

REVIEW OF U.S. AGRICULTURAL TRADE WITH CUBA

HEARING BEFORE THE COMMITTEE ON AGRICULTURE HOUSE OF REPRESENTATIVES

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REVIEW OF U.S. AGRICULTURAL TRADE WITH CUBA

WEDNESDAY, MARCH 16, 2005

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, DC.

The committee met, pursuant to call, at 10:08 a.m., in room 1300 of the Longworth House Office Building, Hon. Bob Goodlatte (chairman of the committee) presiding.

Members present: Representatives Lucas, Moran, Gutknecht, Johnson, Osborne, Graves, Bonner, Rogers, Boustany, Kuhl, Conaway, Fortenberry, Peterson, Holden, Etheridge, Herseth, Butterfield, Cuellar, Melancon, Costa, Salazar, Pomeroy, Boswell, and Chandler.

Staff present: Lynn Gallagher, Brent Gattis, Tyler Wegmeyer, Callista Gingrich, clerk; Ben Anderson, Andy Baker, and Chandler Goule.

OPENING STATEMENT OF HON. BOB GOODLATTE, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF VIRGINIA

The CHAIRMAN. Good morning. This hearing on the House Committee on Agriculture to review United States agricultural trade with Cuba will come to order.

I want to welcome our distinguished witnesses to the Committee on Agriculture. The purpose of this hearing is to review the final regulations issued by the Department of Treasury's Office of Foreign Assets Control, or OFAC, concerning the term "payment of cash in advance," and the effect of the redefinition on U.S. agricultural trade with Cuba.

The OFAC regulations require that U.S. agricultural exporters are to receive payment from Cuba before shipping commodities from the port at which they are loaded. Agricultural producers and exporters see this as a significant change, and that it will require cash payments from Cuba before U.S. commodities even leave the U.S. port. They believe this could curtail interest by Cuba in buying U.S. commodities.

The committee is interested in learning the reasons for the change in regulations by OFAC, the impact of such changes on agricultural trade, and on the contracts for agricultural products that were enforced prior to the change in regulations.

As I have said many times, agricultural trade is essential to the prosperity of American farmers and ranchers. United States agriculture depends on exports, and a vibrant trade policy is important

to United States farmers and ranchers, and to all businesses related to agriculture. We want to seek greater opportunity for our agricultural products and that includes agricultural exports to Cuba.

U.S. agricultural markets are already open to imports, and our tariffs are low. Agricultural tariffs worldwide average about 62 percent, while U.S. agricultural tariffs are 12 percent. Currently, exports account for 30 percent of U.S. farm cash receipts, and nearly 40 percent of all agricultural production is exported. U.S. farmers and ranchers produce much more than is consumed in the United States, and therefore, exports are vital to the prosperity and success of U.S. farmers and ranchers.

Last month, the U.S. Department of Agriculture revised its forecast of United States agricultural exports for 2005, and indicated that agricultural exports will be \$59 billion, with agricultural imports estimated to be \$58 billion. A surplus remains in our balance of agricultural trade, but it is the lowest since 1969.

Since December 2001, when sales of agricultural goods to Cuba were permitted, the payment process to conclude these sales has been in place. U.S. agricultural exports to Cuba have risen from over \$100 million in 2002 to almost \$400 million in 2004. This is a good market for U.S. farmers and ranchers, and one that should not be eliminated.

Cash sales for U.S. agricultural products represent a benefit to both the purchaser and to the U.S. exporter. I find it disturbing that the Treasury Department's Office of Foreign Asset Control is placing, with its February 22, 2005 regulations, what I see as unnecessary barriers in place regarding agricultural trade with Cuba. The director of the Treasury Department's Office of Foreign Asset Control will testify this morning as to the reasons for this regulation. In addition, the committee will hear from several witnesses whose agricultural exports are impacted by this action.

I am especially concerned about the impact these regulations may have on contracts already finalized. These contracts include those with delivery dates after March 24, 2005, may have to be renegotiated to the disadvantage of U.S. exporters, and ultimately, United States farmers and ranchers.

My emphasis on the need to continue U.S. agricultural exports to Cuba in no way diminishes my desire to see freedom come to Cuba. Look at the news over the past few days, and see the hundreds of thousands of Lebanese in the central square in Beirut. They want to see an end to Syrian control of their country. The people of Iraq and Afghanistan have made their desires for freedom known. I hope to see that in Cuba, too.

In April 2003, the House of Representatives voted overwhelmingly to support a resolution offered by my friend, Congressman Lincoln Diaz-Balart, condemning Castro's brutal crackdown on peaceful, pro-democracy movement. On March 17, 2003, the Cuban Government carried out this action against Cuba's peaceful pro-democracy movement, jailing over 80 people, including journalists, librarians, and those working for a democratic transition in Cuba. We remember that terrible event of 2 years ago; however, trade with nations helps not only our farmers and ranchers, but also those hungry people who receive their bounty. This is not about the Castro regime. U.S. exports of food do not help Castro. There is a

reason that food and medicine are exempt from the embargo on Cuba. It is because food and medicine are needed by the people of Cuba, and American farmers and ranchers are well-positioned to provide that food on a cash-only basis, with no extension of credit to the Castro government. And I think that is an important thing for our committee and this Congress to recognize.

We are now awaiting the arrival of the ranking member of the committee, Mr. Peterson from Minnesota. If barring his presence, we will recognize anybody else who would like to make an opening remark.

And I will recognize the gentleman from Iowa, Mr. Boswell.

OPENING STATEMENT OF HON. LEONARD L. BOSWELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. BOSWELL. Thank you, Mr. Chairman, for holding this hearing, and I appreciate it. Those I have listed, and I am sure as well, have met with Senor Pedro Alvarez, who does the purchasing for Cuba, and I hope this panel will tell us today of those failures to make good on the contracts under the current system. I don't know of any, so if there are some, they should tell us.

For us not to promote sales to Cuba simply means to me, from my investigation, they are going to buy it somewhere else. They are going to bring it in all the way from New Zealand, wherever around the world. It is going to cost them a lot more for transportation, so the end result is they get less for their money. And so the embargo does not work. It hasn't worked. They go elsewhere to buy it if they can't buy it from us. They would like to buy it from us because of the good quality and the dependability, and less cost of transportation. It simply makes sense. And the idea that they are putting any pressure on Mr. Castro because of doing this is just not so, because they are going to go somewhere else and buy it. They just get less for their money.

I appreciate that you are having this hearing, Mr. Chairman. Thank you very much.

The CHAIRMAN. I thank the gentleman.

The gentleman from Alabama, Mr. Bonner, is recognized.

OPENING STATEMENT OF HON. JO BONNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. BONNER. Mr. Chairman, I would just like to thank you for holding this hearing. I know this probably wasn't an easy hearing to schedule, because I am sure some of our friends down at the other end of Pennsylvania Avenue had a little bit of heartburn that you would do that, and perhaps some even in our leadership.

But I think that it is very appropriate that we have this conversation today, and I certainly think it is very appropriate that this committee asks these questions of our Government. I can't imagine that any of the witnesses who will come and testify today or answer questions are going to be able to answer what, to me, is a very basic question. "If it isn't broke, why try to fix it?" And I don't know why the previous policies that we had in place—they didn't appear broken. They certainly were not broken to the farmers in my State of Alabama who were engaged in what were legal

trade activities, selling products and commodities that we have to a country that was paying their money and the checks cashed.

I applaud you for holding this hearing, and I look forward to having an opportunity to ask questions of the panelists.

The CHAIRMAN. I thank the gentleman. The gentleman from North Carolina is recognized.

OPENING STATEMENT OF HON. BOB ETHERIDGE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. ETHERIDGE. Thank you, Mr. Chairman. I will be very brief.

Let me join the others in thanking you, because it is important to recognize that when you hold food as an item for hostage, we found out historically, it doesn't work. It does not work well, and the only people that pay are the farmers and the farm families involved in it. So I trust today as the testimony moves and the questions are asked, we can get to a positive resolution of this issue, and everyone will benefit in the end.

So let me thank you again, as others have, for taking the initiative to hold a hearing.

The CHAIRMAN. I thank the gentleman.

The gentleman from Kansas recognized.

OPENING STATEMENT OF HON. JERRY MORAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Mr. MORAN. Mr. Chairman, thank you very much. I, too, commend you for holding this hearing, and look forward to hearing what our witnesses have to say.

In June 2000, I offered an amendment on the House floor to allow for the sale of agricultural commodities, food, and medicine, to Cuba. That amendment passed in the House of Representatives by a vote of 301 to 116. A majority of Republicans and a majority of Democrats supported that amendment. It was an amendment to an appropriation bill that prohibited the Department of Treasury from enforcing the sanctions against Cuba in regard to food, medicine, and agriculture commodities. Ultimately, a resolution of that issue was made in a conference committee, and we now have seen the opportunities come for American farmers and agricultural interest to sell agriculture commodities, food and medicine, to Cuba, and it has been a success story. The 23d largest agricultural export market for our country, one that has a great opportunity to blossom, to grow.

I am re-energized on this issue in large part because of what the Department of Treasury has done in recent days to make these sales more difficult. Prior to that time, the sales could be consummated upon that the transaction or the payment was made when the title to the commodity was transferred to Cuban interests. That is the norm, that is the way it should be. And one more time, it has been made more difficult for these sales to be consummated by requiring the money up front before the commodity leaves the United States' shores.

So I am very interested in hearing what our witnesses have to say, but also looking forward to working with members of this panel. I have introduced legislation that makes clear the law would

require the norm; that is, the money be paid at the time the goods are transferred possession.

And I would ask any of my colleagues on the Agriculture Committee to join us in sponsoring that legislation, and to pursue it legislatively here in Congress.

So I thank the chairman, and look forward to working with him and others on an issue that matters. Trade is important to Kansas farmers.

The CHAIRMAN. I thank the gentleman for his comments.

It is now my pleasure to recognize the gentleman from Minnesota Mr. Peterson.

OPENING STATEMENT OF HON. COLLIN PETERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. PETERSON. Thank you, Mr. Chairman. I apologize for being late. The Secretary and I had a speaking engagement and we both got a little long-winded, so I appreciate your calling this hearing today to discuss the rule change by the Treasury's Office of Foreign Asset Control.

As we know, OFAC's role is to administer and enforce the economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, so forth. And between 2001 and 2004, Cuban buyers paid in almost \$1 billion for U.S. agriculture products while the goods were in transit or in the Cuban ports before the title was transferred to the buyers. In last November, as we are all aware, OFAC decided that the payment methods used for the past 3 years were no longer consistent with the 2000 Export Enhancement Act. It now wants to require that U.S. exporters receive payment from Cuba before the ships carrying U.S. commodities leave for Cuba. OFAC says that for 3 years before, it was unaware of how the sales were transacted.

Now, I find it troubling that according to a letter from the Deputy Secretary of the Treasury dated May 17, 2004, that it was devoting more of its manpower to Cuba issues than it was to al Qaida and affiliated groups. But in spite of that, he has said that they have no knowledge of an ongoing practice that affected almost \$1 billion of agriculture sales. So I think some of the questions we need answered are what enforcement measures are in place? Are there adequate resources devoted to enforcement? What percent of OFAC's manpower is devoted to Cuba versus investigating other terrorist financing issues, and related questions.

As I understand it, there are approximately \$250 million in open contracts with U.S. exporters for purchase of agriculture commodities at the present time, and for any of these contracts under which shipment can not be completed and payment received by March 24, the OFAC clarification would unilaterally void the contracts by prohibiting the payment terms agreed to by the buyer and the seller of these contracts.

If this is the way that the administration plans to handle market opportunities, what could we possibly expect to gain from new trade agreements like CAFTA? Even if we are able to re-negotiate terms with the letter of credit, as has been suggested, how does

this new policy further U.S. objectives in Cuba? If Cuba is successful in establishing itself as a credit-worthy nation, it just seems to me that it undermines our effort to tighten the screws on Castro.

At a minimum, this new rule will prevent U.S. exporters from honoring their contractual commitments. They will suffer losses associated with the broken contracts, and it will brand the USA once again as an unreliable supplier of agriculture exports. How is this policy consistent with our arguments to Japan that its food security does not depend on protecting its own agriculture production? Given this behavior, is it surprising that China is seeking out alternative sources in South America to meet its growing population food needs?

As always in these things, the biggest losers are the U.S. farmers that lose sales, suffer lower prices, and have their reputations tarnished around the world. So I look forward to having an opportunity to have a discussion and have some of these questions answered.

And again, I want to thank you for holding this very timely hearing.

The CHAIRMAN. And at this time, we will advise all Members that their opening statements will be made a part of the record.

[The prepared statements of Members follow:]

PREPARED STATEMENT OF HON. TERRY EVERETT, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF ALABAMA

First, I would like to thank the chairman for holding this hearing on an issue that is of much importance to my district and the entire State of Alabama.

Agriculture is the largest industry in Alabama, and since 2001, agricultural trade with Cuba is conservatively estimated to have had a \$100 million impact on the State's economy. Alabama has become a major supplier of poultry and lumber products as well as grains, soybeans, cotton, and some value-added products.

In December, a delegation of Alabamians traveled to Cuba where they signed \$18 million in new contracts for cash sales of agricultural, food, and forest products to Cuba, which is estimated to have an additional economic impact of \$60 million to the State.

However, as a result of the recent rule issued by the Department of Treasury's Office of Foreign Asset Control, the new interpretation of "cash payment in advance" could endanger these contracts when this rule goes into effect on March 24. Our producers and businesses should be allowed an extended time period in which to comply with this new ruling so that these existing contracts are not declared void or have to be renegotiated to the detriment of our exporters. If this were to occur, Cuba would gladly seek agricultural goods from other nations such as Canada, France, China, and Brazil.

In addition, since Cuba may perceive the new interpretation of "payment of cash in advance" as posing a higher level of risk, it is possible that both the exporters and Cuba will turn toward using letters of credit. However, in Alabama where there are many small exporters, the letters of credit could mean higher transaction costs that could hinder their involvement with Cuba and other Caribbean nations.

Again, I would like to thank Chairman Goodlatte for holding this hearing to discuss this important issue. I look forward to working with the committee to remedy the problems that I have raised here today.

PREPARED STATEMENT OF HON. MIKE ROGERS, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF ALABAMA

Mr. Chairman, I want to thank you for holding this hearing this morning. I am deeply concerned with the Department of the Treasury's Office of Foreign Asset Control's arbitrary transition period of March 24, 2005 for exporters to come into compliance with this new interpretation of the rule. It seems to me that when OFAC reinterprets rules that alter our competitiveness, they should seriously consider all unintended consequences of their actions.

Cuba's export market has become increasingly valuable to producers in Alabama. Maximizing agricultural exports should be our objective, not minimizing our ability to provide necessary food to the Cuban people. If we disrupt the orderly flow of goods now, it could create serious long-term problems for us as Cuba would turn to other countries to supply agricultural products that we until now have been supplying. My question to you Director Werner is: what was the rationale for providing such a small window for compliance and will you give our producers more time to adjust to this new interpretation?

The CHAIRMAN. I would now like to invite our first panel to the table.

Mr. Robert Werner, who is the Director of the Office of Foreign Assets Control with the Department of Treasury here in Washington. Mr. Werner, welcome. Your full written statement will be made a part of the record, and we will be pleased to hear your testimony at this time.

STATEMENT OF ROBERT WERNER, DIRECTOR, OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE TREASURY

Mr. WERNER. Thank you. Good morning, Mr. Chairman, Ranking Member Peterson, and members of the committee. I am pleased to have been invited here today to discuss the issue of payments for United States agricultural exports to Cuba.

As you know, the Department of Treasury's Office of Foreign Assets Control, or OFAC, is responsible for administering and enforcing economic embargos and sanction programs, including the embargo against Cuba. In performing its mission, OFAC relies principally on delegations of authority made pursuant to the President's broad powers under the Trading with the Enemy Act and the International Emergency Economic Powers Act. These statutes authorize the President to prohibit or regulate commercial or financial transactions involving specific foreign countries, entities, or individuals.

OFAC exercises an array of responsibilities in administering and enforcing numerous economic sanctions and embargo programs. These include rulemaking, licensing, compliance oriented outreach and education, civil penalties, referrals for criminal enforcement actions, blocking of assets in the United States in which foreign states or persons have an interest, and required recordkeeping and reporting. We also conduct investigations and analysis in preparation for designations and drafting or implementation of new sanctions programs.

Most relevant to today's hearing, however, is Congress's enactment of the Trade Sanctions Reform and Export Enhancement Act of 2000, or TSREEA. Among other things, this legislation directed the adjustment of restrictions of the export of agricultural products to targeted countries. The Cuban assets control regulations prior to the passage of TSREEA already provided a general license for transactions, including payments, incidents to exportations that were licensed or otherwise authorized by the Commerce Department. This meant that an exporter who had received a commerce license to export goods to Cuba did not need to seek further authorization from OFAC. This provision was amended, however, in order to implement the financing restrictions contained in TSREEA. OFAC also amended and clarified that re-exports of U.S. origin

items by persons subject to U.S. jurisdiction were also covered by the general license.

Finally, the amendment provided that specific licenses would be issued for travel engaged in for the purpose of arranging licensed sales. Mirroring the language in the statute, OFAC's 2001 amendment provides that licensed agricultural sales are authorized, as long as they are financed by payment of cash in advance, or through financing by a third-country financial institution. With respect to third-country financing, the regulation permits U.S. financial institutions to confirm or advise such financing. The term "payment of cash in advance" is not defined in either TSREEA or its legislative history. Similarly, OFAC's regulations do not contain a separate definition of this term. However, OFAC's research indicates that the commonly understood meaning of the term in the international trade finance community is that full payment for the goods is received by the exporter before the goods are shipped.

