

Report for Congress

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Cuba: Issues for the 108th Congress

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Summary

Cuba remains a hard-line Communist state, with a poor record on human rights that has deteriorated significantly in 2003. Fidel Castro has ruled since he ousted the corrupt government of Fulgencio Batista from power in 1959. With the cutoff of assistance from the former Soviet Union, Cuba experienced severe economic deterioration from 1989 to 1993. There has been some improvement since 1994 as Cuba has implemented limited reforms.

Since the early 1960s, U.S. policy toward Cuba has consisted largely of isolating the island nation through comprehensive economic sanctions. The principal tool of policy remains comprehensive sanctions, which were tightened with the Cuban Democracy Act (CDA) in 1992 and the Cuban Liberty and Democratic Solidarity Act in 1996. Another component of U.S. policy consists of support measures for the Cuban people, including private humanitarian donations and U.S.-sponsored radio and television broadcasting to Cuba. In the aftermath of Cuba's crackdown against democracy activists and independent journalists in March 2003, some observers expect that the Bush Administration will adopt a harder line toward Cuba.

There appears to be broad agreement on the overall objective of U.S. policy toward Cuba — to help bring democracy and respect for human rights to the island. But there are several schools of thought on how to achieve that objective. 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.

Congress will likely continue its high level of interest in Cuba in the 108th Congress, with a variety of legislative initiatives regarding sanctions, human rights, drug interdiction cooperation, and broadcasting to Cuba. The final version of the FY2003 omnibus appropriations measure, H.J.Res. 2 (P.L. 108-7), included funding for Radio and TV Marti broadcasting to Cuba and democracy and human rights projects for Cuba. However, the measure did not include funding for U.S.-Cuban anti-drug cooperation or provisions that would have eased Cuba sanctions. The White House had threatened to veto the omnibus bill if it contained provisions weakening the embargo on Cuba. Cuba's human rights crackdown in 2003 will likely have an impact on momentum behind legislative proposals to ease U.S. sanctions policy toward Cuba. In early April 2003, both houses approved resolutions, S.Res. 97 and H.Res. 179, condemning the recent crackdown in Cuba and calling for the release of political prisoners.

This report will be updated regularly to track legislative initiatives and developments in U.S. relations with Cuba.

Contents

Most Recent Developments	1
Political Conditions	1
Human Rights	2
Outlook	7
Economic Conditions	7
U.S. Policy Toward Cuba	9
Issues in U.S.-Cuban Relations	11
Overall Direction of U.S. Policy	11
Helms/Burton Legislation	12
Section 211 Trademark Provision	14
Food and Medical Exports	16
Travel Restrictions	18
Drug Interdiction Cooperation	20
Cuba and Terrorism	22
Cuban Spies in the United States	25
Radio and TV Marti	26
U.S. Funding to Support Democracy and Human Rights	28
Migration	29
Legislation and Resolutions in the 107 th Congress	30
Legislative Initiatives in the 108 th Congress	31
Human Rights	31
Modification of Sanctions	32
Cuba Broadcasting	32
Anti-drug Cooperation	33
Migration	33
For Additional Reading	33

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Most Recent Developments

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.

On April 8, 2003, the House approved H.Res. 179, which condemned the Cuban government's crackdown, called for the release of all political prisoners, and called for the United States to work to ensure a strong resolution in the U.N. Commission on Human Rights this year against the Cuban crackdown. (The 2003 UNCHR session takes place from March 17 - April 27 and will soon be considering a Cuba human rights resolution; attempts are underway to make the resolution stronger in light of the deterioration of the situation in Cuba.)

On April 7, 2003, the Senate approved S.Res. 97, which condemned the recent arrests and other intimidation tactics against democracy activists and called on the Cuban government to immediately release those imprisoned during the crackdown.

On March 18, 2003, the Cuban government began a massive crackdown on independent journalists and democracy activists. About 80 activists were arrested and made subject to swift trials and prosecutions that began on April 3, 2003. Within days, over 50 of the activists had received prison terms ranging from 6 to 28 years. (See *Human Rights, Crackdown in 2003*, below.)

On February 18, 2003, two members of the Christian Liberation Movement (led by Oswaldo Paya, also the organizer of the Varela Project), Jesus Mustafa Felipe and Robert Montero, were sentenced to 18 months in prison on charges of contempt and resisting arrest.

On January 16, 2003, President Bush suspended for six months the right of individuals to file lawsuits against those persons benefitting from confiscated U.S. property in Cuba under Title III of the Cuban Liberty and Democratic Solidarity Act (P.L. 106-114). Like President Clinton, President Bush has used this authority every six months. (See *Helms/Burton Legislation*, below.)

Political Conditions

Although Cuba has undertaken some limited economic reforms in recent years, politically the country remains a hard-line communist state. Fidel Castro, who turned 76 on August 13, 2002, has ruled since the 1959 Cuban Revolution, which

ousted the corrupt government of Fulgencio Batista from power. Castro soon laid the foundations for an authoritarian regime by consolidating power and forcing moderates out of the government. In April 1961, Castro admitted 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 Politburo headed by Fidel Castro). The Constitution also outlined national, provincial, and local governmental structures. Executive power is vested in a Council of Ministers, headed by Fidel Castro as President. Legislative authority is vested in a National Assembly of People's Power, currently with 609 members, that meets twice annually for brief periods. While 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 Raul 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.

In response to the challenge posed by the Varela Project, a human rights initiative that called for changes to the Constitution (see below), the Cuban government orchestrated a national referendum in late June 2002, signed by 8.1 million people, that declared that Cuba's socialist system could not be changed. Subsequently the National Assembly on June 26, 2002, approved amendments to the Constitution stating that "socialism and the revolutionary political and social system in the Constitution.....are irrevocable; and Cuba will never again return to capitalism."¹

Human Rights

Cuba has a poor record on human rights, with the government sharply restricting basic rights, including freedom 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. In March 2003, the government began a massive crackdown that resulted in the imprisonment of about 80 independent journalists and democracy activists, many receiving long prison terms. On April 11, 2003, the government executed three men who had hijacked a ferry in an attempt to reach the United States. The executions, conducted after a swift and secret trial, have been condemned around the world. (See *Crackdown in 2003*, below.)

¹ "Special Session of the National Assembly, A Transcendent Yes," *Granma International*, June 30, 2002, p. 1.

Situation in 2002. The State Department's human rights report on Cuba for 2002 states that the Cuban "authorities routinely continued to harass, threaten, arbitrarily arrest, detain, imprison, and defame human rights advocates and members of independent professional associations, including journalists, economists, doctors, and lawyers, often with the goal of coercing them into leaving the country." The report asserts that "the Interior Ministry Department of State Security investigated and actively suppressed political opposition and dissent" and "maintained a pervasive system of surveillance through undercover agents, informers, rapid response brigades (RRBs), and neighborhood-based Committees for the Defense of the Revolution (CDRs)."

According to the 2002 human rights report, human rights groups inside Cuba estimated the number of political prisoners to be between 230 and 300 people, imprisoned on such charges as dissemination of enemy propaganda, illicit association, contempt for the authorities (usually for criticizing President Castro), clandestine printing, and the broad charge of rebellion. (These figures do not include the large number of Cubans that have been arrested in February and March 2003.) Human Rights Watch reports that the vast majority of politically motivated detentions in 2002 occurred in February and March.²

In May 2002, the Cuban government released prominent political prisoner Vladimiro Roca from jail about two months before his 5-year sentence was complete. Roca was imprisoned in July 1997 along with three other leaders of the "Dissident Working Group," Rene Gomez Manzano, Marta Beatriz Roque, and Felix Bonne. The Cuban government had released Manzano, Roque, and Bonne in May 2000. (Roque was arrested again in March 2003 and sentenced to 20 years in jail.) All four leaders had been convicted by a Cuban court on March 15, 1999, on charges of "sedition" under the Cuban penal code.

While the Cuban government released another prominent political prisoner, Oscar Elías Biscet, in October 2002, the human rights activist was jailed again on December 6, 2002 after his arrest in Havana along with 16 others human rights activists attempting to hold a seminar on nonviolent civil disobedience. Biscet had been originally imprisoned in November 1999 after displaying Cuban flags upside down as a sign of protest and distress.

Varela Project. A human rights initiative within Cuba that received attention in 2002 is the Varela Project (named for the 19th century priest, Felix Varela, who advocated independence from Spain and the abolition of slavery) in which thousands of signatures have been collected supporting a national plebiscite. The referendum 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 Paya, who heads the Christian Liberation Movement, and it is supported by other notable Cuban human rights activists.

² *Human Rights Watch World Report 2003.*

On May 10, 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.”³

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.

Crackdown in 2003. The human rights situation in Cuba has deteriorated significantly in 2003. Human rights activist Elizardo Sanchez, head of the Cuban Commission for Human Rights and National Reconciliation, has called the crackdown “the most intense wave of repression in the history of Cuba.”⁴

In early 2003, dozens of supporters of the Oswaldo Paya’s Varela Project were “harassed, jailed, threatened, and expelled from jobs and universities.”⁵ On February 18, 2003, two members of the Oswaldo Paya’s Christian Liberation Movement, Jesus Mustafa Felipe and Robert Montero, were sentenced to 18 months in prison on charges of contempt and resisting arrest.

