

**U.S. EXPORT AND PAYMENT REGULATIONS AFFECTING TRADE
WITH CUBA**

ARTICLE

ANDRÉS E. MONSERRATE MILLS*

Introduction	153
I. How to Lawfully Trade with Cuba	155
A. U.S. Exporting Corporation or Individual	155
i. Obtaining B.I.S. Authorization.....	155
a. License Exception Agricultural Commodities per 15 C.F.R. § 740.18	155
b. Licensing for Medicine and Medical Devices per 15 C.F.R. § 746.2	157
ii. Obtaining O.F.A.C. Licenses	159
B. Alimport-the Cuban Purchaser and Importer	160
i. Applicable Law	162
II. Payment and Financing.....	162
III. Some Statistics.....	167
Conclusion.....	170

INTRODUCTION

CONTRARY TO POPULAR BELIEF, UNITED STATES CORPORATIONS AND INDIVIDUALS can lawfully engage in trade with Cuba. Most notably, the *Trade Sanctions Reform and Export Enhancement Act of 2000* (T.S.R.A.),¹ with an effective date of October 28, 2000, relaxed the Cuban Trade Embargo established since the early 1960s.² Pursuant to the T.S.R.A., supported by the Cuban Democracy Act of 1992,³ the U.S., through the Department of

* University of Puerto Rico School of Law, J.D. (2013). The author wishes to thank José Nazario, Senior Director of Terminal Operations and Administration at Crowley Maritime Corp., San Juan, Puerto Rico, and Jay Brickman, Vice President of Government Services and Cuba Service at Crowley Maritime Corp., Miami, FL, for sharing their insight with regards to the U.S.-Cuba trade.

¹ Trade Sanctions Reform and Export Enhancement Act of 2000, 22 U.S.C. §§ 7201-7211 (2006).

² The Trading with the Enemy Act of 1917, 50 U.S.C. app. §§ 1-44 (2006), as amended [hereinafter T.W.E.A.], and the Foreign Assistance Act of 1961, 22 U.S.C. §§ 2151-2431 (2006), as amended, are the “two major federal statutes . . . [that] authorize . . . the U.S. embargo against Cuba.” Javier J. Rodríguez *et al.*, *A Synopsis and Analysis of U.S. Laws Relating to the Economic Embargo on Cuba*, 4 U. MIAMI Y.B. INT’L L. 151, 154 (1995).

³ Cuban Democracy Act (C.D.A.) of 1992, 22 U.S.C. §§ 6001-6010 (2006).

Commerce and the Department of the Treasury, maintains a favorable licensing policy with respect to the export of agricultural commodities, food, medicine, and medical devices to Cuba.⁴ The T.S.R.A. also “expand[ed] the pool of eligible recipients in Cuba to include both government and non-government entities, as long as the end-users do not support international terrorism.”⁵

However, this trade with Cuba can best be described as a *one sided* trade relationship, where the only permitted transactions and transfer of goods are those in which the U.S. exports to Cuba. As stated in section 515 of Title 31 of the Code of Federal Regulations (C.F.R.), also known as the Cuban Assets Control Regulations (C.A.C.R.),⁶ it is still illegal—with few exceptions—to import products to the U.S. that are either of Cuban origin, transported through Cuba, or which contain, at least in part, any article derived from Cuba.⁷ Nevertheless, and even with so many obstacles and restrictions, U.S. trade with Cuba represents an attractive market for U.S. corporations or entities that produce, manufacture or

⁴ 22 U.S.C. §§ 7201–7211. See also OFFICE OF FOREIGN ASSETS CONTROL, CUBA: WHAT YOU NEED TO KNOW ABOUT U.S. SANCTIONS AGAINST CUBA 16 (2012) [hereinafter O.F.A.C.], <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/cuba.pdf> (for a brief overview of other authorized goods or products that may be exported to Cuba).

⁵ *Chemical and Biological Controls FAQs*, BUREAU OF INDUS. AND SEC., U.S. DEPT. OF COMMERCE, <http://www.bis.doc.gov/index.php/cbc-faqs> (last visited Aug. 25, 2014).

