

CRS Report for Congress

Cuba: Issues for the 110th Congress

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Summary

Since the early 1960s, U.S. policy toward Cuba under Fidel Castro has consisted largely of isolating the communist nation through comprehensive economic sanctions, which have been significantly tightened by the Bush Administration, including restrictions on travel, private humanitarian assistance, and payment terms for U.S. agricultural exports to Cuba. A second component of U.S. policy has consisted of support measures for the Cuban people, including private humanitarian donations and U.S.-sponsored radio and television broadcasting to Cuba.

As in past years, the main issue for U.S. policy toward Cuba in the 110th Congress will be how to best support political and economic change in one of the world's remaining few communist nations. Unlike past years, however, Congress is now examining policy toward Cuba in the context of Fidel Castro's temporary, and potentially permanent, departure from the political scene because of health conditions, which could foster a re-examination of U.S. policy. Although there has been broad agreement in Congress on the overall objective of U.S. policy toward Cuba — to help bring democracy and respect for human rights to the island — there have been several schools of thought on how best to achieve that objective. Some advocate maximum pressure on the Cuban government until reforms are enacted; others argue for lifting some sanctions that they believe are hurting the Cuban people, or as part of a strategy of lifting sanctions incrementally in response to positive changes in Cuba. Still others call for a swift normalization of U.S.-Cuban relations.

Over the past several years, Congress has continued its high level of interest in Cuba with a variety of legislative initiatives regarding sanctions and human rights. Although one or both houses have at times approved legislative provisions that would ease U.S. sanctions on Cuba, ultimately these provisions have been stripped out of the final enacted measures. President Bush has regularly threatened to veto various appropriations bills if they contained provisions weakening the embargo.

Legislative action on several FY2007 appropriations measures was not completed in the 109th Congress, so action can be anticipated in 2007. House-passed H.R. 5522 would have funded FY2007 Cuba democracy projects, and House and Senate versions of the bill had contrasting provisions on anti-drug cooperation with Cuba. Other bills addressed provisions on agricultural exports, travel, and Cuba broadcasting. In the 110th Congress, several measures have been introduced that would ease Cuba sanctions — H.R. 177 (educational travel), H.R. 216 (Cuban baseball players), and H.R. 217 (overall embargo) — while one measure would tighten sanctions — H.R. 525 (related to U.S. fugitives in Cuba).

This report will be updated regularly. Also see CRS Report RL33622, *Cuba after Fidel Castro: U.S. Policy Implications and Approaches*; CRS Report RL31139, *Cuba: U.S. Restrictions on Travel and Remittances*; CRS Report RL32251, *Cuba and the State Sponsors of Terrorism List*; CRS Report RL33499, *Exempting Food and Agriculture Products from U.S. Economic Sanctions: Status and Implementation*; CRS Report RS20468, *Cuban Migration Policy and Issues*; and CRS Report RL32730, *Cuba: Issues for the 109th Congress*.

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Recent Developments

On January 11, 2007, a federal grand jury in Texas indicted Luis Posada Carriles for lying about how he entered the United States illegally in March 2005, an indictment that could justify his continued detention. Posada had been imprisoned in Panama for several years for involvement in a plot to assassinate Fidel Castro, and allegedly was involved in the 1976 bombing of a Cuban airliner.

In January 11, 2007 testimony before the Senate Select Committee on Intelligence, Defense Intelligence Agency Director Lt. Gen. Michael Maples stated that “Raúl Castro is firmly in control as Cuba’s acting president and will likely maintain power and stability after Fidel Castro dies, at least for the short-term.”

In December 2006, the Office of Cuba Broadcasting of the Broadcasting Board of Governors contracted with a commercial television station and a commercial radio station in Florida to broadcast some Radio and TV Marti programming on a daily basis in order to overcome broadcast jamming by the Cuban government.

On December 12, 2006, independent Cuban journalist Guillermo Fariñas Hernández received the 2006 Cyber Dissident award from the Paris-based Reporters Without Borders. Fariñas went on a seven-month hunger strike in 2006, demanding broader Internet access for Cubans.

On December 6, 2006, the Cuban government released dissident Hector Palacios from prison for health reasons. Palacios, who had been sentenced to 25 years in prison, was part of the group of 75 democracy and human rights activists arrested in March 2003. Of the 75, 16 have been released for health reasons. Some 300 political prisoners in all remain jailed in Cuba.

In a December 2, 2006, speech, Raúl Castro reiterated an offer to negotiate with the United States, as long as it respected Cuba’s independence and as long as the results were based on “equality, reciprocity, non-interference, and mutual respect.”

On November 15, 2006, the Government Accountability Office (GAO) issued a report examining U.S. democracy assistance for Cuba from 1996-2005 and concluded that the U.S. program had significant problems and needed better management and oversight.

Political Conditions

Politically Cuba remains a hard-line communist state. Until he recently stepped down temporarily while recuperating from surgery, Fidel Castro ruled as head of state and government since the 1959 Cuban Revolution, which ousted the corrupt government of Fulgencio Batista. In April 1961, Castro stated that the Cuban Revolution was socialist, and in December 1961, he proclaimed himself to be a Marxist-Leninist. From 1959 until 1976, Castro ruled by decree. A Constitution was enacted in 1976 setting forth the Communist Party as the leading force in the state and in society with power centered in a Political Bureau headed by Fidel Castro. The Constitution also outlined national, provincial, and local governmental structures. Executive power has been vested in a Council of Ministers headed by Fidel Castro as President of the Council.

Legislative authority is vested in a National Assembly of People's Power, currently with 609 members, that meets twice annually for brief periods. When the Assembly is not in session, a Council of State acts on its behalf. As President of the Council of State until recently, Castro has served as head of state and head of government. Although Assembly members were directly elected for the first time in February 1993, only a single slate of candidates was offered. In October 1997, the Cuban Communist Party held its 5th Congress (the prior one was held in 1991) in which the party reaffirmed its commitment to a single party state and reelected Fidel and Raúl Castro as the party's first and second secretaries. Direct elections for the National Assembly were again held in January 1998 and January 2003, but voters again were not offered a choice of candidates.

For a number of years, Fidel's younger brother Raúl, as First Vice President of the Council of State, has been the officially designated successor and was slated to become head of state and head of government with Fidel's departure. Raúl — who turned 75 on June 3, 2006 — also served as First Vice President of the Council of Ministers, as Minister of the Revolutionary Armed Forces (FAR), and as second secretary of the Communist Party.

On July 31, 2006, Fidel provisionally ceded political power to his brother Raúl in order to recover from intestinal surgery. As a result, in a proclamation signed by Fidel, Raúl Castro became First Secretary of the Communist Party, Commander in Chief of the FAR, and President of the Council of State and Government.

At the same time, Fidel tapped six other high-ranking government officials on a provisional basis for key roles in health, education, and energy projects. He delegated the job of promoting public and international health projects to current Minister of Public Health José Ramón Balaguer Cabrera. On education, he designated José Ramón Machado Ventura and Esteban Lazo Hernández, both members of the Political Bureau (Politburo) of the Communist Party and both Vice Presidents of the Council of State. On energy, he designated Carlos Lage, a Vice President of the Council of State and Executive Secretary of the Council of Ministers. Lage is known for orchestrating Cuba's economic recovery in the 1990s. Fidel also directed Lage, as well as Foreign Minister Felipe Pérez Roque and Central Bank

President Francisco Soberón Valdés, to form a commission to manage and prioritize funds for the health, education, and energy programs.

Scenarios for Cuba after Fidel Castro

Because of Fidel's recovery, celebrations for his 80th birthday on August 13, 2006, were postponed until December 2, 2006 (the 50th anniversary of the arrival of Fidel and his followers from Mexico on the boat Granma), but Castro was unable to appear at the celebration in December, fueling speculation that he was gravely ill and would not be returning to power. A number of observers have speculated that Castro is suffering from cancer, although Cuban officials deny it.¹ In late December 2006, a Spanish surgeon who has been treating Castro asserted that he does not have cancer, but that he is recovering from a very serious surgery.²

Although many observers believe that the eventual demise of Cuba's communist government ultimately is inevitable, there is considerable disagreement over when or how this may occur. Some still predict that the regime will collapse when Fidel Castro permanently departs the political scene or dies. Other observers stress that Fidel is still not out of the picture and that when he does die or become permanently debilitated, the Cuban government has a plan for the permanent succession of his brother Raúl. They point to Cuba's strong security apparatus and the extraordinary system of controls that prevents dissidents from gaining popular support.

Before Fidel's recent surgery, observers discerned several potential scenarios for Cuba's future when Fidel either dies in office or departs the political scene because of age or declining health. These fit into three broad categories: the continuation of a communist government; a military government; or a democratic transition or fully democratic government. According to most observers, the most likely scenario, at least in the short term, is a successor communist government led by Raúl Castro. This is likely for a variety of reasons, but especially because of Raúl's designation by Fidel as successor in the party and his position as leader of the FAR. The FAR has been in control of the government's security apparatus since 1989 and has played an increasing role in Cuba's economy through the ownership of numerous business enterprises. The scenario of a military-led government is viewed by some observers as a possibility only if a successor communist government fails because of divisiveness among leaders or political instability. For many observers, the least likely scenario upon Fidel's death or departure is a democratic transition government. With a strong totalitarian security apparatus, the Castro government has successfully impeded the development of independent civil society, with only a small and tightly regulated private sector, no independent labor movement, and no unified political opposition. (For further information, see CRS Report RL33622, *Cuba after Fidel Castro: U.S. Policy Implications and Approaches*, by Mark P. Sullivan.)

¹ "U.S. Government Says Castro's Condition is Terminal," *Latin America Regional Report: Caribbean & Central America*, November 2006; Julia Preston, "Castro to Recover, but not Return, Cubans Say," *New York Times*, Dec. 18, 2006.

² Frances Robles, "Doctor: Castro Doesn't Have Cancer," *Miami Herald*, Dec. 27, 2006.

Human Rights

Overview. Cuba has a poor record on human rights, with the government sharply restricting freedoms of expression, association, assembly, movement, and other basic rights. It has cracked down on dissent, arrested human rights activists and independent journalists, and staged demonstrations against critics. Although some anticipated a relaxation of the government's oppressive tactics in the aftermath of the Pope's January 1998 visit, government attacks against human rights activists and other dissidents have continued since that time. There was a severe crackdown on activists in March 2003 when the government imprisoned 75 democracy activists, including independent journalists and librarians and leaders of independent labor unions and opposition parties. As of January 2007, 59 of the "group of 75" political prisoners remain in prison. The most recent release of the group of 75 was Hector Palacios, released for health reasons on December 6, 2006; Palacios had been sentenced to 25 years in prison in 2003. In January 2007, the independent Cuban Commission on Human Rights and National Reconciliation reported that the number of political prisoners stood at 283 at the end of 2006, compared to 333 at the end of 2005. Despite the reduction, Elizardo Sánchez, the leader of the Commission, asserted that the Cuban government is still repressing Cuban dissidents with threats, police searches of people's homes, interrogations, and short detentions.³

According to the State Department's human rights report for 2005, the Cuban government is one of the world's most systematic human rights violators, controlling all aspects of life through the Communist Party and state-controlled mass organizations. The report asserted that the Cuban government continued to commit numerous serious abuses in 2005. These included arbitrary arrest and detention of human rights advocates and members of independent professional organizations; denial of the right to a fair trial, especially for political prisoners; abuse of detainees and prisoners; harsh and life-threatening prison conditions; denial of freedoms of speech, press, assembly, and association; and targeted "acts of repudiation" (organized public protests) against those who disagree with the government. The government maintained a pervasive system of surveillance through undercover agents, informers, and neighborhood-based Committees for the Defense of the Revolution (CDRs). The government also continued to retaliate against those seeking peaceful political change, including supporters of the Varela Project, which proposes a national referendum to bring about political and economic reform.

In October 2005, a Cuban human rights group known as the Ladies in White (*Damas de Blanco*) received the Sakharov Prize for Freedom of Thought from the European Parliament. The group, formed after Cuba's March 2003 crackdown, consists of wives, mothers, and sisters of dissidents who conduct peaceful protests calling for the unconditional release of political prisoners.

In December 2006, independent Cuban journalist Guillermo Fariñas Hernández received the 2006 Cyber Dissident award from the Paris-based Reporters Without

³ "Cuba: No Improvement under Raúl, Say Human Rights Activists," *Latinnews Daily*, Jan. 10, 2007.