On March 18, 2003, a day after the opening of the 2003 session of the U.N. Commission on Human Rights in Geneva, the Cuban government began a massive crackdown on independent journalists, leaders of independent labor unions and opposition parties, and other democracy activists, including those supporting the Varela Project. About 80 activists were arrested and made subject to swift trials and prosecutions that began on April 3, 2003. Foreign journalists and diplomats were excluded from the trials. Within days, more than 50 of the activists had received prison terms ranging from 6 to 28 years. Among the activists were 27 independent journalists, including Raul Rivero and Oscar Espinosa Chepe, sentenced to 20 years, and Omar Rodríguez Saludes, sentenced to 27 years. Other democracy activists sentenced include economist Marta Beatriz Roque (who had been imprisoned from July 1997 until May 2000), who received 20 years, Hector Palacios, a leader of the Varela Project, who received 25 years, and Luis Enrique Ferrer García of the Christian Liberation Movement, who received 28 years.

In a further deterioration of Cuba’s human rights situation, 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 men were executed by firing squads after summary trials that were held behind close doors; four other ferry

³ “Text of Jimmy Carter’s Speech, Broadcast Live to Cuban People,” *Associated Press*, May 15, 2002.

⁴ Nancy San Martin, “Cuba: Dissidents Were Eroding Socialist System,” *Miami Herald*, April 10, 2003.

⁵ Elaine De Valle, “Cuba Increases Pressure on Pro-Paya Dissidents,” *Miami Herald*, February 20, 2003, p. F1.

hijackers received life sentence while another received 30 years in prison. The ferry hijacking was preceded by the hijacking of two small planes to the United States.

International human rights groups, such as Amnesty International and Human Rights Watch, and a number of foreign countries, including Mexico and several European Union nations, have condemned the crackdown and the executions.

The United States — both the Administration and Congress (see “Legislative Initiatives” below) — have strongly condemned the Cuban government’s actions. In response to the summary trials of the dissidents, the State Department issued a statement characterizing the actions as “the most despicable act of political repression in the Americas in a decade,” and called “on the international community ...in condemning this repression and in demanding the release of these Cuban prisoners of conscience.”⁶

Analysts see a variety of potential reasons for Cuba’s severe crackdown on democracy activists. The Cuban government asserts that the crackdown was justified because the defendants were supported by the U.S. government and that U.S. diplomats in Cuba, most notably the head of the U.S. Interests Section in Havana, James Cason, often met with the dissidents. Some analysts believe that the crackdown was a clear message by the Cuban government that it will not tolerate the U.S. government’s active and open support for the opposition movement. Other analysts emphasize that the crackdown was an effort by Castro to strengthen the regime’s political control in light of a faltering economy and dim economic prospects ahead. According to this view, an increasingly assertive opposition movement could become a national security threat to the Castro regime in the tough economic times ahead. Along these lines, some analysts see the crackdown as a way for the regime to clear away any potential opposition in order to ensure that the eventual succession of Raul Castro to power will be smooth.

Some observers maintain that the Cuban government’s willingness to jeopardize the possibility of easing U.S. trade and travel restrictions as an indication that it currently views the dissident movement as a serious security threat. Others, however, believe that the Cuban government judged that there would not be any movement to ease the embargo under the Bush Administration and felt that it had little to lose in cracking down on the opposition movement.

Finally, a view often heard when Castro takes harsh action that jeopardizes an improvement in relations with the United States is that Castro actually is opposed to any further opening to the United States because it could threaten his regime’s control. According to this view, the crackdown against the opposition puts the skids on any potential easing of U.S. policy.

UNCHR Resolutions. From 1991 until 1997, the U.N. Commission on Human Rights (UNCHR) called on the Cuban government to cooperate with a Special Representative (later upgraded to Special Rapporteur) designated by the

⁶ U.S. Department of State, International Information Programs, Washington File, “U.S. Condemns Initiation of Trials Against Activists in Cuba,” April 3, 2003.

Secretary General to investigate the human rights situation in Cuba. But Cuba refused to cooperate with the Special Rapporteur, and the UNCHR annually approved resolutions condemning Cuba's human rights record. In 1998, however, the UNCHR rejected — by a vote of 16 to 19, with 18 abstentions — the annual resolution sponsored by the United States that would have condemned Cuba's rights record and would have extended the work of the Special Rapporteur for another year. U.S. officials and human rights activists expressed deep disappointment with the vote. Observers maintained that the vote did not signify any improvement in human rights in Cuba, but rather was an expression of disagreement with the United States over its policy toward Cuba.

From 1999-2002, the UNCHR again approved annual resolutions criticizing Cuba for its human rights record, although without appointing a Special Rapporteur. In 1999, the UNCHR resolution was approved by a vote of 21-20, with 12 abstentions. In 2000, the resolution, sponsored by the Czech Republic and Poland, was approved by a vote of 21-18, with 14 abstentions. On April 18, 2001, the resolution, sponsored by the Czech Republic and co-sponsored by 16 other nations, including the United States, was approved by a vote of 22-20, with 10 abstentions. A U.S. Congressional delegation traveled to Geneva to encourage adoption of the resolution. Mexico abstained but, in a shift under the new Fox administration, publicly stated its concern about human rights in Cuba.

On April 19, 2002, the UNCHR approved a resolution, by a vote of 23 to 21, with 9 abstentions, calling on Cuba to improve its human rights record “in accordance with the Universal Declaration of Human Rights and the principles and standards of the rule of law.” Uruguay sponsored the resolution, which was supported by six other Latin American nations: Argentina, Chile, Costa Rica, Guatemala, Mexico, and Peru. Brazil and Ecuador abstained, while Venezuela was the only Latin American country besides Cuba to vote against the resolution. Compared to previous years, the 2002 resolution was milder in that it recognized Cuba's efforts to fulfill the “social rights” of its people “despite an adverse international environment,” while at the same time calling on Cuba “to achieve similar progress in respect of human, civil, and political rights.”

The 2003 meeting of the UNCHR takes place from March 17 - April 25, 2003, in Geneva. The United States is supportive of a resolution sponsored by Costa Rica, Nicaragua, Peru, and Uruguay that urges Cuba to receive the personal representative of the U.N. High Commissioner for Human Rights. Efforts reportedly will be made to make the resolution stronger before its approval, given the recent human rights crackdown in Cuba. The U.N. High Commissioner for Human Rights, Sergio Vieira de Mello, has expressed concern about the deterioration of the human rights situation in Cuba.

Legislative Initiatives. Over the years, Congress has gone on record on numerous occasions condemning the human rights situation in Cuba. In the 107th Congress, the House approved H.Res. 91 (Smith, Christopher) in April 2001 condemning the repressive and totalitarian actions of the Cuban government. In June 2002, the Senate approved S.Res. 272 (Nelson) supporting the Varela Project and calling on the Cuban government to provide its citizens with internationally accepted

standards for civil and human rights, and the opportunity to vote in free and fair elections.

In the 108th Congress, both houses approved resolutions condemning the Cuban government in the aftermath of the March 2003 crackdown on independent journalists and other democratic activists. The Senate approved S.Res. 97 (Nelson) on April 7, 2003, which condemned the recent arrests and other intimidation tactics against democracy activists and called on the Cuban government to immediately release those imprisoned during the crackdown. The House approved H.Res. 179 (Diaz-Balart, Lincoln) on April 8, which condemned the crackdown, called for the release of all political prisoners, and called for the United States to work to ensure a strong resolution in the UNCHR this year against the Cuban crackdown. Several additional resolutions have been introduced on Cuba's poor human rights situation: H.Con.Res. 16 (Andrews), S.Res. 62 (Ensign), H.Res. 164 (Flake), and H.Con.Res. 125 (Deutsch). In addition, H.R. 1201 (Ros-Lehtinen) would posthumously revoke the naturalization of an individual reported to be responsible for human rights violations in Cuba.

In addition to resolutions on the poor human rights situation, Congress funds democracy and human rights projects for Cuba in annual Foreign Operations and Commerce, Justice, and State appropriations measures. For more details, see *U.S. Funding to Support Democracy and Human Rights*, below.

Outlook

Observers are divided over the future of the Castro government. Although most believe that the demise of the Communist government is inevitable, there is considerable disagreement over when or how this may occur. Some point to Castro's age and predict that the regime will collapse when Castro is not at the helm. Other observers maintain that Fidel Castro may remain in power for years, and that Cuba has a plan for the succession of his brother Raul. They point to Cuba's strong security apparatus and the extraordinary system of controls that prevents dissidents from gaining popular support. Moreover, observers maintain that Cuba's elite has no interest in Castro's overthrow, and that Castro still enjoys some support, in part because of the social benefits of the Cuban revolution, but also because Cubans see no alternative to Castro.

Even if Castro is overthrown or resigns, the important question remaining is the possibility or viability of a stable democratic Cuba after Castro. Analysts point out that the Castro government has successfully impeded the development of independent civil society, with no private sector, no independent labor movement, and no unified political opposition. For this reason, they contend that building a democratic Cuba will be a formidable task, one that could meet stiff resistance.