⁶ 31 C.F.R. §§ 515.101–515.901 (2013); Laura A. Michalec, *Trade with Cuba Under the Trading with the Enemy Act: A Free Flow of Ideas and Information?*, 15 FORDHAM INT’L L. J. 808, 815 (1991) (“The Treasury Department, which was designated to administer [the] TWEA, delegated its authority to [the Office of Foreign Assets Control], which in turn, promulgated the [C.A.C.R.] . . .”) (footnotes omitted). Authority of the C.A.C.R. stems, at least in part, from the T.W.E.A., 50 U.S.C. app. § 5. See also Maria L. Pagán, *U.S. Legal Requirements Affecting Trade with Cuba*, 7 PACE INT’L L. REV. 485, 488 (1995).

⁷ 31 C.F.R. § 515.204, supported by 22 U.S.C. § 7208, states that:

[N]o person subject to the jurisdiction of the United States may purchase, transport, import, or otherwise deal in or engage in any transaction with respect to any merchandise outside the United States if such merchandise:

- (1) Is of Cuban origin; or
- (2) Is or has been located in or transported from or through Cuba; or
- (3) Is made or derived in whole or in part of any article which is the growth, produce or manufacture of Cuba.

Id. Despite these general prohibitions, there are exceptions where U.S. travelers to Cuba may bring with them, under specific licenses, certain types of goods, for a certain amount or value, which are usually for personal consumption. See Pagán, *supra* note 6, at 491–92. Another exception to the general prohibition is the *Informational Materials Exception*, as defined in 31 C.F.R. § 515.332 and regulated by section 5(b)(4) of the TWEA, 50 U.S.C. app. § 5(b)(4), and 31 C.F.R. § 515.206, whereas only tangible items, such as publications, films, posters, records, photographs, microfilms, microfiche, tapes, compact disks, CD-ROMs, artworks, and news wire feeds may be brought or imported to any U.S. jurisdiction. *Id.* at 493; 50 U.S.C. app. § 2404. Section 5(b)(4) also provides that the President does not have the authority to regulate or prohibit the *exportation* of these *Informational Materials*. See also Michalec, *supra* note 6, at 808 n.5. But see *FACT SHEET: Treasury and Commerce Announce Regulatory Amendments to the Cuba Sanctions*, U.S. DEPT. OF THE TREASURY (Jan. 15, 2015), <http://www.treasury.gov/press-center/press-releases/pages/j19740.aspx>.

distribute the aforementioned T.S.R.A. approved products and goods. This article will examine the licensing, payment and financing structures regulated by the T.S.R.A. and C.F.R., explore the past success of U.S. and Puerto Rico agricultural, medical, and other commodities exports to Cuba, and illustrate the importance of Cuba as a potentially lucrative market for U.S. and Puerto Rico exporters.

I. HOW TO LAWFULLY TRADE WITH CUBA

A. U.S. Exporting Corporation or Individual

Two licenses are required to engage in trade with Cuba. The Office of Foreign Assets Control (O.F.A.C.) of the Department of the Treasury is the agency that regulates licensing insofar as travel and the physical delivery of goods to Cuba by persons subject to U.S. jurisdiction, as well as the transaction and payment between the parties.⁸ The Bureau of Industry and Security (B.I.S.) of the Department of Commerce, which “is responsible for implementing and enforcing the Export Administration Regulations (EAR), which [in turn] regulate the export and re-export of most commercial items,”⁹ is the agency that authorizes the type of goods that can be exported. The U.S. corporation or individual interested in exporting to Cuba must first license the products to be exported with the B.I.S.¹⁰

i. Obtaining B.I.S. Authorization

a. License Exception Agricultural Commodities per 15 C.F.R. § 740.18¹¹

A License Exception Agricultural Commodities (hereinafter, “AGR”) is an expedited license that authorizes the export of agricultural commodities to Cuba. The first step to obtain B.I.S. authorization for the export of agricultural

⁸ Rodríguez, *supra* note 2, at 154 (“The Office of Foreign Assets Control . . . is the principal organ of the U.S. government responsible for monitoring and enforcing the embargo against Cuba.”).