Borders. Fariñas went on a seven-month hunger strike in 2006, demanding broader Internet access for Cubans.

Varela Project and the National Dialogue. Named for the 19th century priest, Felix Varela, who advocated independence from Spain and the abolition of slavery, the Varela Project has collected thousands of signatures supporting a national plebiscite for political reform in accordance with a provision of the Cuban Constitution. The referendum, if granted, would call for respect for human rights, an amnesty for political prisoners, private enterprise, and changes to the country's electoral law that would result in free and fair elections. The initiative is organized by Oswaldo Payá, who heads the Christian Liberation Movement.

In May 2002, organizers of the Varela Project submitted 11,020 signatures to the National Assembly calling for a national referendum. This was more than the 10,000 required under Article 88 of the Cuban Constitution. Former President Jimmy Carter noted the significance of the Varela Project in his May 14, 2002 address in Havana that was broadcast in Cuba. Carter noted that “when Cubans exercise this freedom to change laws peacefully by a direct vote, the world will see that Cubans, and not foreigners, will decide the future of this country.”⁴ In response to the Varela Project, the Cuban government orchestrated its own referendum in late June 2002 that ultimately led to the National Assembly amending the Constitution to declare Cuba's socialist system irrevocable. The Varela Project has persevered despite the 2003 human rights crackdown, which included the arrest of 21 Project activists. In October 2003, Oswaldo Payá delivered more than 14,000 signatures to Cuba's National Assembly, again requesting a referendum on democratic reforms.

Since December 2003, Payá has been involved in another project known as the National Dialogue with the objective of getting Cubans involved in the process of discussing and preparing for a democratic transition. According to Payá, thousands of Cubans have met in dialogue groups to discuss a working document covering such themes as: economic, political, and institutional changes; social issues; public health and the environment; public order and the armed forces; media, science, and culture; reconciliation; and reuniting with the exile community.⁵

Assembly to Promote Civil Society. Led by three prominent Cuban human rights activists — Marta Beatriz Roque, René Gómez Manzano, and Felix Bone — the Assembly to Promote Civil Society held two days of meetings in Havana on May 20-21, 2005, with some 200 participants. The date was significant because May 20 is Cuba's independence day. Many observers had expected the government to prevent or disrupt the proceedings. The Cuban government did prevent some Cubans and foreigners from attending the conference, but overall the meeting was dubbed by its organizers as the largest gathering of Cuban dissidents since the 1959

⁴ “Text of Jimmy Carter's Speech, Broadcast Live to Cuban People,” Associated Press, May 15, 2002.

⁵ Oswaldo Payá, “Dissidents' Goal: A National Dialogue,” *Miami Herald*, Aug. 9, 2005.

Cuban revolution.⁶ The Assembly issued a ten-point resolution laying out an agenda for political and economic change in Cuba.⁷ Among its provisions, the resolution called for the release of all political prisoners, demanded respect for human rights, demanded the abolition of the death penalty, and endorsed a 1997 dissident document on political and economic rights entitled the “Homeland Belongs to Us All.”⁸

Legislative Initiatives. In the 109th Congress, five resolutions were approved regarding Cuba’s human rights situation. H.Con.Res. 81 (Menendez), approved in April 2005, expressed the sense of Congress regarding the two-year anniversary of the human rights crackdown in Cuba. The resolution demanded that Cuba release all political prisoners; legalize all political parties, labor unions, and press; and hold free and fair elections. Two resolutions approved in May 2005 — H.Res. 193 (Diaz-Balart, Mario) and S.Res. 140 (Martinez) — expressed support for the organizers and participants of the May 20, 2005, meeting in Havana of the Assembly to Promote Civil Society. H.Res. 388 (Diaz-Balart, Lincoln), approved in September 2005, expressed the sense of the House regarding the Cuban government’s crackdown against dissidents in July 2005. S.Res. 469 (Lieberman), approved in May 2006, condemned the April 25, 2006, beating and intimidation of Cuban dissident Martha Beatriz Roque. In addition, Congress funds democracy and human rights projects for Cuba in annual Foreign Operations appropriations measures. For more details, see *U.S. Funding to Support Democracy and Human Rights*, below.

Economic Conditions

With the cutoff of assistance from the former Soviet Union, Cuba experienced severe economic deterioration from 1989-1993, with estimates of economic decline ranging from 35-50%, but there has been considerable improvement since 1994. From 1994-2000, as Cuba moved forward with some limited market-oriented economic reforms, economic growth averaged 3.7% annually. From 2001-2006, economic growth averaged almost 5%.

Economic growth was especially strong over the past two years, registering an impressive 9.5% in 2005 (despite widespread damage caused by Hurricanes Dennis and Wilma) and an estimated 8.7% in 2006. The economy has benefitted from the growth of the tourism, nickel, and oil sectors, and support from Venezuela and China in terms of investment commitments and credit lines.⁹ Cuba benefits from a preferential oil agreement with Venezuela, which provides Cuba with more than 90,000 barrels of oil a day. Some observers maintain that Venezuela’s oil subsidies amounted to more than \$2 billion a year 2006. Venezuela is also helping Cuba

⁶ Nancy San Martin, “‘A Triumph’ in Cuba as Dissidents Gather,” *Miami Herald*, May 21, 2005.

⁷ The full text of the resolution is available in Spanish from Cubanet: [<http://www.cubanet.org/ref/dis/052305.htm>].

⁸ See the full text of “The Homeland Belongs to Us All” online at [<http://www.cubanet.org/CNews/y97/jul97/homdoc.htm>].

⁹ “Cuba Country Report,” Economist Intelligence Unit, January 2007.

upgrade an oil refinery in Cienfuegos, and reportedly is providing some \$300-500 million in credit for a variety of projects ranging from housing to electricity.¹⁰

Over the years, Cuba has expressed pride for the nation's accomplishments in health and education. In 2004, according to the U.N. Development Programs's 2006 *Human Development Report*, life expectancy in Cuba was 77.6 years, adult literacy was estimated at almost 100%, and the infant mortality rate was 6 per 1,000 live births, the lowest rate in Latin America. For 2006, Cuba has boasted an infant mortality rate of 5.3, just second behind Canada in the Western Hemisphere.¹¹

When Cuba's economic slide began in 1989, the government showed little willingness to adopt any significant market-oriented economic reforms, but in 1993, faced with unprecedented economic decline, Cuba began to change policy direction. Beginning in 1993, Cubans were allowed to own and use U.S. dollars and to shop at dollar-only shops previously limited to tourists and diplomats. Self-employment was authorized in more than 100 occupations in 1993, most in the service sector, and by 1996 that figure had grown to more than 150 occupations. Also in 1993, the government divided large state farms into smaller, more autonomous, agricultural cooperatives (Basic Units of Cooperative Production, UBPCs). It opened agricultural markets in 1994, where farmers could sell part of their produce on the open market, and it also permitted artisan markets for the sale of handicrafts. In 1995, the government allowed private food catering, including home restaurants (*paladares*), in effect legalizing activities that were already taking place), and approved a new foreign investment law that allows fully owned investments by foreigners in all sectors of the economy with the exception of defense, health, and education. In 1996, it authorized the establishment of free trade zones with tariff reductions typical of such zones. In 1997, the government enacted legislation to reform the banking system and established a new Central Bank (BCC) to operate as an autonomous and independent entity.

Despite these measures, the quality of life for many Cubans remains difficult — characterized by low wages, high prices for many basic goods, shortages of medicines, and power outages (although these have been significantly reduced) — and the government has backtracked on some of its reform efforts. Regulations and new taxes have made it extremely difficult for many of the nation's self-employed. Some home restaurants have been forced to close because of the regulations. In 2004, the Cuban government limited the use of dollars by state companies for any services or products not considered part of their core business. Some analysts viewed the measure as an effort to turn back the clock on economic reform measures.¹² In October 2004, Fidel Castro announced that U.S. dollars no longer would be used in entities that currently accept dollars (such as stores, restaurants, and hotels). Instead, Cubans would need to exchange their dollars for “convertible pesos,” with a 10%

¹⁰ Frances Robles and Steven Dudley, “Chávez May Be Buying Cuba's Future with Oil,” *Miami Herald*, Aug. 30, 2006.

¹¹ “Cuba Says Its Infant Mortality Rate is Lowest in Latin America,” Agence France Presse, Jan. 4, 2007.

¹² Larry Luxner, “New Decree Limits Dollar Transactions as Cuba Tightens Controls Once Again,” *CubaNews*, April 2004.

surcharge for the exchange. Cubans could exchange their dollars or deposit them in banks with the surcharge until November 14. Dollar bank accounts will still be allowed, but Cubans will not be able to deposit new dollars into the accounts. Beginning in April 2005, convertible pesos were no longer on par with the U.S. dollar, but instead were linked to a basket of foreign currencies. This reduces the value of dollar remittances sent to Cuba and provides more hard currency to the Cuban government.¹³

U.S. Policy Toward Cuba

In the early 1960s, U.S.-Cuban relations deteriorated sharply when Fidel Castro began to build a repressive communist dictatorship and moved his country toward close relations with the Soviet Union. The often tense and hostile nature of the U.S.-Cuban relationship is illustrated by such events and actions as U.S. covert operations to overthrow the Castro government culminating in the ill-fated April 1961 Bay of Pigs invasion; the October 1962 missile crisis in which the United States confronted the Soviet Union over its attempt to place offensive nuclear missiles in Cuba; Cuban support for guerrilla insurgencies and military support for revolutionary governments in Africa and the Western Hemisphere; the 1980 exodus of around 125,000 Cubans to the United States in the so-called Mariel boatlift; the 1994 exodus of more than 30,000 Cubans who were interdicted and housed at U.S. facilities in Guantanamo and Panama; and the February 1996 shootdown by Cuban fighter jets of two U.S. civilian planes operated by the Cuban American group, Brothers to the Rescue, which resulted in the death of four U.S. crew members.

Since the early 1960s, U.S. policy toward Cuba has consisted largely of isolating the island nation through comprehensive economic sanctions, including an embargo on trade and financial transactions. The Cuban Assets Control Regulations (CACR), first issued by the Treasury Department in July 1963, lay out a comprehensive set of economic sanctions against Cuba, including a prohibition on most financial transactions with Cuba and a freeze of Cuban government assets in the United States. The CACR have been amended many times over the years to reflect changes in policy, and remain in force today.

These sanctions were made stronger with the Cuban Democracy Act (CDA) of 1992 (P.L.102-484, Title XVII) and with the Cuban Liberty and Democratic Solidarity Act of 1996 (P.L. 104-114), the latter often referred to as the Helms/Burton legislation. The CDA prohibits U.S. subsidiaries from engaging in trade with Cuba and prohibits entry into the United States for any vessel to load or unload freight if it has engaged in trade with Cuba within the last 180 days. The Cuban Liberty and Democratic Solidarity Act, enacted in the aftermath of Cuba's shooting down of two U.S. civilian planes in February 1996, combines a variety of measures to increase pressure on Cuba and provides for a plan to assist Cuba once it begins the transition to democracy. Most significantly, the law codified the Cuban embargo, including all restrictions under the CACR. This provision is especially noteworthy because of its

¹³ Larry Luxner, "Cuba's 'Convertible Peso' No Longer Linked to U.S. Dollar," *CubaNews*, April 2005, p. 3.

long-lasting effect on U.S. policy options toward Cuba. The executive branch is circumscribed in lifting or substantially loosening the economic embargo without congressional concurrence until certain democratic conditions are met. Another significant sanction in the law is a provision in Title III that holds any person or government that traffics in U.S. property confiscated by the Cuban government liable for monetary damages in U.S. federal court. Acting under provisions of the law, however, both President Clinton and President Bush have suspended the implementation of Title III at six-month intervals.

In addition to sanctions, another component of U.S. policy, a so-called second track, consists of support measures for the Cuban people. This includes U.S. private humanitarian donations, medical exports to Cuba under the terms of the Cuban Democracy Act of 1992, U.S. government support for democracy-building efforts, and U.S.-sponsored radio and television broadcasting to Cuba. In addition, the 106th Congress approved the Trade Sanctions Reform and Export Enhancement Act of 2000 (P.L. 106-387, Title IX) that allows for agricultural exports to Cuba, albeit with restrictions on financing such exports.