Economic Conditions

With the cutoff of assistance from the former Soviet Union, Cuba experienced severe economic deterioration from 1989-1993, although there has been some improvement since 1994. Estimates of economic decline in the 1989-93 period range from 35-50%. Recovery began in 1994, with the economy growing 0.7% in 1994, 2.5% in 1995, and 7.8% in 1996. While the Cuban government originally was predicting a growth rate of 4-5% for 1997, growth for the year was just 2.5%, largely because of disappointing sugar production. For 1998, the government's goal was for a growth rate of 2.5-3.5%, but another poor sugar harvest, a severe drought in eastern Cuba, and the effects of Hurricane Georges resulted in an estimated growth rate of just 1.2%. In 1999 and 2000, the economy rebounded with growth rates of 6.2% and 5.6%, respectively.

Growth slowed to 3% in 2001 in the aftermath of the effects of Hurricane Michelle and the September 11, 2001 terrorist attacks in the United States. The terrorist attacks severely affected Cuba's tourist industry, with reports of some hotels closing and restaurants being empty. Hurricane Michelle damaged some 45,000 homes and severely hurt the agricultural sector. Low world prices for sugar and nickel, a decline in the number of tourists since September 2001, and Venezuela's April-September 2002 suspension of oil shipments to Cuba because of Cuba's slow payment all contributed to the economic downturn in 2002.⁷ For 2002, the Cuban economy grew an estimated 1.1%, while a rate of 2.3% is forecast for 2003.⁸

Socialist Cuba has expressed pride for the nation's accomplishments in health and education. The World Bank estimates that in 2000, the adult literacy rate was 97%, life expectancy was 76 years, and the under-5 years of age mortality rate was 9 per 1,000, the lowest rate in Latin America and comparable to the rate of the United States. Nevertheless, the country's economic decline has reduced living standards considerably and resulted in shortages in medicines and medical supplies.

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. Since 1993, Cubans have been allowed to own and use U.S. dollars and to shop at dollar-only shops previously limited to tourists and diplomats. Self-employment was

⁷ Venezuela provided Cuba with 53,000 barrels of oil per day under a five-year bilateral agreement signed in October 2000, with favorable financing terms for Cuba. This provided Cuba with about one-third of its oil needs. In the aftermath of the failed ouster of President Hugo Chavez in April 2002, Venezuela suspended oil shipments to Cuba, but these shipments were resumed in September 2002 after Cuba and Venezuela agreed to a restructuring of Cuba's \$142 million debt owed to Venezuela for its oil purchases. See Jose de Cordoba, "Cuba's Weak Economy May be Battered Again," *Wall Street Journal*, June 6, 2002; "Venezuela Shuts Off the Oil Spigot," *CubaNews*, June 2002, p. 12; "Venezuela: Halt in Oil to Cuba May Ease Pressure on Chavez," *Strategic Forecasting* (Straftor.com), May 30, 2002; and "Latin America Roundup," *Miami Herald*, September 9, 2002.

⁸ "Cuba Country Report," Economist Intelligence Unit (EIU) Country Reports, March 1, 2003.

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. Other Cuban economic reforms included breaking up large state farms into smaller, more autonomous, agricultural cooperatives (Basic Units of Cooperative Production, UBPCs) in 1993; opening agricultural markets in September 1994 where farmers could sell part of their produce on the open market; opening artisan markets in October 1994 for the sale of handicrafts; allowing private food catering, including home restaurants (*paladares*) in June 1995 (in effect legalizing activities that were already taking place); approving a new foreign investment law in September 1995 that allows fully owned investments by foreigners in all sectors of the economy with the exception of defense, health, and education; and authorizing the establishment of free trade zones with tariff reductions typical of such zones in June 1996. In May 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. Moreover, some analysts fear that the government has begun to backtrack on its reform efforts. Regulations and new taxes have made it extremely difficult for many of the nation's self-employed (at one point estimated at more than 200,000, but now estimated at 160,000 or lower, out of a total labor force of some 4.5 million). Some home restaurants have been forced to close because of the regulations. Some foreign investors in Cuba have also begun to complain that the government has backed out of deals or forced them out of business.

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, resulting 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. 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), 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 Helms/Burton legislation — 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. Among the law’s sanctions 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 6-month intervals.

Another component of U.S. policy consists of support measures for the Cuban people, a so-called second track of U.S. policy. This includes U.S. private humanitarian donations, U.S. government support for democracy-building efforts, and U.S.- sponsored radio and television broadcasting to Cuba.

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 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 competition.

Bush Administration Policy. President Bush made his first major statement on his Administration’s policy toward Cuba on May 18, 2001. He affirmed that his Administration would “oppose any attempt to weaken sanctions against Cuba’s government ... until this regime frees its political prisoners, holds democratic, free elections, and allows for free speech.” He added that he would “actively support those working to bring about democratic change in Cuba.”⁹

In July 2001, President Bush asked the Treasury Department to enhance and expand the enforcement capabilities of the Office of Foreign Assets Control. The President noted the importance of upholding and enforcing the law in order to prevent “unlicensed and excessive travel,” enforce limits on remittances, and ensure that humanitarian and cultural exchanges actually reach pro-democracy activists in Cuba.

⁹ The White House, “Remarks by the President in Recognition of Cuba Independence Day”, May 18, 2001. See [<http://www.whitehouse.gov/news/releases/2001/05/20010518-7.html>].

On May 20, 2002, President Bush announced a new initiative on Cuba that includes four measures designed to reach out to the Cuban people: 1) facilitating humanitarian assistance to the Cuban people by U.S. religious and other non-governmental organizations (NGOs); 2) providing direct assistance to the Cuban people through NGOs; 3) calling for the resumption of direct mail service to and from Cuba¹⁰; and 4) establishing scholarships in the United States for Cuban students and professionals involved in building civil institutions and for family members of political prisoners. While the President said that he would work with Congress to ease sanctions if Cuba made efforts to conduct free and fair legislative elections (in January 2003) and adopt meaningful market-based reforms, he also maintained that full normalization of relations would only occur when Cuba has a fully democratic government, the rule of law is respected, and human rights are fully protected. The President's initiative did not include an explicit tightening of restrictions on travel to Cuba that some observers had expected. The President, did state, however, that the United States would "continue to enforce economic sanctions on Cuba, and the ban on travel to Cuba, until Cuba's government proves that it is committed to real reform."¹¹

In the aftermath of Cuba's crackdown against human rights activists and independent journalists in February and March 2003, some observers maintain that the Bush Administration will adopt a harder line toward Cuba. The head of the U.S. Interests Section in Havana, James Cason, maintains that the Administration could further tighten its policy toward Cuba in response to the crackdown.¹²

Issues in U.S.-Cuban Relations

Overall Direction of U.S. Policy

Over the years, although U.S. policymakers have agreed 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 about how to achieve that objective. 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

¹⁰ Direct mail service was suspended in 1962. The Cuban Democracy Act of 1992 directed the U.S. Postal service to take actions to provide direct mail service. In January 1999, President Clinton called for the resumption of direct mail service. In the past, Cuba has responded to U.S. overtures about direct mail service by maintaining that the two countries would need to enter into a civil-aviation agreement. Cuba in the past has also expressed concern about potential terrorism that could occur with direct mail service and would want to discuss with the United States measures to prevent such activity before the resumption of direct mail. See: Philip Brenner, "Washington Loosens the Knot Just a Little," *NACLA Report on the Americas*, March 1, 1999.

¹¹ "President Bush Announced Initiative for a New Cuba," Remarks by the President on Cuba Policy Review, White House, May 20, 2002.

¹² Henry Hamman, "U.S. May Harden Line on Havana," *Financial Times*, April 9, 2003.

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.

In general, those advocating a loosening of the sanctions-based policy toward Cuba make several policy arguments. They assert that if the United States moderated its policy toward Cuba – through increased travel, trade and diplomatic dialogue, that the seeds of reform would be planted in Cuba, 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 Castro's demise does not appear imminent, the United States should espouse a more realistic 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 to U.S. businesses because 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, 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 a road map for the steps Cuba needs to take in order for the United States to normalize relations, including lifting the embargo. They argue that softening U.S. policy at this time without concrete Cuban reforms would boost the Castro regime politically and economically, enabling 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; that sustained sanctions can work; and that the sanctions against Cuba have only come to full impact with the loss of large subsidies from the former Soviet bloc. Opponents of loosening U.S. sanctions further argue that Cuba's failed economic policies, not the U.S. embargo, are the causes of the economy's rapid decline.

Legislative initiatives introduced in the 107th Congress reflected divergent views on the direction of U.S. policy toward Cuba (whether sanctions should be eased or intensified) and also covered a range of issues including human rights, immigration, drug interdiction cooperation, and broadcasting to Cuba. Congress will likely continue its high level of interest in Cuba in the 108th Congress, with a variety of legislative initiatives regarding sanctions and human rights. Cuba's crackdown on human rights activists and independent journalists in 2003 will likely have an impact on momentum behind legislative proposals to ease U.S. sanctions policy toward Cuba.