⁹ BUREAU OF INDUS. AND SEC., U.S. DEPT. OF COMMERCE, INTRODUCTION TO COMMERCE DEPARTMENT EXPORT CONTROL 1, www.bis.doc.gov/index.php/forms-documents/doc_view/142-eccn-pdf. See 15 C.F.R. §§ 730–774 (2014). “The EAR have been designed primarily to implement the Export Administration Act of 1979, as amended, 50 U.S.C. app. §§ 2401–2420 (EAA).” *Id.* § 730.2.

¹⁰ O.F.A.C., *supra* note 4, at 16.

¹¹ 15 C.F.R. § 740.1(a) states that:

A *License Exception* is an authorization . . . that allows you to export . . . items subject to the Export Administration Regulations (EAR) that would otherwise require a license . . . under one or more of the Export Control Classification Numbers (ECCNs) in the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the EAR . . .

15 C.F.R. § 740.1(a).

commodities under this type of license is to verify that the exports qualify as E.A.R.99 products, which are products that are not controlled by the Commerce Control List (C.C.L.)¹² provided by the E.A.R.¹³ To qualify as *agricultural commodities*, or AGR (as stated in the E.A.R.), the exports must meet the definition requirements of 15 C.F.R. § 772.¹⁴ Most agricultural commodities will be classified as E.A.R.99 products and will thus not require a prior B.I.S. commodity classification number, or Commodity Classification Automated Tracking System (C.C.A.T.S.) code.¹⁵ Thus, to avoid delays, exporters should consult the C.C.L. and the E.A.R.99 list to determine whether their products require a prior C.C.A.T.S. determination before applying for a License Exception AGR.

After verifying these requirements, the exporter should refer to 15 C.F.R. § 740.18, which sets forth the procedural eligibility requirements to qualify for a License Exception AGR,¹⁶ such as having a written contract prior to any shipment.¹⁷ The exporter must also submit a License Exception AGR notification through either B.I.S.'s online application system, Simplified Network Application Process – Redesign (S.N.A.P.-R.), or by preparing a B.I.S.-748P Multipurpose Application Form.¹⁸ It is crucial that the U.S. exporter, when applying for any B.I.S. export license, meet the requirements of 15 C.F.R. § 748 and its supplements, such as disclosure of the parties involved in the import-export transaction.¹⁹

¹² 15 C.F.R. § 774.1; 15 C.F.R. pt. 774 (Supp. 1-5). Products that are included on the C.C.L. are not eligible for license exceptions, and thus require a standard export license from the B.I.S. in order to export.

¹³ 15 C.F.R. § 734.3(c); BUREAU OF INDUS. AND SEC., U.S. DEPT. OF COMMERCE, *supra* note 9, at 5 (“EAR99 items generally consist of low-technology consumer goods and do not require a license in many situations.”). Ordinarily, E.A.R.99 products do not require a B.I.S. license, however, “virtually all exports . . . to embargoed destinations . . . require a license.” *Id.* at 6 (emphasis added).

¹⁴ See 15 C.F.R. § 772.1 (providing the definition of *agricultural commodities*), and Agricultural Trade Act of 1978, 7 U.S.C. § 5602 (2012). Moreover, “[f]or the purposes of License Exception AGR, agricultural commodities also include vitamins, minerals, food additives and dietary supplements, and bottled water.” See also *TSRA Facts*, BUREAU OF INDUS. AND SEC., U.S. DEPT. OF COMMERCE, <https://archive.today/yrhO> (last visited Aug. 25, 2014).

¹⁵ However, some agricultural commodities, such as live horses, unprocessed red western cedar, and certain dry fertilizers that contain ammonium nitrate, although considered either *agricultural commodities* or E.A.R.99 products, do require a prior C.C.A.T.S. determination, as they may be on the C.C.L., possibly requiring a standard export license to export to Cuba. See *TSRA Facts*, *supra* note 14; 15 C.F.R. §§ 746.2(b)(4)(iii), 748.3 & 754. See also *Classification Request Guidelines*, BUREAU OF INDUS. AND SEC., U.S. DEPT. OF COMMERCE, <http://www.bis.doc.gov/index.php/licensing/commerce-control-list-classification/classification-request-guidelines> (last visited Aug. 25, 2014) (for guidelines on how to submit a C.C.A.T.S. request with the B.I.S.).