In 2004, OFAC's compliance division began receiving specific inquiries from U.S. financial institutions, seeking guidance on the question of whether or not the shipment of goods prior to receipt of payment by U.S. exporters was permitted under the financing provision. While OFAC is not certain what triggered the inquiries, we believe it may have been an article published in July, concerning agricultural trade with Cuba and methods of payment. OFAC compliance actually referred two of these cases to OFAC's enforcement division for an investigation, and notified senior OFAC management about the issue. OFAC began extensive consultations within Treasury and with other administration offices on the interpretation of "payment of cash in advance." In order to mitigate any disruption of licensed agricultural exports to Cuba, OFAC adopted a temporary policy of issuing specific licenses permitting cash payment against documents to exporters whose transactions occurred while guidance was pending. OFAC created this temporary policy to ensure that U.S. exporters received payment for goods already shipped to Cuba, and the Cuban people did not see a disruption in agricultural shipments to the island.

On February 22, 2005, following the completion of the inter-agency consultations, OFAC announced a clarification of the term "payment of cash in advance" that conforms the common understanding of the term in international trade finance. Specifically, OFAC confirmed that payment of cash in advance with regard to commerce licensed shipments to Cuba means payment of cash prior to shipment of goods. This clarification of "payment of cash in advance" had no effect on payments financed through letters of credit, which have always been permitted under TSREEA. The final rule on this payment policy went into effect on the day it was announced. In order to provide a transition period, the language in the final rule provides a 30-day window, or to March 24, 2005, for exporters to engage in transactions under financing terms resembling cash against documents. However, it requires that payment for such transactions be completed within the 30-day period. Exporters will continue to obtain authorization needed to obtain authorization from commerce to ship the goods.

After the 30-day cash against documents financing period ends, any transactions under financing terms resembling cash against

documents will be prohibited. To the extent an exporter has an existing contract that requires cash against documents, financing transactions to occur after the 30-day period, the payment terms of that contract will need to be re-negotiated to allow for cash in advance of shipment, or a letter of credit issued by a third-country bank. It is consistent with the President's authority and with OFAC's past practice in other sanctions programs to provide for a limited grace period for export transactions under preexisting contracts.

Thank you for the opportunity to address the committee on this important topic.

[The prepared statement of Mr. Werner appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Werner.

Your regulations say that U.S. financial institutions requested guidance from the Treasury regarding the term "payment of cash in advance." Can you tell us who raised this issue, and when?

Mr. WERNER. The issue was raised sometime in the summer of 2004 by several banks that were processing payments for exporters. And the question they raised was whether, in fact, cash in advance meant cash in advance of shipment, or permitted some sort of cash against documents or transfer of title. Again, we are unsure exactly of what stimulated the inquiry, but we think it may have been related to publicity at that time.

The CHAIRMAN. Can you tell us or provide us with a list of the banks that made that request?

Mr. WERNER. I don't have a list of that with me, and Mr. Chairman, I am sure that we can provide this committee in the appropriate forum a list of those names.

The CHAIRMAN. If you would do that, we would appreciate that.

What was the response from the Treasury to the persons that raised the issue?

Mr. WERNER. Our compliance folks, many of them are former bankers, and their response was we think cash in advance, as that term is ordinarily understood, means cash in advance of shipment, but we will check and confirm. It became clear very quickly, given the acceleration and cause that there was more than an isolated problem out there; that there was some sort of systemic problem. And at that point, we began a more extensive discussion within Treasury about it.

The CHAIRMAN. And why did this definition issue arise 3 years after agricultural exports to Cuba had begun?

Mr. WERNER. Your question is a good one, and a fair one, sir.

One of the problems here is that the agricultural exports were taking place under a general license under the OFAC regulations, which as distinguished from when OFAC grants specific licenses, there was no reporting requirement. So the individual transactions were not being monitored. So unless we received an interdiction notice or question from a bank or a self-disclosure from an exporter or some other source of information, it was very difficult to detect that the financing mechanism was different from what we had anticipated.

The CHAIRMAN. As you know and as Mr. Peterson mentioned in his remarks, there were a number of agricultural contracts in force

as of February 22, 2005, which may have to be re-negotiated. Several agricultural organizations wrote to you asking for relief regarding those contracts, citing significant cost to U.S. agriculture.

While you may not have fully reviewed this petition, can you tell me if OFAC has granted relief in similar situations, allowing for contracts in force prior to any regulations to be fulfilled?

Mr. WERNER. I haven't had an opportunity to review the petition. I was handed a copy of it this morning and we will review it carefully.

What I can tell you is that the way that agricultural contracts have been handled in the past has varied, depending on the sanctions program. And there are programs in which there was no contract sanctity granted to agricultural contracts. There are programs where there was a very short period, and there were programs where there were longer periods. There is no definite rule with respect to any particular program.

The CHAIRMAN. So you do have some latitude here?

Mr. WERNER. There is always flexibility in revisiting licensing policies.

The CHAIRMAN. We would ask that you keep the committee informed of the evaluation of this petition by OFAC and any conclusions that you reach on it.

Mr. WERNER. We would be glad to do that. What I can tell you, though, is that the 30-day period was arrived at after a lot of very serious consideration. And while I can't prejudge the petition, it would surprise me if it raised issues that we were completely unaware of.

The CHAIRMAN. Is there any way that the letters of credit that everybody is discussing now, as they are contemplated in your OFAC regulations, could be considered to violate the OFAC regulations on exporting agricultural products to Cuba?

Mr. WERNER. If I understand the question, the letter of credit option has always been an option, and provided a standard commercial letter of credit is used, it is a viable mechanism for financing contracts.

When I met with a group of exporters and trade groups following the imposition of our clarification, the issue was raised as to whether the cash against documents alternative could fit within the letter of credit option. And if that is the question, I don't think that it can.

The CHAIRMAN. Thank you, Mr. Werner. I now recognize the gentleman from Minnesota, Mr. Peterson.

Mr. PETERSON. Thank you, Mr. Chairman.

In the explanation section of the Federal Register, you stated that the clarification of the payment in advance conforms to common understanding of the term in international trade finance. However, I have become aware of a CRS legal analysis of four traditional methods of payment of goods in the international transactions that is looking how they normally work in the regular course of things, concluding that it is difficult to find—and I quote, "Difficult to find legal support for an interpretation of payment of cash in advance that requires payment to be received prior to shipment." This review also found that international trade and finance community customarily places the emphasis on the transfer of legal

control, rather than on the date of shipment in these transactions. Stated another way the CRS memorandum declared that “It appears that a seller can ship goods without relinquishing legal control of them, and therefore, payment can still be required in advance of the transfer of legal control.” And furthermore, they said that “Interpreting the statute to require payment of cash in advance of legal control appears to enable both the seller and the buyer to take full advantage of the available payment options without violating the TSREEA.”

So I would like you to elaborate on how OFAC’s clarification of this term conforms to the common understanding of the term in international trade finance, how that stands up, given that we are being told by a CRS legal analysis that, in their words, “it is difficult to find legal support for an interpretation of payment of cash in advance that requires payment to be received prior to shipment.” And is it OFAC’s intent to make it more difficult for U.S. exporters to sell food products to Cuba as part of the policy to keep the heat on Castro, or just what is going on here? You have legal analysis that disputes what we are being told by CRS?

Mr. WERNER. Sir, I think your question is two parts. I will answer the CRS question first.

I think what they were emphasizing is the fact that it is difficult to find a legal definition of the term “cash in advance.” But I think that that is a different issue from whether the term itself has a common understanding in the international trade finance community. And I think with respect to the latter, it clearly does have a common understanding and in fact, for the most part, exporters were very careful not to even use the term “cash in advance” with us when they described to us what they were doing. And we spent considerable resources trying to determine the best plain meaning of that term, and found a number of references to it on Government websites and elsewhere, where the term “cash in advance” was clearly defined to include payment before shipment.

With respect to your second question, in terms of what OFAC is trying to do, I would respectfully submit that we are trying to do what we are obligated to do, which is to administer and enforce the sanctions programs. And so what we did was to do our best to interpret the meaning of both the statute and the regulation.

Mr. PETERSON. Well, with all due respect, what I am reading here is that they don’t agree. They say the common understanding is not what you say.

Are you applying the same standards to Iran and Sudan?

Mr. WERNER. Iran and Sudan both have cash in advance financing restrictions in their regulations. Those two programs, though, differ from Cuba in that in addition to cash in advance and letters of credit, they also provide for an open account option, which is a third credit financing option that is not permitted in the Cuba programs.

Mr. PETERSON. They have to be paid before anything leaves the port when it goes to Iran and Sudan?

Mr. WERNER. It would depend which option under the financing they use. If they use cash in advance, yes. If they use the open account financing option, that gives them much more flexibility.

Mr. PETERSON. So then the open account option does not apply to Cuba?

Mr. WERNER. That is correct.

Mr. PETERSON. And why is that?

Mr. WERNER. It is not included as an option either within the TSREEA statutory provision, or the regulations.

Mr. PETERSON. But it is included in the—

Mr. WERNER. It is included in the Sudan and Iran programs, yes.

Mr. PETERSON. And so when the Cuba situation was passed, that was left out? Is that what happened, or—

Mr. WERNER. That is correct. The TSREEA section 908 which imposed the financing mechanisms did not include an open account option.

Mr. PETERSON. Thank you.

The CHAIRMAN. I thank the gentleman.

The gentleman from Kansas, Mr. Moran, is recognized for 5 minutes.

Mr. MORAN. Mr. Chairman, thank you very much.

I would again call to the committee's attention H.R. 719, which has been introduced by myself and many other Members of Congress would clarify Congress's intent to legally sell agricultural goods as authorized by TSREEA by defining cash payments in advance as receipt of payment before transfer of title, and release of physical control of goods to the sellers.

Mr. Werner, you indicated that—I think that is the issue, at least from an agricultural perspective, with your most recent rules is how we define payment in advance. That is really what is at issue here, and prior to your most recent conclusion, those payments were occurring prior to the delivery of the goods. Now the requirement will be that the payments are made in advance of the shipment leaving the United States. Is that an accurate summary from a common understanding of what is going on?

Mr. WERNER. That is my understanding with respect to the cash in advance option.

Mr. MORAN. I was very interested in asking you about why this issue arose, and I think your testimony so far has been that a number of banks, a couple of banks raised this issue and that caused OFAC to research the law and then try to reach a conclusion. Is that what precipitated this change?

Mr. WERNER. Yes, it is, sir.

Mr. MORAN. Anything besides that?

Mr. WERNER. Sir, I became the director of OFAC in October 2004, and this was one of the first issues I was presented with.

Mr. MORAN. When you say presented with, presented by?

Mr. WERNER. By my staff.

Mr. MORAN. By your staff. And then you testified in your statement that in reaching a conclusion how to proceed, what conclusion should be reached, you consulted with Treasury and other administration offices?

Mr. WERNER. Yes, sir.

Mr. MORAN. Who would you consult with?

Mr. WERNER. We consulted with a variety of departments, including the departments we always rely on in these programs, such as the State Department, but obviously in this case, we also con-

sulted with the Agriculture Department, given the agricultural nature of the issue.

Mr. MORAN. Is this a clear cut decision? I mean, is there questions within OFAC as to the right conclusion, or in evaluating the law, this is clearly the answer?

Mr. WERNER. In performing the statutory construction on the term and in evaluating our regs, this is the clearest interpretation.

Mr. MORAN. Outside of seeking legal advice as to the definition of payment in advance, what other advice did you receive? Is this strictly a legal question, or are there other considerations?

Mr. WERNER. For the purposes of OFAC, while we engaged in the due diligence of trying to understand how this had actually been financed, what the real practice had been, what the impact would be on exporters and shippers, for us, this was really a matter of construing the term in giving it the plain meaning that was the best plain meaning based on the research we did.

Mr. MORAN. And so there are no other considerations, other than the legal definition of this phrase?

Mr. WERNER. For the purposes of OFAC, this interpretation is clearly consistent with the administration's policy. But from my perspective, this was done pursuant to my office's obligation to administer and enforce this program.

Mr. MORAN. For purposes of OFAC, is there somebody else out there who has purposes besides OFAC in this definition?

Mr. WERNER. No, I think, sir, what I would acknowledge is that we believe that the interpretation and implementation of this regulation and clarification is also consistent with the purposes of the embargo and the administration's position on the embargo.

Mr. MORAN. And that position on the embargo is defined who within the administration? Who would you consult to determine what the administration's policy is in regard to trade with Cuba?

Mr. WERNER. I think it really wouldn't be appropriate for me to get into the deliberative nature of those issues.

What I can tell you is that my role is as the administer enforcer of this program, and I can tell you what I did to arrive at my construction of the term, which is to look very carefully to the legislative history, to research any possible legal definitions of the term, to review very carefully websites and trade journals regarding the common understood meaning of the term.

Mr. MORAN. Did you consult with the Secretary of the Treasury?

Mr. WERNER. I did consult within the Treasury Department extensively, yes.

Mr. MORAN. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman.

The gentleman from Pennsylvania, Mr. Holden, is recognized.

Mr. HOLDEN. Thank you, Mr. Chairman.

Mr. Werner, can you tell us specifically what sources you relied on in your research, and why the research you cite in the final rule and your testimony is not discussed in that rule? I mean, we are sort of dancing around it here. I just wondered if you could tell us specifically about your sources.

Mr. WERNER. I can tell you some of the sources. There is a USDA website that we looked at, which talks about other methods of payment and it talks about open accounts, partial payments in ad-

vance, cash in advance, and it says with respect to cash in advance “The foreign buyer pays the exporter prior to shipment. This method is used when the foreign buyer is certain that the exporter will ship as ordered. It is also commonly used for small shipments of stock, embryos, and other things.” In addition, we found a definition of the term on the Maritime Administration’s website, which also defined cash in advance as “a method of payment for goods in which the buyer pays the seller in advance of the shipment of the goods—”

Mr. HOLDEN. So Mr. Werner, you relied on websites and didn’t have any one-on-one conversations, discussions, meetings?

Mr. WERNER. Well, we did meet extensively with people within the administration who are knowledgeable about these issues. We also—

Mr. HOLDEN. From USDA?

Mr. WERNER. Yes, we did. We also found on the website of the Small Business Administration a similar definition.

Mr. HOLDEN. Could you tell us who you met with at USDA?

Mr. WERNER. I really think that the focus has to be on what I did as the administer and the enforcer of this provision, and we met with a variety of officials within the USDA. I really think I can’t go into a list of—

Mr. HOLDEN. Well, this committee is charged with oversight, and I think we would like to talk to the people at USDA that consulted with you. So if you could supply us their names, I think we would like to talk with them.

A current law allows the U.S. Government to seize Cuban assets on American soil. If Cuba purchases U.S. agriculture goods before they leave the U.S. port, Cuba could risk product seizure. What are your views on this possibility?

Mr. WERNER. I am not sure what the concern is. If the concern is with respect to TWEA, which permits seizure of goods for terrorism related assets for victims of terrorism, TWEA actually in section 201(d)(2) carves out an exception for agricultural—well, for goods required to be licensed. And in this case, because TSREEA requires the licensing of these goods and they are licensed, they would not fall within the parameters or the scope of the TWEA provision. So I don’t understand what the legal risk is in that situation.

Mr. HOLDEN. Well, maybe I don’t understand the law. But current law is that any Cuban assets can be seized, correct?

Mr. WERNER. I don’t think that that is necessarily correct.

Mr. HOLDEN. Well, I could be wrong, but that is my understanding.

Mr. WERNER. There is a distinction between the vesting authority of the U.S. Government with respect to Cuban assets and the actual provisions that govern third parties’ abilities to attach sovereign assets.

Mr. HOLDEN. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman.

The gentleman from Alabama, Mr. Bonner, is recognized for 5 minutes.

Mr. BONNER. Thank you, Mr. Chairman.

Mr. Werner, 3½ years ago when interim rules became effective allowing agricultural exports to Cuba, many producers, especially those in my home State of Alabama in my congressional district became excited at the prospect of being able to export their product to a new market. Since 2001, in Alabama alone, Cuban trade has contributed to roughly \$100 million impact in our State's economy. And I have no doubt that we are not the only State to have seen similar, if not greater, statistics.

According to the congressional Research Service, U.S. agriculture exports to Cuban market ranked 138th for our country and totaled 4.6 million in 2001. In 2004, the Cuban export market ranked 27th for the United States, and totaled \$380 million. While I know that put into context, last year's agricultural exports to Cuba represent less than 1 percent of U.S. farm products exports worldwide, I still feel this is an important market that our farming community needs to pursue.

So my question first is why is it, if you could explain, that OFAC and the Department of Treasury decided to clarify the meaning of payment of cash in advance to mean payment before the shipment, when the previous method of payment, at least to my constituents in Alabama and to our agricultural officials throughout the Southeast, told us that it worked very sufficient under the old plan?

Mr. WERNER. Sir, the reason we clarified it in that manner is that our obligation was to implement the law as written in the way that we thought most—that was clearest. And based on our research and understanding of the term, we felt that the best construction of that term was cash in advance means cash prior to shipment.

Mr. BONNER. Do you believe, or is it your office's position that this new ruling will eventually lead Cuba to not trade at all with U.S. agriculture exporters?