Helms/Burton Legislation

Major Provisions and Implementation. The Cuban Liberty and Democratic Solidarity Act (P.L. 104-114) was enacted into law on March 12, 1996. **Title I, Section 102(h)**, codifies all existing Cuban embargo Executive Orders and regulations. No presidential waiver is provided for any of these codified embargo

provisions. This provision is significant because of the long-lasting effect on U.S. policy options toward Cuba. In effect, the Executive Branch is circumscribed in any changes in U.S. policy toward Cuba until certain democratic conditions are met.

Title III, controversial because of the ramifications for U.S. relations with countries investing in Cuba, allows U.S. nationals to sue for money damages in U.S. federal court those persons that traffic in property confiscated in Cuba. It extends the right to sue to Cuban Americans who became U.S. citizens after their properties were confiscated. The President has authority to delay implementation for 6 months at a time if he determines that such a delay would be in the national interest and would expedite a transition to democracy in Cuba.

Beginning in July 1996, President Clinton utilized this provision to for 6-months the right of individuals to file suit against those persons benefitting from confiscated U.S. property in Cuba. At the time of the first suspension on July 16, 1996, the President announced that he would allow Title III to go into effect, and as a result liability for trafficking under the title became effective on November 1, 1996. According to the Clinton Administration, this put foreign companies in Cuba on notice that they face prospects of future lawsuits and significant liability in the United States. At the second suspension on January 3, 1997, President Clinton stated that he would continue to suspend the right to file law suits "as long as America's friends and allies continued their stepped-up efforts to promote a transition to democracy in Cuba." He continued, at 6-month intervals, to suspend the rights to file Title III lawsuits.

President Bush has continued to suspend implementation of Title III at six-month intervals, most recently on January 16, 2003. When President Bush first used his authority to suspend Title III implementation in July 2001, he cited efforts by European countries and other U.S. allies to push for democratic change in Cuba.

Title IV of the law denies admission to the United States to aliens involved in the confiscation of U.S. property in Cuba or in the trafficking of confiscated U.S. property in Cuba. This includes corporate officers, principals, or shareholders with a controlling interest in an entity involved in the confiscation of U.S. property or trafficking of U.S. property. It also includes the spouse, minor child, or agent of aliens who would be excludable under the provision. This provision is mandatory, and only waiveable on a case-by-case basis for travel to the United States for humanitarian medical reasons or for individuals to defend themselves in legal actions regarding confiscated property.

To date the State Department has banned from the United States a number of executives and their families from three companies because of their investment in confiscated U.S. property in Cuba: Grupos Domos, a Mexican telecommunications company; Sherritt International, a Canadian mining company; and BM Group, an Israeli-owned citrus company. In 1997, Grupos Domos disinvested from U.S.-claimed property in Cuba, and as a result its executives are again eligible to enter the United States. Action against executives of STET, an Italian telecommunications company was averted by a July 1997 agreement in which the company agreed to pay the U.S.-based ITT Corporation \$25 million for the use of ITT-claimed property in Cuba for ten years. For several years, the State Department has been investigating

a Spanish hotel company, Sol Melia, for allegedly investing in property that was confiscated from U.S. citizens in Cuba's Holguin province in 1961. Press reports in March 2002 indicated that a settlement was likely between Sol Melia and the original owners of the property, but by the end of the year settlement efforts had failed.¹³

Foreign Reaction and the EU's WTO Challenge. Many U.S. allies — including Canada, Japan, Mexico, and European Union (EU) nations — strongly criticized the enactment of the Cuban Liberty and Democratic Solidarity Act. They maintain that the law's provisions allowing foreign persons to be sued in U.S. court constitute an extraterritorial application of U.S. law that is contrary to international principles. U.S. officials maintain that the United States, which reserves the right to protect its security interests, is well within its rights under NAFTA and the World Trade Organization (WTO).

Until mid-April 1997, the EU had been pursuing a case at the WTO, in which it was challenging the Helms/Burton legislation as an extraterritorial application of U.S. law. The beginning of a settlement on the issue occurred on April 11, 1997, when an EU-U.S. understanding was reached. In the understanding, both sides agreed to continue efforts to promote democracy in Cuba and to work together to develop an agreement on agreed disciplines and principles for the strengthening of investment protection relating to the confiscation of property by Cuba and other governments. As part of the understanding, the EU agreed that it would suspend its WTO dispute settlement case. Subsequently in mid-April 1998, the EU agreed to let its WTO challenge expire.

Talks between the United States and the EU on investment disciplines proved difficult, with the EU wanting to cover only future investments and the United States wanting to cover past expropriations, especially in Cuba. Nevertheless, after months of negotiations, the EU and the United States reached a second understanding on May 18, 1998. The understanding set forth EU disciplines regarding investment in expropriated properties worldwide, in exchange for the Clinton Administration's obtaining a waiver from Congress for the legislation's Title IV visa restrictions. Future investment in expropriated property would be barred. For past illegal expropriations, government support or assistance for transactions related to those expropriated properties would be denied. A Registry of Claims would also be established to warn investors and government agencies providing investment support that a property has a record of claims. These investment disciplines were to be applied at the same time that the President's Title IV waiver authority was exercised.

Reaction was mixed among Members of Congress to the EU-U.S. accord, but opposition to the agreement by several senior Members has forestalled any amendment of Title IV in Congress. The Bush Administration initially indicated that the Administration was looking into the possibilities of legislation to enact a

¹³ "April Likely to Mark Beginning of Epic Battle Over Cuba Policy Between White House, Congress," *Cuba Trader*, March 11, 2002, p. 2-3; "Congress Expected to Make New Push for Title IV Enforcement after Settlement Fails," *Cuba Trader*, December 9, 2002.

presidential waiver for the provision, but during the June 2001 U.S.-EU summit, President Bush noted the difficulty of persuading Congress to amend the law.¹⁴

Section 211 Trademark Provision

A European Union challenge of U.S. law regarding Cuba in the World Trade Organization involves 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 maintains that it holds the right to the Havana Club name. 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 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. 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.

After Bacardi began selling rum in the United States under the Havana Club label, Pernod Ricard's joint venture unsuccessfully challenged Bacardi in U.S. federal court. In February 2000, the U.S. Court of Appeals for the Second Circuit in New York upheld a lower court's ruling that the joint venture had no legal right to use the Havana Club name in the United States, and also that it was barred from recognizing any assertion of treaty rights with regard to the trade name.

After formal U.S.-EU consultations on the issue were held in 1999 without resolution, the EU initiated a WTO dispute settlement panel in June 2000, maintaining that the U.S. law violates the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS). An August 6, 2001 ruling by the WTO panel was described as mixed, with both sides claiming a partial victory. The panel ruled that WTO rules on intellectual property rights did not cover trade names, but also ruled that a portion of the law (Section 211(a)(2)) prohibiting U.S. courts from recognizing such Cuban trademarks based on common law rights or registration is in violation of the TRIPS because it denies access to U.S. courts by trademark holders.

In early October 2001, the EU formally notified the WTO that it was appealing the ruling. The WTO appeals panel issued its ruling on January 2, 2002, and again the ruling was described as mixed. According to the United States Trade Representative (USTR), the appellate panel upheld the "U.S. position that WTO intellectual property rights rules leave WTO members free to protect trademarks by establishing their own trademark ownership criteria" and overturned the earlier ruling that Section 211 was in violation of TRIPS because it denied access to U.S. courts by

¹⁴ "EU, U.S. Take Sharply Different Tacks on Dispute Resolution," *Inside U.S. Trade*, June 22, 2001.

trademark holders.¹⁵ However, the appellate panel also found that Section 211 violated WTO provisions on national treatment and most-favored-nation treatment, which could require the United States to amend Section 211 so that it does not violate WTO rules. Although there is access to courts to enforce trademark rights, Section 211 restricted access in a discriminatory manner (against Cuban nationals and foreign successors-in-interest.) On March 28, 2002, the United States agreed that it would come into compliance with the WTO ruling through legislative action by Congress by January 3, 2003.¹⁶

No legislative action to amend Section 211 was taken by the end of the 107th Congress. Instead, on December 20, 2002, the EU and the United States agreed to extend the period for the United States to implement the findings of the WTO dispute settlement ruling until June 30, 2003. According to a January 16, 2003 U.S. report to the WTO: “The 108th Congress is now getting organized and preparing to resume work. The United States Administration has been consulting with the U.S. Congress concerning appropriate statutory measures and will continue to work with the Congress on resolving the dispute.”¹⁷

In the 107th Congress, some Members of Congress, including a House Cuba Working Group, called for repeal of the Section 211 trademark provision. Those supporting a repeal of Section 211 argue that the law endangers over 5,000 trademarks of over 500 U.S. companies registered in Cuba.¹⁸

Reportedly, United State Trade Representative officials have advocated a narrow fix in which Section 211 would be amended so that it applies to U.S. companies instead of being limited to foreign companies. The EU reportedly wants the law amended to state that it would not apply in cases in which the trademark had been abandoned by its original owner. Pernod Ricard maintains that the trademark had been abandoned by the original owner years ago. It reportedly wants the law repealed altogether, while Bacardi favors the narrow solution advocated by USTR officials.¹⁹

Food and Medical Exports

Under U.S. sanctions, commercial medical and food exports to Cuba are allowed but with numerous restrictions and licensing requirements. The 106th Congress passed the Trade Sanctions Reform and Export Enhancement Act of 2000

¹⁵ United States Trade Representative, “WTO Issues Report Upholding Key Aspects of U.S. Law in Trademark Dispute,” Press Release, January 2, 2002.