The Clinton Administration made several changes to U.S. policy in the aftermath of the Pope's January 1998 visit to Cuba, which were intended to bolster U.S. support for the Cuban people. These included the resumption of direct flights to Cuba (which had been curtailed after the February 1996 shutdown of two U.S. civilian planes), the resumption of cash remittances by U.S. nationals and residents for the support of close relatives in Cuba (which had been curtailed in August 1994 in response to the migration crisis with Cuba), and the streamlining of procedures for the commercial sale of medicines and medical supplies and equipment to Cuba. In January 1999, President Clinton announced several additional measures to support the Cuban people. These included a broadening of cash remittances to Cuba, so that all U.S. residents (not just those with close relatives in Cuba) could send remittances to Cuba; an expansion of direct passenger charter flights to Cuba from additional U.S. cities other than Miami (direct flights later in the year began from Los Angeles and New York); and an expansion of people-to-people contact by loosening restrictions on travel to Cuba for certain categories of travelers, such as professional researchers and those involved in a wide range of educational, religious, and sports activities.

Bush Administration Policy

The Bush Administration essentially has continued the two-track U.S. policy of isolating Cuba through economic sanctions while supporting the Cuban people through a variety of measures. However, within this policy framework, the Administration has emphasized stronger enforcement of economic sanctions and has further tightened restrictions on travel, remittances, and humanitarian gift parcels to Cuba. There was considerable reaction to the Administration's June 2004 tightening of restrictions for family visits and to the Administration's February 2005 tightening of restrictions on payment terms for U.S. agricultural exports to Cuba.

May 2004 Commission for Assistance to a Free Cuba Report. In May 2004, President Bush endorsed the recommendations of a report issued by the inter-agency Commission for Assistance to a Free Cuba, chaired by then-Secretary of State

Colin Powell. The Commission made recommendations for immediate measures to “hasten the end of Cuba’s dictatorship” as well as longer-term recommendations to help plan for Cuba’s transition from communism to democracy in various areas. The President directed that up to \$59 million be committed to implement key recommendations of the Commission, including support for democracy-building activities and for airborne broadcasts of Radio and TV Marti to Cuba. The report’s most significant recommendations included a number of measures to tighten economic sanctions on family visits and other categories of travel and on private humanitarian assistance in the form of remittances and gift parcels. Subsequent regulations issued by the Treasury and Commerce Departments in June 2004 implemented these new sanctions. (The full Commission report is on the State Department website at [<http://www.state.gov/p/wha/rt/cuba/commission/2004/>].)

In 2005, the Administration continued to tighten U.S. economic sanctions against Cuba by further restricting the process of how U.S. agricultural exporters may be paid for their sales. In July 2005, Secretary of State Condoleezza Rice appointed Caleb McCarry as the State Department’s new Cuba Transition Coordinator to direct U.S. government “actions in support of a free Cuba.” Secretary Rice reconvened the Commission for Assistance to a Free Cuba in December 2005 to identify additional measures to help Cubans hasten the transition to democracy and to develop a plan to help the Cuban people move toward free and fair elections.

July 2006 Commission for Assistance to a Free Cuba Report. In July 2006, the inter-agency Commission for Assistance to Free Cuba issued its second report making recommendations to hasten political change in Cuba toward a democratic transition. The full report is available at [<http://www.cafc.gov/rpt/>].

The Commission called for the United States to provide \$80 million over two years for the following: to support Cuban civil society (\$31 million); to fund education programs and exchanges, including university training in Cuba provided by third countries and scholarships for economically disadvantaged students from Cuba at U.S. and third country universities (\$10 million); to fund additional efforts to break the Cuban government’s information blockade and expand access to independent information, including through the Internet (\$24 million); and to support international efforts at strengthening civil society and transition planning (\$15 million). According to the Cuba Transition Coordinator, this assistance would be additional funding beyond what the Administration is already currently budgeting for these programs.¹⁴ Thereafter, the Commission recommended funding of not less than \$20 million annually for Cuba democracy programs “until the dictatorship ceases to exist.” This would roughly double the amount currently spent on Cuba democracy programs.

The report also set forth detailed plans of how the U.S. government, along with the international community and the Cuban community abroad, could provide assistance to a Cuban transition government to help it respond to critical humanitarian and social needs, to conduct free and fair elections, and to move

¹⁴ U.S. Department of State, Second Report of the Commission for Assistance to a Free Cuba, Briefing, July 10, 2006.

toward a market-based economy. The report also outlined a series of preparatory steps that the U.S. government could take now, before Cuba's transition begins, so that it will be well prepared in the event that assistance is requested by the new Cuban government. These included steps in the areas of government organization, electoral preparation, and anticipating humanitarian and social needs.

The Commission report received a mixed response from Cuba's dissident community. Although some dissidents, like former political prisoner Vladimiro Roca, maintain that they would welcome any U.S. assistance that helps support the Cuban dissident movement, others expressed concerns about the report. Dissident economist and former political prisoner Oscar Espinosa Chepe stressed that Cubans have to be the ones to solve their own problems. According to Chepe, "We are thankful for the solidarity we have received from North America, Europe, and elsewhere, but we request that they do not meddle in our country."¹⁵ Miriam Leiva, a founding member of the Ladies in White, a human rights organization, expressed concern that the report could serve as a rationale for the government to imprison dissidents.¹⁶ Leiva also faulted the Commission's report for presuming what a Cuban transition must be before U.S. recognition or assistance can be provided. According to Leiva, "Only we Cubans, of our own volition ... can decide issues of such singular importance. Cubans on the island have sufficient intellectual ability to tackle a difficult, peaceful transition and reconcile with other Cubans here and abroad."¹⁷

U.S. Reaction to Fidel's Ceding of Power. In response to Fidel Castro's announcement that he was temporarily ceding power to his brother Raúl, President Bush issued a statement on August 3, 2006, that "the United States is absolutely committed to supporting the Cuban people's aspiration for democracy and freedom." The President urged "the Cuban people to work for democratic change" and pledged U.S. support to the Cuban people in their effort to build a transitional government in Cuba. U.S. officials indicated that there are no plans for the United States to "reach out" to the new leader. Secretary of State Condoleezza Rice reiterated U.S. support for the Cuban people in an August 4, 2006, statement broadcast on Radio and TV Marti. According to Secretary Rice, "All Cubans who desire peaceful democratic change can count on the support of the United States."¹⁸

Although there was some U.S. concern that political change in Cuba could prompt a migration crisis, there has been no unusual traffic since Castro ceded power temporarily to his brother. The U.S. Coast Guard has plans to respond to such a migration crisis, with support from the Navy if needed. In her August 4, 2006, message to the Cuban people, Secretary of State Rice encouraged "the Cuban people to work at home for positive change." Department of Homeland Security officials

¹⁵ Nicholas Kraley, "Bush OKs Initiative to Support Opposition," *Washington Times*, July 11, 2006.

¹⁶ Frances Robles and Pablo Bachelet, "Plan for Change in Cuba Gets OK," *Miami Herald*, July 11, 2006.

¹⁷ Miriam Leiva, "We Cubans Must Decide," *Miami Herald*, July 15, 2006.

¹⁸ U.S. Department of State, "Secretary of State Condoleezza Rice Message to the People of Cuba," Aug. 4, 2006.

also announced several measures to discourage Cubans from risking their lives on the open seas. U.S. officials also discouraged those in the Cuban American community wanting to travel by boat to Cuba to speed political change in Cuba.

Raúl Castro asserted in an August 18, 2006, published interview that Cuba has “always been disposed to normalize relations on an equal plane,” but at the same time he expressed strong opposition to current U.S. policy toward Cuba, which he described as “arrogant and interventionist.”¹⁹ In response, Assistant Secretary of State for Western Hemisphere Affairs Thomas Shannon reiterated a U.S. offer to Cuba, first articulated by President Bush in May 2002, that the Administration was willing to work with Congress to lift U.S. economic sanctions if Cuba were to begin a political opening and a transition to democracy. According to Shannon, the Bush Administration remains prepared to work with Congress for ways to lift the embargo if Cuba is prepared to free political prisoners, respect human rights, permit the creation of independent organizations, and create a mechanism and pathway toward free and fair elections.²⁰

In a December 2, 2006 speech, Raúl reiterated an offer to negotiate with the United States. He said that “we are willing to resolve at the negotiating table the longstanding dispute between the United States and Cuba, of course, provided they accept, as we have previously said, our condition as a country that will not tolerate any blemishes on its independence, and as long as said resolution is based on the principles of equality, reciprocity, non-interference, and mutual respect.”²¹

In the aftermath of Fidel’s ceding of power to his brother, the Bush Administration established five interagency working groups to manage U.S. policy toward Cuba. The State Department is leading working groups on diplomatic actions, to build international support for U.S. policies; strategic communications, to ensure that Cubans understand U.S. government positions; and democratic promotion. The Commerce Department is leading a working group on humanitarian aid, in the event that a democratic transition government requests assistance. The Department of Homeland Security and the National Security Council are heading a working group on migration.²² In addition to these working groups, U.S. Director of National Intelligence John Negroponte announced in mid-August 2006 the establishment of the position of Mission Manager for Cuba and Venezuela responsible for integrating collection and analysis on the two countries across the Intelligence Community.

¹⁹ “No Enemy Can Defeat Us,” interview of Raúl Castro by Laszar Barredo Medina, *Diario Granma*, Aug. 18, 2006.

²⁰ U.S. Department of State, “U.S. Policy Toward Cuba,” Thomas Shannon, Assistant Secretary for Western Hemisphere Affairs, Aug. 23, 2006.

²¹ “English Transcript of Raul Castro’s Speech,” *Miami Herald*, Dec. 2, 2006.

²² Pablo Bachelet, “U.S. Creates Five Groups to Eye Cuba,” *Miami Herald*, Sept. 13, 2006.

Issues in U.S.-Cuban Relations

Debate on the Overall Direction of U.S. Policy

Over the years, although U.S. policymakers have agreed on the overall objectives of U.S. policy toward Cuba — to help bring democracy and respect for human rights to the island — there have been several schools of thought about how to achieve those objectives. Some advocate a policy of keeping maximum pressure on the Cuban government until reforms are enacted, while continuing current U.S. efforts to support the Cuban people. Others argue for an approach, sometimes referred to as constructive engagement, that would lift some U.S. sanctions that they believe are hurting the Cuban people, and move toward engaging Cuba in dialogue. Still others call for a swift normalization of U.S.-Cuban relations by lifting the U.S. embargo. Fidel Castro's July 31, 2006, announcement that he was ceding political power to his brother Raúl temporarily in order to recover from surgery could foster a re-examination of U.S. policy, especially if Fidel's departure from the political scene becomes permanent as many predict. In this new context, there are two broad policy approaches to contend with political change in Cuba: a status-quo approach that would maintain the U.S. dual-track policy of isolating the Cuban government while providing support to the Cuban people; and an approach aimed at influencing the Cuban government and Cuban society through increased contact and engagement. (For additional information, see CRS Report RL33622, *Cuba after Fidel Castro: U.S. Policy Implications and Approaches*.)

In general, those who advocate easing U.S. sanctions on Cuba make several policy arguments. They assert that if the United States moderated its policy toward Cuba — through increased travel, trade, and diplomatic dialogue — then the seeds of reform would be planted, which would stimulate and strengthen forces for peaceful change on the island. They stress the importance to the United States of avoiding violent change in Cuba, with the prospect of a mass exodus to the United States and the potential of involving the United States in a civil war scenario. They argue that since the demise of Cuba's communist government does not appear imminent, even if Fidel Castro dies, the United States should espouse a more pragmatic approach in trying to induce change in Cuba. Supporters of changing policy also point to broad international support for lifting the U.S. embargo, to the missed opportunities for U.S. businesses because of the unilateral nature of the embargo, and to the increased suffering of the Cuban people because of the embargo. Proponents of change also argue that the United States should be consistent in its policies with the world's few remaining communist governments, including China or Vietnam, and also maintain that moderating policy will help advance human rights.

On the other side, opponents of changing U.S. policy maintain that the current two-track policy of isolating Cuba, but reaching out to the Cuban people through measures of support, is the best means for realizing political change in Cuba. They point out that the Cuban Liberty and Democratic Solidarity Act of 1996 sets forth the steps that Cuba needs to take in order for the United States to normalize relations. They argue that softening U.S. policy at this time without concrete Cuban reforms would boost the Castro regime, politically and economically, and facilitate the

survival of the communist regime. Opponents of softening U.S. policy argue that the United States should stay the course in its commitment to democracy and human rights in Cuba, and that sustained sanctions can work. Opponents of loosening U.S. sanctions further argue that Cuba's failed economic policies, not the U.S. embargo, are the causes of Cuba's difficult living conditions.