Mr. WERNER. This is purely based on the press reports I have read. It sounds to me as though trade with Cuba will be able to continue in agricultural context, particularly with the alternative option of letters of credit available.

Mr. BONNER. Mr. Werner, are you aware of what the trade deficit is?

Mr. WERNER. Yes, sir.

Mr. BONNER. \$665 billion. It is an all-time high. We have got farmers in my State, that because of these new rules, they are being told that they can no longer trade. And it sounds like in answering Mr. Peterson's question, there is more flexibility in trading with Iran than there is with Cuba, based on your answer.

Mr. WERNER. That is correct. There is more flexibility in financing terms for Iran than there are for Cuba.

Mr. BONNER. I know you are from the Treasury Department and not the State Department, but would you venture a guess which is the greater threat to international security right now? Iran or Cuba?

Mr. WERNER. Sir, I hope you will forgive me if I don't venture a guess.

Mr. BONNER. It seems to me that in the administration's flexibility with Iran and Sudan that there was some objectivity in terms of making that decision with regard to the open account.

Would you venture a guess in terms of what the administration's position would be if Congress provided the open account provision for Cuba? Would that be something that the Treasury Department and the administration would support or oppose, based on this decision?

Mr. WERNER. What I can tell you, sir, is if Congress enacts and the President signs a provision of law that permits open accounts, OFAC will administer and enforce that provision as we do in the other country's programs.

Mr. BONNER. Just briefly, in the remaining time I have got, can you tell me what other countries, in addition to Cuba, that we require this rigid enforcement of payment of cash in advance around the world?

Mr. WERNER. At this point, Cuba, I believe, is the most restricted in the financing mechanisms.

Mr. BONNER. And a final question. Are you aware of any other countries, our friends in Canada, France, China, Brazil, Japan, any other countries, some of which are freedom-loving countries like we are, that are putting these types of restrictions on their trade with Cuba?

Mr. WERNER. I am not aware of that.

Mr. BONNER. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman.

The gentleman from North Carolina, Mr. Etheridge, recognized for 5 minutes.

Mr. ETHERIDGE. Thank you, Mr. Chairman, and thank you, again, for this hearing. I think the questions have indicated, Mr. Werner, there is not a lot of happy campers on this side of the mic as it relates to trade for our farmers and for our country.

Let me follow, again, so I can understand your answer to the last question, because my friend, Congressman Moran, has introduced legislation that would, among other things, correct this problem and clarify the definition of "payment of cash in advance" to deal with the transfer of title and control of goods instead of the shipping date.

I hope I understood you correct, so let me ask the question again so I make sure I understand what the interpretation would be, not your answer, but what your interpretation would be, should Congress pursue that and pass it. Would the position of your department and the administration be if we returned it to the previous definition, would it be your interpretation and the administration's that we then would ship goods as had been previously shipped?

Mr. WERNER. I am familiar with the proposed legislation, and if the language in that legislation were enacted, then yes, that would clearly permit cash against document sort of financing mechanism.

Mr. ETHERIDGE. I thank you, because that is a policy statement, I think, that the committee had thought they had done before.

One other question, and it pursues a bit my friend from Alabama just raised, but it is in a little different context. And I recognize that you are in Treasury, and not in the State Department, but you are not totally immune to the issues that we are dealing with as it relates to the international consequences as well as the financial. Can you share with this committee how requiring the seller to receive payment before a shipment—before a ship can sail with its

loaded cargo from a U.S. port places more of a burden or imposes an additional cost on the Cuban Government and helps advance U.S. foreign policy objectives?

Mr. WERNER. Well, one of the things that became clear to me after we came out with a clarification of cash in advance is based on many of the questions we received from exporters and banks is that the letter of credit option may either not have been fully understood or fully investigated, and based on what I have read and heard, it seems to me that that option is a very viable option for agricultural exports to Cuba.

Mr. ETHERIDGE. I am not sure I got an answer to my question. Would you like me to restate the question?

Mr. WERNER. Yes, please.

Mr. ETHERIDGE. My question was do you think the change in payments and the position we took has imposed an additional cost on the Cuban Government, and how will it advance our U.S. foreign policy objectives?

Mr. WERNER. I don't know if it imposes a further cost on the Cuban Government, because it may depend how agricultural transactions are negotiated between buyer and seller in the future. But what I do know and what my focus was, is that it implements, in our view, the language in the statute and the regulations.

Mr. ETHERIDGE. Any comment on U.S. foreign policy objectives?

Mr. WERNER. I believe that it is consistent with U.S. foreign policy objectives, the current interpretation.

Mr. ETHERIDGE. So the only person that gets an imposition are the American farmers and sellers?

Mr. WERNER. Again, I don't know how exporters will end up renegotiating and negotiating their financing mechanisms.

Mr. PETERSON. Would the gentleman yield?

Mr. ETHERIDGE. Yes.

Mr. PETERSON. Just to follow up, what does this cost, if you buy a letter of credit as opposed to what you are doing? Can you tell us how much that is?

Mr. WERNER. I can't tell you, because I think it may even vary among financial institutions and customers. What I do know is that every financing mechanism has its pluses and minuses. For example, the cash against documents mechanism that was being used resulted in demurrage charges as ships set off the coast of Cuba. Now, my understanding is various exporters negotiated those costs to shift them in one way or another, but again, it all depends on the particular nature of the contractual relationship.

The CHAIRMAN. Mr. Werner, thank you. We have a vote pending on the floor, and that is going to be followed by a motion to recommit, and then a vote on that and final passage. My intention is to come back here during motion to recommit so I will entertain some more questions.

Right now, based on who is in the room, Mr. Conaway is next, and then Ms. Herseth. However, we will continue this as time permits, and the committee will stand in recess.

[Recess.]

The CHAIRMAN. The committee will reconvene.

Mr. Werner, I apologize for holding you so long, but I didn't get any takers on coming back in the interim. So we will now turn to the gentleman from Texas, Mr. Conaway, for his questions.

Mr. CONAWAY. Thank you, Mr. Chairman.

Mr. Werner, help me understand the rationale between not having open accounts for trade with Cuba versus having open accounts to trade with other countries. Is there some historical precedent? I mean, that had to have been a conscious decision that somebody made at the time that trade was resumed to not have open accounts. What are the risks to American exporters, or just exactly why is it that we don't allow the traders to take the credits risks of not getting paid by Cuba if they want to send their goods over there?

Mr. WERNER. Yes, sir. That distinction is actually based on the language of TSREEA itself. In section 908(b), TSREEA provides for specific financing restrictions with respect to Cuba, and permits only cash in advance or third country financing letters of credit.

Mr. CONAWAY. OK. I understand that is the mechanics. Could you help me understand the rationale that was used to develop that decision?

Mr. WERNER. That was a congressional enactment, sir.

Mr. CONAWAY. OK. So they could be cured in your mind, if we changed the law?

Mr. WERNER. Yes, sir.

Mr. CONAWAY. Thank you, Mr. Chairman. I don't have any other questions.

The CHAIRMAN. I thank the gentleman.

The gentleman from Minnesota, Mr. Gutknecht, is recognized.

Mr. GUTKNECHT. Mr. Chairman, I have no questions.

Mr. CHAIRMAN. All right. Well, Mr. Werner, you are off the hook.

Mr. WERNER. Thank you very much, sir.

The CHAIRMAN. Before you go, let me just say, obviously this committee is very united in our concerns about the decision that has been made regarding the definition of payment in advance. We hope that you will review this, both from the standpoint of the companies that have contractual obligations that are before them right now that were made prior to the issuance of the ruling, and in addition to the long-term problem that we have here. This is not a matter of people on this committee not being in support of the administration's position with regard to Cuba and wanting to restore democracy to that nation after 40 years of totalitarian rule. It is a matter of this committee not wanting to see American agriculture needlessly restrained from having the opportunity to sell, for cash, taking basically American dollars in payment for something that are needed by the people of Cuba. I hope you will convey back to those in the administration that this is a very serious concern that we will continue to seek ways to address. And we would like to see the administration be a partner with us in solving this problem for American agriculture, which is very anxious to increase our exports, something we badly need to do.

Mr. WERNER. I will convey your views and I thank you for the invitation today, Mr. Chairman.

The CHAIRMAN. Mr. Moran would like to add a word.

Mr. MORAN. Mr. Chairman, thank you very much for those sentiments, and I agree.

If I could ask the witness just one more question. If I understand your testimony—let me add something to it. Is it true that OFAC would have the flexibility to reach a different decision than the one you reached, but based upon precedent and international understanding of that phrase, you believe you reached the best decision?

Mr. WERNER. Yes, sir.

Mr. MORAN. Thank you.

The CHAIRMAN. I thank you. If you would provide written answers to any questions that were offered by members of the committee that you were unable to answer today or we will hold the record open for any other questions we might receive, as well.

Mr. WERNER. Yes, sir.

The CHAIRMAN. Thank you very much, sir.

We would now like to invite our second panel to the table. Mr. Robert Wright, executive vice president of sales and marketing with Pilgrim's Pride Corporation of Dallas, TX; Mr. Dennis DeLaughter, who is a rice producer with Progressive Farm Management of Edna, TX; Mr. Richard Lewis, chief operating officer with DairyAmerica of Fresno, CA; and Mr. Charles Kruse, president of the Missouri Farm Bureau of Dexter, MO.

The Chair would advise all of the members of the panel that their full written statement will be made a part of the record. We ask you limit your comments to 5 minutes, and we will start with Mr. Wright. Welcome.

I might note that we are very pleased to see a representative of Pilgrim's Pride here. You have significant operations in my district in the Shenandoah Valley in Virginia and we are pleased to hear your testimony.

STATEMENT OF ROBERT WRIGHT, EXECUTIVE VICE PRESIDENT, SALES AND MARKETING, PILGRIM'S PRIDE CORPORATION, PITTSBURG, TX

Mr. WRIGHT. Yes, we do. Thank you very much, Mr. Chairman.

Good morning, for the opportunity to present the views and the recommendations of the National Chicken Council and the National Turkey Federation regarding the very important issue of U.S. agricultural trade with Cuba, especially with respect to poultry.

Congressman Peterson and committee members, we appreciate the strong and vital interest you have shown with respect to the issue at today's hearing.

My name is Bob Wright. I am executive vice president of sales and marketing for Pilgrim's Pride Corporation. My company has poultry and egg operation in the States of Virginia, Texas, Pennsylvania, Alabama, Arkansas, Georgia, Kentucky, Louisiana, North Carolina, Tennessee, West Virginia, Arizona, California, Iowa, Mississippi, Utah, and Wisconsin. More than 5,000 dedicated family farmers work hard each day, help us to produce our chicken, turkey, and eggs, and serve our customers here at home, and abroad. Pilgrim's Pride is a publicly traded company, and trades under the symbol "PPC."

Although the major enterprise of Pilgrim's Pride is our young chicken broiler meat, our turkey and egg operations contribute significantly to our company's success. Over the past 15 years, it has become more and more critical that my company, like most major poultry companies, export significant share of our production, especially chicken leg quarters. Market analysts have calculated that at least 40 percent of the chicken leg quarters produced must be exported if the industry is to have a reasonable opportunity to make a fair return on our investment. To achieve 40 percent, each and every export market must be fully serviced. U.S. consumers overwhelmingly prefer chicken and turkey breast meat, compared to the back half of the bird, so exporting leg quarters is critical to balancing supply and demand.

In a short period of time, Cuba has become the seventh largest export market for poultry exports. Since December, we have sold for cash over 200,000 metric tons of poultry, valued at over \$127 million, as well as over \$2.7 million worth of eggs. At the same time, it is important to note that turkey products being exported to Cuba are especially important for the turkey companies engaged in export business. So you can appreciate our dismay at the February 22 when OFAC and the Department of Treasury announced its reinterpretation of certain rules governing U.S. agricultural exports to Cuba. Such a reinterpretation by OFAC was not necessary. When trade began in 2001, exporters, just as other U.S. agricultural exporters, have followed the rules and regulations that were developed to implement the Export Enhancement Act. U.S. poultry exports believe they have been following both the intent of Congress and the spirit of the Act by receiving payment prior to transferring title. Payment of cash in advance of the product is clearly what Congress intended. But under the recent reinterpretation, that arrangement, which has functioned well, is not an option.

Exports of poultry, like other farm products to Cuba, are now in jeopardy of being lost. Putting these exports at risk was not necessary. Over the years, the NCC and the NTF and I have personally applauded the Government, which has publicly stated on occasion after occasion that the United States will be a reliable supplier of the world's food needs, and that unilateral Government actions that abrogate contracts for export will not happen. Surely, OFAC could have opted to allow existing contracts for exports to Cuba to be valid. I hope that someone can explain how setting this unfortunate precedent is in the national interest to the United States.

OFAC does continue to permit exports with the use of letters of credit through third countries. It remains to be seen whether this option is actually viable for poultry exports.

Since it is critically important that U.S. poultry exports to Cuba not be disrupted or worse, I believe it is imperative that OFAC reevaluate its decision regarding existing contracts, and first of all, permit those contracts to move forward. At the same time, I urge this committee to work with the full House of Representatives to promptly pass legislation that clearly and fully defines the term "payment of cash in advance" so that trade can continue as it has since December 2001.

U.S. poultry producers and exporters look forward to working with the committee and your fellow congressmen. As the title of the

law states, TSREEA was designed to enhance exports and promote farm good exports, and help build a stronger U.S. agriculture.

I would be pleased to respond to your questions regarding this important issue. Thank you again for this opportunity and the time to share my thoughts with you.

[The prepared statement of Mr. Wright appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you very much, Mr. Wright.

Mr. DeLaughter we will hear your testimony now.

**STATEMENT OF DENNIS R. DELAUGHTER, RICE PRODUCER,
PROGRESSIVE FARM MANAGEMENT, EDNA, TX, ON BEHALF
OF THE U.S. RICE PRODUCERS ASSOCIATION AND USA RICE
FEDERATION**

Mr. DELAUGHTER. Thank you, and good morning, Mr. Chairman, and members of the committee. My name is Dennis DeLaughter. I am a rice farmer from Edna, TX, and the past chairman of the U.S. Rice Producers Association. My testimony today has also been endorsed by the U.S.A. Rice Federation.

Thank you for holding this timely hearing to review the state of U.S. agricultural trade with Cuba.

Export markets are critical to the profitability of U.S. rice farmers and the rice industry. 45 percent of the total U.S. rice crop moves into export channels. In only 3 years since U.S. rice exports to Cuba resumed in December 2001, Cuba has grown to be among our top five largest single country export markets for U.S. rice. The February 22, 2005, announcement of new restrictions on that trade by the Treasury Department's Office of Foreign Assets Control threatens to disrupt our exports to Cuba, and to degrade our reputation as a reliable supplier of grain to the world.

Cuba is a natural market for U.S. rice. In the 1950's, Cuba purchased approximately \$37 million annually and U.S. rice, and accounted for 25 percent of all U.S. rice exports. Today, Cuban demand for rice is approximately 600,000 tons of milled rice per year. Their average local production is about 200,000 tons annually; however, it is expected that their production will be off substantially this year, as Cuba is suffering from its worst drought in over 100 years.

Until recently, Cuba has purchased approximately 400,000 tons of rice annually, mostly from China, Thailand, and Vietnam. This represents approximately \$100 million in annual trade that was occurring just off the U.S. coast, but without our involvement or benefit.

Congress provided for the resumption of trade with Cuba when it passed the Trade Sanctions Reform Enhancement Act of 2000, and exempted sales of food and medicine from such embargos. Since then, Cuba has purchased nearly 320,000 tons of U.S. rice worth a reported \$81 million. In 2004 alone, the Cubans bought \$64 million worth of U.S. rice, more than their purchases of any other commodity. This established Cuba as our fastest growing market overall.

Cuban purchasers generally pay promptly. There have been no extensions of credit to Cuba by any U.S. entities. This bipartisan improvements made by the 2004 Export Enhancement Act were

working to enhance exports on a cash basis as Congress had intended. Then comes a new rule from OFAC.

The rice industry is disappointed that in imposing this new restriction, OFAC has ignored the requirement in section 903 of the 2000 Export Enhancement Act that prohibits the imposition of any new restriction or condition on commercial exports sales of agricultural commodities, unless the President submits a report to Congress regarding the restriction 60 days in advance, and that Congress enacts a joint resolution approving the report.

Rice farmers can not agree with OFAC that the new interpretation is not a restriction or condition on trade. The interpretation renders invalid \$250 million worth of open-ended agricultural export contracts, and imposes new requirements to finance trades through banks in foreign countries.

At the time the final rule was announced, U.S. exporters had pending contracts for sales of approximately 950,000 metric tons of goods to Cuba, worth a delivered value of approximately \$250 million. This included sales contracts for an estimated 50,000 tons of rice valued at about \$15 million. All of those sales are now at risk, and if lost, the eventual losses will be borne by American farmers.

Additionally, we feel the final rule will raise questions around the world concerning the reliability of U.S. agriculture suppliers to the detriment of the U.S. agriculture industry and American farmers. We also want to point out that OFAC's final rule effectively requires the use of letters of credit through third country financial institutions. This will increase the transactional cost for U.S. agricultural sales, costs that, again, will be ultimately borne by U.S. farmers.

We feel it is not too late to prevent some of these undesirable consequences, and we offer four options for the committee to consider.