¹⁶ “U.S., EU Agree on Deadline for Complying with Section 211 WTO Finding,” *Inside U.S. Trade*, April 12, 2002.

¹⁷ World Trade Organization. Status Report Regarding Implementation of the DSB Recommendations and Rulings in the Dispute, United States - Section 211 Omnibus Appropriations Act of 1998, January 16, 2003.

¹⁸ “USA-Engage Joins Cuba Fight,” *Cuba Trader*, April 1, 2002.

¹⁹ “EU Presses for U.S. WTO Compliance, as Baucus Sees Links to Commission,” *Inside U.S. Trade*, November 22, 2002.

(P.L. 106-387, Title IX) that allows for one-year export licenses for shipping food and medicine to Cuba, although no U.S. government assistance, foreign assistance, export assistance, credits, or credit guarantees are available to finance such exports. The law, furthermore, 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. The law 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 food and medicine sales. Regulations implementing the new provisions were published in the *Federal Register* on July 12, 2001.

Some in the business community argued that the changes in policy did not amount to much because they still do not allow financing for the sales. Nevertheless, U.S. agribusiness companies continued to explore the Cuban market for potential future sales. The Cuban government told a group of U.S. farmers who traveled there in November 2000, after passage of the new law, that although it was interested in U.S. agricultural exports, it refused to buy any under the financing restrictions imposed by that new law.

In the aftermath of Hurricane Michelle that struck in early November 2001, Cuba changed its policy of not buying agricultural products from the United States because of its disapproval of U.S. financing restrictions. While the U.S. government offered humanitarian assistance to Cuba in the aftermath of the hurricane, Cuba declined, saying that instead it wanted to purchase food supplies from the United States. As a result, Cuba negotiated with several U.S. agricultural companies to import products such as wheat, corn, soybeans, rice, and chicken. The first shipments of goods arrived in mid-December 2001. This marked the first time that Cuba purchased food supplies directly from the United States since the approval of such sales in the 106th Congress. In March 2002, the Cuban government agreed to purchase additional agricultural products from the United States. In late September 2002, a U.S. Food & Agribusiness Exhibition was held in Havana featuring 288 exhibitors marketing 1,000 products from more than 30 states, the District of Columbia, and Puerto Rico.²⁰ The trade fair reportedly yielded another \$50-100 million in additional sales contracts.²¹

As a result of the change in U.S. sanctions, U.S. exports to Cuba increased from \$7.1 million in 2001 to \$144.4 million in 2002, the majority in agricultural products. For the first two months of 2003, U.S. exports amounted to \$27 million.²²

Opponents of further easing restrictions on food and medical exports to Cuba maintain that U.S. policy does not deny such sales to Cuba, as evidenced by the recent sales in the aftermath of Hurricane Michelle. Moreover, according to the State Department, since the Cuban Democracy Act was enacted in 1992, the United States

²⁰ Nancy San Martin, "U.S. Official Dampens Trade-Show Enthusiasm with Talks of Cuban Credit," *Miami Herald*, September 29, 2002, p. F1.

²¹ "Foreign Trade and Payments: Cuba Imports More Food from the United States," Cuba Country Report, Economist Intelligence Unit, November 1, 2002.

²² World Trade Atlas

has licensed more than \$4.3 billion in private humanitarian donations. Opponents of easing U.S. sanctions 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.

Supporters of easing restrictions on food and medical exports to Cuba argue that the restrictions harm the health and nutrition of the Cuban population. They argue that although the U.S. government may have licensed more than \$4.3 billion in humanitarian donations to Cuba since 1992, much smaller amounts have actually been sent to Cuba. Some supporters of easing sanctions believe the embargo plays into Castro's hands by allowing him to use U.S. policy as a scapegoat for his failed economic policies and as a rationale for political repression. U.S. agribusiness companies that support the removal of trade restrictions on agricultural exports to Cuba believe that U.S. farmers are missing out on a market of some \$700 million so close to the United States.

Some agricultural producers exporting to Cuba support continuation of the prohibition on financing for agricultural exports to Cuba because it ensures that they will be paid. Instead, some exporters want to change U.S. restrictions in order to sell agriculture and farm equipment to Cuba.²³ Other agricultural exporters, however, support the lifting of the prohibition on financing. They contend that allowing such financing would help smaller U.S. companies expand purchases to Cuba more rapidly.²⁴

Legislative Initiatives. In the 107th Congress, numerous initiatives focused in whole or in part on easing restrictions on food and medical exports to Cuba. Several focused on lifting private financing restrictions for agricultural sales set forth in the Trade Sanctions Reform and Export Enhancement Act of 2000 (P.L. 106-387, Title IX, Section 908(b)). The House-passed version of the FY2003 Treasury Department appropriations bill, H.R. 5120, included a provision stating that no funds in the bill could be used to implement any sanction on private commercial sales of agricultural commodities or medicines to Cuba. Some observers suggested that the practical effect of this amendment would be to prevent the Treasury Department's Office of Foreign Assets Control (OFAC) from ensuring that sales to Cuba do not include private financing.²⁵ The Senate version of the bill, S. 2740, as reported out of committee, did not include a similar provision. Final action on the FY2003 Treasury Department appropriations measure was not completed before the end of the 107th Congress.

²³ "Ag Groups Split Over Trade With Cuba," *Congress Daily AM*, National Journal, February 11, 2003.

²⁴ "Farm Equipment Exports Likely to Face Tough Opposition from White House, Congress," *Cuba Trader*, Vol. III, No. 7, February 17, 2003.

²⁵ "House Approves Limits on Treasury Enforcement of Cuba Embargo," *Inside U.S. Trade*, July 26, 2002.

In the 108th Congress, the final version of the FY2003 omnibus appropriations measure, P.L. 108-7 (H.J.Res. 2), which included Treasury Department funding, did not include the House-passed provision from the 107th Congress that would have provided no funding for enforcing restrictions against private financing of agricultural sales to Cuba. The White House had threatened to veto the omnibus bill if it had provisions weakening the embargo on Cuba.

To date in the 108th Congress, several initiatives have been introduced that would lift restrictions in whole or in part on food and medical exports to Cuba. H.R. 187 (Serrano), introduced January 7, would allow for the financing of agricultural sales to Cuba. Two broad bills, H.R. 188 (Serrano), introduced January 7, 2003, and S. 403 (Baucus), introduced February 13, 2003, would lift all Cuba embargo restrictions, including those on food and medical exports.

Travel Restrictions²⁶

Restrictions on travel to Cuba have been a key and often contentious component in 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 5 years, from 1977 until 1982, there were no restrictions on travel. Restrictions on travel to Cuba are part of the Cuban Assets Control Regulations²⁷ (CACR), the overall embargo regulations administered by the Treasury Department's Office of Foreign Assets Control (OFAC).

On March 24, 2003, OFAC announced that the Cuba travel regulations were being amended to ease travel to Cuba for those with close relatives in Cuba. Travel is now permitted to visit relatives to within three degrees of relationship of the traveler and is not restricted to travel in circumstances of humanitarian need. Travelers to Cuba may also carry up to \$3,000 in remittances (compared to \$300 previously), although the limit of \$300 per quarter for each household remains. At the same time, the regulations were tightened for certain types of educational travel. People-to-people educational exchanges unrelated to academic coursework are no longer allowed under the regulations. Some groups have lauded the restriction of these educational exchanges because they believe they have become an opportunity for unrestricted travel; others criticize the Administration's decision to restrict the second largest category of travel to Cuba in which ordinary people were able to travel and exchange with their counterparts on the island.

Major arguments made for lifting the Cuba travel ban are: 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 American tourist travel would support Castro's rule by providing his government with millions of dollars in

²⁶ For further information, see CRS Report RL31139, *Cuba: U.S. Restrictions on Travel and Legislative Initiatives*, by Mark P. Sullivan.

²⁷ The travel regulations can be found at 31 CFR 515.560, which references other sections of the CACR for general and specific travel-related transaction licensing criteria.

tourist receipts; 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.

Legislative Initiatives. In the 107th Congress, numerous initiatives would have lifted or eased restrictions on travel to Cuba, but no action was completed on these measures. In the second session, both the House-passed and Senate Appropriations Committee versions of the FY2003 Treasury Department appropriations bill (H.R. 5120 and S. 2740) had provisions that would have eased restrictions on travel to Cuba. The provisions would have provided that no funds could be used to administer or enforce the Treasury Department regulations with respect to travel to Cuba. Some observers have raised the question of whether the effect of this amendment would be limited since the underlying embargo regulations restricting travel would remain unchanged; enforcement action against violations of the relevant embargo regulations could potentially take place in future years when the Treasury Department appropriations measure did not include the funding limitations on enforcing the travel restrictions.²⁸ In addition, Section 124 of the Senate bill stipulated that no Treasury Department funds for “Departmental Offices, Salaries, and Expenses” may be used by OFAC, until OFAC has certain procedures in place to expedite license applications for travel. Final action on the FY2003 Treasury Department appropriations measure was not completed before the end of the 107th Congress.