¹⁶ 15 C.F.R. § 740.18.

¹⁷ *Id.* § 740.18(a)(3).

¹⁸ 15 C.F.R. pt. 748 (Supp. 1) (for Multipurpose Application Instructions). See also *International Logistics*, EXPORT.GOV, http://www.export.gov/logistics/eg_main_018803.asp (last visited Aug. 25, 2014).

¹⁹ 15 C.F.R. § 748.

After receiving the License Exception AGR notification, the B.I.S., if necessary, will have two days to refer it to other federal departments and agencies, which will have nine days upon their receipt to review said notification and submit a written objection to B.I.S.²⁰ on grounds that “the [Cuban] recipient may promote international terrorism or the transaction raises nonproliferation concerns”²¹ If said objections are timely filed, the applicant may lose the License Exception AGR notification, however, the B.I.S. could process said notification “as a [standard export] license application in accordance with the provisions described in § 750.4 of the EAR, and the licensing policies set forth in the EAR.”²² Thus, the export transaction may nonetheless be approved, and as previously mentioned, would probably be authorized.²³ Respectively, if no objections are filed within a total of eleven business days since notification to B.I.S., the exporter “may proceed with the transaction provided that . . . all other requirements of License Exception AGR are met”²⁴

b. Licensing for Medicine and Medical Devices per 15 C.F.R. § 746.2²⁵

Unlike with agricultural commodities, an exporter of *Medicine* and *Medical Devices*, per 15 C.F.R. § 746.2(b) and as also defined in 15 C.F.R. § 772.1 with reference to the Federal Food, Drug and Cosmetic Act (F.D.C.A.),²⁶ requires a license approved and authorized by the B.I.S. —and any other relevant federal agencies— without the option of applying for a License Exception.²⁷ Although

²⁰ *Id.* § 740.18(c)(3)-(4).

²¹ *Id.* § 740.18(c)(4).

²² *Id.* See *id.* § 750.4. See also *TSRA Facts*, *supra* note 14.

²³ O.F.A.C., *supra* note 4.

²⁴ 15 C.F.R. §§ 740.18(a) & (c)(4), 746.2(a) & (1)(xii) & 748.4. Other requirements include:

(1) The commodity meets the definition of “agricultural commodities” in part 772 of the EAR;

(2) The commodity is EAR99. You must have an official commodity classification of EAR99 from BIS for fertilizers, western red cedar and live horses before you submit a notification under this license exception . . . ;

(3) The export . . . is made pursuant to a written contract . . . ;

(4) The export . . . is made within 12 months of the signing of the contract or within 12 months of notification that no objections were raised (if no contract is required) . . . ;

(5) You notify BIS prior to exporting . . . according to the procedures set forth in paragraph (c) of this section.

Id. § 740.18(a)(1)-(5).

²⁵ *Id.* § 746.2(b)(1).

²⁶ As stated in 15 C.F.R. § 772.1, medical devices are *devices* and medicines are *drugs*, as defined in the F.D.C.A., 21 U.S.C. § 321 (2012).

²⁷ 15 C.F.R. § 746.2. See also U.S. DEP’T OF COMMERCE, ACTIONS TAKEN PURSUANT TO SECTION 906(A)(1) OF THE TRADE SANCTIONS REFORM AND EXPORT ENHANCEMENT ACT OF 2000, AS AMENDED (2012) [hereinafter *Trade Sanctions Reform and Export Enhancement Act*],

these licenses will “generally be approved,”²⁸ the E.A.R. are particularly concerned with the exportation of medicine and medical devices to Cuba due to the possibility that these products could be misused and potentially re-exported by the Cuban purchaser.²⁹