The most efficient and effective method is to protect and enhance this market for OFAC is to reverse its final rule. If the final rule is not reversed, OFAC should approve the industry petition submitted yesterday by more than 30 farm and trade groups, and modify the rule to allow contracts that were in place as of February 22 to be honored under their original payment and other terms.

We urge the swift enactment of legislation to reiterate the intent of Congress that exports financed by the payment of cash in advance be allowed to continue on the same basis that has been successfully used for \$1 billion in exports during the past 4 years.

And finally, Congress should insist that OFAC and future administrations respect the requirement in section 903 of the 2000 Export Enhancement Act that prohibits the imposition of new trade restrictions or conditions unless approved in advance by Congress. Absence of compliance with the law, rice producers are concerned that there will be nothing to stop the total shutdown of exports to Cuba by similar restrictive interpretations in the future.

Mr. Chairman, U.S. rice farmers have been told repeatedly that export markets are our future. When these markets are closed off, everyone in the industry is hurt and farmers must bear the ultimate costs of lost markets from their own pocketbooks. These are unnecessary costs that rice farmers should not be asked to pay, es-

pecially when pending budget proposals would reduce the farm safety net on which farmers depend here at home.

Thank you again for this opportunity, and I look forward to answering any of your questions.

[The prepared statement of Mr. DeLaughter appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. DeLaughter.

Mr. Lewis, welcome.

**STATEMENT OF RICHARD K. LEWIS, CHIEF OPERATING
OFFICER, DAIRYAMERICA, INC., FRESNO, CA**

Mr. LEWIS. Thank you. Good afternoon, Mr. Chairman and committee members.

I am going to make five discussion points today. I want to talk a little bit about the background of DairyAmerica, transition of DairyAmerica from solely a domestic supplier to an international supplier as well, Cuba and the current procedures employed for exports by DairyAmerica, OFAC redefinition, and the ramifications of these actions.

DairyAmerica is a non-profit marketing agency for U.S. cooperatives. We have eight members spread from coast to coast. We market their 1 billion pounds of powder a year, of nonfat powder, buttermilk powder, and whole milk powders. As I said before, we were solely a domestic supplier with very little international marketing, and only when we had help from the U.S. Dairy Export Program.

International marketing can be very difficult and more demanding. Specifications by customers are certainly more demanding than specifications in the United States. But DairyAmerica has made a transition in the last 5 years. We focused only on the U.S. market. We are now looking and have been looking over the last 3 to 5 years at international marketing, as well as domestic. The development programs and introduction by the U.S. Dairy Export Council led U.S. producers and DairyAmerica to international markets. These programs help our industry recognize the opportunities for growth in the international market, and enabled DairyAmerica to become a more serious producer for these markets.

To bridge that next gap from strictly a domestic supplier to a more reliable export supplier, we put in place an export marketing plan, and a marketing agreement, utilizing us to use resources already in place for efficiency, lower cost to serve, utilizing production resources to overcome production problems, utilizing resources to recognize and capitalize on the new and different products recognized by DairyAmerica through the U.S. programs. And working together in this marketing agreement, we have been able to schedule production and shipments to meet customer needs, and keep member inventories at a minimum.

Cuba and the payment issues. Cuba is a part of our international marketing plan and has been since 2003. DairyAmerica members from Texas, Massachusetts, California, and Pennsylvania have supplied 25.3 million pounds of powder with a value in excess of \$24 million. This is powder that normally would be sold under the Dairy Support Program to the Commodity Credit Corp. Powder was sold to Cuba with terms cash in advance as required by the original OFAC regulations. Normal terms of cash in advance involve a

minimum as a procedure to assure both buyer and seller that both parties are protected. The product is loaded and on board bill of lading is prepared by a third party, the shipping company. All other documents are then prepared as required by the United States and Cuba, and documents specific to the customers. From loading to generating all the documents, it takes one to two days. In our case, we load on a Thursday. Documents are to the customer by Monday. Documents are reviewed and if no changes are made, authorization by the customer or payment is made. Our experience shows that it takes about 2 to 3 days from that authorization until the money reaches our account.

This is a commonly used international trading practice, and the Cuban buyer, or any export buyer will not gain control nor ownership of the powder until payment has been made and confirmation by our bank that funds have been placed in our account. OFAC redefinition to mean cash payment from the Cuban buyer before the U.S. commodities even leave the U.S. port, and letters of credit have been talked about. Letters of credit add cost, time, and complexity to currently a very simple transaction.

Ramifications. Today, we have 2.2 million pounds of powder on hold waiting clarification of the terms "cash in advance." There is going to be additional costs for storage and costs for money. Our current contracted commitment is 4.4 million pounds, and we have a future contracted commitment of 8.9 million pounds. We are also being asked to negotiate another 8 to 13 million pounds for delivery late 2005, 2006. This is a very important customer to American agriculture. We have since been informed by Mr. Pedro Alvarez, chairman and CEO of Alimport, that cash in advance of leaving U.S. soil could lead to cancellation of the remaining contracts and halt discussions for any future sales.

DairyAmerica has made huge efforts and investments to seek international markets as opposed to resorting to selling to CCC. It is ironic that while the United States trade representative, National Milk Producers Federation, and the U.S. Dairy Export Council fight unfair trade barriers imposed by foreign countries on a regular basis, and our own Government is imposing new and detrimental trade barriers to its own industries. And this, while we face trade deficits near record levels.

In conclusion, we find it difficult to understand why we are constantly reminded by the same Government of the benefits of trade, and then be faced with the redefinition of payment terms that will add absolutely nothing but increased barriers, forcing U.S. companies to forgo these export opportunities.

Thank you for your time.

[The prepared statement of Mr. Lewis appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Lewis.

Mr. Kruse, we are very pleased to have you with us as well today.

STATEMENT OF CHARLES E. KRUSE, PRESIDENT, MISSOURI FARM BUREAU, DEXTER, MO, ON BEHALF OF THE AMERICAN FARM BUREAU FEDERATION

Mr. KRUSE. Thank you, Mr. Chairman and members of the committee. I, too, want to thank you for holding this hearing. It is a very timely hearing and we appreciate the fact that you are doing this.

I am Charlie Kruse. I am president of Missouri Farm Bureau, and I am a soybean and corn producer in Stoddard County, MO. In addition, I sit on the Board of Directors for the American Farm Bureau Federation, and I this year am chairman of the American Farm Bureau Trade Advisory Committee. We appreciate the opportunity to provide you our comments on recent actions taken by the Office of Foreign Assets Control, OFAC, Department of Treasury, to restrict the financial terms by which sales of U.S. agricultural products are made to Cuba.

Farm Bureau has longstanding policy and support of expanding U.S. trade with Cuba. Since passing of the Trade Sanctions Reform and Export Enhancement Act, TSREEA, U.S. agriculture has seen its sales to Cuba grow exponentially, and the Cuban export market has grown in importance. According to USDA FAS, our sales have gone from nearly zero in 2000 to almost \$400 million in 2004. Our sales to Cuba have almost doubled every year since 2001. Cuba is now our 25th largest export market.

Our sales have included a variety of U.S. agriculture products, including, but not limited to, wheat, rice, corn, soybeans, chicken, pork, eggs, dairy products, apples, and live animals. But recent changes by OFAC to the regulations could reverse this trend.

On February 22, 2005, OFAC announced that it was redefining "payment of cash in advance." Under the new definition, cash payments from Cuba for U.S. agricultural sales would have to be received by U.S. banks before the product could be shipped from U.S. ports. This new definition is significant in that payment of cash in advance is the most commonly used means for receiving payment from Cuba. Under its original interpretation, U.S. agricultural products could be shipped to Cuba, but ownership of the goods would only be transferred once payment was received from Cuba. OFAC's new regulation ignores the original intent of Congress on payment of cash in advance.

This could result in the loss of sales currently under contract, in addition to all future sales to the country, and it disregards contract sanctity, putting U.S. agriculture in the position as being viewed as an unreliable supplier. Why OFAC chose to review and reinterpret the definition of payment in cash advance is not clear to us. We believe we have followed congressional intent as allowed under TSREEA, and its regulations of payment of cash in advance.

Regarding disregard of congressional intent, language in the Agricultural Export Facilitation Act of 2005, H.R. 719, introduced by Congressman Moran and others, clarifies the intent of Congress of cash payment in advance as authorized by TSREEA. The redefinition of "payments of cash in advance" will be costly to U.S. agriculture producers and companies. This new regulation jeopardizes current and future contractual sales to Cuba. According to Alimport, a Cuban buyer, outstanding agricultural sales contracts

for more than 950,000 tons of agricultural products worth more than \$200 million could be affected by this regulation, and are at risk because of current actions by OFAC. It is unlikely that Cuba would be willing to accept the newly defined "payment of cash in advance," as they would apply to outstanding contracts. The new definition of "payment of cash in advance" changes the terms under which existing contracts were written, and creates a situation where products could be subject to seizure.

While we must look at the potential losses and risks to the U.S. agriculture sector created by this new regulation, we must also look at the overall issue of contract sanctity raised by these actions. We, again, do not understand why OFAC would risk possibly nullifying all outstanding contracts, rather than make the changes effective only for new contracts. The sanctity of U.S. agricultural export sales contracts is important to U.S. agriculture in maintaining and growing export market share, and current actions by OFAC will leave Cuba and possible other purchasers of U.S. agricultural products to question whether the United States is a reliable supplier. These actions may also force Cuba to look to our competitors to fill its agricultural import needs.

It is critical to U.S. agriculture trade that this issue be resolved in a manner that does not jeopardize exports, current or future, to Cuba, and is clear in its intent as to what is allowed under the law.

Thank you, Mr. Chairman, for holding this hearing, and I would be pleased to answer any questions.

[The prepared statement of Mr. Kruse appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you very much, Mr. Kruse.

Mr. Wright, you mentioned that poultry was our largest export to Cuba, representing almost 16 percent of products sold. So I understand your concern about these recent regulations. I wonder if you will tell us if you will change the way you do business with Cuba, based on these new rules?

Mr. WRIGHT. Congressman, we will comply with the laws, and based on the new rules, it will, we believe, greatly restrict our ability to export to Cuba.

The CHAIRMAN. Could you explain that in some detail? Will you talk about the letters of credit that Mr. Werner was touting in his testimony?

Mr. WRIGHT. We believe there is an additional cost to the letters of credit that will be borne by the Cuban importers, and based on that, it may leave our product less competitive than potentially Brazil's or another exporter.

The CHAIRMAN. Do you have any feel for how much of a difference it would make, what percentage added cost a letter of credit might add?

Mr. WRIGHT. I don't know that number, Congressman.

The CHAIRMAN. I wonder if you could investigate that and supply that information to the committee.

Mr. WRIGHT. I would be happy to do that.

The CHAIRMAN. If you would supply that officially for the committee, that would be helpful.

Mr. Kruse, do you have any feel for how Cuba has reacted to these new regulations?

Mr. KRUSE. Mr. Chairman, I think overall, they certainly are concerned, and we think they should be concerned. We are not aware of any problems that have existed under the original rule and I think it is just obvious that Cuba is going to look to trade with people—they prefer to trade with the United States, I think for a lot of reasons, including transportation costs, but if we take actions either intended or unintended to cause them to think about looking elsewhere, it certainly is not going to be good for American agriculture. And that certainly is our concern.

The CHAIRMAN. Do you have any feel for whether they will continue to purchase U.S. agriculture commodities?

Mr. KRUSE. I guess my sense would be, Mr. Chairman, they will continue to purchase U.S. products, but I also think this new interpretation of the rule will cause them, perhaps, to either decrease or certainly not increase the amount of products they buy from the United States at a time when we have a great opportunity to be the provider of first resort, not of last resort.

The CHAIRMAN. Corn and soybeans represent over \$200 million in sales to Cuba since the law was changed in 2000. What do you think the potential is for continued sales of those two commodities?

Mr. KRUSE. Well, Mr. Chairman, I think it is amazing and impressive to see how much progress we have made just in the last 4 years, and I think there is a great opportunity to continue that progress. But I think this new interpretation of the rule is a real setback and a setback, as we all know, at a time when farmers in this country need all the help we can get in finding new markets for what we produce.

The CHAIRMAN. Does Cuba have any rules regarding biotech corn or soybeans?

Mr. KRUSE. Not that I am aware of.

The CHAIRMAN. So we have pretty much open access to the market for these commodities as opposed to, say, the Europeans, who have imposed all kinds of restrictions on our getting access to that market with GM products?

Mr. KRUSE. Yes, sir, Mr. Chairman. I think another point that is important, I had the privilege to go to Cuba a few years ago and I was so impressed by the fact that the Cuban officials will clearly tell you that they would prefer to buy from the United States, and talked about the about 30 percent increase on average of costs because of transportation costs when they purchase from somewhere besides the United States.

The CHAIRMAN. Mr. Lewis, would you address the issue of contract sanctity? When you entered into a contract to sell milk powder to Cuba was there any difference between that contract and any other contract with a foreign buyer, as far as the method of payment was concerned?

Mr. LEWIS. Yes. Cuba is strictly cash in advance. We have other customers throughout the world that buy on letters of credit. We don't prefer to work with letters of credit because as I said, they are costly, they are time-consuming, and they can slow down payment. And we feel that working with Cuba with the cash in advance, as we have applied it, has been a very good method of marketing for us.

The CHAIRMAN. Under that system, did Cuba gain control of the milk powder only when you received full payment?

Mr. LEWIS. Only when we were notified by our bank that we received full payment and it was in our account did we then release the documentation for Cuba to get the product in their control.

The CHAIRMAN. And did you believe you were following the OFAC regulations?

Mr. LEWIS. Absolutely, to the letter of the law.

The CHAIRMAN. Very good. Thank you very much.

The gentleman from Minnesota is recognized for 5 minutes.

Mr. PETERSON. Thank you, Mr. Chairman, and thank all of the witnesses.

OFAC has explained this morning that the timing of its new rule was caused, I guess, by the U.S. banks stopping payments and processed request guidance from Treasury regarding this term "payment of cash in advance." Are you aware of banks stopping payment and then requesting guidance? Do you have any direct knowledge of this happening?

Mr. WRIGHT. I have no direct knowledge of that happening.

Mr. PETERSON. Mr. DeLaughter?

Mr. DELAUGHTER. No, sir, not at all.

Mr. LEWIS. I do.

Mr. PETERSON. You do?

Mr. LEWIS. Yes. One of our payments by about 3 weeks and one by another week. It was held up by the banks, and the banks told us it was in regard to OFAC's investigation into payment terms to Cuba.

Mr. PETERSON. But did that bank ask OFAC to investigate this?

Mr. LEWIS. That I don't know. I just know our funds were held up.

Mr. PETERSON. So they called you and said their funds are held up because they were—

Mr. LEWIS. No, we had to call them. They didn't even call us.

Mr. PETERSON. You didn't get the money—

Mr. LEWIS. We had to call them. They said that the reason your funds are on hold is because of actions by OFAC.

Mr. PETERSON. And when was this, what date?

Mr. LEWIS. I believe it was either December or January. I can't tell you for sure. I can look that up and get back to you on it.

Mr. PETERSON. So you are not aware that any bank that you are aware of that asked for guidance?

Mr. LEWIS. Not aware of any bank asking for guidance.

Mr. PETERSON. How about you, Mr. Kruse?

Mr. KRUSE. No, sir.

Mr. PETERSON. Could any of you figure out why a bank would do this if they have been doing it for 3 years? I mean, we asked these questions of the guy from OFAC, didn't really get any kind of—I mean, do you guys have any inside scoop on why this could have happened?

Mr. DELAUGHTER. No, sir.

Mr. LEWIS. I don't know why they would do it. I mean, they are in the business to make money on transactions of funds. Why would they ask about something that has been going on for over 2 or 3 years?

Mr. DELAUGHTER. And in general, once you start a process, you don't really want to change that. I mean, the paper flow starts a certain way.

Mr. PETERSON. So it is a mystery to you, too, as how this all came about. I think it is safe to say it is a mystery to a lot of us.

Have they specified to you the payment alternatives that comply with this new interpretation? I mean, is the only thing that they have talked about are these letters of credit? Is that it?

Mr. WRIGHT. That is the only alternative that has been discussed, to my knowledge.

Mr. PETERSON. You all agree with that?

Mr. DELAUGHTER. That is correct. That is all we are aware of.

Mr. PETERSON. This is maybe not a fair question, but it occurs to me—I represent the biggest sugar-producing area of the United States, and my sugar producers are very concerned about CAFTA. Some of you are probably on the other side of that, but it is just curious as to how we could get into a situation where they are promoting CAFTA as the great opportunity for farmers, and from what I can tell, we have a bigger market in Cuba sitting right there than anything we are going to gain out of CAFTA. So can any of you explain to me how we can get in the situation we are about to screw up a market that is just sitting there and—in exchange for something that may or may not happen? That may be not a fair question, but that is what my people up in northern Minnesota want. They can't figure it out. Maybe you can't, either.

Mr. WRIGHT. No, I really can't, Congressman.

Mr. DELAUGHTER. Congressman, I say that is why we are sitting here is because we really can't figure it out.

Mr. LEWIS. I agree with comments that were made earlier this morning. "If it ain't broke, don't fix it."

Mr. KRUSE. I would say, too, there is no one silver bullet to solve all the concerns we have in agriculture, and we all know that. We certainly understand the concerns, Congressman Peterson, that you have and your constituents have with CAFTA. We think it is net positive for agriculture, but we also believe very strongly that the opportunities we have created with Cuba to this point bode very well for us to continue that and at some point down the road, there are going to be winners and losers in Cuba. And we better hope we are a winner.