In the 108th Congress, the final version of the FY2003 omnibus appropriations measure, H.J.Res. 2, which included Treasury Department funding, did not include any provisions easing restrictions on travel to Cuba. The White House had threatened to veto the omnibus bill if it had provisions weakening the embargo on Cuba.

To date in the 108th Congress, two broad bills, H.R. 188 (Serrano), introduced January 7, 2003, and S. 403 (Baucus), introduced February 13, 2003, would lift all Cuba embargo restrictions, including those on travel.

Drug Interdiction Cooperation

Because of Cuba’s geographic location, the country’s waters and airspace have been used by traffickers to transport illicit 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 29 countries and less formal arrangements with 12 others, according to the Department of State. Britain and France have provided counternarcotics training. In November

²⁸ “House Approves Limits on Treasury Enforcement of Cuba Embargo,” *Inside U.S. Trade*, July 26, 2002.

2001, Cuba hosted a regional counternarcotics conference focusing on strategies to prevent drug abuse, drug trafficking, and money laundering.

The United States has cooperated with Cuba on anti-drug efforts on a case-by-case basis dating back to the 1970s. 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 Specialists 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. However, the State Department's March 2003 International Narcotics Control Strategy Report maintains that the Cuban government has not exploited the Coast Guard official's presence to the fullest by developing more effective anti-drug cooperation. The report also notes that the Cuban government has subjected the Coast Guard official to repeated harassment by State Security agents.

Cuba has called for a bilateral anti-drug cooperation agreement with the United States.²⁹ 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. While Drug Enforcement Administration head Asa Hutchison expressed appreciation for Cuba's actions, he indicated that cooperation would continue on a case-by-case basis, not through a bilateral agreement.³⁰ State Department spokesman Richard Boucher said that if Cuba "were to demonstrate a willingness to work across the board with us on law enforcement issues, then we might consider some more formal structure," but he indicated that Cuba has not demonstrated that kind of commitment. As an example, Boucher maintained that "there are still dozens of fugitives from U.S. justice who have been provided safe haven by the Cuban government."³¹ Although the current level of case-by-case cooperation will probably continue, it is unlikely that the level of cooperation will increase significantly given the Administration's position. Some Members have called for greater cooperation with Cuba on drug control and view Cuba's proposal

²⁹ 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, March 17, 2002.

³⁰ Anthony Boadle, "U.S. Thanks Cuba, But Declines Anti-drug Accord," *Reuters*, March 19, 2002.

³¹ U.S. Department of State, State Department Regular Briefing, March 19, 2002.

as a good-will gesture, while others view the effort as a ploy to sway public opinion and influence views in the U.S. Congress.³²

Legislative Initiatives. In the second session of the 107th Congress, both House and Senate versions of the FY2003 Foreign Operations appropriations bill (H.R. 5410 and S. 2779) had divergent provisions related to Cuba and counternarcotics cooperation with the United States. Section 585 of the Senate bill provided that \$3 million in International Narcotics Control and Law Enforcement assistance should be made available for preliminary work by the Department of State and other entities to establish cooperation with appropriate agencies of the Cuban government on counter-narcotics matters. The money would not be available if the President certified 1) that Cuba does 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 2) that there is evidence of involvement of the Cuban government in drug trafficking. In contrast, Section 581 of the House bill provided that none of the funds appropriated for “International Narcotics Control and Law Enforcement” may be made available for assistance to the Cuban government. Final action on the Foreign Operations measure was not completed before the end of the 107th Congress.

In the 108th Congress, the final version of the FY2003 omnibus appropriations measure, H.J.Res. 2 (P.L. 108-7), which included Foreign Operations funding, did not include either the House or Senate provisions on anti-drug cooperation with Cuba. The Senate version of H.J.Res. 2, included a provision (Division E, Foreign Operations appropriations, Sec. 580) similar to the Senate bill in the 107th Congress described above. It would have provided \$3 million for international narcotics control and law enforcement assistance for preliminary work to establish cooperation with Cuba on counter-narcotics matters.

H.R. 1432 (Rangel), introduced March 25, 2003, would authorize the Secretary of State to enter into negotiations with representatives of the Cuban government to establish cooperation between the United States and Cuba on illicit narcotics control efforts.

Cuba and Terrorism

Cuba was added to the State Department’s list of states sponsoring international terrorism in 1982 for its complicity with the M-19 insurgent group in Colombia. Communist Cuba has had a 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.

³² Vanessa Bauza, “Cuba’s Cooperation Seen as a Trojan Horse,” *Fort Lauderdale Sun Sentinel*, March 31, 2002, p. 1F.

Cuba remains on the State Department's terrorism list. According to the State Department's May 21, 2002 *Patterns of Global Terrorism* report, Castro continues "to view terror as a legitimate revolutionary tactic." The report maintained that Cuba provides safehaven to at least 20 Basque ETA terrorists from Spain and has provided "some degree of safehaven and support" to members of two Colombian insurgent groups, the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN). (Cuba has been the site of peace talks between the Colombian government and the ELN.) The report noted that one of three Irish Republican Army (IRA) members arrested in Colombia on suspicion of providing explosives training to the FARC had been based in Cuba for 5 years. The report also noted that numerous U.S. fugitives from justice resided in Cuba (see "Cuba and U.S. Fugitives from Justice" above). It also asserted that "since September 11, Fidel Castro has vacillated over the war on terrorism." The report noted that while Cuba signed all 12 U.N. counterterrorism conventions and the Ibero-American declaration on terrorism in 2001, it has also issued strong rhetoric against the U.S.-led war on terrorism.

Although Cuba offered support to the United States in the aftermath of the World Trade Center and Pentagon attacks in 2001, Fidel Castro also stated that the attacks were in part a consequence of the United States having applied "terrorist methods" for years.³³ Cuba's subsequent statements became increasingly hostile, according to press reports, which quoted Cuba's mission to the United Nations as describing the U.S. response to the U.S. attacks as "fascist and terrorist" and that the United States was using the attack as an excuse to establish "unrestricted tyranny over all people on Earth."³⁴ Castro himself said that the U.S. government was run by "extremists" and "hawks" whose response to the attack could result in an "infinite killing of innocent people."³⁵

The Cuban government, however, had a much more muted reaction to the U.S. decision to send captured Taliban and Al Qaeda fighters from Afghanistan to the U.S. naval base at Guantanamo Bay, Cuba. Guantanamo 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. In 1994-1995, the base was used to house thousands of Cubans and Haitians fleeing their homeland. As of February 2003, about 650 detainees from more than 30 countries are being held at Guantanamo. Although the Cuban government objects to the U.S. presence at Guantanamo as a national security threat and opposes the presence as illegal, it has not opposed the new mission of housing detainees from Afghanistan. Defense Minister Raul Castro noted that, in the unlikely event that a prisoner would

³³ Andrew Cawthorne, "Cuba's Castro Urges U.S. to Keep Calm," Reuters, September 11, 2001.

³⁴ Kevin Sullivan, "Castro Warns About U.S. Military Plans," *Washington Post*, September 23, 2001, p. A38.

³⁵ *Ibid.*

escape into Cuban territory, Cuba would capture the prisoner and return him to the base.³⁶

On September 17, 2002, Deputy Assistant Secretary of State Daniel Fisk accused Cuba of impeding U.S. efforts to defeat the threat against terrorism. Fisk accused the Cuban government of distracting U.S. attention and resources from anti-terrorist efforts by setting up false leads. The Cuban government strongly denied the allegations that it has tried to mislead investigators.

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. On December 19, 2002, Juan Pablo Roque, a Cuban spy who had infiltrated the Cuban American group Brothers to the Rescue (whose plane was shot down by Cuba in 1996) reportedly was shot and wounded in Havana; an anti-Castro paramilitary group known as Comando F-4 claimed responsibility.³⁷

Cuba and Biological Weapons ? In 2002, there were allegations that Cuba, which has an advanced biotechnology sector, is involved in developing biological weapons. On May 6, 2002, Under Secretary of State for Arms Control and International Security John Bolton stated that “the United States believes that Cuba has at least a limited offensive biological warfare research-and-development effort” and “has provided dual-use technology to other rogue states.” Bolton called on Cuba “to cease all BW-applicable cooperation with rogue states and to fully comply with all of its obligations under the Biological Weapons Convention.” Although Bolton’s statement received considerable media attention, it was similar to a March 19, 2002 statement by Assistant Secretary of State for Intelligence and Research Carl Ford before the Senate Committee on Foreign Relations.

When questioned on the issue, Secretary of State Powell maintained that Under Secretary Bolton’s statement was not based on new information. Powell asserted that the United States believes Cuba has the capacity and the capability to conduct research on biological weapons but emphasized that the Administration had not claimed that Cuba had such weapons.³⁸ Some observers view Powell’s statement as contradicting that of Under Secretary Bolton.³⁹ The State Department’s annual

³⁶ “Cuba Would Hand Over Escapees, Raul Castro Says,” *Miami Herald*, January 20, 2002.

³⁷ Elaine De Valle, “Anti-Castro Group Claims Shooting of Spy in Cuba,” *Miami Herald*, December 31, 2002.

