drug trafficking accord with Cuba would be logical, although he could not anticipate what the next Administration would do.²¹

Foreign assistance

Numerous provisions of law prohibit U.S. assistance to Cuba, some without waiver authority. For instance, Section 620(a)(1) of the Foreign Assistance Act of 1961 generally prohibits assistance to the present government of Cuba and does not authorize the President to waive its application. Nevertheless, the President does retain authority to provide certain types of assistance to Cuba. Pursuant to Section 491 of the Foreign Assistance Act of 1961, for example, the President is authorized to provide assistance to any foreign country, "on such terms and conditions as he may determine, for international disaster relief and rehabilitation, including assistance relating to disaster preparedness, and to the prediction of, and contingency planning for, natural disasters abroad." Another example is Section 104(c)(4) of the Act, which allows for health-related assistance notwithstanding any other provision of law. Section 109 of the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 (P.L. 104–114) authorizes the President to provide support to individuals and independent nongovernmental organizations working to support democracy-building efforts for Cuba. In addition, annual foreign operations appropriations measures have had a provision (for FY2008, see Section 634(b) of P.L. 110–161, Division J) allowing for assistance to support tropical forestry and biodiversity conservation and energy programs aimed at reducing greenhouse gas emissions. This provision, however, has been subject to Section 620A of the Foreign Assistance Act of 1961 that prohibits assistance to governments supporting international terrorism unless the President determines that national security interests or humanitarian reasons justify a waiver. Such a waiver would be required for Cuba since it is on the State Department's list of countries supporting international terrorism.

Section 307 of the Foreign Assistance Act withholds the U.S. proportionate share from international organizations conducting programs in specific countries, including Cuba, with the exception of programs of the United Nations Children's Fund (UNICEF) and certain programs of the International Atomic Energy Agency (IAEA). This provision is largely symbolic, however, and does not prevent international organizations from conducting programs in Cuba. For example, the United Nations Development Program has an active program in Cuba.

²¹José Manuel Calvo, "Thomas Shannon Secretario de Estado adjunto para Latinoamérica: Sería un acuerdo contra el narcotráfico entre Cuba y EE UU," *El País*, January 11, 2009.

The President also has special authority under Section 614 of the Foreign Assistance Act of 1961 to authorize a limited amount of assistance each fiscal year “when the President determines and so notifies in writing to the Speaker of the House and the chairman of the Committee on Foreign Relations of the Senate, that to do so is important to the security interests of the United States.” Before exercising this authority, the President needs to consult with and provide a written policy justification to the appropriations and foreign relations committees in both houses.

Diplomatic relations

While the President has the power to restore full diplomatic relations with Cuba, such an action would usually occur as part of a broader effort toward normalizing relations. For example, the normalization of U.S. relations with Vietnam proceeded incrementally for a number of years, with Congress playing a significant role in the normalization process. A detailed roadmap for the normalization of relations with Vietnam was issued in 1991, although an Ambassador was not appointed until 1997, after President Clinton issued a determination that certain conditions had been met regarding Vietnamese cooperation on POW/MIA issues. The President has the power to appoint Ambassadors with the advice and consent of the Senate.

Terrorism lists

The President has authority to remove Cuba from various terrorist lists in U.S. law. Under Section 40A of the Arms Export Control Act (P.L. 90-629; 22 U.S.C. 2781), the Secretary of State makes an annual determination listing those countries that are not cooperating fully with U.S. antiterrorism efforts. Being on the list prohibits the export of defense articles and defense services, but the President may waive the sanction if he determines that the transaction is important to the national interests of the United States. Cuba was added to the State Department’s list of states sponsoring international terrorism in 1982 pursuant to Section 6(j) of the Export Administration Act (P.L. 96-72). Exports of dual-use goods and services require a license to any country identified as a state supporter of terrorism. Being listed under Section 6(j) also triggers other laws that limit economic transactions. Pursuant to provisions in the Act, the President may remove a country from the list in two ways. The first option is to submit a report to Congress certifying, before the removal would take effect, that: (1) there has been a fundamental change in the leadership and policies of the government; (2) the government is not supporting acts of international terrorism; and (3) the government has provided assurances that it will not support acts of international terrorism in the future. The second option is to submit a report at least 45 days before the removal of the country from the list certifying that: (1) the government has not provided any support for international terrorism during the preceding six-month period, and (2) that the government has provided assurances that it will not support acts of international terrorism in the future.