Most medicines and medical devices are considered E.A.R.99 products, however, the exporter must ensure that they meet the definition criterion stated in the F.D.C.A. Medicines and medical devices that are controlled by the C.C.L., such as certain vaccines, immunotoxins (antibody-toxin conjugates that bear antigens homologous to the antibody), diagnostic and food testing kits, and other medical products containing certain toxins, may not be eligible for export to Cuba.³⁰ For these products, the exporter must verify whether they are controlled by the C.C.L. —under classification numbers ECCN 1C991, 1C395, or 1C995— and if uncertain, apply for a C.C.A.T.S. number.³¹ Thus, whether or not the medicines and medical devices qualify as E.A.R.99 products or are included in the C.C.L. is somewhat immaterial; a B.I.S. standard license will ultimately be required in order for an individual to be properly authorized to export to Cuba.

Finally, the last step is to make sure that the vessel that will physically deliver the authorized goods to Cuba has obtained and maintains a valid B.I.S. license for the transportation and delivery of these goods.³² It should be emphasized

https://www.bis.doc.gov/index.php/forms-documents/doc_view/635-biennial-report-to-congress-oct-2010-sept-2012 (“Exports of medicines and medical devices to Cuba are not eligible for License Exception . . .”).

²⁸ 15 C.F.R. § 746.2(b)(1).

²⁹ *Id.* § 746.2(b)(1)(ii)–(v). This section states that applications to export medicines and medical devices will generally be approved, except:

(ii) If there is a reasonable likelihood that the item to be exported will be used for purposes of torture or other human rights abuses;

(iii) If there is a reasonable likelihood that the item to be exported will be reexported;

(iv) If the item to be exported could be used in the production of any biotechnological product, or

(v) If it is determined that the United States government is unable to verify, by on-site inspection or other means, that the item to be exported will be used for the purpose for which it was intended and only for the use and benefit of the Cuban people

Id.

³⁰ See OTHER MEDICINES, BUREAU OF INDUS. AND SEC., https://www.bis.doc.gov/index.php/forms-documents/doc_view/714-other-medicines. Export of these medical products is more restricted as they may be used for chemical or biological warfare purposes and could be regulated by other federal agencies, such as the U.S. Department of Defense. Hence, it could take up to forty days to obtain an export license for these products. See also *U.S. Antiterrorism Rules Restrict Vaccine Exports*, CTR. FOR INFECTIOUS DISEASE RESEARCH AND POLICY, UNIV. OF MINN., <http://www.cidrap.umn.edu/cidrap/content/influenza/panflu/news/oct17o8exports.html> (last visited Aug. 27, 2014).

³¹ *Trade Sanctions Reform and Export Enhancement Act*, *supra* note 27.

³² See generally, *Cuba*, BUREAU OF INDUS. AND SEC., U.S. DEPT. OF COMMERCE, <http://www.bis.doc.gov/index.php/policy-guidance/country-guidance/sanctioned-destinations/cuba> (last visited Aug. 23, 2014).

that “[f]lying an aircraft or sailing a vessel to Cuba, even temporarily, constitutes an export or reexport to Cuba. If the aircraft or vessel is subject to the EAR (e.g., those departing from the United States), then a license is required to fly/sail to Cuba.”³³

The exporter, as well as the carrier service provider, should make sure to have met all of the E.A.R. requirements before exporting products, seeing as “acting through a forwarding or other agent, or delegating or re delegating authority, does not in and of itself relieve anyone of responsibility for compliance with the EAR.”³⁴ Furthermore, any violation of the E.A.R. by the exporter or carrier could imply criminal and civil penalties, fines or imprisonment.³⁵

ii. Obtaining O.F.A.C. Licenses

With regards to Cuba, there are two types of licenses issued by O.F.A.C.: (1) general licenses, which allow individuals to engage in authorized transactions without prior O.F.A.C. approval and are mainly used for the transmission of mail, news programming, and for travel to Cuba for the purpose of gathering news; and (2) specific licenses, which apply to transactions between the U.S. and Cuba, and are issued on a case-by-case basis.³⁶ Thus, the applicable license for exports of U.S. products to Cuba is the specific license.³⁷