³⁸ David Gonzalez, “Carter and Powell Cast Doubt on Bioarms in Cuba,” *New York Times*, May 14, 2002, p. 3.

³⁹ David Gonzalez, “Carter and Powell Cast Doubt on Bioarms in Cuba,” *New York Times*, May 14, 2002.

Patterns of Global Terrorism report issued May 21, 2002, did not mention the issue of Cuba and biological weapons.

In response to Under Secretary Bolton's statement, the Cuban government called the allegations a lie and maintained that the Bush Administration was trying to justify its hard-line policies just when the momentum is increasing in the United States to ease the embargo. During his trip to Cuba, former President Jimmy Carter criticized the Bush Administration over the allegations and said that Administration officials who had briefed him before the trip assured him that Cuba had not shared anything with other countries that could be used for terrorist purposes.⁴⁰

The Senate Foreign Relations Committee's Subcommittee on Western Hemisphere, Peace Corps, and Narcotics Affairs held a hearing on the issue on June 5, 2002.⁴¹ At the hearing, Assistant Secretary of State for Intelligence and Research Carl Ford distinguished between the term "effort" and "program," and maintained that Cuba has a biological weapons effort and not a biological weapons program. Ford characterized a program as something substantial and multifaceted that includes test facilities, production facilities, and a unit within the military specifically designated for such weapons capability. In contrast, he characterized an effort as the research and development that would be necessary to create biological weapons.

U.S. government concerns about Cuba's capability to produce biological weapons dates back several years. In 1998, then U.S. Secretary of Defense William Cohen stated in a transmittal letter (accompanying a report to Congress on Cuba's threat to U.S. national security) that he was "concerned about Cuba's potential to develop and produce biological agents, given its biotechnology infrastructure..."⁴²

Cuba began building up its biotechnology industry in the 1980s and has spent millions investing in the sector. The industry was initially geared "to apply biotechnology and genetic engineering to agriculture in order to increase yields" but has also produced numerous vaccines, interferon, and other drugs and has exported many of its biotechnology products.⁴³ In 1999, the British pharmaceutical company Glaxo SmithKline announced an agreement to test and market a new Cuban meningitis vaccine that might eventually be used in the United States.⁴⁴

⁴⁰ Kevin Sullivan, "Carter Says He Was Told U.S. Had No Proof Cuba Shared Bioweapons Data," *Washington Post*, May 14, 2002, p. 14.

⁴¹ U.S. Congress. Senate Committee on Foreign Relations. Subcommittee on Western Hemisphere, Peace Corps and Narcotics Affairs. Cuba's Pursuit of Biological Weapons: Fact or Fiction? 107th Congress, June 5, 2002. S.Hrg. 107-736.

⁴² United States Information Agency, "Text: Defense Secretary's Letter to Thurmond on Cuban Threat," May 6, 1998.

⁴³ Teo A. Babun, Jr., *A Business Guide to Cuba*, Cubanews, Miami Herald Publishing Company, 1996, pp. 66-67.

⁴⁴ Michael Kranish, "Biotechnology; Incubating Biotech Cuba Become Biotech Hotbed," *Boston Globe*, May 15, 2002, p. D1.

Cuban Spies in the United States

Over the past several years, the FBI has arrested and convicted several Cuban intelligence agents in the United States. In June 2001, five members of the so-called “Wasp Network” were convicted on espionage charges by a U.S. Federal Court in Miami. Sentences handed down in December 2001 ranged from 15 years to life in prison. The group tried to penetrate U.S. military bases and exile groups. The Cuban government has vowed to work for the return of the five spies who have been dubbed “Heroes of the Republic” by Cuba’s National Assembly. In addition to the five, a married couple was sentenced in January 2002 to prison terms of 7 years and 3 ½ years for their participation in the spy network.

In addition, two U.S. government officials have been implicated in spying for Cuba. In February 2000, an Immigration and Naturalization Service (INS) official from Miami, Mariano Faget, was arrested and ultimately convicted in May 2000 for passing classified information to a friend with ties to Cuba. He was sentenced to 5 years in prison in June 2001. The case led to the State Department’s expulsion of a Cuban diplomat working in Washington D.C.

On September 21, 2001, Defense Intelligence Agency (DIA) analyst Ana Montes was arrested on charges of spying for the Cuban government. Montes reportedly supplied Cuba with classified information about U.S. military exercises and other sensitive operations.⁴⁵ On March 19, 2002, Montes pled guilty to spying for the Cuban government for 16 years, during which she divulged the names of four U.S. government intelligence agents working in Cuba and information about a “special access program” related to U.S. national defense. On October 16, 2002, Montes was sentenced to 25 years in prison in exchange for her cooperation with prosecutors as part of a plea bargain. In response to the espionage case, in early November 2002 the U.S. Department of State ordered the expulsion of four Cuban diplomats in the United States, two from the Cuban Interests Section in Washington D.C. and two from Cuba’s U.N. Mission in New York. Cuba strongly asserted that the diplomats were not involved in intelligence activities.

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 FY2004 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.

⁴⁵ Bill Miller and Walter Pincus, “Defense Analyst Accused of Spying for Cuba, Woman Passed Classified Information on Military Exercises, FBI Says,” *Washington Post*, September 22, 2001, p. A1.

TV Marti broadcasts for four and one-half hours daily; on May 20, 2002, the broadcast schedule was changed from the early hours of 3:30 a.m. - 8:00 a.m. to the evening hours of 6:00 p.m. - 10:30 p.m. Radio Marti broadcasts 24 hours a day on short and medium wave (AM) channels. Surveys of Cubans have shown a Radio Marti listenership of 9% in 2000 and 5% in 2001.⁴⁶

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 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.

Both Radio and TV Marti have at times been the focus of controversies, including 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 Office of the Inspector General.⁴⁷ (For background on Cuba broadcasting through 1994, see CRS Report 94-636, *Radio and Television Broadcasting to Cuba: Background and Issues through 1994*.)

From FY1984 through FY2002, Congress appropriated almost \$407 million for broadcasting to Cuba, with about \$249 million for Radio Marti (since FY1984) and \$158 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 only people who see TV Marti in Cuba are those Cubans who visit the consular

⁴⁶ Brian Conniff, Acting Director, International Broadcasting Bureau, Broadcasting Board of Governors, Testimony before the House International Relations Committee, Subcommittee on International Operations and Human Rights, June 6, 2002.

⁴⁷ 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, February 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; and 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.

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 \$150 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."⁴⁸ 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.

FY2003 Funding. In September 2002, both houses approved the conference report (H.Rept. 107-671) to the Foreign Relations Authorization Act for FY2003 (H.R. 1646) that authorizes \$25.923 million for Cuba broadcasting for FY2003. The President signed the measure into law on September 30, 2002 as P.L. 107-228.

The Bush Administration requested \$25.362 million for broadcasting to Cuba for FY2003, with about \$15 million for Radio Marti and \$10 million for TV Marti. In the 107th Congress, the Senate Appropriations Committee reported out its version of the FY2003 Commerce, Justice, State and Related Agencies (CJS) appropriations bill, S. 2778 (S.Rept. 107-218) on July 24, 2002, which would have provided \$24.996 million for Cuba broadcasting. Final action on the measure was not completed before the end of the 107th Congress. In the 108th Congress, the final version of the FY2003 omnibus appropriations bill, H.J.Res. 2 (P.L. 108-7), which includes Commerce, Justice and State appropriations in Division B, provides \$24.996 million for Radio and TV Marti broadcasting to Cuba.

FY2004 Funding. For FY2004, the Administration requested \$26.901 million for Cuba broadcasting, with \$16.355 million for Radio Marti and \$10.546 million for TV Marti.

⁴⁸ Advisory Panel on Radio Marti and TV Marti, *Report of the Advisory Panel on Radio Marti and TV Marti*, Executive Summary, March 1994.

U.S. Funding to Support Democracy and Human Rights

Over the past several years, the U.S. Agency for International Development has provided assistance 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.⁴⁹

These efforts are funded through the annual foreign aid appropriations bill. In FY2001, \$4.989 million was provided for various Cuba projects; \$5 million was provided in FY2002; and \$5.750 million will be provided in FY2003 (the Administration requested \$6 million as part of its foreign aid request, but following the enactment of the FY2003 omnibus appropriations bill, P.L. 108-7, the Administration allocated \$5.750 million). For FY2004, the Administration has requested \$7 million for information dissemination to foster democratic progress and the development of a civil society in Cuba.

In addition to funding through foreign operations appropriations, the United States provides democratization assistance for Cuba through the National Endowment for Democracy (NED), which is funded through the annual Commerce, Justice, and State (CJS) appropriations measure. In FY2001, NED funded \$765,000 in democracy projects for Cuba; in FY2002, it funded \$841,000 in Cuba projects. Funding levels for NED's Cuba projects in FY2003 and in the FY2004 request are not available yet but will probably rise because of increased overall funding for NED.

Migration

In 1994 and 1995, Cuba and the United States reached two migration accords 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 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. Amidst 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

⁴⁹ See USAID's Cuba program website: [<http://www.usaid.gov/regions/lac/cu/>].