Travel and Private Humanitarian Assistance Restrictions

Restrictions on travel to Cuba have been a key and often contentious component of U.S. efforts to isolate the communist government of Fidel Castro for much of the past 40 years. Over time there have been numerous changes to the restrictions and for five years, from 1977 until 1982, there were no restrictions on travel. Restrictions on travel and remittances to Cuba are part of the CACR, the overall embargo regulations administered by the Treasury Department's Office of Foreign Assets Control (OFAC).

Major arguments made for lifting the Cuba travel ban are that it contributes to the suffering of Cuban families; it hinders efforts to influence conditions in Cuba and may be aiding Castro by helping restrict the flow of information; it abridges the rights of ordinary Americans; and Americans can travel to other countries with communist or authoritarian governments. Major arguments in opposition to lifting the Cuba travel ban are that more American travel would support Castro's rule by providing his government with potentially millions of dollars in hard currency; that there are legal provisions allowing travel to Cuba for humanitarian purposes that are used by thousands of Americans each year; and that the President should be free to restrict travel for foreign policy reasons.

Under the current Bush Administration, enforcement of U.S. restrictions on Cuba travel has increased, and restrictions on travel and on private remittances to Cuba have been tightened. In March 2003, the Administration eliminated travel for people-to-people educational exchanges unrelated to academic course work. In June 2004, the Administration significantly restricted travel, especially family travel, and the provision of private humanitarian assistance to Cuba in the form of remittances and gift parcels. In April 2005, OFAC cracked down on certain religious organizations promoting licensed travel to Cuba and warned them not to abuse their license by taking individuals not affiliated with their organizations. OFAC's actions were prompted by reports that groups practicing the Afro-Cuban religion Santería had been taking large groups to Cuba as a means of skirting U.S. travel restrictions.²³ In 2006, the Administration suspended the licenses of several travel service providers, including one of the largest such providers in Florida, La Estrella de Cuba. Several religious organizations also had their licenses suspended, and church groups and several Members of Congress expressed concern about more restrictive licenses for religious travel.²⁴

²³ Oscar Corral, "Is Santería Used as Ploy to Skirt Travel Rules?," *Miami Herald*, Feb. 27, 2005

²⁴ Oscar Corral, "Feds Lay Down the Law on Cuba to Travel Agents," *Miami Herald*, Apr. 29, 2006; Pablo Bachelet, "New Rules Impede Religious Travel," *Miami Herald*, Mar. 16, 2006.

Among the June 2004 restrictions that remain in place are the following:

- Family visits were restricted to one trip every three years under a specific license and are restricted to immediate family members, with no exceptions. Under previous regulations, family visits could occur once a year under a general license, with travel more than once a year allowed, but under a specific license. Previously travel had been allowed to visit relatives to within three degrees of relationship to the traveler.
- Cash remittances, estimates of which range from \$400 million to \$800 million, were further restricted. Quarterly remittances of \$300 may still be sent, but are now restricted to members of the remitter's immediate family and may not be remitted to certain government officials and certain members of the Cuban Communist Party. The regulations were also changed to reduce the amount of remittances that authorized travelers may carry to Cuba, from \$3000 to \$300.
- Gift parcels were limited to immediate family members and were denied to certain Cuban officials and certain members of the Cuban Communist Party. The contents of gift parcels may no longer include seeds, clothing, personal hygiene items, veterinary medicines and supplies, fishing equipment and supplies, or soap-making equipment.
- The authorized per diem allowed for a family visit was reduced from the State Department per diem rate, currently \$167 per day, to \$50 per day.
- With the exception of informational materials, licensed travelers may not purchase or otherwise acquire merchandise and bring it back into the United States. Previous regulations allowed visitors to Cuba to import \$100 worth of goods as accompanied baggage.
- Fully-hosted travel, by a person not subject to U.S. jurisdiction, was prohibited as a permissible category of travel.
- Travel for educational activities was further restricted, including the elimination of educational exchanges sponsored by secondary schools.

There has been mixed reaction to the tightening of Cuba travel and remittance restrictions. Supporters maintain that the increased restrictions will deny the Cuban government dollars that help maintain its repressive control. Opponents argue that the tightened sanctions are anti-family and will only result in more suffering for the Cuban people. There were also concerns that the new restrictions were drafted without considering the full consequences of their implementation. For example, the elimination of fully-hosted travel raised concerns about the status of 70 U.S. students receiving full scholarships at the Latin American School of Medicine in Havana. Members of the Congressional Black Caucus, who were instrumental in the

establishment of the scholarship program for U.S. students, expressed concern that the students may be forced to abandon their medical education because of the new OFAC regulations. As a result of these concerns, OFAC ultimately licensed the medical students in August 2004 to continue their studies for a period of two years and engage in travel-related transactions.

Legislative Initiatives. From 2000-2004, one or both houses of Congress approved amendments to appropriations bills that would have eased restrictions on travel to Cuba in various ways, but these provisions ultimately were stripped out of final enacted measures. The Administration regularly threatened to veto legislation if it contained provisions weakening Cuba sanctions.

In the second session of the 109th Congress, on June 14, 2006, the House rejected two amendments to the FY2007 Transportation/Treasury appropriation bill, H.R. 5576, that would have eased Cuba travel restrictions. H.Amdt. 1050 (Rangel), rejected by a vote of 183-245, would have prohibited funds from being used to implement the overall economic embargo of Cuba. H.Amdt. 1051 (Lee), rejected by a vote of 187-236, would have prohibited funds from being used to implement the Administration's June 2004 tightening of restrictions on educational travel to Cuba. An additional Cuba amendment, H.Amdt. 1032 (Flake), that would have prohibited the use of funds to amend regulations relating to travel for religious activities in Cuba, was withdrawn from consideration.

In other action, on June 22, 2006, the Senate Appropriations Committee reported its version of the FY2007 Agriculture appropriations bill, H.R. 5384 (S.Rept. 109-266), which contained a provision (Section 755) that would have liberalized travel to Cuba related to the sale of agricultural and medical goods. The provision would have provided for such travel under a general license, instead of under a specific license as currently required, issued on a case-by-case basis by the Treasury Department. Final action on the bill was not completed before the end of the 109th Congress. Similar Senate provisions in FY2004 and FY2005 agricultural appropriations bills were stripped out of the final enacted measures.

Agricultural Exports and Sanctions

U.S. commercial agricultural exports to Cuba have been allowed for several years, but with numerous restrictions and licensing requirements. The 106th Congress passed the Trade Sanctions Reform and Export Enhancement Act of 2000 or TSRA (P.L. 106-387, Title IX) that allows for one-year export licenses for selling agricultural commodities to Cuba, although no U.S. government assistance, foreign assistance, export assistance, credits, or credit guarantees are available to finance such exports. TSRA also denies exporters access to U.S. private commercial financing or credit; all transactions must be conducted in cash in advance or with financing from third countries. TSRA reiterates the existing ban on importing goods from Cuba but authorizes travel to Cuba, under a specific license, to conduct business related to the newly allowed agricultural sales.

In February 2005, OFAC amended the Cuba embargo regulations to clarify that TSRA's term of "payment of cash in advance" means that the payment is received by the seller or the seller's agent prior to the shipment of the goods from the port at

which they are loaded. U.S. agricultural exporters and some Members of Congress strongly objected that the action constitutes a new sanction that violates the intent of TSRA and could jeopardize millions of dollars in U.S. agricultural sales to Cuba. OFAC Director Robert Werner maintained that the clarification “conforms to the common understanding of the term in international trade.”²⁵ On July 29, 2005, OFAC clarified that, for “payment of cash in advance” for the commercial sale of U.S. agricultural exports to Cuba, vessels can leave U.S. ports as soon as a foreign bank confirms receipt of payment from Cuba. OFAC’s action was aimed at ensuring that the goods would not be vulnerable to seizure for unrelated claims while still at the U.S. port. Supporters of overturning OFAC’s February 22, 2005 amendment, such as the American Farm Bureau Federation, were pleased by the clarification but indicated that they would still work to overturn the February rule.²⁶

Since late 2001, Cuba has purchased more than \$1.5 billion in agricultural products from the United States. Overall U.S. exports to Cuba amounted to about \$7 million in 2001, \$146 million in 2002, \$259 million in 2003, \$404 million in 2004, \$369 million in 2005, and \$324 for the first 11 months of 2006, the majority in agricultural products. In the first seven months of 2005, U.S. agricultural exports to Cuba had fallen by 25%, but rebounded beginning in August 2005 so that for the year overall, U.S. exports to Cuba had declined just 8.7% compared to 2004.²⁷ The rebound in U.S. exports to Cuba in the second half of 2005 coincided with OFAC’s late July 2005 clarification regarding “payment of cash in advance” noted above. The Cuban government maintains that the overall decline in U.S. agricultural exports to Cuba in 2005 was because of the stricter U.S. regulations. Other observers maintain that the decline was in part a result of Cuba’s efforts to influence U.S. companies, local and state officials, and Members to lobby for changes in U.S. policy.²⁸

Some groups favor further easing restrictions on agricultural exports to Cuba. They argue that the restrictions harm the health and nutrition of the Cuban population. U.S. agribusiness companies that support the removal of restrictions on agricultural exports to Cuba believe that U.S. farmers are missing out on a market of over \$700 million annually so close to the United States. Some exporters want to change U.S. restrictions so that they can sell agriculture and farm equipment to Cuba.²⁹ Agricultural exporters who support the lifting of the prohibition on

²⁵ U.S. Department of the Treasury, Testimony of Robert Werner, Director, OFAC, before the House Committee on Agriculture, Mar. 16, 2005.

²⁶ Christopher S. Rugaber, “Treasury Clarifies Cuba Farm Export Rule, and Baucus Relents on Nominees,” *International Trade Reporter*, Aug. 4, 2005.

²⁷ World Trade Atlas. Department of Commerce Statistics.

²⁸ Jane Bussey, “Export Reversal, Food Exports to Cuba Dipped by 11% in 2005,” *Miami Herald*, Feb. 25, 2006.

²⁹ “Ag Groups Split Over Trade With Cuba,” *Congress Daily AM*, National Journal, Feb. 11, 2003.

financing contend that allowing such financing would help smaller U.S. companies expand purchases to Cuba more rapidly.³⁰

Opponents of further easing restrictions on agricultural exports to Cuba maintain that U.S. policy does not deny such sales to Cuba, as evidenced by the large amount of sales since 2001. Moreover, according to the State Department, since the Cuban Democracy Act was enacted in 1992, the United States has licensed billions of dollars in private humanitarian donations. Opponents further argue that easing pressure on the Cuban government would in effect be lending support and extending the duration of the Castro regime. They maintain that the United States should remain steadfast in its opposition to any easing of pressure on Cuba that could prolong the Castro regime and its repressive policies. Some agricultural producers that export to Cuba support continuation of the prohibition on financing for agricultural exports to Cuba because it ensures that they will be paid.

Legislative Initiatives. In the second session of the 109th Congress, both the House-passed and Senate Appropriations Committee-reported versions of the FY2007 Transportation/Treasury appropriation bill, H.R. 5576, contained a provision that would have prohibited funds from being used to implement the February 2005 tightened restrictions on financing for U.S. agricultural exports to Cuba. The House provision (Section 950) was added by H.Amdt. 1049 (Moran, Kansas), which was adopted by voice vote on June 14, 2006. The Senate provision (Section 846) was in the Senate Appropriations Committee's version of the bill reported on July 26, 2006 (S.Rept. 109-293); it was added by an amendment offered by Senator Dorgan by voice vote during the committee's July 20, 2006, markup of the bill. The Administration's Statement of Policy on the bill had a presidential veto threat if the bill contained any provision weakening Cuba sanctions. Action on H.R. 5576 was not completed by the end of the 109th Congress, so final action on FY2007 Transportation/Treasury appropriations will be completed in 2007.