As previously mentioned, the export of goods to Cuba has two elements, one being the actual transaction, *i.e.* payment by the Cuban importer to the U.S. exporter in exchange for the shipment of goods,³⁸ and the actual, physical delivery of the goods to Cuba —by sea or air— which requires the presence of vessel or aircraft operators and crewmembers. Every single person onboard any vessel or aircraft traveling to Cuba to deliver goods must be previously authorized by

³³ *Id.* (“An individual validated license is required for *all* exports and reexports of vessels on temporary sojourn to Cuba. . . . [These] applications . . . are reviewed on a case-by-case basis . . . [and are] generally only authorized for commercial shipments of authorized cargo.” (emphasis added)). See also 15 C.F.R. § 746.2(b)(5).

³⁴ *Id.* § 758.3.

³⁵ *Penalties*, BUREAU OF INDUS. AND SEC., U.S. DEPT. OF COMMERCE, <http://www.bis.doc.gov/index.php/enforcement/oe/penalties> (last visited Aug. 23, 2014) (“[C]riminal penalties can reach 20 years imprisonment and \$1 million per violation. Administrative monetary penalties can reach [from] \$11,000 [to] \$120,000 per violation”); 15 C.F.R. pt. 766 (Supp. 1 & 2).

³⁶ Michalec, *supra* note 6, at 816 nn.43–49.

³⁷ One exception, pursuant to 31 C.F.R. § 515.533(e), applies to employees or agents of the producer or distributor of agricultural commodities, medicines and medical devices, who may travel to Cuba under a general license for “travel-related transactions and additional transactions directly incident to the commercial marketing, sales negotiation, accompanied delivery, or servicing in Cuba of such items,” as described in 31 C.F.R. § 515.560(c). See O.F.A.C., *supra* note 4, at 8. Specific licenses may also be issued for “export-related travel to Cuba not covered by a general license.” *Id.* at 11. See also 31 C.F.R. § 515.533(g) (2013).

³⁸ See Section II, Payment and Financing, *infra*.

O.F.A.C.³⁹ Respectively, “[v]essels traveling to Cuba are also subject to regulations implemented by the Department of Commerce and the United States Coast Guard.”⁴⁰ Additionally, any carrier that “wishes to provide transportation services between the United States and Cuba must be specifically licensed [by O.F.A.C.] as a Carrier Service Provider.”⁴¹

License applications can be sent to the Department of Treasury and O.F.A.C. for the export of goods under the T.S.R.A. by submitting either a hard copy of the application and other relevant documents, or a CD-ROM disk containing electronic files of the application and other necessary information.⁴² The application should include the following information:

1. Full names and addresses of all parties involved in the transactions and their roles, including financial institutions . . . ;
2. [The] purchasing agent (identify company principals);
3. [The] end-user(s) (full contact name), or other participants involved in the purchase of the proposed export items; and
4. If applicable, the commodity classification [C.C.A.T.S.] numbers that are associated with the proposed export items.⁴³

Similar to violations of E.A.R. provisions, C.A.C.R. violations can lead to criminal and civil penalties, including imprisonment, and “are punishable under section 16 of the TWEA.”⁴⁴ As with the E.A.R., exporters and carriers of goods to Cuba should be certain of their compliance with the C.A.C.R.

B. Alimport-the Cuban Purchaser and Importer

The U.S. exporter should be aware of which Cuban governmental agencies or divisions regulate or supervise import-export transactions. With this knowledge,

³⁹ O.F.A.C., *supra* note 4, at 12.

⁴⁰ *Id.* Absent an O.F.A.C. license, vessels that enter a port or place in Cuba to engage in the trade of goods are prohibited from entering a U.S. port for a period of 180 days from the date the vessel departed Cuba. 31 C.F.R. § 515.207. However, “[v]essels engaging solely in trade with Cuba that is authorized or exempt from the Regulations (e.g., *vessels carrying authorized exports of agricultural products* . . .) are authorized pursuant to [31 C.F.R.] § 515.550 to enter U.S. ports notwithstanding these . . . prohibitions.” O.F.A.C., *supra* note 4, at 17 (emphasis added).