Mr. PETERSON. Mr. Lewis, you are only selling powder? You are not selling butter or—

Mr. LEWIS. No. DairyAmerica is strictly a powder marketing agency.

Mr. PETERSON. Thank you, Mr. Chairman.

Mr. MORAN [presiding]. Thank you, Mr. Peterson.

The other gentleman from Minnesota, Mr. Gutknecht.

Mr. GUTKNECHT. Thank you, Mr. Chairman. I want to thank the witnesses, and I apologize for not being at the first part of the hearing. We had another hearing in a committee that I serve on.

I am interested in this issue, and this is probably not the right place to come to the defense of the administration, but I have been one on the committee who has not been a particular fan of trading with communist Cuba. But this has been an enlightening hearing because what I had believed was that what Cuba really wants is

more credit. And this is an impoverished country, even in the area of sugar, where they probably can produce all the sugar we need in North America. Their level of production has gone down and down and down. Only Fidel could do that to the people of Cuba.

And I do think, ultimately, the winds of change will come across that island as well, and we will enjoy very good economic relations with Cuba.

But I want to thank you, because you have actually shed a different kind of a light. I didn't quite understand this issue. I am not sure I understand it today, but this is a nation that it seems to me, their economic situation deteriorates year to year. And I am not sure right now how good a customer they will be.

But I guess the question I would ask all of you, I would suspect you have all done business with other—well, I will call them communist countries, but I have had only one example in my district of a company that—and it was a manufacturing concern that got burned on a deal in communist China.

I just wondered, how do you get paid from some of these other countries? And have you ever gotten burned?

Mr. WRIGHT. Congressman, the poultry industry has a number of countries we export to throughout the world. Generally, we have a variety of payment arrangements that may be letters of credit, they could be certain accounts. But in general, they would be similar to what historically has gone on in the last couple of years with Cuba where at the point in time when title is going to transfer, we get paid.

The opportunities or the times where the industry has generally been burned has been more when we have had product on the ocean and policy has changed. And a lot of times, that has come either with artificial trade barriers, or disease bans, or those type of things that we have experienced over the last couple years. Where then, you are put in the position where there is product on the ocean that you have to attempt to divert the sale to another country.

But generally, to my knowledge, there has not been an ongoing war or an issue with a country, per se. There could be with an individual customer due to their financial health, but it has not been a problem exporting to other countries.

Mr. GUTKNECHT. Do you all agree with that?

Mr. DELAUGHTER. Yes, sir.

Mr. GUTKNECHT. Thank you. I yield back.

Mr. MORAN. Thank you, Mr. Gutknecht.

Following in line of Mr. Gutknecht's questioning, I assume that there is some rule that involves a business decision about who you want to sell to. That in part, perhaps, these rules and regulations may be designed to protect the American seller, although I doubt that, but I assume that you make business decisions all the time about the credit worthiness of your customers. Is that an accurate statement?

Mr. DELAUGHTER. Correct.

Mr. LEWIS. Yes, sir, accurate.

Mr. MORAN. And already, there is a difficult circumstance in trading with Cuba. I mean, we are talking about a—I don't know what the right adjective is—a modest to a severe restriction or abil-

ity to sell to Cuba as a result of a recent OFAC decision. But prior to that, already Cuba has to overcome a number of hurdles for U.S. agriculture commodities to be sold. And I would like for you to kind of confirm to the committee what those hurdles are. What impediments already the law puts in place, and then perhaps describe how a transaction works. If a Kansas co-op has a load of beans or a carload of wheat, how do we sell it to Cuba? How does that process work?

Mr. LEWIS. I don't sell beans, so—

Mr. MORAN. It was a terrible question, or an awfully good one.

Mr. KRUSE. Well, in principle it is the same, whatever we sell. I think it is a very good point, because it is difficult, and I am sure that these gentlemen that sell other products, but it has to either be—it all has to be transacted through a third party bank. And I think what now has been put in front of us by OFAC's action is if we think about it, they have sort of taken away the cash part of this and made us look, perhaps, more to the credit side. In other words, they have made it more difficult for us to deal in cash transactions. I think that is pretty clear, and I think that is unfortunate.

Mr. MORAN. And if the goal is to protect the U.S. seller, one might be promoting cash sales rather than credit sales. Is that accurate?

Mr. KRUSE. Yes, sir.

Mr. MORAN. Thank you.

Mr. WRIGHT. Congressman, I was going to comment that the cash in advance sale we have with Cuba is really less risky than a lot of our domestic sales where we extend credit. And so here domestically to U.S. manufacturers and retailers and whatnot, we have credit terms that are promises to pay, but they may or may not. And to get cash at the time we go to transfer the product is, in fact, less risky than a lot of our domestic sales.

Mr. MORAN. Which allows me the opportunity to point out, which means it is much more difficult for Cuba to acquire U.S. goods under the current law, aside from what OFAC's recent decision is, because we are taking some of the credit risks—we are taking the credit risk out of the cash out front.

Mr. DELAUGHTER. That is correct.

Mr. MORAN. And the question that we have, I guess that OFAC has is what does "up front" mean? Kind of that phrase we would use in the middle of the country, we have to pay cash up front. What is "up front?" And always before up front, was whenever the title to the goods transferred to the Cubans, and now it seems to be that when they are—before they leave the United States. That is the issue.

And then my question is, OFAC indicated they consulted with the administration, and did anyone from the Department of Treasury consult with the businesses in the United States, you or your organizations that are making sales to Cuba, before they reached the conclusion in their new rule?

Mr. DELAUGHTER. No, sir, not that we are aware of. In fact, we learned more today just listening to his testimony than what he has alluded at any point in time at any meetings we have had with OFAC up to this date.

Mr. MORAN. Have you all had the opportunity to explain your position to officials within the administration as to the consequences of this decision? You are here talking to us as Members of Congress. This obviously was a decision made someplace else than here. Are you consulting with people within the Department of Treasury or elsewhere about the ramifications of this decision?

Mr. DELAUGHTER. There was one meeting that was held after the ruling came down, and we discussed what the ramifications were to them openly at that particular meeting. Plus, we have had many conversations with the USDA, talking about this and trying to determine what steps we need to take to move forward in getting some kind of resolution to the issue.

Mr. MORAN. In raising complaints or concerns about the OFAC decision, who you are talking to within the administration? Are they officials at the Department of Agriculture?

Mr. DELAUGHTER. We had one meeting with the Treasury Department.

Mr. MORAN. The Treasury, thank you.

Mr. DELAUGHTER. And then we had other meetings with the Department of Agriculture.

Mr. MORAN. Any other response to that?

Mr. WRIGHT. Congressman, the poultry industry, through our three trade associations, the National Chicken Council, the National Turkey Federation, and the Southeastern Poultry and Egg Federation, has had ongoing dialogue with the USDA. We have not had dialogue with the Treasury Department, but have had an ongoing dialogue both with FAS and the Secretary of the USDA.

Mr. DELAUGHTER. We have had American Farm Bureau staff people who have met with OFAC and expressed our concerns and what we thought were the problems that were going to exist with their rule change.

Mr. MORAN. In some ways, I wish that this panel would have testified prior to the OFAC official, Mr. Werner.

Are there questions that you would like—what did you hear today that would—if you were a Member of Congress sitting on this panel that you would have liked to ask OFAC or for us to pursue further?

Mr. DELAUGHTER. I think one of the things that I heard was that they had a choice in their interpretation, and they have used the most restrictive interpretation they possibly could. And that is very troublesome to us, because it concerns us as to what happens after we solve this problem, what is the next issue right down the road?

Mr. MORAN. After Mr. Werner left the table, my second follow up question would have been what other issues do we need to worry about if we solve this one? It seems like we are always on the defense. We made what I thought was significant progress in June 2000, and rather than having the opportunity to expand that success, all we do is keep fighting to keep it from being chipped away. And I was pleased, I guess, in a sense, although disappointed to hear that the—let me limit it at pleased. I was pleased to hear that OFAC has flexibility, but reached the conclusion that they believe I guess was the best conclusion, but it wasn't a conclusion that they had to reach. And I was interested in that response to my question.

Anyone else? Anything we should be pursuing? Mr. Wright.

Mr. WRIGHT. Congressman, in Mr. Werner's presentation, he suggested that there may be some leeway in interpreting the rule for the existing contracts. The rule is set to take effect next week, the 24th, and it would be very timely to make a decision on can there be some leeway on the existing contracts, and if so, what is that? There a number of people that have to make a decision about whether to put product up or whether to ship or not to ship, or whether to re-negotiate or not re-negotiate. There may be people who are already obligated with future sales or whatever to make that, and time would be very critical to get some decision made on contracts that are currently in existence.

Mr. MORAN. Have those questions been raised with OFAC and you are waiting on an answer?

Mr. WRIGHT. Yes.

Mr. MORAN. Mr. Kruse.

Mr. KRUSE. Mr. Chairman, I think our concerns would sort of be two-fold. I would hope that OFAC, thanks to the hearing you held today, perhaps would understand in more significant terms the importance of grandfathering, so to speak, these existing contracts, estimated somewhere around \$200 million sitting out there. If we don't do something—if OFAC doesn't do something to honor these existing contracts under the old rules, I think it makes us look, in trade, as an unreliable trading partner.

So that is an urgent concern I think we would all share. And then a longer term concern is we would certainly, I know you all would too, we would hope that OFAC would reevaluate their rule and we would like to see it go back to what the original rule was. We thought that was working well and we thought that was the intent of Congress.

Mr. DELAUGHTER. Mr. Chairman, I would just add, too, that part of our discussion amongst our group has been the concern that this should have been brought back to Congress before this was done. We just feel that it was done in such a way that it violated what we had some level of comfort with. And so part of our concern is that we get some of our level of comfortability back in this process.

Mr. LEWIS. I am afraid that OFAC really isn't interested in whether we trade or don't trade. I think this is strictly his interpretation of the rules. I don't think they are going to listen any further to industry. We will continue to try, but gentlemen, I think it is in your hands. You are the ones who are going to have to intercede on our behalf to get some sanity into this ruling.

Mr. DELAUGHTER. We agree.

Mr. MORAN. That is a mixed blessing. It is a very tough road to hoe.

Mr. Gutknecht.

Mr. GUTKNECHT. Mr. Chairman, I would just offer one last thought. And this may be the right time for us to begin to talk about it.

I really don't believe that food should ever be used as a political weapon. And it does strike me that that is really—if you cut away all the layers of bureaucratic discussion here. And it may well be time. And it is not up to the Congress. We can not negotiate treaties. But frankly, and I have talked to my colleagues from Canada,

from Germany, from Australia, from New Zealand, parliamentarians from around the world. It really may be a time for us to seriously begin to talk about a world food treaty, and say that food can not be used as a political weapon, a barring, a declaration of war. And I think it might bring to an end some of these kinds of discussions and these uncertainties. And it is a way of saying to the world that look, if you buy food from us, you will be treated just like any other customer, regardless of your politics, unless there is a declaration of war. And maybe now is the time to start seriously talking about that, not only with our parliamentary friends around the rest of the world, but maybe some of the folks here.

I yield back the balance of my time.

Mr. MORAN. I thank the gentleman from Minnesota. I want to thank our witnesses for their testimony today. This important matter remains an open issue, and one that the committee intends to pursue. We want to see the U.S. Government not place barriers in the way of agricultural exports, nor does the committee want to see legitimate contracts entered into willingly by a seller and a buyer declared void because of regulations issued without notice or comment. This is a matter the committee intends to pursue. Incidentally, these are words that were penned by the chairman, and so I think that adds greater credibility to the fact that this committee takes this issue very seriously.

Again, I thank each of the witnesses today for their testimony. Without objection, the record of today's hearing will remain open for 10 days to receive additional material and supplementary written responses from witnesses to any question posed by a member of the panel.

The hearing of the House Committee on Agriculture is adjourned.

[Whereupon, at 12:57 p.m., the committee was adjourned.]

[Material submitted for inclusion in the record follows:]

STATEMENT OF ROBERT WERNER

Good morning Chairman Goodlatte; Ranking Member Peterson; and members of the committee. I am pleased to have been invited here today to discuss the issue of payments for United States agricultural exports to Cuba.

As you know, the Department of the Treasury's Office of Foreign Assets Control (OFAC) is responsible for administering and enforcing economic embargoes and sanctions programs, including the embargo of Cuba. In performing its mission, OFAC relies principally on delegations of authority made pursuant to the President's broad powers under the Trading With the Enemy Act (TWEA) and the International Emergency Economic Powers Act (IEEPA) to prohibit or regulate commercial or financial transactions involving specific foreign countries, entities, or individuals. OFAC exercises an array of responsibilities in administering and enforcing numerous economic sanctions and embargo programs, including rulemaking; licensing; compliance-oriented outreach and education; civil penalties; referrals for criminal enforcement actions; the blocking of assets in the United States in which foreign states or persons have an interest; and required recordkeeping and reporting. We also conduct investigations and analysis in preparation for designations and drafting or implementation of new sanctions programs.

In administering and enforcing economic sanctions and embargo programs, OFAC maintains a close working relationship with numerous other Federal departments and agencies to ensure that these programs are implemented properly and enforced effectively. Among the agencies OFAC works with outside the Treasury Department are: the Department of State (State) for foreign policy guidance in promulgating regulations and in considering sensitive license applications; the Department of Commerce (Commerce) on issues regarding exports and reexports; U.S. Customs and

Border Protection and U.S. Immigration and Customs Enforcement for assistance in the many enforcement matters involving exports, imports, transportation, and travel; the bank regulatory agencies to assure bank compliance with financial restrictions; the Department of Justice on legal issues and matters in litigation; and numerous law enforcement agencies.

THE CUBA EMBARGO AND THE TRADE SANCTIONS REFORM AND EXPORT
ENHANCEMENT ACT OF 2000

On July 8, 1963, the United States imposed an economic embargo against Cuba in response to hostile actions by the Cuban government. The embargo was implemented by OFAC through promulgation of the Cuban Assets Control Regulations (31 CFR Part 515). Cuba is also presently listed as a state sponsor of terrorism by the Department of State.

Most relevant to today's hearing, however, is the fact that in 2000, Congress enacted the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA). Among other things, this legislation directed the adjustment of restrictions on the export of agricultural commodities to countries subject to U.S. unilateral controls.

In order to implement TSRA, on July 21, 2001, OFAC published amendments to the Cuban Assets Control Regulations, as well as amendments to the Sudanese Sanctions Regulations (31 CFR Part 538), the Libyan Sanctions Regulations (31 CFR Part 550), and the Iranian Transactions Regulations (31 CFR Part 560). OFAC believes that these amendments, which were produced in consultation with other government agencies, are consistent with both the statutory language of TSRA and the intent of its drafters. We also believe that the amendments provide exporters with an efficient and expedited process for engaging in authorized exports of agricultural commodities.

With respect to Cuba, OFAC's implementation of TSRA focused on methods of payment for agricultural exports licensed by the Commerce Department.

The Cuban Assets Control Regulations, prior to the passage of TSRA, already provided a general license for transactions, including payments, incident to exportations that were licensed or otherwise authorized by the Commerce Department. This meant that an exporter who had received a Commerce license to export goods to Cuba did not need to seek further authorization from OFAC. This provision, found in section 515.533 of the regulations, was amended, however, in order to implement the financing restrictions contained in TSRA. OFAC also amended section 515.533 to clarify that reexports of U.S.-origin items by persons subject to the jurisdiction of the United States were also covered by the general license (section 515.533(a)) and that specific licenses would be issued for travel engaged in for the purpose of arranging licensed sales (section 515.533(e)).

FINANCING EXPORTS TO CUBA

Mirroring the language in the statute, OFAC's 2001 amendment to section 515.533 provides that licensed agricultural sales are authorized as long as they are financed by payment of cash in advance or through financing by a third country financial institution. With respect to third country financing, the regulation permits U.S. financial institutions to confirm or advise such financing. These provisions are reflected in section 515.533(a)(2) and provide specifically that: Only the following payment or financing terms may be used: Payment of cash in advance;

For authorized sales of agricultural items, financing by a banking institution located in a third country provided the banking institution is not a designated national, United States citizen, United States permanent resident alien, or an entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches). Such financing may be confirmed or advised by a United States banking institution.

It is important to emphasize that financing through letters of credit, by a non-target bank in a third country, has always been authorized under these provisions. That is as true today as it was when the TSRA amendments were introduced. Letters of credit are a recognized method of payment in international trade, including agriculture. When a bank issues a letter of credit, it is creating its own obligation to pay a seller, as long as the seller submits documents in accordance with the terms of the letter of credit. Such financing provides a "buffer" between the buyer and the seller with a bank substituting its name and credit for that of the buyer. In the case of OFAC's regulations, the payment to the U.S. exporter may even be guaranteed and expedited by a U.S. bank based on a credit facility with a legitimate non-target foreign bank. In terms of accommodating sales contracts, goods are often shipped before documents can be presented in letter of credit transactions; payment from a third country bank may well be received after shipment.

INTERPRETING SECTION 515.533(A)(2)(I)

The term “payment of cash in advance” found in section 515.533(a)(2)(i) is not defined in either TSRA, or its legislative history. Similarly, OFAC’s regulations do not contain a separate definition of this term. OFAC’s research indicates, however, that the commonly understood meaning of the term in the international trade finance community is that full payment for the goods is received by the exporter before the goods are shipped. And this, as will be discussed further, is the construction that OFAC applies to this term.