Also in the second session, the Senate Appropriations Committee reported its version of the FY2007 Agriculture appropriations bill, H.R. 5384 (S.Rept. 109-266), which contains a provision (Section 755) liberalizing travel to Cuba related to the sale of agricultural and medical goods. It would have provided for such travel under a general license, instead of under a specific license currently issued by the Treasury Department on a case-by-case basis. Action on H.R. 5384 was not completed by the end of the 109th Congress, so FY2007 agriculture appropriations will need to be addressed in the new Congress.

Trademark Sanction³¹

A provision in the FY1999 omnibus appropriations measure (Section 211 of Division A, Title II, P.L. 105-277, signed into law October 21, 1998) prevents the United States from accepting payment for trademark registrations and renewals from

³⁰ "Farm Equipment Exports Likely to Face Tough Opposition from White House, Congress," *Cuba Trader*, Vol. III, No. 7, Feb. 17, 2003.

³¹ For additional information, see CRS Report RS21764, *Restricting Trademark Rights of Cubans: WTO Decision and Congressional Response*, by Margaret Mikyung Lee.

Cuban or foreign nationals that were used in connection with a business or assets in Cuba that were confiscated, unless the original owner of the trademark has consented. The provision prohibits U.S. courts from recognizing such trademarks without the consent of the original owner. The measure was enacted because of a dispute between the French spirits company, Pernod Ricard, and the Bermuda-based Bacardi Ltd. Pernod Ricard entered into a joint venture with the Cuban government to produce and export Havana Club rum, but Bacardi, whose company in Cuba was expropriated in the 1960s, maintains that it holds the right to the Havana Club name. Although Pernod Ricard cannot market Havana Club in the United States because of the trade embargo, it wants to protect its future distribution rights should the embargo be lifted.

The European Union initiated World Trade Organization dispute settlement proceedings in June 2000, maintaining that the U.S. law violates the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS). In January 2002, the WTO ultimately found that the trademark sanction violated WTO provisions on national treatment and most-favored-nation obligations in the TRIPS Agreement.³²

On March 28, 2002, the United States agreed that it would come into compliance with the WTO ruling through legislative action by January 3, 2003.³³ That deadline was extended several times since no legislative action had been taken to bring Section 211 into compliance with the WTO ruling. On July 1, 2005, however, in an EU-U.S. bilateral agreement, the EU agreed that it would not request authorization to retaliate at that time, but reserved the right to do so at a future date, and the United States agreed not to block a future EU request.³⁴ On August 3, 2006, the U.S. Patent and Trademark Office announced that Cuba's Havana Club trademark registration was "cancelled/expired," a week after OFAC had denied a Cuban government company the license that it needed to renew the registration of the trademark.³⁵

Two different approaches have been advocated to bring Section 211 into compliance with the WTO ruling. Some want a narrow fix in which Section 211 would be amended so that it also applies to U.S. companies instead of being limited to foreign companies. Advocates of this approach argue that it would affirm that the United States "will not give effect to a claim or right to U.S. property if that claimed

³² For more detailed information on the case, see CRS Report RL32014, *WTO Dispute Settlement: Status of U.S. Compliance in Pending Cases*, by Jeanne J. Grimmett, and CRS Report RS21764, *Restricting Trademark Rights of Cubans: WTO Decision and Congressional Response*, by Margaret Mikyung Lee.

³³ "U.S., EU Agree on Deadline for Complying with Section 211 WTO Finding," *Inside U.S. Trade*, Apr. 12, 2002.

³⁴ "Japan, EU Suspend WTO Retaliation Against U.S. in Two Cases," *Inside U.S. Trade*, July 15, 2005.

³⁵ "PTO Cancels Cuban 'Havana Club' Mark; Bacardi Set to Sell Rum Under Same Mark," *International Trade Daily*, Aug. 10, 2006.

is based on a foreign compensation.”³⁶ Others want Section 211 repealed altogether. They argue that the law endangers over 5,000 trademarks of over 500 U.S. companies registered in Cuba.³⁷ They maintain that Cuba could retaliate against U.S. companies under the Inter-American Convention for Trademark and Commercial Protection.

Several legislative initiatives in the 108th and 109th Congresses would have repealed the Section 211 trademark provision from law, while other bills would have advanced the narrow fix to Section 211 in order to comply with the WTO ruling, but no action was taken on these measures. The July 2005 EU-U.S. bilateral agreement, in which the EU agreed not to retaliate against the United States, but reserved the right to do so at a later date, reduced pressure on Congress to take action to comply with the WTO ruling.

Offshore Oil Sector Development

The issue of Cuba’s development of its offshore oil reserves along its northwest coast, which reportedly could amount to more than 5 billion barrels of oil, has been a concern among some Members of Congress. Cuba has signed agreements with four foreign oil companies — Repsol (Spain), Sherritt International (Canada), Norsk-Hydro (Norway), and ONGC (India) — for the exploration of offshore oil and gas. Some Members expressed concern about the oil development so close to the United States and about potential environmental damage to the Florida coast.

In the 109th Congress, legislation was introduced in both houses — H.R. 5292 (Ros-Lehtinen), S. 2682 (Nelson), and S. 2795 (Martinez) — that would have imposed sanctions related to Cuba’s offshore oil development on its northern coast. In contrast, other Members introduced legislation, H.R. 5353 (Flake) and S. 2787 (Craig), that would have authorized U.S. companies to work with Cuba for the offshore exploitation and extraction of oil along Cuba’s northern coast. They argued that U.S. companies’ involvement in Cuba’s offshore oil development would reduce the likelihood of potential environmental damage caused by an oil spill.

Drug Interdiction Cooperation

Because of Cuba’s geographic location, the country’s waters and airspace have been used by illicit narcotics traffickers to transport drugs for ultimate destinations in the United States. Over the past several years, Cuban officials have expressed concerns over the use of their waters and airspace for drug transit as well as increased domestic drug use. The Cuban government has taken a number of measures to deal with the drug problem, including legislation to stiffen penalties for traffickers, increased training for counternarcotics personnel, and cooperation with a number of countries on anti-drug efforts. Cuba has bilateral counternarcotics agreements with 33 countries and less formal arrangements with 16 others,

³⁶ Brian Lehman, testimony before the Senate Committee on the Judiciary, hearing on “An Examination of Section 211 of the Omnibus Appropriations Act of 1998,” July 13, 2004.

³⁷ “USA-Engage Joins Cuba Fight,” *Cuba Trader*, Apr. 1, 2002.

according to the Department of State. In 2003, Cuba began nationwide multi-agency anti-drug efforts: Operation Hatchet III, focusing on maritime and air interdiction; and Operation Popular Shield, focusing on investigations.

There has been a mixed record of cooperation with Cuba on anti-drug efforts. In 1996, Cuban authorities cooperated with the United States in the seizure of 6.6 tons of cocaine aboard the Miami-bound *Limerick*, a Honduran-flag ship. Cuba turned over the cocaine to the United States and cooperated fully in the investigation and subsequent prosecution of two defendants in the case in the United States. Cooperation has increased since 1999 when U.S. and Cuban officials met in Havana to discuss ways of improving anti-drug cooperation. Cuba accepted an upgrading of the communications link between the Cuban Border Guard and the U.S. Coast Guard as well as the stationing of a U.S. Coast Guard Drug Interdiction Specialist (DIS) at the U.S. Interests Section in Havana. The Coast Guard official was posted to the U.S. Interests Section in September 2000, and since that time, coordination has increased somewhat.

The State Department, in its March 2006 International Narcotics Control Strategy Report, maintains narcotics cooperation occurs on a case-by-case basis through the Coast Guard specialist. The report notes that Cuba has provided to the investigation information to the United States on narcotics trafficking cases as well as information on suspect vessels and aircraft. The report contends, however, that Cuba consistently seeks to engage U.S. cooperation on counternarcotics efforts in order “to project an aura of normalization with the United States.” The report maintains that broader cooperation with Cuba, such as through a bilateral agreement, is not possible until Cuba “abandons its totalitarian character and its role as a state sponsor of terrorism.”

Cuba maintains that it wants to cooperate with the United States to combat drug trafficking, and on various occasions has called for a bilateral anti-drug cooperation agreement with the United States.³⁸ In January 2002, Cuba deported to the United States Jesse James Bell, a U.S. fugitive wanted on drug charges, and in early March 2002, Cuba arrested a convicted Colombian drug trafficker, Rafael Bustamante, who escaped from jail in Alabama in 1992. At the time, then Drug Enforcement Administration head Asa Hutchison expressed appreciation for Cuba’s actions, but indicated that cooperation would continue on a case-by-case basis, not through a bilateral agreement.³⁹

Legislative Initiatives. Over the past several years, House and Senate versions of Foreign Operations appropriations bills have contained contrasting

³⁸ On March 12, 2002, Cuba’s Ministry of Foreign Affairs and the Cuban Interests Section in Washington delivered three diplomatic notes to the U.S. Interests Section in Havana and the State Department in Washington proposing agreements on drug interdiction, terrorism, and migration issues. See “Statement from the Ministry of Foreign Affairs: Prominent Drug Trafficker Arrested in our Country,” Information Office, Cuban Interests Section, Mar. 17, 2002; “Cuba Offers to Sign Anti-Drug Pact,” *Miami Herald*, Apr. 8, 2006.

³⁹ Anthony Boadle, “U.S. Thanks Cuba, But Declines Anti-Drug Accord,” Reuters, Mar. 19, 2002.

provisions related to funding for cooperation with Cuba on counternarcotics efforts. House bills have generally prohibited funds for such efforts, while Senate versions would have funded such efforts. Ultimately, none of these provisions were included in enacted measures.

In the second session of the 109th Congress, the House-passed provision of the FY2007 Foreign Operations appropriations bill, H.R. 5522, included a provision that no International Narcotics Control and Law Enforcement (INCLE) funds could be made available to the Cuban government. The report to the bill (H.Rept. 109-486) maintained that full reporting and transparency by the Cuban government and U.S. monitoring of counternarcotics assistance in Cuba would be difficult, if not impossible, given Cuba's hostility toward the U.S. government. As in past years, the Senate version of the bill had a provision, in Section 551(e), that would have provided \$5 million in INCLE funds for preliminary work to establish cooperation with Cuba on counternarcotics matters. The money would not have been available if the President certified that Cuba did not have in place appropriate procedures to protect against the loss of innocent life in the air and on the ground in connection with the interdiction of illegal drugs and there was evidence of involvement of the Cuban government in drug trafficking. Final action on H.R. 5522 was not completed before the end of the 109th Congress.

Cuba and Terrorism⁴⁰

Cuba was added to the State Department's list of states sponsoring international terrorism in 1982 because of its alleged ties to international terrorism and support for terrorist groups in Latin America. Cuba had a long history of supporting revolutionary movements and governments in Latin America and Africa, but in 1992, Fidel Castro said that his country's support for insurgents abroad was a thing of the past. Cuba's change in policy was in large part because of the breakup of the Soviet Union, which resulted in the loss of billions of dollars in annual subsidies to Cuba, and led to substantial Cuban economic decline.

Cuba remains on the State Department's terrorism list. According to the State Department's *Country Reports on Terrorism 2005* report (issued in April 2006), Cuba has "actively continued to oppose the U.S.-led Coalition prosecuting the global war on terror and has publicly condemned various U.S. policies and actions."

The State Department report also noted that Cuba maintains close relationships with other state sponsors of terrorism such as Iran and North Korea and has provided safe haven for members of several foreign terrorist organizations. The report maintained that Cuba provides safe haven to various Basque Homeland and Freedom (ETA) members from Spain and to members of two Colombian insurgent groups, the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN), although the report also maintained that there is no information concerning terrorist activities of these or other organizations in Cuba. The State Department's 2002 and 2003 *Patterns of Global Terrorism* reports

⁴⁰ For further information, see CRS Report RL32551, *Cuba and the State Sponsors of Terrorism List*, by Mark P. Sullivan.

acknowledged that Colombia acquiesced to this arrangement and that Colombia publicly said that it wanted Cuba's continued mediation with the ELN in Cuba. Since December 2005, the Colombian government and the ELN have held four rounds of exploratory talks in Havana, and in October 2006, the two parties announced plans to launch a formal peace process.⁴¹

The 2005 report also maintained that Cuba permits U.S. fugitives from justice to live legally in Cuba. Many are accused of hijacking or committing violent actions in the United States, including Joanne Chesimard, who is wanted for the murder of a New Jersey State Trooper in 1973. The State Department report noted that most of the fugitives entered Cuba in the 1970s and that Cuba has stated that it will no longer provide safe haven to new fugitives who may enter Cuba. In the 109th Congress, Section 101(1)(H) of House-passed H.R. 2601 would have authorized funds for the U.S. Interests Section in Havana to disseminate the names of U.S. fugitives residing in Cuba and any rewards for their capture. H.R. 332 (King) would have amended the Cuban Liberty and Democratic Solidarity Act of 1996 to require that, in order to determine that a democratically elected government in Cuba exists, the government extradite to the United States individuals who are living in Cuba in order to escape prosecution or confinement for a criminal offense committed in the United States.