ACTIONS REQUIRING LEGISLATIVE ACTION

Embargo

Lifting or substantially easing the U.S. economic embargo on Cuba today as set forth in the CACR would require legislative action to amend or repeal certain provisions in the Libertad Act (P.L. 104–114) and other Acts. Section 102(h) of that law codified the economic embargo, including the CACR restrictions. While the CACR itself includes licensing authority that provides administrative flexibility, totally lifting or substantially easing the embargo regulations would appear to violate the intention of Congress. Additional provisions of the Libertad Act, Sections 204–206, require that certain conditions be met before the President may suspend or ultimately terminate the economic embargo. For the suspension of the embargo, these conditions require that a transition government: does not include Fidel or Raúl Castro; has legalized all political activity; has released all political prisoners; has dissolved several coercive elements of state security; has made commitments to free and fair elections for a new government in 18 months; has ceased interference with Radio and TV Marti broadcasts; is making demonstrable progress in establishing an independent judiciary, respecting international recognized human rights and basic freedoms, and allowing the establishment of independent trade unions and social, economic, and political associations; and has given assurances that it will allow the speedy and efficient distribution of assistance to the Cuban people. The actual termination of the embargo would require additional conditions, including most significantly, that an elected civilian government is in power.

Travel

Lifting travel restrictions altogether would require legislative action. This is because of the codification of the embargo in Section 102(h) of the Libertad Act discussed above, although, as noted above, the Administration retains flexibility through licensing authority to ease travel restrictions. In addition, a provision in the TSRA (Section 910(b) of P.L. 106–387, Title IX) prevents the Administration from licensing travel for tourist activities, and defines such activities as any activity not expressly authorized in the 12 categories of travel set forth in the CACR regulations. This legislative provision essentially circumscribes the authority of the Executive Branch to issue travel licenses for activities beyond those already allowed, and would have to be amended or repealed in order to expand categories of travel to Cuba or lift travel restrictions altogether.

Agricultural and medical exports

Further lifting restrictions on the sale of agricultural and medical exports to Cuba would require legislative action. TSRA allows for the granting of one-year export licenses for shipping food and medicine to Cuba. However, no U.S. government assistance (including foreign assistance, export assistance, credits, or credit guarantees) can be made available to finance such exports. The law also denies exporters access to U.S. private commercial financing or credit, and, as noted above, all transactions must be conducted

with payment of cash in advance, or with financing from third countries. The Cuban Democracy Act of 1992 (P.L. 102-484, Section 1705) allows commercial medical exports to Cuba under certain conditions. The law requires specific licenses for such transactions, and requires onsite verification to determine that the exported item is to be used for the purposes for which it was intended and only for the use and benefit of the Cuban people.

U.S. foreign subsidiary trade with Cuba

Allowing U.S. foreign subsidiaries to trade with Cuba would require legislative action. A provision in the Cuban Democracy Act of 1992 (P.L. 102-484, Section 1706) prohibits U.S. foreign subsidiary trade with Cuba. When this provision went into effect, U.S. foreign subsidiary exports to Cuba amounted to over \$400 million.²² This provision would have to be repealed for such trade to be allowed.



²² Donna Rich Kaplowitz, *Anatomy of a Failed Embargo, U.S. Sanctions Against Cuba* (Lynne Rienner Publishers, 1998), p. 152.