⁴¹ *Id.* at 12; 31 C.F.R. § 515.572(a)(2).

⁴² *Frequently Asked Questions and Answers*, U.S. DEPT. OF TREASURY [hereinafter *Frequently Asked Questions and Answers*], <http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx#97> (last visited Mar. 24, 2015). License applications for travel to Cuba may be submitted through a specific website designed and operated by O.F.A.C. for just such purpose. *OFAC-Application-Introduction*, OFFICE OF FOREIGN ASSETS CONTROL, <http://cubatransaction.ofac.treas.gov/> (last visited Aug. 24, 2014). See also OFFICE OF FOREIGN ASSETS CONTROL, COMPREHENSIVE GUIDELINES FOR LICENSE APPLICATIONS TO ENGAGE IN TRAVEL-RELATED TRANSACTIONS INVOLVING CUBA 44-50 (2012), http://www.treasury.gov/resource-center/sanctions/Programs/Documents/cuba_tr_app.pdf.

⁴³ *Frequently Asked Questions and Answers*, *supra* note 42.

⁴⁴ Pagán, *supra* note 6, at 502. See 50 U.S.C. app. § 16 (2006). See also O.F.A.C., *supra* note 4, at 4.

the exporter can further verify whether the purchaser, which is almost exclusively *Empresa Cubana Importadora de Alimentos* (hereinafter, “Alimport”), Cuba’s authoritative agency for all agricultural imports, has followed all the necessary steps and procedures on their end, thus ensuring the seamless performance and execution of these contracts.

In Cuba, all international or foreign imports and exports of goods are regulated by the Central Government, through its *Ministerio de Comercio Exterior*, or Ministry of Foreign Commerce (MINCEX), and Cuban agencies, corporations or individuals who seek to engage in foreign trade must obtain the proper authorization from MINCEX.⁴⁵ As part of the application process with MINCEX, importers must also register their corporations, and any corresponding import-export contracts, with the *Registro Nacional de Exportadores e Importadores*, or National Registry of Exporters and Importers, which is a division of the Cuban Chamber of Commerce.⁴⁶ Moreover, all importers seeking to engage in an import-export transaction that exceeds the financial value of 250,000 Cuban Convertible Pesos,⁴⁷ which equals the same amount in U.S. dollars as of 2011,⁴⁸ must also file and specify the nature of said transaction with the *Comité de Contratación para las Operaciones Comerciales de Importación y Exportación*, or the Import and Export Commercial Operations Contracting Committee—another division of MINCEX—and obtain its authorization prior to executing the transfer of goods.⁴⁹ Once the transaction is approved by all the corresponding governmental entities and thus executed, importers are further required to assess the quality and quantity of the merchandise upon its receipt, ensuring that the terms and conditions of the import-export contract are met to the fullest extent.⁵⁰

⁴⁵ Gladys Santana González *et al.*, *Política y contratación internacionales*, in *LA EMPRESA Y EL EMPRESARIO EN CUBA: LIBRO-GUÍA 40* (Centro de Información y Adiestramiento Informático para el Abogado ed., 2000) [hereinafter *BUSINESS AND THE ENTREPRENEUR IN CUBA*].

⁴⁶ *Id.*

⁴⁷ *Comité de Contratación*, CUBA LEGAL INFO, <http://cubalegalinfo.com/mercantil/importacion-exportacion/comite-de-contratacion> (last visited Aug. 24, 2014).

⁴⁸ The Cuban Convertible Peso (currency code CUC) differs from the Cuban Peso (currency code CUP), also known as the National Peso. Since 2011, the CUC is pegged to the U.S. dollar at par and is used “mainly in the tourism trade and for luxury items,” whereas the CUP is mostly used by Cuban citizens for “non-luxury items and staples.” *Cuban Convertible Peso*, OANDA, <http://www.oanda.com/currency/iso-currency-codes/CUC> (last visited Aug. 24, 2014). The CUC is roughly twenty five times more valuable than the CUP. *See also Cuban Peso*, OANDA, <http://www.oanda.com/currency/iso-currency-codes/CUP> (last visited Aug. 24, 2014). Most notably, “[t]he convertible peso (CUC) is what the [Cuban] government uses to purchase U.S. exports.” C. PARR ROSSON & FLYNN J. ADCOCK, *EMERGING MARKETS FOR U.S. AGRICULTURE: FOCUS ON CUBA* 3 (2010-2011), cnas.tamu.edu/Index/E312.pdf.