In general, those who support keeping Cuba on the terrorism list argue that there is ample evidence that Cuba supports terrorism. They point to the government's history of supporting terrorist acts and armed insurgencies in Latin America and Africa. They point to the government's continued hosting of members of foreign terrorist organizations and U.S. fugitives from justice. Critics of retaining Cuba on the terrorism list maintain that it is a holdover from the Cold War. They argue that domestic political considerations keep Cuba on the terrorism list and maintain that Cuba's presence on the list diverts U.S. attention from struggles against serious terrorist threats.

Cuba as the Victim of Terrorism. Cuba has been the target of various terrorist incidents over the years. In 1976, a Cuban plane was bombed, killing 73 people. In 1997, there were almost a dozen bombings in the tourist sector in Havana and in the Varadero beach area in which an Italian businessman was killed and several others were injured. Two Salvadorans were convicted and sentenced to death for the bombings in March 1999, and three Guatemalans were sentenced to prison terms ranging from 10-15 years in January 2002. Cuban officials maintain that Cuban exiles funded the bombings.

In November 2000, four anti-Castro activists were arrested in Panama for a plot to kill Fidel Castro. One of the accused, Luis Posada Carriles, was also allegedly involved in the 1976 Cuban airline bombing noted above.⁴² The four stood trial in March 2004 and were sentenced on weapons charges in the case to prison terms ranging from seven to eight years. In late August 2004, Panamanian President

⁴¹ CRS Report RL32250, *Colombia: Issues for Congress*, by Colleen Cook.

⁴² Frances Robles, "An Old Foe of Castro Looks Back on His Fight," *Miami Herald*, Sept. 4, 2003.

Mireya Moscoso pardoned the four men before the end of her presidential term. Three of the men are U.S. citizens and traveled to Florida, where they received strong support from some in the Cuban American community, while Posada Carriles reportedly traveled to another country.

On April 13, 2005, Posada's lawyer said that his client, reportedly in the United States after entering the country illegally, would seek asylum in the United States because he has a "well-founded fear of persecution" for his opposition to Fidel Castro.⁴³ Posada, a Venezuelan citizen, had been imprisoned in Venezuela for the bombing of the Cuban airliner in 1976, but reportedly was allowed to "escape" from prison in 1985 after his supporters paid a bribe to the prison warden.⁴⁴ He had been acquitted for the bombing but remained in prison pending a prosecutorial appeal.⁴⁵ Posada also reportedly admitted, but later denied, involvement in the string of bombings in Havana in 1997, one of which killed an Italian tourist.⁴⁶ U.S. Immigration and Customs Enforcement (ICE) arrested Posada on May 17, 2005, and subsequently charged him with illegally entering the United States. A Department of Homeland Security press release indicated that ICE does not generally deport people to Cuba or countries believed to be acting on Cuba's behalf.⁴⁷ Venezuela requested Posada's extradition and pledged that it would not hand Posada over to Cuba, but on September 26, 2005, a U.S. immigration judge ruled that Posada likely faced torture in Venezuela and could not be deported in keeping with U.S. obligations under the Convention Against Torture.⁴⁸ ICE reviewed the case and determined on March 22, 2006, that Posada would not be freed from a federal immigration facility in El Paso, Texas.⁴⁹

In November 2006, however, a U.S. federal judge, who is considering Posada's plea that he be released, ordered the government to supply evidence, by February 1, 2007, justifying his continued detention. On January 11, 2007, a federal grand jury in Texas indicted Posada on seven counts for lying about how he entered the United States illegally in March 2005, an indictment that could justify his continued detention. The Cuban government responded by maintaining that Posada needs to

⁴³ Alfonso Chardy and Nancy San Martin, "Lawyer Expects Posada to Show Soon," *Miami Herald*, Apr. 14, 2005.

⁴⁴ Ann Louise Bardach, "Our Man's in Miami. Patriot or Terrorist?," *Washington Post*, Apr. 17, 2005.

⁴⁵ Although Posada was acquitted by a military court, a higher court ordered a new civilian trial. Reportedly a first set of prosecutors recommended against charging Posada, but a second set of prosecutors took the case to trial, and Posada escaped during that time in 1985. See Oscar Corral, "Debate Focuses on Escape," *Miami Herald*, June 19, 2005.

⁴⁶ Oscar Corral and Alfonso Chardy, "Victim's Kin Oppose Posada Bid for Asylum," *Miami Herald*, May 7, 2005.

⁴⁷ Department of Homeland Security, Office of Public Affairs, Statement, May 17, 2005.

⁴⁸ Alicia Caldwell, "Judge Says Cuban Militant Can't Be Deported to Venezuela," *Associated Press*, Sept. 28, 2005.

⁴⁹ Oscar Corral, "Cuban Exile Militant Luis Posada Denied Release," *Miami Herald*, Mar. 22, 2006.

be charged with terrorism, not just lying about how he entered the United States. Another grand jury in New Jersey is reportedly examining Posada's alleged role in the 1997 bombings in Cuba.⁵⁰

U.S. Funding to Support Democracy and Human Rights

Over the past several years, the United States provided assistance — primarily through the U.S. Agency for International Development (USAID), but also through the State Department and the National Endowment for Democracy (NED) — to increase the flow of information on democracy, human rights, and free enterprise to Cuba.

USAID's Cuba program supports a variety of U.S.-based non-governmental organizations to promote rapid, peaceful transition to democracy, help develop civil society, and build solidarity with Cuba's human rights activists.⁵¹ These efforts are largely funded through Economic Support Funds (ESF) in the annual foreign operations appropriations bill. Funding for such projects amounted to about \$5 million for each of FY2001 and FY2002, \$6 million in FY2003, \$21.4 million in FY2004 (because of re-programmed ESF assistance to fund the democracy-building recommendations of the Commission to Provide Assistance for a Free Cuba), \$8.9 million in FY2005, and an estimated \$10.9 million in FY2006.

For FY2007, the Administration requested \$9 million in ESF to support the recommendations of the President's Commission for Assistance to a Free Cuba, and to support USAID-administrated democracy and human rights programs. The report to the House-passed version of the FY2007 Foreign Operations appropriations bill, H.R. 5522 (H.Rept. 109-486), recognized the work of USAID in promoting democracy and humanitarian assistance for Cuba and urged the agency to continue to promote its Cuba program. The report to the Senate version of H.R. 5522 (S.Rept. 109-277) recommended \$2.5 million in ESF for Cuba democracy programs, \$6.5 million less than the Administration's request. Final action on H.R. 5522 was not completed before the end of the 109th Congress, so action on FY2007 Foreign Operations appropriations will be completed in 2007. The July 2006 report of the Commission for Assistance to a Free Cuba recommended, in addition to current funding, \$80 million over two years for a variety of measures to hasten Cuba's transition to democracy, and not less than \$20 million annually thereafter for Cuba democracy programs.

The NED's democratization assistance for Cuba is funded largely through the annual Commerce, Justice, and State (CJS) appropriations measure, although NED has also received some State Department ESF for its Cuba program. NED funding for Cuba has steadily increased over the past several years: \$765,000 in FY2001;

⁵⁰ Alfonso Chardy and Jay Weaver, "Posada a Target of New Federal Probes," *Miami Herald*, Nov. 12, 2006, and "Grand Jury Indicts Cuban Exile Militant Luis Posada Carriles," *Miami Herald*, Jan. 12, 2007.

⁵¹ See USAID's Cuba program website: [http://www.usaid.gov/locations/latin_america_caribbean/country/cuba/].

\$841,000 in FY2002; \$1.14 million in FY2003; and \$1.15 million in FY2004. For FY2005, NED funded 17 Cuba projects with \$2.4 million.

In mid-November 2006, the Government Accountability Office (GAO) issued a report examining U.S. democracy assistance for Cuba from 1996-2005, and concluded that the U.S. program had significant problems and needed better management and oversight. According to GAO, internal controls, for both the awarding of Cuba program grants and oversight of grantees, “do not provide adequate assurance that the funds are being used properly and that grantees are in compliance with applicable law and regulations.”⁵² Investigative news reports on the program maintained that high shipping costs and lax oversight have diminished its effectiveness.⁵³ Representative William Delahunt, who along with Representative Jeff Flake had requested the GAO study, promised hearings on the Cuba democracy funding in the 110th Congress.

Radio and TV Marti

U.S.-government sponsored radio and television broadcasting to Cuba — Radio and TV Marti — began in 1985 and 1990 respectively. As spelled out in the *Broadcasting Board of Governors FY2007 Budget Request*, the objectives of Radio and TV Marti are 1) to support the right of the Cuban people to seek, receive, and impart information and ideas through any media and regardless of frontiers; 2) to be effective in furthering the open communication of information and ideas through use of radio and television broadcasting to Cuba; 3) to serve as a consistently reliable and authoritative source of accurate, objective, and comprehensive news; and 4) to provide news, commentary, and other information about events in Cuba and elsewhere to promote the cause of freedom in Cuba.

Until October 1999, U.S.-government funded international broadcasting programs had been a primary function of the United States Information Agency (USIA). When USIA was abolished and its functions were merged into the Department of State at the beginning of FY2000, the Broadcasting Board of Governors (BBG) became an independent agency that included such entities as the Voice of America (VOA), Radio Free Europe/Radio Liberty (RFE/RL), Radio Free Asia, and the Office of Cuba Broadcasting (OCB), which manages Radio and TV Marti. OCB is headquartered in Miami, Florida. Legislation in the 104th Congress (P.L. 104-134) required the relocation of OCB from Washington D.C. to south Florida. The move began in 1996 and was completed in 1998.

Radio Marti broadcasts on short and medium wave (AM) channels for 24 hours six days per week, and for 18 hours one day per week. TV Marti broadcasts 24 hours a day, seven days a week on the Hispasat satellite and is also available on the Internet 24 hours a day. Until July 2005, TV Marti had also been broadcast via

⁵² U.S. Government Accountability Office, U.S. Democracy Assistance for Cuba Needs Better Management and Oversight, GAO-07-147, November 2006.

⁵³ Oscar Corral, “Federal Program to Help Democracy in Cuba Falls Short of Mark,” *Miami Herald*, Nov. 14, 2006, and “Is U.S. Aid Reaching Castro Foes?” *Miami Herald*, Nov. 15, 2006.

blimps from facilities in Cudjoe Key, Florida for four and one-half hours daily, but the aerostats were destroyed by Hurricane Dennis. Since mid-2004, both Radio and TV Marti programming have been transmitted for several hours once a week via airborne broadcasts conducted by the Air Force. Since August 2006, a dedicated contracted private aircraft has been used to transmit TV Marti Monday through Saturday evenings, and Radio Marti broadcasts will reportedly be added in the future.⁵⁴ In addition, the OCB contracted with a private U.S. commercial television station to broadcast some TV Marti programs daily, beginning on December 18, 2006. OCB also contracted with a private commercial radio station in Miami, Radio Mambi, to broadcast some Radio Marti programming.⁵⁵

Both Radio and TV Marti have at times been the focus of controversies, including questions about adherence to broadcast standards. There have been various attempts over the years to cut funding for the programs, especially for TV Marti, which has not had an audience because of Cuban jamming efforts. Various studies and audits of these programs have been conducted, including investigations by the U.S. General Accounting Office, by a 1994 congressionally established Advisory Panel on Radio and TV Marti, and by the State Department's and BBG's Inspector General offices in 1999 and 2003.⁵⁶ More recently, in December 2006, press reports alleged significant problems in the OCB's operations, with claims of cronyism, patronage, and bias in its coverage.⁵⁷

From FY1984 through FY2006, about \$530 million has been spent for broadcasting to Cuba, with about \$316 million for Radio Marti (since FY1984) and \$214 million for TV Marti (since FY1989).