A complicating factor here is that the general license provisions of section 515.533 made monitoring payments for agricultural shipments to Cuba difficult since, under a general license, the parties involved in the transaction had no obligation to file reports with OFAC. It is now apparent that this allowed a discrepancy to develop between OFAC’s expectation of how cash in advance payments would be processed and how many exporters actually implemented this financing option.

In 2003, however, at the request of the State Department, OFAC did send out a survey to a number of U.S. exporters, asking them to certify that they were in compliance with the payment provisions of section 515.533. Virtually all of the letters received in response to OFAC’s inquiry merely certified that the exporters were in compliance with the “payment of cash in advance” provisions of section 515.533.

A recent review of these responses has revealed that there were a handful of letters that indicated that, despite the commonly understood meaning of “payment of cash in advance” as described above, some exporters were interpreting the term to allow for the shipping of goods to Cuba provided cash payment was received prior to delivery of title to the goods. This method of payment more closely resembles a financing mechanism known in the international trade as documentary collection. A further review of these responses was not conducted.

CLARIFICATION OF SECTION 515.533(A)(2)(I)

In the summer of 2004, OFAC’s Compliance Division began receiving specific inquiries from U.S. financial institutions seeking guidance on the question of whether or not the shipment of goods prior to receipt of payment by U.S. exporters was permitted under section 515.533(a)(2)(i).

OFAC is not certain what triggered the inquiries. We believe it may have been an article concerning agricultural trade with Cuba and methods of payment, which was published in late July (*Economic Eye on Cuba*, 26 July–15 August 2004). OFAC Compliance actually referred two of these cases to OFAC’s Enforcement Division for investigation and notified senior OFAC management about the issue. However, OFAC found itself in the position of being unable to provide definitive guidance and began extensive consultations within Treasury and with other executive branch agencies on the interpretation of the term “payment of cash in advance.” These consultations took a number of months.

As an interim step, in order to mitigate any disruption of licensed agricultural exports to Cuba, OFAC adopted a temporary policy of issuing specific licenses permitting cash payment against documents to exporters whose transactions occurred while guidance was pending. OFAC created the interim specific licensing policy to ensure that U.S. exporters received payment for goods already shipped to Cuba and the Cuban people did not see a disruption in agricultural shipments to the island.

On February 22, 2005, following the completion of the interagency consultations, OFAC announced a clarification of the term “payment of cash in advance,” as set forth in section 515.533(a)(2)(i), that conforms to the common understanding of the term in international trade finance described above. Specifically, OFAC confirmed that “payment of cash in advance” with regard to Commerce-licensed shipments of agricultural items to Cuba means payment of cash prior to shipment of goods. This clarification of “payment of cash in advance” had no effect on payments financed through letters of credit under section 515.533(a)(2)(ii).

TRANSITION PERIOD

The final rule on this payment policy went into effect on the day it was announced. In order to provide a transition period, the language in the final rule provides a 30-day window (March 24, 2005) for exporters to engage in transactions under financing terms resembling “cash against documents,” but requires payment for such transactions to be completed within that 30-day period. Exporters will continue to need to obtain authorization from Commerce to ship the goods.

After the 30-day “cash against documents” financing period ends, any transactions under financing terms resembling “cash against documents” will be prohibited. To the extent an exporter has an existing contract that requires “cash against docu-

ments” financing transactions to occur after the 30-day period, the payment terms of that contract would need to be renegotiated to allow for cash in advance of shipment or a letter of credit issued by a third-country bank. It is consistent with the President’s authority and with OFAC’s past practice in other sanctions programs, such as the sanctions against Iran and Sudan, to provide for a limited grace period for export transactions under pre-existing contracts.

OFAC believes the clarification announced on February 22, 2005, implements TSRA in a manner that is most consistent with the plain meaning of the statutory language.

It is also important to emphasize that the provisions allowing for payment through letters of credit issued by third country banks remain unaffected by the clarification of “cash payment in advance.”

Thank you for the opportunity to address the Committee on this important topic.

STATEMENT OF TEXAS GRAIN SORGHUM ASSOCIATION

Please accept for the record these comments of the Texas Grain Sorghum Association (TSGA) with regard to the Committee’s Review of the U.S. Agricultural Trade with Cuba.

TGSA and the National Grain Sorghum Producers have supported congressional efforts to open trade with Cuba. Our members hope that Cuba can continue to grow as a trading partner with the U.S. agriculture industry, especially as it relates to sorghum. We expect the Cuban feed market to grow as the Cuban government increases the country’s annual per capita protein consumption by expanding its domestic poultry industry. TGSA has been working hard to groom a relationship with Cuban buyers in an effort to develop a market there, a market that represents a priority for us because of its close proximity to the sorghum belt.

Our members are concerned about the Final Rule recently published by the Treasury Department’s Office of Foreign Assets Control (OFAC) that restricts the payment terms under which sorghum and other agricultural products maybe sold to Cuba. We are especially concerned about this new restriction on exports to Cuba, because sales of food and medicine were exempted from economic embargoes and such restrictions by the provisions of the Trade Sanctions Reform and Export Enhancement Act of 2000.

Our farmer members are concerned at this apparently arbitrary change that restricts the export opportunities to a valued and prime market. We are particularly concerned because the Cuban market has proven to be one of a very few, if any, U.S. markets where our customers consistently trade on a cash basis in such a timely fashion.

U.S. agriculture is entering a new era of global trade. Our members urge the Committee to continue its efforts to ensure that the Treasury Department and other agencies responsible for our trade policies do not put agriculture in the position of once again having to defend the reliability of the U.S. as a supplier of agricultural commodities and goods. Our industry suffers from a plethora of issues that hamper world trade. We continue to cooperate with our government in devoting vast resources to opening and developing markets. Yet, our fastest-growing export market is threatened by the new restrictions in OFAC’s Final Rule.

Finally, Reuters is reporting that a prolonged drought in Cuba has led to the slaughter of hundreds of thousands of head of cattle in the island’s parched eastern provinces. We anticipate that this could lead to food shortages, and could lead to demands for humanitarian assistance from developed countries like the U.S. If our government continues to implement this Final Rule as it has, we could be in the position of providing humanitarian aid to a country that used to be a cash market. This is not a sign of progress in growing new trade opportunities.

TGSA represents 4,000 grain sorghum producers in the State of Texas, working on legislation, trade, and promotion issues. Grain sorghum is used primarily as a feed ingredient in the poultry industry for both egg and meat production. Mexico is the main export market for sorghum, with the Caribbean Islands purchasing small parcels of sorghum because of our cost-competitiveness.

We request that you take note of our concerns, in the best interests of our sorghum producers, the U.S. agriculture industry, and the buyers that depend on U.S. agriculture’s vast productivity.

STATEMENT OF RICHARD K. LEWIS

Mr. Chairman, and Members of the Committee on Agriculture, my name is Rich Lewis, chief operating officer of DairyAmerica. My testimony before this committee today concerns the term "payment of cash in advance" and the effect the redefinition of this term will have on U.S. agricultural trade with Cuba—specifically the export sales of NFDM (Non Fat Dry Milk) from the United States by DairyAmerica Members.

BACKGROUND

DairyAmerica is a non-profit marketing cooperative representing 8 Cooperatives located throughout the United States. DairyAmerica was incorporated on May 18, 1995 to market NFDM, Buttermilk and Whole Milk Powder production for its Members in a manner consistent with the articles of incorporation and by-laws that allow diversity of sales and the greatest return to Members.

DairyAmerica markets Member powder throughout the United States and the world. Since 1995, our Members have worked to produce dairy products that are consistent with the needs of our customers. Our member cooperatives have consistently been reliable producers of high quality milk powders for the domestic market. Because international specifications for milk powders can be, and very often are, different than those specifications required by U.S. customers, Dairy America Cooperatives have invested extensive time and resources to build the same reliability domestic customers currently experience in the international markets.

DairyAmerica's production and sales have experienced a tremendous transition since 1995, but particularly over the last 4 years. For instance, DairyAmerica has worked closely with the overseas market development programs of the U.S. Dairy Export Council, which has helped DairyAmerica become a serious supplier of milk powders internationally.

THE ISSUE

Included in our international marketing plan are sales to the Cuban market. We have supplied this market with Member production since late 2003—mostly with NFDM from a Member location in Winnsboro, TX, but from other facilities as well—including sites in Massachusetts; Pennsylvania and California. Since DairyAmerica began shipping milk powder to Cuba, U.S. NFDM sales to Cuba have reached approximately 25.3 million lbs., with a value in excess of \$24 million USD. This powder was exported using procedures normally followed when selling on payment terms commonly known as "cash in advance," as required in the original OFAC regulations. Specifically, the procedure entailed (1) shipping the product from a U.S. port, and (2) advising our Cuban buyer of its shipping status (an "on-board" bill of lading is prepared by the shipping company). At this point, the process begins for full payment in advance of the buyer having ownership of the product. Once full payment is received, the "on board" bills of lading—the shipping documents that allow the buyer to gain control of the product—are released to the buyer.

Once the product is "on-board" the vessel, it usually takes one day to prepare documents and one day to get documents shipped to the customer for review and payment authorization. Shipments to Cuba are traditionally on Thursday, so document receipt by our customer takes place the following Monday. Documents are reviewed, and assuming no revisions are needed, payment by the customer is authorized on Tuesday. Our experience shows that payment posts to our account within 2 to 3 days from the date of authorization for payment. During this time period, the NFDM powder is held in DairyAmerica's account until our bank provides proof to us that the funds have been received in our account. Then, and only then, do we authorize release of documents so our customer can take possession of the NFDM.

It is important to reiterate and point out that under this commonly used international trading practice, the Cuban buyer will not gain control and ownership of the powder until payment has been made. This practice fully complies with the spirit and the letter of the "2000 Export Enhancement Act" (TSREEA).

Based on my understanding of OFAC's recent "redefinition", if the current ruling remains unchanged for payment of cash in advance—requiring "cash payments from Cuba before the U.S. commodities even leave the U.S. port"—we will see the remaining 6,000 MT (13.2 million lbs.) under current contracts in jeopardy of being cancelled. I have also heard that sales covered by a "letter of credit" may be considered by OFAC as an alternative form of payment to "cash in advance" for sales to Cuba. This not only adds another layer of complexity to making the sale, but also increases the cost and time to receive our funds on those sales. Today, we have

1,000 MT (2.2 million lbs.) of powder on hold that will not ship until we understand the ruling on payments, in order to remain compliant with the terms of sales to Cuba. There is now added costs for storage of the NFDM and cost of money, since we were going to ship on March 17 and are now on an indefinite hold. This is powder that was specifically produced, including added costs, to fit the particular needs of our Cuban customer.

Under our current contract, we have 2,014 MT (4.4 million Lbs.) of NFDM left to ship, including the 1,007 MT on hold. We have an additional 4,028 MT (8.9 million Lbs.) under separate contract scheduled for delivery from June to September 2005. Additionally, we are working to negotiate an additional 4,000 to 6,000 MT contract (8.8 million to 13.2 million lbs.) for delivery in late 2005/early 2006. We have been informed by Mr. Pedro Alvarez, Chairman and C.E.O. of Alimport that "cash payment in advance of leaving U.S. soil could lead to the cancellation of the remaining contract and halt discussions for additional sales". Unfortunately, 26 million lbs. of NFDM will then be required to find a new home either in the international or domestic market. While it is certainly not our most preferred buyer, one of those domestic markets is the Dairy Price Support Program (CCC). Dairy America has made huge efforts and investments to seek international markets as opposed to resorting to selling to the CCC. However, given OFAC's recent reinterpretation of trade regulations, we may find that we have no choice but to sell to CCC again, sooner than we ever expected because the U.S. government is creating new barriers to legitimate commercial outlets for our product.

It is ironic that while the United States Trade Representative, the National Milk Producers Federation, the U.S. Dairy Export Council fight unfair trade barriers imposed by foreign countries on a regular basis, the U.S. government is imposing new and detrimental trade barriers on its own industries. The U.S. agriculture surplus is disappearing at a rapid pace contributing to our huge national trade deficit. Meanwhile, we are constantly reminded by the government of the benefits of trade. Given these two forces, it is extremely difficult for us to understand why the U.S. government intends to force U.S. companies to forego export opportunities. We ask this committee to allow us to counter the increased level of imports with which the U.S. dairy industry must contend with opportunities in foreign markets, particularly those markets in which the United States has a natural advantage due to geographical proximity.

Thank you for your time and the opportunity to present DairyAmerica's specific concern regarding the "redefinition" of the term "payment of cash in advance" and its effect on trade with Cuba, and potentially other international customers.

STATEMENT OF CHARLIE KRUSE

Good morning, I am Charlie Kruse, president of Missouri Farm Bureau and a soybean and corn producer from Stoddard County, Missouri. In addition, I sit on the Board of Directors for the American Farm Bureau Federation and am Chairman of the AFBF Trade Advisory Committee.

We appreciate the opportunity to provide you our comments on recent actions taken by the Office of Foreign Assets Control (OFAC), Department of Treasury, to restrict the financial terms by which sales of U.S. agricultural products are made to Cuba. Farm Bureau has long-standing policy in support of expanding U.S. trade with Cuba.

Until passage of the Trade Sanctions Reform and Export Enhancement Act (TSREEA) in 2000, the Cuban market was closed to U.S. agricultural exports due to U.S. sanctions imposed in 1963. Since passage of TSREEA, U.S. agriculture has seen its sales to Cuba grow exponentially, and the Cuban export market has grown in importance. According to USDA/FAS ¹

our sales have gone from nearly zero in 2000 to almost \$400 million in 2004. Our sales to Cuba have almost doubled every year since 2001. Cuba is now our 25th largest export market. Our sales have included a variety of U.S. agriculture products including but not limited to wheat, rice, corn, soybeans, chicken, pork, eggs, dairy products, apples and live animals. But recent changes by OFAC to the regulations that guide acceptable payment terms by the Cuban government could reverse this trend.

On February 22, 2005, OFAC announced that it was redefining "payment of cash in advance." Under the new definition, cash payments from Cuba for U.S. agricul-

¹ USDA/FAS Export/Import Statistics for Bulk, Intermediate, and Consumer Oriented (BICO) Foods and Beverages

tural sales would have to be received by U.S. banks before the product could be shipped from U.S. ports. This new definition is significant in that "payment of cash in advance" is the most commonly used means for receiving payment from Cuba. The new definition reverses the original interpretation and established method for sales to Cuba.

Most contracts made with the Cuban government for the purchase of U.S. agricultural products have used "payment of cash in advance" as the method of payment. Under its original interpretation, U.S. agricultural products could be shipped to Cuba but all certificates, title and ownership of the goods would only be transferred once payment was received from Cuba. OFAC's new regulation ignores the original intent of Congress on "payment of cash in advance" under TSREEA. This could result in the loss of sales currently under contract in addition to all future sales to the country, and disregards contract sanctity, putting U.S. agriculture in the position of being viewed as an unreliable supplier.

U.S. agriculture has been making sales to Cuba under the original definition of "payment of cash in advance" since the enactment of TSREEA. Concern regarding the method of payment has never been raised by Congress, or until recently, OFAC. Why OFAC chose to review and reinterpret the definition of "payment of cash in advance" is not clear to us. We believe we have followed Congressional intent, as allowed under TSREEA and its regulations, of "payment of cash in advance."

OFAC's disregard of Congressional intent on "payment of cash in advance" has caused members of Congress to draft language to clarify their original position on this issue. Language in the Agricultural Export Facilitation Act of 2005 (H.R. 719) introduced by Reps. Jerry Moran (R-Kan.), "Butch" Otter (R-Idaho) and Jeff Flake (R-Ariz.) clarifies Congress' intent to sell agriculture goods, as authorized by TSREEA, by defining "cash payment in advance" as receipt of payment before transfer of title and release of physical control of goods to the seller. This provision gives all parties, including banks, clear guidance as to the authorized terms of payment. We believe this clarification would assure the terms of sale would not be misinterpreted or overly cumbersome. AFBF supports the Agricultural Export Facilitation Act of 2005 (H.R. 719).

The redefinition of "payments of cash in advance" will be costly to U.S. agriculture producers and companies. This new regulation jeopardizes current and future contractual sales to Cuba. According to Alimport, a Cuban buyer, outstanding agricultural sales contracts for more than 950,000 tons of agricultural products, worth more than \$200 million, could be affected by this regulation and are at risk because of current actions by OFAC. The products in jeopardy include corn, rice, wheat, chicken, soybean meal, soybean oil, soybeans, peas, milk, shortening, pork, lentils, chick peas, as well as many other consumer food products.

It is unlikely that Cuba would be willing to accept the newly defined "payment of cash in advance" as they would apply to outstanding contracts. The new definition of "payment of cash in advance" changes the terms under which existing contracts were written and creates a situation where products could be subject to seizure. Under current U.S. law, the U.S. government can seize Cuban assets on American soil. If Cuba purchases U.S. agriculture goods in the manner defined within the regulation, Cuba would risk possible seizure of the product because at the time of payment, ownership is transferred to Cuba while the product is still in U.S. ports.

Under the new regulation OFAC did provide a 30-day implementation period during which any outstanding contract, if filled and paid for by March 24, would not be held under the new regulation. Some of the outstanding contracts will be completed by this date but there are many other contracts with shipment dates for later in the year. While OFAC has mentioned that a special license could be requested to complete these sales, under current contractual terms there is no guarantee that such a license will be granted.