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 Base, most having been paroled into the United States. Periodic U.S.-Cuban talks have been held on the implementation of the migration accords.

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.

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. U.S. prosecution against migrant smugglers in Florida has also increased in recent years with numerous convictions.

From late November 1999 through June 2000, national attention became focused on Cuban migration policy as a result of the Elian Gonzalez case, the five-year old boy found clinging to an inner tube off the coast of Fort Lauderdale. The boy's mother drowned in the incident, while his father who resided in Cuba, called for his return. Although the boy's relatives in Miami wanted him to stay in the United States, the Immigration and Naturalization Service ruled that the boy's father had the sole legal authority to speak on his son's behalf. After numerous legal appeals by the Miami relatives were exhausted, the boy returned to Cuba with his father in June 2000. In Cuba, Fidel Castro orchestrated numerous mass demonstrations and a media blitz on the issue until the boy's return. The case generated an outpouring of emotion among the Cuban population as well as in south Florida.

Legislation and Resolutions in the 107th Congress

P.L. 107-77 (H.R. 2500)

State Department and Related Agencies Appropriations, FY2002. The measure fully funded the Administration's request of \$24.872 million for broadcasting to Cuba for FY2002. H.R. 2500 reported by the House Committee on Appropriations (H.Rept. 107-139) July 13, 2001. House passed (408-19), amended, July 18, 2001. S. 1215 reported by the Senate Committee on Appropriations July 20, 2001 (S.Rept.

107-42). On September 10, 2001, the Senate substituted the language of S. 1215 as its version of H.R. 2500, and on September 13, 2001 the Senate passed (97-3) the bill, amended. Conference report (H.Rept. 107-278) filed November 9, 2001. House approved conference (411-15) on November 14, 2001, and the Senate approved it (98-1) on November 15, 2001. Signed into law November 28, 2001.

P.L. 107-115 (H.R. 2506)

Foreign Operations Appropriations, FY2002. Introduced and reported by the House Committee on Appropriations July 17, 2001 (H.Rept. 107-142). House passed (381-46) July 24, 2001. The House committee report to the bill notes that the Appropriations Committee fully supports the Administration's budget request of at least \$5 million aimed at promoting democracy in Cuba. Senate Committee on Appropriations reported its version September 2, 2001 (S.Rept. 107-58). Senate passed (96-2) October 24, 2001. The Senate version would have provided \$1.5 million for the Department of State and other agencies to establish cooperation with Cuba on counter-narcotics matters. Conference report (H.Rept. 107-345) filed December 19, 2001, without the Senate provision on counter-narcotics cooperation with Cuba. However, the conference report called for a report by the Secretary of State within 6 months on 1) the extent, if any of the direct involvement of the government of Cuba in illegal drug trafficking; 2) the likelihood that U.S. international narcotics assistance to the government of Cuba would decrease the flow of drugs transiting through Cuba, and 3) the degree to which the government of Cuba is exchanging with U.S. agencies drug-related law enforcement information. The conference report also encouraged the Administration to transmit to Congress, not later than 9 months, any legislation necessary to decrease the flow of drugs to or from Cuba. House agreed (357-66) to the conference December 19; Senate agreed (unanimous consent) December 20. Signed into law January 10, 2002.

P.L. 107-228 (H.R. 1646)

Foreign Relations Authorization Act, FY2002 and FY2003. Conference report (H.Rept. 107-671) filed September 23, 2002; Section 121 of the conference report version of the bill authorized \$25.923 million for FY2003 for Cuba broadcasting. House agreed to conference report by voice vote September 25, 2002; Senate agreed by unanimous consent September 26, 2002. Signed into law September 30, 2002.

H.Res. 91 (Smith, Christopher)

Expressing the sense of the House of Representatives regarding the human rights situation in Cuba. House passed (347-44, 22 present) April 3, 2001.

S.Res. 272 (Nelson)

Expresses support for the Varela Project. Introduced May 20, 2002. Senate Foreign Relations Committee reported May 29, 2002. Senate approved (87-0) June 10, 2002.

Legislative Initiatives in the 108th Congress

Human Rights

P.L. 108-7 (H.J.Res. 2)

Consolidated Appropriations Resolution, 2003. President signed into law February 20, 2003. While the measure does not earmark funding for human rights and democracy projects for Cuba, it does fund FY2003 Foreign Operations appropriations; the Administration's FY2003 foreign aid request had included \$6 million for such projects (\$5.750 was ultimately allocated by the Administration). Also see "Cuba Broadcasting" below for the law's provisions regarding Radio and TV Marti.

H.Con.Res. 16 (Andrews)

To call for the immediate release of all political prisoners in Cuba, including Dr. Oscar Elias Biscet. Introduced January 28, 2003; referred to Committee on International Relations.

H.Con.Res. 125 (Deutsch)

Expressing the sense of Congress regarding the arrests of Cuban democracy activists by the Cuban government. Introduced March 27, 2003; referred to Committee on International Relations.

H.R. 1201 (Ros-Lehtinen)

Cuban Victims of Torture Act. To posthumously revoke the naturalization of Eriberto Mederos. Introduced March 11, 2003; referred to Committee on the Judiciary.

H.Res. 164 (Flake)

Expressing the sense of the House regarding the human rights situation in Cuba, and for other purposes. Introduced March 26, 2003; referred to the Committee on International Relations Committee.

H.Res. 179 (Diaz-Balart, Lincoln)

Expresses the sense of the House regarding the systematic human rights violations in Cuba committed by the Castro regime, calls for the immediate release of all political prisoners, and supports respect for basic human rights and free elections in Cuba. Introduced April 7, 2003. House passed (414-0, 11 present) April 8, 2003.

S. 97 (Nelson)

Expresses the sense of the Senate regarding the arrests of Cuban democracy activists by the Cuban government. Introduced March 25, 2003; Senate Committee on Foreign Relations discharged by Unanimous Consent. Senate amended and agreed to the resolution April 7 by Unanimous Consent.

S.Res. 62 (Ensign)

Calling upon the OAS Inter-American Commission on Human Rights, the UN High Commissioner for Human Rights, the European Union, and human rights

activists throughout the world to take certain actions in regard to the human rights situation in Cuba. Introduced February 24, 2003; referred to Committee on Foreign Relations.

Modification of Sanctions

H.R. 187 (Serrano)

To amend the Trade Sanctions Reform and Export Enhancement Act of 2000 to allow for the financing of agricultural sales to Cuba. Introduced January 7, 2003; referred to Committee on Financial Services and in addition to the Committees on International Relations and Agriculture.

H.R. 188 (Serrano)

To lift the trade embargo on Cuba. Introduced January 7, 2003; referred to Committee on International Relations and to Committees on Ways and Means, Energy and Commerce, the Judiciary, Financial Services, Government Reform, and Agriculture.

S. 403 (Baucus)

United States-Cuba Trade Act of 2003. To lift the trade embargo on Cuba, and for other purposes. Introduced February 13, 2003; referred to the Committee on Finance.

Cuba Broadcasting

P.L. 108-7 (H.J.Res. 2)

Consolidated Appropriations Resolution, 2003. President signed into law February 20, 2003. The final version provides \$24.996 million for Radio and TV Marti broadcasting to Cuba (Division B, Commerce, Justice, and State appropriations). Also see "Human Rights" above regarding the law's funding of human rights and democracy projects.

Anti-drug Cooperation

H.R. 1432 (Rangel)

To authorize the Secretary of State to enter into negotiations with representatives of the Cuban government to establish cooperation between the United States and Cuba on illicit narcotics control efforts. Introduced March 25, 2003; referred to the Committee on International Relations.

Migration

H.R. 189 (Serrano)

Baseball Diplomacy Act. Waives certain prohibitions with respect to nationals of Cuba coming to the United States to play organized professional baseball. Introduced January 7, 2003; referred to the Committee on International Relations and to the Committee on the Judiciary.

For Additional Reading

- CRS Electronic Briefing Book on Trade, *Cuba Sanctions*, by Mark P. Sullivan.
[<http://www.congress.gov/brbk/html/ebtra108.html>]
- CRS Electronic Briefing Book on Trade, *Economic Sanctions and Agricultural Exports*, by Remy Jurenas. [<http://www.congress.gov/brbk/html/ebtra13.html>]
- CRS Report RL31302, *Appropriations for FY2003: Treasury, Postal Service, Executive Office of the President, and General Government*, by Sharon S. Gressle.
- CRS Report RS20450, *The Case of Elian Gonzalez: Legal Basics*, by Larry M. Eig.
- CRS Report RL30837, *Cuba: An Economic Primer*, by Ian F. Fergusson.
- 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 Legislative Initiatives*, 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 RL30570, *Elian Gonzalez: Chronology and Issues*, by Ruth Ellen Wasem.
- CRS Issue Brief IB10061, *Exempting Food and Agriculture Products from U.S. Economic Sanctions: Status and Implementation*, by Remy Jurenas.
- 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 RL31258, *Suits Against Terrorist States*, by David M. Ackerman.
- CRS Report RS21003, *Travel Restrictions: U.S. Government Limits on American Citizens' Travel Abroad*, by Susan B. Epstein and Dianne E. Rennack.