Debate on TV Marti. In the various congressional debates on TV Marti over the years, opponents of continued funding of the program maintain that virtually the

⁵⁴ "TV Marti Broadcasts to Cuba Have Increased to Six-Times-a-Week," *Miami Herald*, Aug. 6, 2006.

⁵⁵ Christina Hoag, "Radio, TV Marti To Be Aired Locally," *Miami Herald*, Dec. 19, 2006.

⁵⁶ See the following reports and audits: U.S. General Accounting Office (GAO), *Broadcasts to Cuba, TV Marti Surveys are Flawed*, GAO/NSIAD-90-252, August 1990; U.S. GAO, *TV Marti, Costs and Compliance with Broadcast Standards and International Agreements*, GAO/NSIAD-92-199, May 1992; U.S. GAO, Letter to Hon. Howard L. Berman and Hon. John F. Kerry regarding Radio Marti broadcast standards, GAO/NSIAD-93-126R, Feb. 17, 1993; Advisory Panel on Radio and TV Marti, *Report of the Advisory Panel on Radio and TV Marti*, Three Volumes, March 1994; U.S. GAO, *Radio Marti, Program Review Processes Need Strengthening*, GAO/NSIAD-94-265, September 1994; U.S. GAO, *U.S. Information Agency, Issues Related to Reinvention Planning in the Office of Cuba Broadcasting*, GAO/NSIAD-96-110, May 1996; U.S. Department of State, Office of the Inspector General, *Review of Policies and Procedures for Ensuring that Radio Marti Broadcasts Adhere to Applicable Requirements*, 99-IB-010, June 1999; U.S. Department of State and the Broadcasting Board of Governors, Office of Inspector General, *Review of the Effectiveness and Implementation of Office of Cuba Broadcasting's New Program Initiatives*, Report No. IBO-A-03-01, January 2003.

⁵⁷ Oscar Corral, "Radio, TV Marti Face Another Government Audit," *Miami Herald*, Dec. 18, 2006, and "Problems Dog Broadcaster," *Miami Herald*, Dec. 19, 2006.

only people who see TV Marti in Cuba are those Cubans who visit the consular section of the U.S. Interests Section in Havana, which has a waiting room in which TV Marti may be viewed. These critics argue that some \$190 million has been spent by the United States for TV Marti, while the Cuban government only needs to spend a few thousand dollars to jam the broadcasts effectively. They argue that TV Marti is a waste of taxpayers' money because it does not contribute to the promotion of freedom and democracy in Cuba, unlike Radio Marti, which some Cubans listen to as a source of information. Opponents also argue that the conversion of TV Marti from VHF to UHF transmission has not succeeded in overcoming Cuba's jamming efforts.

In contrast, supporters of continued TV Marti funding point to a congressionally mandated Advisory Panel in 1994, which stated that "the Cuban people have an ardent desire and a genuine need to receive the programming produced by TV Marti."⁵⁸ Supporters argue that eliminating TV Marti would send a message to the Cuban people that the United States is not committed to the cause of freedom in Cuba. They believe that eliminating TV Marti would be giving in to the dictatorial Castro government, which suppresses the free flow of information in Cuba. These proponents contend that it is impossible for the Cuban government to completely jam TV Marti, and maintain that significant numbers of Cubans have attempted to tune in to the programming. Still others point to the potential use of TV Marti in the event of a crisis or upheaval in Cuba's future, and argue that in such a scenario, it would be important to have TV Marti available as a news source.

FY2007 Request. The Administration requested \$36.279 million for Cuba broadcasting in FY2007, with \$2.7 million of this to purchase an aerostat for broadcasting TV Marti. The request was slightly below the \$37.129 million appropriated in FY2006 (when Congress funded the Administration's request to acquire and outfit an aircraft for dedicated airborne radio and television broadcasts to Cuba), but almost \$9 million above the \$27.6 million appropriated in FY2005. On June 29, 2006, the House passed H.R. 5672, the FY2007 Science, State, Justice, Commerce and Related Agencies appropriations bill, that would fund Cuba broadcasting under the International Broadcasting Operations account. The report to the bill (H.Rept. 109-520) recommended \$36.102 million for Cuba broadcasting, including \$2.7 million to improve transmission capabilities via aerostat for broadcasting TV Marti. The Senate version of H.R. 5522, the FY2007 Foreign Operations appropriations bill, would fund Cuba broadcasting. The Senate report to the bill (S.Rept. 109-277) recommended full funding of the Administration's request of \$36.279 million. Final action was not completed on either bill before the end of the 109th Congress, so the 110th Congress may face action in 2007.

Migration Issues

Cuba and the United States reached two migration accords in 1994 and 1995 designed to stem the mass exodus of Cubans attempting to reach the United States by boat. On the minds of U.S. policymakers was the 1980 Mariel boatlift in which

⁵⁸ Advisory Panel on Radio Marti and TV Marti, *Report of the Advisory Panel on Radio Marti and TV Marti*, Executive Summary, March 1994.

125,000 Cubans fled to the United States with the approval of Cuban officials. In response to Castro's threat to unleash another Mariel, U.S. officials reiterated U.S. resolve not to allow another exodus. Amid escalating numbers of fleeing Cubans, on August 19, 1994, President Clinton abruptly changed U.S. migration policy, under which Cubans attempting to flee their homeland were allowed into the United States, and announced that the U.S. Coast Guard and Navy would take Cubans rescued at sea to the U.S. naval base at Guantanamo Bay, Cuba. Despite the change in policy, Cubans continued fleeing in large numbers.

As a result, in early September 1994, Cuba and the United States began talks that culminated in a September 9, 1994 bilateral agreement to stem the flow of Cubans fleeing to the United States by boat. In the agreement, the United States and Cuba agreed to facilitate safe, legal, and orderly Cuban migration to the United States, consistent with a 1984 migration agreement. The United States agreed to ensure that total legal Cuban migration to the United States would be a minimum of 20,000 each year, not including immediate relatives of U.S. citizens. In a change of policy, the United States agreed to discontinue the practice of granting parole to all Cuban migrants who reach the United States, while Cuba agreed to take measures to prevent unsafe departures from Cuba.

In May 1995, the United States reached another accord with Cuba under which the United States would parole the more than 30,000 Cubans housed at Guantanamo into the United States, but would intercept future Cuban migrants attempting to enter the United States by sea and would return them to Cuba. The two countries would cooperate jointly in the effort. Both countries also pledged to ensure that no action would be taken against those migrants returned to Cuba as a consequence of their attempt to immigrate illegally. On January 31, 1996, the Department of Defense announced that the last of some 32,000 Cubans intercepted at sea and housed at Guantanamo had left the U.S. Naval Station, most having been paroled into the United States.

Wet Foot/Dry Foot Policy. Since the 1995 migration accord, the U.S. Coast Guard has interdicted thousands of Cubans at sea and returned them to their country, while those deemed at risk for persecution have been transferred to Guantanamo and then found asylum in a third country. Those Cubans who reach shore are allowed to apply for permanent resident status in one year, pursuant to the Cuban Adjustment Act of 1966 (P.L. 89-732). This so-called "wet foot/dry foot" policy has been criticized by some as encouraging Cubans to risk their lives in order to make it to the United States and as encouraging alien smuggling. Others maintain that U.S. policy should welcome those migrants fleeing communist Cuba whether or not they are able to make it to land.

The number of Cubans interdicted at sea by the U.S. Coast Guard has risen in recent years, from 931 in 2002 to 1,464 in 2003 and 1,499 in 2004. In 2005, 2,952 Cubans were interdicted, almost twice the number of Cubans interdicted in 2004, but in 2006, the number of interdictions declined to 2,293 for the year.⁵⁹

⁵⁹ U.S. Coast Guard, Alien Migrant Interdiction, Coast Guard Office of Law Enforcement, "Total Interdictions, Calendar Year 1982 to Present," Apr. 28, 2006.

U.S. prosecution against migrant smugglers in Florida has increased in recent years with numerous convictions. There have been several violent incidents in which Cuban migrants have brandished weapons or in which Coast Guard officials have used force to prevent Cubans from reaching shore. In July 2003, a U.S. federal court in Florida convicted a Cuban national for hijacking a plane to Key West on April 1, 2003. Another six Cubans were convicted in Key West in December 2003 for hijacking a Cubana Airlines plane to Florida earlier in the year.

The Cuban government has taken forceful action against individuals engaging in alien smuggling. Prison sentences of up to three years may be imposed against those engaging in alien smuggling, and for incidents involving death or violence, a life sentence may be imposed. On April 11, 2003, the Cuban government executed three men who had hijacked a ferry in Havana on April 2 in an attempt to reach the United States. The ferry hijacking had been preceded by the hijacking of two small planes to the United States. The summary execution prompted worldwide condemnation of the Cuban government. The Cuban government maintained that it took the action to prevent additional hijackings.

In the aftermath of Fidel Castro's July 31, 2006, announcement that he was temporarily ceding political power to his brother, Department of Homeland Security officials announced several measures to discourage Cubans from risking their lives on the open seas. On August 11, 2006, Department of Homeland Security (DHS) Deputy Secretary Michael P. Jackson urged "the Cuban people to stay on the island" and discouraged "anyone from risking their life in the open seas in order to travel to the United States." At the same time, DHS announced additional measures to discourage Cubans from turning to alien smuggling as a way to enter the United States. The measures support family reunification by increasing the numbers of Cuban migrants admitted to the United States each year who have family members in the United States, although the overall number of Cubans admitted to the United States annually will remain at about 21,000. Cubans who attempt to enter the United States illegally will be deemed ineligible to enter under this new family reunification procedure. In another change of policy, Cuban medical personnel currently conscripted by the Cuban government to work in third countries will be allowed to enter the United States; their families in Cuba will also be allowed to enter the United States.⁶⁰

Migration Talks. Semi-annual U.S.-Cuban talks alternating between Cuba and the United States had been held regularly on the implementation of the 1994 and 1995 migration accords, but the State Department cancelled the 20th round of talks scheduled for January 2004, and no migration talks have been held since. According to the State Department, Cuba has refused to discuss five issues identified by the United States: (1) Cuba's issuance of exit permits for all qualified migrants; (2) Cuba's cooperation in holding a new registration for an immigrant lottery; (3) the need for a deeper Cuban port used by the U.S. Coast Guard for the

⁶⁰ Department of Homeland Security, "DHS Announces Additional Measures to Combat Alien Smuggling of Cubans," and "USCIS Will Further Strengthen Measures that Support the Reunification of Families Separated by the Castro Regime," Press Releases, Aug. 11, 2006.

repatriation of Cubans interdicted at sea; (4) Cuba's responsibility to permit U.S. diplomats to travel to monitor returned migrants; and (5) Cuba's obligation to accept the return of Cuban nationals determined to be inadmissible to the United States.⁶¹ In response to the cancellation of the talks, Cuban officials maintained that the U.S. decision was irresponsible and that Cuba was prepared to discuss all of the issues raised by the United States.⁶²

Guantanamo Naval Base

The 45-square mile U.S. Naval Station at Guantanamo Bay, Cuba, has been a U.S. base since 1903, and under a 1934 treaty that remains in force, the U.S. presence can only be terminated by mutual agreement or by abandonment by the United States. When Fidel Castro assumed power in the 1959 Cuban revolution, the new government gave assurances that it would respect all its treaty commitments, including the 1934 treaty covering the Guantanamo base. Subsequently, however, as U.S.-Cuban relations deteriorated, the Cuban government opposed the presence as illegal.

The mission of the base has changed over time. During the Cold War, the base was viewed as a good location for controlling Caribbean sea lanes, as a deterrent to the Soviet presence in the Caribbean, and as a location for supporting potential military operations in the region. In 1994-1995, the base was used to house thousands of Cubans and Haitians fleeing their homeland, but by 1996 the last of the refugees had departed, with most Cubans paroled into the United States, pursuant to a May 1995 U.S.-Cuban migration accord. Since the 1995 accord, the U.S. Coast Guard has interdicted thousands of Cubans at sea and returned them to Cuba, while a much smaller number, those deemed at risk for persecution, have been taken to Guantanamo and then granted asylum in a third country.