While we must look at the potential losses and risks to the U.S. agriculture sector created by this new regulation, we must also look at the overall issue of contract sanctity raised by these actions. We again do not understand why OFAC would risk possibly nullifying all outstanding contracts rather than make the changes effective only for new contracts. It is our understanding that not since President Jimmy Carter ordered a complete U.S. grain embargo against the Soviet Union in 1980 have U.S. agricultural export contracts been nullified by an action of the U.S. government.

The sanctity of U.S. agricultural export sales contracts is important to U.S. agriculture in maintaining and growing export market share. Current actions by OFAC will lead Cuba, and possible other purchasers of U.S. agriculture products, to question whether the U.S. is a reliable supplier. These actions may also force Cuba to look to our competitors to fill its agricultural import needs.

While OFAC has tightened the definition of "payments of cash in advance," it will continue to allow purchases to be made through a letter of credit from a third country financial institution, as allowed under TSREEA. While this does not resolve the current situation it is an option for current contracts and future sales, but again this option also comes with its own cost to all parties involved, including U.S. agricultural producers.

If Cuba determines the new definition of "payment of cash in advance" is unacceptable, it is expected that current outstanding contracts with "payments of cash in advance" as the payment option will be nullified after March 24. U.S. companies will need to renegotiate the payment terms of these contracts to replace "payments of cash in advance" with letters of credit. As U.S. exporters renegotiate the payment terms there is nothing prohibiting the Cubans from renegotiating other terms of the contract such as price.

Also, letters of credit come with their own increased financial cost to Cuba because of the risk involved by third country banks. These costs would not only affect future contracts but current renegotiated contracts as well. This could lead to less U.S. agricultural product being purchased because of increased business costs to the Cubans.

We have no explanation why OFAC has taken this action. These new regulations ignore both the spirit of Congress under TSREEA and the sanctity of contractual obligations. These actions come with a cost to U.S. agricultural producers and companies who are dependant on trade. The U.S. encouraged producers to support fair and open trade. We have been advocates for opening new markets and working to maintain and grow our market share in the world. The actions taken by OFAC send the opposite message; reinterpretation will make it more difficult for us to maintain or increase our current Cuban market share.

It is critical to U.S. agricultural trade that this issue be resolved in a manner that does not jeopardize exports, current or future, to Cuba and is clear in its intent as to what is allowed under the law.

STATEMENT OF ROBERT WRIGHT

Good morning. Thank you, Chairman Goodlatte for the opportunity to present the views and recommendations of the National Chicken Council and National Turkey Federation regarding the very important issue of U.S. agricultural trade with Cuba, especially with respect to poultry. Mr. Chairman, Congressman Peterson, and Committee members, we appreciate the strong and vital interest you have shown with respect to the issue of today's hearing.

My name is Robert (Bob) Wright and I am Executive Vice President, Sales and Marketing for Pilgrim's Pride Corporation. My company has poultry and egg operations in the States of Virginia, Texas, Pennsylvania, Alabama, Arkansas, Georgia, Kentucky, Louisiana, North Carolina, Tennessee, West Virginia, Arizona, California, Iowa, Mississippi, Utah and Wisconsin. More than 5,000 dedicated family farmers work hard each day to help us produce the chickens, turkeys, and eggs we need to serve our customers here at home and abroad. Pilgrim's Pride is a publicly traded company and is listed on the New York Stock Exchange under the symbol PPC.

Exports Are Critical. Although the major enterprise for Pilgrim's Pride is our young meat chicken (broilers) operations, our turkey and egg operations contribute very significantly to our company's success. Over the past 15 years it has become more and more critical that my company, like most major poultry companies, export a significant share of our production, especially chicken leg quarters. Market analysts have calculated that at least 40 percent of the chicken leg quarters produced must be exported if the industry is to have a reasonable opportunity to make a fair return on our investment. To achieve 40 percent, each and every export market must be fully-serviced so that marketing opportunities are not diminished nor lost. U.S. consumers overwhelmingly prefer chicken and turkey breast meat compared with the back-half of the bird. So, exporting leg quarters and other leg meat is critically important in balancing supply with demand.

Cuba is the seventh largest market for U.S. poultry exports. Since December 2001, U.S. exporters have sold for cash almost 200,000 metric tons of poultry valued at over \$127.5 million. The vast majority of these exports have been chicken leg quarters. At the same time, however, it is important to note that the turkey products being exported to Cuba are especially important for those turkey companies engaged in this export business.

OFAC Action Unnecessary. So, you can appreciate my dismay and my fellow industry men being disheartened on February 22 when the Office of Foreign Assets Control (OFAC)/U.S. Department of Treasury announced its re-interpretation of cer-

tain rules governing U.S. agricultural exports to Cuba. Such re-interpretation by OFAC was not necessary. When trade began in December 2001 and until now, U.S. poultry exporters, just as other U.S. agricultural product exporters, have followed the rules and regulations that were developed to implement the 2000 Export Enhancement Act (TSREEA). U.S. poultry exports believe they have been following both the intent of Congress and the spirit of the Act when payment was made by the Cuban buyer prior to receiving title to the product. Payment of cash in advance of the product changing ownership is clearly what Congress intended. But, under the recent re-interpretation by OFAC, that arrangement, which has functioned well for more than three years, is not an option. I continue to wonder why OFAC's action at this time was necessary.

Exports of poultry, like other farm products, to Cuba are now in jeopardy of being lost. Putting these exports at risk was not necessary. Over the years, the National Chicken Council, the National Turkey Federation, and I, personally, have applauded when the U.S. government has publicly stated on occasion after occasion that the United States will be a reliable supplier of the world's food needs and that unilateral government actions that abrogate contracts for export will not happen. How do U.S. poultry exporters explain to the Cuban buyer that the contracts signed in good faith can no longer be honored? Surely, OFAC could have opted to allow existing contracts for exports to Cuba to be valid. I hope someone can explain how setting this very unfortunate precedent is in the national interest of the United States.

OFAC does continue to permit exports with the use of letters of credit through third countries. It remains to be seen if this option is actually viable for poultry exports. If it is viable, there could be significant additional costs compared with the payment of cash in advance option.

Recommendations: Since it is critically important that U.S. poultry exports to Cuba not be disrupted, or worse, I believe it is imperative that OFAC re-evaluate its decisions regarding existing contracts and permit these contracts to go forward until the agreed-upon transactions are completed. At the same time, I urge this Committee to work with the full House of Representatives to promptly pass legislation that clearly and fully defines the term "payment of cash in advance" so that trade can continue as it has since December 2001.

U.S. poultry producers and exporters look forward to working with the Committee and your fellow Congressmen to accomplish what Congress clearly thought it has done when it passed in October 2000 the 2000 Export Enhancement Act. As the title of the law states, TSREEA was designed to enhance exports and promote farm goods exports to help build a stronger U.S. agriculture sector.

I would be pleased to respond to your questions regarding this very important issue.

Thank you again for the opportunity to share my thoughts and recommendations.

STATEMENT OF STEPHEN FRUECHTE

I wish to express my opinion on the U.S.- Cuba trade situation. I am a farmer from southeast Minnesota. I raise corn, soybeans, hay and bison. I have made two shipments of bison to Cuba.

The U.S. Trade Embargo on Cuba and the Travel Ban for U.S. Citizens must end. Lifting the sanctions and becoming friends with our Caribbean neighbor is long overdue.

In December I made my second trip to Havana where I attended the Third Anniversary of the First Shipment to Cuba since the embargo. Over 340 lawmakers, producers and representatives from 165 U.S. companies in 30 States traveled to Havana to negotiate contracts totaling \$125 million for the sale of U.S. products. In 2000, the Trade Sanctions Reform and Export Enhancement Act authorized U.S. companies to export food, agricultural and medical products to Cuba on a cash-only basis after the destruction caused by Hurricane Mitch. Cuba has contracted to buy more than \$1 billion in American farm goods since it began taking advantage of the exception in 2001. Cuba is now the 21st largest customer for U.S. ag products.

Cuba is a logical trading partner with the U.S. They currently import \$4.5 billion of products from the rest of the world. Cuba imports approximately \$1 billion in food and \$1 billion in medicine annually. This amount could double with reduced freight costs from a closer source. While our country struggles in the face of a huge trade deficit, we have a willing trading partner only 90 miles from Florida.

Trade however is a two way street. For Cuba to purchase U.S. goods they need to have a source of revenue to pay for them. Thus we need to end the travel ban for U.S. citizens. Allow Americans to visit Cuba. Let them savor the warmth and

beauty of the “Jewel of the Caribbean,” Permit them to enjoy the culture and hospitality of Cuba.

Cubans harbor little animosity towards Americans. They only wish to become friends. They ask questions like, “Why do Americans hate the Cuban people?” and “Why does your government enforce policies that create undue suffering and hardship for the people of Cuba?” Both the Cuban people and Cuban government welcome U.S. travelers to Cuba.

Recently, Chinese President Hu Jintao visited Cuba offering strong political and financial support. He pledged \$500 million for a new nickel plant and \$15 million for education and health care. These investments symbolize China’s growing influence in Cuba, a country right in America’s backyard. Are we forgetting history from only 40 plus years ago? Actions by the Treasury Department’s Office of Foreign Assets Control caused some companies trading with Cuba to find Cuban payments were not being credited to U.S. bank accounts. This led Cuba to buy wheat, corn, soy products, powdered milk and chicken from other countries. The purchases meant U.S. companies missed out on about \$100 million of sales. The latest ruling by the Treasury Department that requires payment before loading of ships is another slap in the face to U.S. agriculture and marks us as an unreliable supplier. The embargo was imposed more than 40 years ago. However as is the case with other embargos, it has proven to be ineffective at controlling the leadership of a country. It only serves to burden its people. Lift the embargo. Allow free trade and travel between neighbors. Open up a larger market for U.S. ag products and create new markets for other U.S. goods and services. Improve the economies of both countries. Improve the conditions of those who carry the burden of a failed political policy. Sincerely,

STATEMENT OF RALPH AND FILOMENA KAEHLER

“Why develop a friend 80 miles off of our coast, when we can create another enemy instead?”

That is what the supporters of the embargo and the recently imposed anti-free trade restrictions are doing.

The Ralph Kaehler Family (Ralph, Filomena, Cliff, and Seth) of St. Charles, Minnesota, has been actively involved with Cuban trade and humanitarian issues since the U.S. Food & Agribusiness Exposition in Havana, Cuba September, 2002. We are a family owned farming operation in southeast Minnesota—Congressman Gil Gutknecht’s area. We raise and sell beef breeding stock, corn, and soybeans on our farm that has been in the family since 1881.

Our boys are 13 and 15 years old—we want them to go to Cuba to continue negotiating contracts—rather than having them sent there with a gun to help keep peace—if the flawed policy of the U.S. Government continues. The last UN vote on the issue of ending the USA embargo toward Cuba, was 173 to 3.

1) We need to end the embargo with Cuba. To paraphrase Minnesota Speaker of the House Steve Swiggum, “If you don’t trade food with a country, you end up trading bullets.”

(2) Until we end the embargo, we need to interpret the rules of trade with Cuba as Congress intended.

(3) We need to have direct banking between U.S. & Cuba to reduce our expenses, make food products more competitive, and make it easier to receive and track payments.

Our small operation has had much success with trade with Cuba:

- exported first livestock since the embargo
- conducted feeding trials and sold the first Distillers Dried Grain
- sold the first large group of dairy and beef heifers first shipment July 2003, second shipment Jan 2005
- sold the first bison
- sold the first sheep—which included 3 different breeds
- negotiated the first letter of intent to purchase Powdered Milk—November 2003

Our family’s pending and current contracts that will be negatively impacted by the recent restrictions of free and democratic trade by our government’s new interpretation are:

- 10,000 MT Distillers Dried Grain
- 2nd sheep contract, 30–60 head
- beef and dairy breeding stock, 300 head
- Embryos from our boys’ 4– cattle herd

This will have a severe impact on our family farm business, along with the other farmers who supply us the products.

As one looks into the U.S. Cuba policy, you encounter a broad range of stories and emotions. On our first visit, we went to Cuba with a neutral stance regarding the US-Cuba policy—but now, we wholeheartedly agree with the following observation which so eloquently captures the typical American’s response upon seeing the situation for himself, “If you go to Cuba politically neutral, you will come back an advocate to end the embargo.”

Our family and all 23 producers and business people who traveled to Cuba with us for Alimport Negotiations Events have come back as, “Ardent Advocates for Normalization of Trade Relations with Cuba.” These farmers and businessmen that traveled with us represent the following Agricultural business groups: Beef cattle, Dairy cattle, Sheep, Bison, Sugar Beets, Corn, Soybeans, hay, Edible Beans, Brokerage companies, and journalists.

Cuba is the first nation to buy large quantities of U.S. live beef and dairy breeding stock since the discovery of the BSE cow in December of 2003. Of all the nations that could have shown support for U.S. cattlemen—Cuba stepped up to the plate first.

Other credits to Cuba—it has grown to be our 25th largest export market—we cannot use the term “partner” as our trade with Cuba is one way, due to our Government’s restrictions of imports from Cuba.

In a Democracy, the majority is supposed to rule, not an elite minority. As long as the embargo is in place, this minority is ruling. We respectfully ask you to end the embargo that has been so ineffective, threatens peace with our neighbor, and has been detrimental to both the Cuban people and the American Farmer. In the immediate future, we request that you support the Cuban Trade Facilitation Act of 2005 as introduced by Senator Baucus.

Thank you for taking the time to hear our concerns.

**NATIONAL CHICKEN COUNCIL**1015 FIFTEENTH STREET, NW, SUITE 930
WASHINGTON, DC 20005PHONE: 202-296-2622
FAX: 202-293-4005

March 25, 2005

Honorable Robert Goodlatte
Chairman
Committee on Agriculture
1301 Longworth House Office Building
Washington, DC 20515-6001

RE: Question Regarding Cost of Letters-of-Credit for Exports to Cuba

Dear Chairman Goodlatte:

Thank you again for holding the March 16 Committee hearing regarding agricultural trade issues with Cuba. Your leadership in helping U.S. agricultural exporters to continue to conduct business with Cuba is appreciated.

At the hearing you asked Robert Wright with Pilgrim's Pride a question regarding the additional cost of using letters-of-credit rather than having transactions continue on a cash basis. Mr. Wright asked that I assist him in providing this response to your question.

After conferring with a number of U.S. poultry exporters who service the Cuban market and certain other knowledgeable persons, it can be concluded that using letters-of-credits to finance poultry and other agricultural exports to Cuba will add 1½ to 2 percent to the overall cost of the transaction when compared to the previously permitted cash arrangement. Although this cost is a very important consideration regarding whether or not U.S. poultry exports will continue to Cuba, an even more important impediment may be involved with having to do business on a strictly letter-of-credit basis. As U.S. exporters have re-negotiated contracts with the Cuban importer, they are being confronted with the situation that financial lending institutions are placing a limit on the total amount of credit they are willing to extend to Cuba. In other words, with the rapid and sizeable shift of business from cash to credit, lenders are being cautious that the combined amount of credit to Cuba does not exceed Cuba's capacity to service this debt on an on-going, timely, and sufficient manner.


Future export sales may be limited or even halted if Cuba reaches its credit limit. At this time, it is difficult to determine what that limit may be, but the limit will likely be known in the next few weeks. It also should be better understood in the near future the extent to which this limit will negatively impact U.S. agricultural exports to Cuba.

Honorable Robert Goodlatte Letter
Page--2

Permit me to also take this opportunity to express the National Chicken Council's disappointment with the decision by the Office of Foreign Assets Control to reject the request in the March 15 petition filed by 33 organizations. The petitioners had hoped OFAC would permit export contracts as of February 22, 2005, to be transacted according to the previously agreed-upon terms.

The National Chicken Council, especially our members who export to Cuba, looks forward to continuing to work with you and the Committee so that U.S. poultry companies are again permitted to conduct transactions on a cash basis as Congress intended when it passed the Export Enhancement Act of 2000.

Sincerely,



William P. Roenigk
Senior Vice President

ptg

cc: Lynn Gallagher
Senior Professional Staff Member
Committee on Agriculture

**Review of Agricultural Trade with Cuba:
Threatening Rice Producers' Fastest
Growing Market**

**Testimony of
Dennis R. DeLaughter**

**On behalf of
U S Rice Producers Association
and the
USA Rice Federation**

**Before
The Committee on Agriculture
U.S House of Representatives**

March 16, 2005

INTRODUCTION

Good morning Mr. Chairman and Members of the Committee. I am Dennis DeLaughter, a rice farmer from Edna, Texas. I am the past Chairman of the U.S. Rice Producers Association. I currently serve on the Association's International Trade Committee, and also serve on the Department of Agriculture's Agriculture Technical Advisory Committee on Trade. My testimony today has also been endorsed by the USA Rice Federation.

Thank you for holding this timely hearing to review the state of U.S. agricultural trade with Cuba. In only 3 years since U.S. rice exports to Cuba resumed in December of 2001, Cuba has grown to be among our top 5 largest single country export markets for U.S. rice. The February 22, 2005, announcement of new restrictions on that trade by the Treasury Department's Office of Foreign Assets Control (OFAC) threatens to disrupt our exports to Cuba and to degrade our reputation as a reliable supplier of grain to the world market – a reputation that Congress and U.S. farmers have been working steadfastly to rebuild and maintain since the embargo of U.S. agricultural exports to the Soviet Union in 1980.