Another mission for the Guantanamo base emerged with the U.S.-led global campaign against terrorism in the aftermath of the September 11, 2001, terrorist attacks in the United States. With the U.S. war in Afghanistan in 2001, the United States decided to send some captured Taliban and Al Qaeda fighters to be imprisoned in Guantanamo. Although the Cuban government has objected to the U.S. presence at Guantanamo, it did not initially oppose the new mission of housing detainees. Defense Minister Raúl Castro noted that, in the unlikely event that a prisoner would escape into Cuban territory, Cuba would capture the prisoner and return him to the base.⁶³ The Cuban government, however, has expressed concerns about the treatment of prisoners at the U.S. base and has said it will keep pressing the international community to investigate the treatment of terrorist suspects.⁶⁴ In

⁶¹ U.S. Department of State. State Department Regular Briefing, Richard Boucher. Jan. 7, 2004.

⁶² "Migration Talks Cancelled," *Miami Herald*, Jan. 8, 2004.

⁶³ "Cuba Would Hand Over Escapees, Raúl Castro Says," *Miami Herald*, Jan. 20, 2002.

⁶⁴ For information on terrorist suspects held at Guantanamo, see CRS Report RL31367, *Treatment of "Battlefield Detainees" in the War on Terrorism*, by Jennifer K. Elsea; and CRS Report RS22173, *Detainees at Guantanamo Bay*, by Jennifer K. Elsea.

January 2005, it denounced what it described as “atrocities” committed at the Guantanamo base.⁶⁵

With regard to the future of the Guantanamo base, a provision in the Cuban Liberty and Democratic Solidarity Act of 1996 (P.L. 104-114, Section 210) states that once a democratically elected Cuban government is in place, U.S. policy is to be prepared to enter into negotiations either to return the base to Cuba or to renegotiate the present agreement under mutually agreeable terms.

Legislation in the 109th Congress

The following listing consists of enacted appropriations measures with Cuba-related provisions, FY2007 appropriations bills with Cuba provisions that were not completed by the end of the 109th Congress, and human rights resolutions that were approved. For a complete listing of legislative initiatives in the 109th Congress, see CRS Report RL32730, *Cuba: Issues for the 109th Congress*.

Appropriations Measures

P.L. 109-102 (H.R. 3057). FY2006 Foreign Operations, Export Financing, and Related Programs. Signed into law November 14, 2005. Funds FY2006 democracy and human rights funding for Cuba. The Administration requested \$15 million in ESF assistance for democracy activities for Cuba. Neither the House nor the Senate versions addressed this issue, and the conference report did not include a specific earmark for Cuba.

P.L. 109-108 (H.R. 2862). FY2006 Science, State, Justice, Commerce, and Related Agencies Appropriations Act. Reported by Appropriations Committee (H.Rept. 109-118). House passed June 16, 2005. Senate passed September 15, 2005. Conference report (H.Rept. 109-272) filed November 7, 2005. House approved conference November 9; Senate approved conference November 16, 2005. Signed into law November 22, 2005. The report to the House bill included a committee recommendation of \$27.9 million for Cuba broadcasting, \$10 million below the Administration’s request, and did not provide funding for an aircraft to transmit Radio and TV Marti programming. Senate action on appropriations for Cuba broadcasting were included in the Senate version of H.R. 3057 rather than H.R. 2862, and fully funded the Administration’s request of \$37.7 million. The conference report fully funds the Administration’s request of \$37.7 million for Broadcasting to Cuba under the International Broadcasting Operations account.

H.R. 5384 (Bonilla). FY2007 Agriculture Appropriations bill. Introduced and reported by House Appropriations Committee May 12, 2006; passed House May 23, 2006. Senate Appropriations Committee reported its version June 22, 2006 (S.Rept. 109-266). The Senate version contains a provision, Section 755, providing for travel to Cuba under a general license for travel related to the sale of agricultural and

⁶⁵ Ana Radelat, “Cuba Turns Up Rhetoric on Guantanamo as UN Condemns Human Rights Abuses,” *CubaNews*, April 2005.

medical goods to Cuba. Currently such travel is provided under a specific license issued by the Treasury Department on a case-by-case basis. Final action was not completed by the end of the 109th Congress.

H.R. 5522 (Kolbe). FY2007 Foreign Operations, Export Financing and Related Programs. Introduced June 5, 2006, and reported by the House Appropriations Committee (H.Rept. 109-486); House passed (373-34) June 9, 2006. The Senate Appropriations reported its version of the bill July 10, 2006 (S.Rept. 109-277). With regard to Cuba democracy programs, the Senate-reported version recommended \$2.5 million in ESF, \$6.5 million less than the request, while the House report to the bill recognized the work of USAID in promoting democracy and humanitarian assistance for Cuba and urged the agency to continue to promote its Cuba program. With regard to counternarcotics cooperation with Cuba, the House-passed bill, in Section 570, would have provided that no International Narcotics Control and Law Enforcement (INCLE) funds may be made available for Cuba, while the Senate-reported version, in Section 551(e), would have provided \$5 million in INCLE funds for preliminary work to establish cooperation with Cuba. The money would not be available if the President certified that Cuba did not have in place appropriate procedures to protect against the loss of innocent life in the air and on the ground in connection with the interdiction of illegal drugs and there was evidence of involvement of the Cuban government in drug trafficking. The Senate-reported version also would have funded Cuba broadcasting, with the Senate report to the bill recommending full funding of the Administration's \$36.279 million request. The House would have funded Cuba broadcasting in H.R. 5672, the FY2007 Science, State, Justice, Commerce and Related Agencies appropriations bill, described below. Final action was not completed before the end of the 109th Congress.

H.R. 5576 (Knollenberg). FY2007 Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act. Introduced June 9, 2006; reported by House Appropriations Committee (H.Rept. 109-495). House passed (406-22) June 14, 2006. Reported by Senate Appropriations Committee (S.Rept. 109-293) July 26, 2006. Both the House and Senate versions of the bill include a provision (Section 950 in the House version and Section 846 in the Senate version) that prohibits funds from being used to implement tightened restrictions on financing for U.S. agricultural exports to Cuba that were issued in February 2005. In the House bill, the provision was added by H.Amdt. 1049 (Moran, Kansas), approved by voice vote during floor consideration on June 14, 2006. Final action on the measure was not completed by the end of the 109th Congress.

H.R. 5672 (Wolf). FY2007 Science, State, Justice, Commerce and Related Agencies appropriations. Introduced June 22, 2006; reported by House Appropriations Committee (H.Rept. 109-520). House passed June 29, 2006. As approved, Cuba broadcasting is to be funded under the International Broadcasting Operations account. The report to the bill recommends \$36.102 million for Cuba broadcasting, including \$2.7 million to improve transmission capabilities via aerostat for broadcasting TV Marti. Final action on the measure was not completed before the end of the 109th Congress.

Human Rights Resolutions

H.Con.Res. 81 (Menendez). Expresses the sense of Congress regarding the two-year anniversary of the human rights crackdown in Cuba. Introduced March 2, 2005; approved by the House Committee on International Relations March 9, 2005. House passed (398-27, 2 present) April 27, 2005.

H.Res. 193 (Diaz-Balart, Mario). Expresses support of the House of Representatives to the organizers and participants of the May 20, 2005, meeting in Havana of the Assembly to Promote Civil Society. Introduced April 6, 2005; approved by the Committee on International Relations April 27, 2005. House passed (392-22, 1 present) May 10, 2005.

H.Res. 388 (Diaz-Balart, Lincoln). Expresses the sense of the House of Representatives regarding the Cuban government's extreme repression against members of Cuba's pro-democracy movement in July 2005; condemns gross human rights violations committed by the Cuban regime; calls on the Secretary of State to initiate an international solidarity campaign on behalf of the immediate release of all Cuban political prisoners; calls on the European Union to reexamine its current policy toward the Cuban regime; and calls on the U.S. Permanent Representative to the United Nations and other international organizations to work with member countries of the U.N. Commission on Human Rights (UNCHR) to ensure a strong resolution on Cuba at the 62nd session of the UNCHR. Introduced July 26, 2005. House passed (393-31) September 29, 2005.

S.Res. 140 (Martinez). Expresses support of the Senate for the May 20, 2005 meeting in Havana of the Assembly to Promote Civil Society. Introduced May 12, 2005; Senate approved by unanimous consent May 17, 2005.

S.Res. 469 (Lieberman). Condemns the April 25, 2006, beating and intimidation of Cuban dissident Martha Beatriz Roque. Introduced May 8, 2006; Senate passed May 25, 2006, by unanimous consent.

Legislative Initiatives in the 110th Congress

H.R. 177 (Lee). Pursuit of International Education (PIE) Act of 2007. Prohibits the use of funds available to the Department of the Treasury to implement regulations from June 2004 that tightened restrictions on travel to Cuba for educational activities. Introduced January 4, 2007; referred to Committee on Foreign Affairs.

H.R. 216 (Serrano). Baseball Diplomacy Act. Waives certain prohibitions with respect to nationals of Cuba coming to the United States to play organized baseball. Introduced January 4, 2007; referred to Committees on Foreign Affairs and Judiciary.

H.R. 217 (Serrano). Cuba Reconciliation Act. Lifts the trade embargo. Removes provisions restricting trade and other relations with Cuba, including repeal of the Cuban Democracy Act of 1992, the Cuban Liberty and Democratic Solidarity Act of 1996, and provisions of Section 211 of the Department of Commerce and Related Agencies Appropriations Act, 1999 related to transactions or payments with respect to trademarks. Introduced January 4, 2007; referred to the Committees on Foreign Affairs, Ways and Means, Energy and Commerce, Judiciary, Financial Services, Oversight and Government Reform, and Agriculture.

H.R. 525 (King). Amends the Cuban Liberty and Democratic Solidarity Act of 1996 to require that, in order to determine that a democratically elected government in Cuba exists, the government extradite to the United States convicted felon William Morales and all other individuals who are living in Cuba in order to escape prosecution or confinement for criminal offense committed in the United States. Introduced January 17, 2007; referred to the Committee on Foreign Affairs.

For Additional Reading

CRS Report RL33551, *Transportation, the Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, the Executive Office of the President and Independent Agencies (TTHUD): FY2007 Appropriations*, coordinated by David Randall Peterman and John Frittelli.

CRS Report RL32905, *Transportation, the Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, the Executive Office of the President and Independent Agencies: FY2006 Appropriations*, coordinated by David Randall Peterman and John Frittelli.

CRS Report RL33412, *Agriculture and Related Agencies: FY2007 Appropriations*, coordinated by Jim Monke.

CRS Report RS20450, *The Case of Elian Gonzalez: Legal Basics*, by Larry M. Eig.

CRS Report RL33622, *Cuba after Fidel Castro: U.S. Policy Implications and Approaches*, by Mark P Sullivan.

CRS Report RL32251, *Cuba and the State Sponsors of Terrorism List*, by Mark P. Sullivan.

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

CRS Report RL31740, *Cuba: Issues for the 108th Congress*, by Mark P. Sullivan.

CRS Report RL30806, *Cuba: Issues for the 107th Congress*, by Mark P. Sullivan and Maureen Taft-Morales.

CRS Report RL30628, *Cuba: Issues and Legislation in the 106th Congress*, by Mark P. Sullivan and Maureen Taft-Morales.

CRS Report RL31139, *Cuba: U.S. Restrictions on Travel and Remittances*, by Mark P. Sullivan.

CRS Report RL30386, *Cuba-U.S. Relations: Chronology of Key Events 1959-1999*, by Mark P. Sullivan.

CRS Report RS20468, *Cuban Migration Policy and Issues*, by Ruth Ellen Wasem.

CRS Report RS22173, *Detainees at Guantanamo Bay*, by Jennifer K. Elsea.

CRS Report RL33499, *Exempting Food and Agriculture Products from U.S. Economic Sanctions: Status and Implementation*, by Remy Jurenas.

CRS Report RS22094, *Lawsuits Against State Supporters of Terrorism: An Overview*, by Jennifer K. Elsea.

CRS Report 94-636, *Radio and Television Broadcasting to Cuba: Background and Issues Through 1994*, by Susan B. Epstein and Mark P. Sullivan.

CRS Report RS21764, *Restricting Trademark Rights of Cubans: WTO Decision and Congressional Response*, by Margaret Mikyung Lee.

CRS Report RL31370, *State Department and Related Agencies: FY2006 Appropriations and FY2007 Request*, by Susan B. Epstein.

CRS Report RL31258, *Suits Against Terrorist States by Victims of Terrorism*, by David M. Ackerman.

CRS Report RL32014, *WTO Dispute Settlement: Status of U.S. Compliance in Pending Cases*, by Jeanne J. Grimmett.