CUBA: AMERICA'S LARGEST NATURAL RICE MARKET

In 1951, Cuba was the destination for 252,878 metric tons of US rice, approximately \$52 million in sales that represented 51% of US rice exports at that time. Rice exports to Cuba during the period between 1951 and 1960 averaged approximately 169,000 metric tons, valued at \$37 million annually and accounting for 25% of all rice exports for the decade.¹ Following the overthrow of the Batista government in 1959, the U.S. unilateral embargo closed that market in 1960.

The US rice industry has grown tremendously in the past 40 years. US rice production is expected to fall slightly from last year to approximately 10.0 million metric tons in 2005. Approximately 45% of the US crop moves into export channels.

Today, Cuban demand for rice is approximately 600,000 tons of milled rice per year. The island's rice-growing area, with average production limited to approximately 200,000 tons, has ensured consistently strong import demand

¹ A total of 1.7 MMT, base on US Department of Commerce estimates (SEE Attachment A).

over the last half of the 20th century. Until recently, Cuba has purchased approximately 400,000 tons of rice annually, mostly from China, Thailand and Vietnam. This quantity represented approximately \$100 million in annual trade that was occurring just off the US coast – but without US involvement or benefit.

In addition to shutting off exports to Cuba, export embargoes imposed unilaterally by our government represent one of the greatest impediments to the enhanced exports of U.S. rice. For example, the largest market for U.S. rice in the 1950s was Cuba, in the 1970s it was Iran, and in the 1980s it was Iraq. Rice farmers have known for decades what the U.S. Department of Agriculture concluded in 1997, that “Of all grains exported by the United States, rice has been particularly hard-hit by trade restrictions.”² The Department went on to note that such unilateral trade restrictions had put more than 13 percent of projected global rice import demand off-limits to U.S. farmers and exporters.

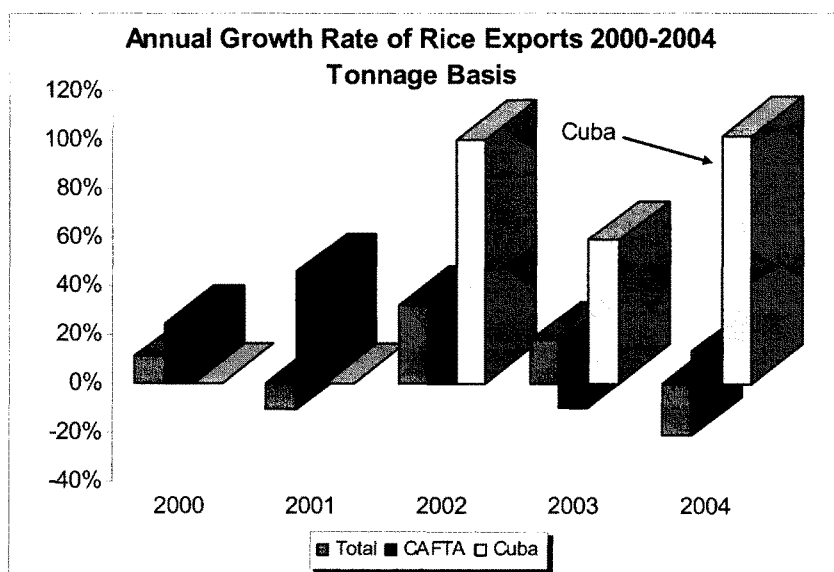
THE 2000 EXPORT ENHANCEMENT ACT REOPENS RICE TRADE WITH CUBA

Thanks to the leadership of Senators John Ashcroft, Richard Lugar, and Byron Dorgan and Representatives George Nethercutt and Jo Ann Emerson, among many others, Congress provided for the resumption of trade with Cuba when it passed the Trade Sanctions Reform and Export Enhancement Act of 2000. The Act sought to achieve its goal of enhancing U.S. agricultural export opportunities by explicitly exempting sales of food and medicine from the exercise of any economic embargo. In order to prevent the extension of credit to Cuba by any U.S. entity, the Act limited the financing terms of sales to Cuba to either—

- (A) Payment of cash in advance; or
- (B) Financing by third country financial institutions (excluding United States persons or Government of Cuba entities), except that such financing may be confirmed or advised by a United States financial institution.

² **A Review of U.S. Trade Restrictions and Grain Exports**, Foreign Agriculture Service, U.S. Department of Agriculture, http://www.fas.usda.gov/grain/circular/1997/97-09/feature/trd_rstr.htm.

Cuba first made purchases of U.S. agricultural products under the new Export Enhancement Act authorities in December 2001. Since that time, Cuba has contracted to purchase approximately \$1.25 billion worth of U.S. agricultural goods. Approximately \$1 billion of agricultural goods have already been delivered and paid for. These purchases included shipments of nearly 320,000 tons of U.S. rice, worth a reported \$81 million. In 2004 the Cubans bought \$64 million worth of U.S. rice – more than their purchases of any other commodity. This established Cuba as our fastest growing market overall, and one of the top five customers for long grain rice.



The majority of this trade was conducted on a cash basis, pursuant to licenses issued by the Department of Commerce. Cuban purchasers generally paid promptly, and there has been no extension of credit to Cuba by US entities. Clearly, the bipartisan improvements made by Congress in the 2000 Act were working to enhance exports on a cash basis, as Congress had intended.

OFAC's NEW TRADE RESTRICTIONS THREATEN U.S. EXPORTS

Beginning in November of 2004 OFAC began holding up payments to U.S. sellers doing business with Cuba, and reportedly began imposing new regulatory reviews and/or licensing requirements on U.S. sellers and their banks that slowed payments to U.S. sellers. In response to these new restrictions on trade, a long list of Members of Congress, including Chairman Goodlatte, wrote to the Department of the Treasury and other Executive branch agencies to express their concern regarding the imposition of new restrictions on trade with Cuba.

Despite these urgings from Congress, on February 22, 2005, OFAC issued a Final Rule revising the regulations governing the payment terms permitted for the sale of licensed agricultural products to Cuba (70 Fed. Reg. 9225; the "Final Rule"). The Final Rule was published without any prior notice to Congress or to the exporting community, nor was any opportunity afforded for comment on the Final Rule by the agricultural or exporting communities.

We are disappointed that in imposing this new restriction on exports to Cuba, OFAC has ignored the requirement in section 903 of the 2000 Export Enhancement Act that prohibits the President from imposing any new restriction or condition on commercial export sales of agricultural commodities unless the President submits a report to Congress regarding the restriction 60 days before its imposition, AND the Congress enacts a joint resolution approving the report.³ It is difficult for rice farmers to agree with

³ Section 903(a) of the Export Enhancement Act (22 U.S.C 2207(a)) reads as follows:

"Sec. 903. Restriction.

"(a) New sanctions. Except as provided in sections 7203 and 7204 of this title and notwithstanding any other provision of law, the President may not impose a unilateral agricultural sanction or unilateral medical sanction against a foreign country or foreign entity, unless –

"(1) not later than 60 days before the sanction is proposed to be imposed, the President submits a report to Congress that -

"(A) describes the activity proposed to be prohibited, restricted, or conditioned; and

"(B) describes the actions by the foreign country or foreign entity that justify the sanction; and

"(2) there is enacted into law a joint resolution stating the approval of Congress for the report submitted under paragraph (1)."

Footnote 3, continues...

OFAC that the new “interpretation” is not a restriction or condition on trade when the interpretation calls into question the legality of more than \$1 billion in exports over more than 3 years, renders invalid \$250 million worth of open agricultural export contracts, and imposes new requirements to finance trades through banks in foreign countries.

Mr. Chairman, it is our understanding that the Department of Agriculture was active in interagency discussions prior to the announcement of the Final Rule. We appreciate the efforts of Members of Congress like you, as well as the efforts of USDA officials, who tried to warn of the many complications that such a rule will impose on U.S. exports. Unfortunately, the Final Rule will nonetheless have very negative impacts on pending sales, future sales, and the export prospects and livelihoods of U.S. farmers.

CURRENT VALID CONTRACTS VOIDED: At the time the Final Rule was announced, U.S. exporters had pending contracts for sales of approximately 950,000 metric tons of agricultural goods to Cuba worth a delivered value of approximately \$250 million. The contracts are with approximately 50 U.S. exporters from 30 different states, with the substantial majority of the sales for delivery after March 24, 2005. The agricultural goods include wheat, corn, rice, chicken, soy meal, soy oil, soybeans, peas, milk, shortening, mayonnaise, margarine, chocolate, crackers, canned evaporated milk, apples, cattle, animal feed, pork fat, port hams, lentils, chick peas, tomato paste, spices and other assorted consumer food products.⁴ This included sales contracts for an estimated 50,000 tons of rice, valued at about \$ 15 million.

The performance of some of these contracts is scheduled to occur as late as December of this year. The Final Rule precludes U.S. exporters from performing these contracts pursuant to the contracts’ payment terms after March 24, 2005. After March 24, only contracts financed through third country financial institutions may go forward. Pending rice sales estimated at \$15 million, and hundreds of millions of dollars worth of other

Footnote 3, continued...

Section 902(6) and 902(2)(E) of the Act make clear that the prohibited unilateral agricultural sanctions under section 903(a) include “any prohibition, restriction, or condition on carrying out” “any commercial export sale of agricultural commodities”.

⁴ Information provided by Alimport on or about March 8, 2005.

agricultural products under open contracts would be rendered void by OFAC's Final Rule.

Losing the sale (unless the Cubans are gracious enough to renegotiate the contracts' payment terms) will expose exporters to the possibility of experiencing a loss on any hedge position that the exporter took at the time the contract was entered into. The eventual losers in this case will be the American farmers, as previously booked export sales are reversed, and the commodities that had been booked for export flow back onto the domestic market.

If Cuba does not insist on the original contract payment terms, the payment terms will need to be renegotiated, and the increased costs will almost inevitably be born by the U.S. exporter. In the future, the costs associated with such uncertainties in selling farm goods to Cuba will, again, reveal themselves in lower prices paid to U.S. farmers.

U.S. AGRICULTURE'S REPUTATION DIMINISHED: The Final Rule sends the wrong message to American agriculture's global trading partners. We understand that this is the first time since President Carter ordered an embargo of American grain for sale to the former Soviet Union in January 1980, that the United States has adopted regulations that preclude U.S. exporters from performing existing contracts for the sale of agricultural goods. Until the February 22 Final Rule, trade sanctions have generally allowed existing contracts to be completed. Protecting the sanctity of U.S. agricultural export sales contracts is essential for American agriculture to maintain and grow its export market share in an industry where one third of U.S. products must be exported. The February 22 Final Rule will inevitably raise questions around the world concerning the reliability of the U.S. as a supplier of agricultural goods, to the detriment of the U.S. agricultural industry and American farmers.

FUTURE TRANSACTION COSTS INCREASED: Unfortunately, OFAC's Final Rule effectively requiring the use of letters of credit through third country financial institutions will increase the transactional costs for U.S. agricultural sales. These costs will fall disproportionately on small exporters, many of whom will be run out of the market by the increased costs and complexities of the trade. The costs of these reduced sales will ultimately be borne by U.S. farmers.

IT IS NOT TOO LATE:

If allowed to remain in place, OFAC's unilateral changes in the terms of these sales breach existing sales contracts, threaten opportunities for future sales, and brand U.S. agriculture as an unreliable supplier in world agricultural markets. But it is not too late to prevent or diminish these undesirable consequences, through any one of a number of avenues.

1. Reverse the OFAC February 22 Final Rule.

All U.S. rice producers and millers agree with Chairman Goodlatte and the dozens of other Members of the House and Senate who expressed their opposition to the imposition of new restrictions and conditions on the cash sale of agricultural products to Cuba. We believe that the more than \$1 billion in sales to Cuba on a cash basis during the past 4 years have proven the wisdom of Congress and the resilience of our agriculture industry in beginning to recapture what was once our largest rice market. The most efficient, effective method to protect and enhance this market is for OFAC to reverse the Final Rule.

2. Honoring Existing Contracts.

If the February 22 Final Rule is not reversed, OFAC should amend the Rule to allow contracts that were in place as of that date to be honored under their original payment and other terms. To fail to do so will establish a precedent of ignoring the importance of contract sanctity, to the detriment of the U.S. agriculture's reputation as a reliable international supplier for years to come.

3. Reiterating and Clarifying Existing Law.

We urge Congress to enact legislation reiterating the intent of Congress that the payment of cash in advance under the 2000 Export Enhancement Act was indeed intended to enhance trade, not to restrict it. This issue is addressed in section 5 of H.R. 719, the Agricultural Export Facilitation Act of 2005, which was introduced by Congressman Moran of Kansas. We urge the swift enactment of legislation to reiterate the intent of Congress that exports financed by the payment of cash in advance be allowed to continue on the same basis that has been successfully used for \$1 billion in exports during the past 4 years.

4. Insisting on Strict Future Compliance with Section 903.

Congress should insist that OFAC and future Administrations respect the requirement in section 903 of the 2000 Export Enhancement Act that prohibits the imposition of new trade restrictions or conditions absent the prior notice to, and approval by Congress. If OFAC is permitted to invalidate contracts for more than \$250 million in exports by “interpreting” one term in the law after more than \$1 billion of successful trade under that law, rice producers are very concerned that there will be nothing to stop the total shut down of exports to Cuba by a similar “interpretation” of the Act’s third country bank financing provisions in the future.

CONCLUSION: IRONY

Mr. Chairman, it seems ironic to rice producers and millers that it is only the hoped for graciousness of Cuban buyers that will prevent the revocation of hundreds of millions of dollars in sales of rice and other farm goods to Cuba. It is our government that is restricting the trade, and we must rely on the Cubans to allow trade to go forward in spite of these restrictions.

We are particularly concerned that we risk losing a potential \$100 million market that is so close to our own shores. The loss of this market would be especially acute because there are so many other markets that are already unavailable to us because of tariff and nontariff barriers, or by other unilateral sanctions imposed by our own government.

One glance at a world atlas will tell you that the US rice industry in the Mississippi Delta and along the Gulf Coast have a tremendous transportation advantage over their Asian competitors in reaching the Cuban rice market. US rice farmers and millers have already begun to penetrate the Cuban rice market with high-quality rice that Cuban consumers prefer over cheaper Asian rice.

US rice farmers have been told that export markets are our markets of the future. When these markets are closed off, everyone in the industry is hurt, and farmers predictably pay the ultimate costs of lost markets from their own pockets. These are unnecessary costs that rice farmers should not be asked to pay, especially when pending budget proposals would reduce the farm safety net on which farmers depend here at home.

All we are asking is that the law be allowed to operate as Congress intended, and that the US industry have an opportunity to compete for this very promising market, without undue restriction from our own government.

I look forward to addressing any questions that you may have.

Thanks you.

Attachment A
Cuba's Share Of Total US Rice Exports, by volume and value, 1951-61*

Table 9. Cuba's share of total U.S. rice exports, by volume and value, 1951-61

Year	U.S. exports		Cuban imports from U.S.		Cuba's share ^a	
	Quant.	Value	Quant.	Value	Quant.	Value
	Metric tn	million \$'s	metric tn	million \$'s	-----%-----	
1951	493,498	94	252,878	52	51.2	55.3
1952	800,402	157	219,282	50	27.4	31.8
1953	707,332	154	253,786	50	35.9	32.5
1954	568,862	107	162,532	38	28.6	35.5
1955	454,454	81	96,702	21	21.3	25.9
1956	824,010	132	144,826	27	17.6	20.4
1957	740,928	124	187,048	40	25.2	32.3
1958	573,856	97	187,048	40	32.6	41.2
1959	690,080	105	171,612	36	24.9	34.2
1960	893,472	130	15,890	17	1.8	13.1
1961	806,758	106	b	b	b	b

^a Calculated by the authors.

^b Minimal amounts before the economic embargo was totally enforced.

Source: U.S. Department of Commerce (various issues).

* Alvarez, J. and W. A. Messina, Jr., Cuba's Rice Industry: Potential Imports From Florida, International Working Paper 92-27, Food and Resource Economics Department, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, Florida, September 1992.

STATEMENT OF MILTON SANCHEZ-PARODI, M.D.

I have seen the new interpretation by the Office of Foreign Assets Control of the U.S. Treasury Department of the regulations relating to the sales of allowable products to Cuba have a chilling effect on sales. This reinterpretations can impact businesses here in Ohio.

Vista Trade Group, a company with offices in Louisiana, Ohio, California, and Washington, DC and formed by Cuban-Americans to promote sales of food and medicines to Cuba, as set forth by the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSREEA) has experienced hesitation from businesses previously willing to sell their products in Cuba. This hesitation is directly related to these new OFAC reinterpretations.

It is not hard to see how businesses would be hesitant to sell, when payments may be jeopardized. No business would have the same willingness to sell when payments may be delayed or altogether canceled.

The United States has always represented and defended freedom. Our own Republic stands on free enterprise and the Capitalist system. Yet, when it comes to Cuba, we seem to stand our fundamental values on its head (in the name of democracy) and legislate restrictions on free trade and freedom of travel, freedoms which are basic to the foundations of our Republic.

That is why I ask members of this committee to not succumb to machinations of a few Members of Congress and an office of the U.S. Treasury Department which results in reversing the will of Congress as represented by the TSREEA of 2000.

Please stand for freedom of trade and travel. History well shows that restricting freedom is not a long lasting solution.

Enhancement of business practices, and allowing freedom of movement will solidify our values and serve as an example to others of the benefits of freedom.

Restricting our freedoms only serves those who seek to control the freedom of others and is antithetical to American values.

Thank you kindly for the opportunity of expressing my testimony.