⁴⁹ SANTANA GONZÁLEZ, *supra* note 45, at 41.

⁵⁰ *Id.* at 42 (stating that MINCEX could also designate a supervisory entity to monitor the transaction).

i. Applicable Law

As part of the regulatory authority of the Cuban government with regards to import-export contracts or purchase agreements, MINCEX passed legislation pertaining to the contents of the said contracts “with the objective of setting forth the general legal framework that all national importing entities must comply with during the negotiation and final agreement phases of purchase and sale contracts.”⁵¹ As such, MINCEX set forth a *Proforma Purchase Contract*, and Cuban importers contracting with foreign exporters must abide by and incorporate its general clauses.⁵² One of these clauses requires that the contracting parties agree upon and state, according to the *principle of party autonomy* and general commercial customs and practices, the applicable jurisdiction and law for any claim that could arise from any discrepancies or the interpretation of the purchase agreement.⁵³ However, it should be noted that certain Uniform Rules and Regulations of the International Chamber of Commerce (I.C.C.) would apply to both, the letter of credit and the underlying purchase agreement, unless the parties expressly choose otherwise.⁵⁴ Thus, the contracting parties, and their representative banks, can select the applicable law for any claim that could ensue from discrepancies or disagreements over the purchase agreement or letter of credit used therein.⁵⁵

II. PAYMENT AND FINANCING

After the purchase agreement is negotiated,⁵⁶ drafted and approved by all U.S. and Cuban agencies, and all necessary licenses are obtained, the next step is to execute the transfer of goods and payment procedures. The T.S.R.A. and the regulatory scheme provided by the C.A.C.R. states that licensed sales of U.S. products to Cuba “must be financed either by *payment of cash in advance*, as defined in [31 C.F.R.] § 515.533(a)(2)(i)(A), or by third-country banks that are not

⁵¹ *Id.* (translation by the author).

⁵² *Id.* at 42–43. See also CÁMARA DE COMERCIO DE LA REPÚBLICA DE CUBA, REGULACIONES DE IMPORTACIÓN VIGENTES EN CUBA [CHAMBER OF COMMERCE OF THE REPUBLIC OF CUBA, CURRENT CUBAN IMPORTATION REGULATIONS] 11–19 (1997) (for a sample of these general contract clauses).

⁵³ SANTANA GONZÁLEZ, *supra* note 45, at 43.

⁵⁴ See Odalys Otero Núñez, *Ordenación jurídica de la banca*, in BUSINESS AND THE ENTREPRENEUR IN CUBA, *supra* note 45, at 55, 93, 95. “Thus, the Uniform Rules for Contract Guarantees . . . and the Uniform Rules for Demand Guarantees . . . are generally accepted by Cuba when engaging in [international] commerce.” *Id.* at 90–91 (translation by the author). These Rules would apply to the underlying purchase agreement. *Id.* Otero Núñez adds that the Uniform Customs and Practices for Documentary Credits (U.C.P.) would apply to letters of credit. *Id.* at 93.

⁵⁵ *Id.* at 96.

⁵⁶ 31 C.F.R. § 515.533(b) states that U.S. exporters “are authorized to engage in all transactions ordinarily incident to negotiation of and entry into executory contracts for [licensed exports] . . . from the United States to Cuba . . .” *Id.*

U.S. persons or Government of Cuba entities,”⁵⁷ as defined in 31 C.F.R. § 515.533(a)(2)(ii) and (iii).

According to a report published by the International Trade Commission (I.T.C.) in 2007, before 2004, U.S. exporters “believed that transactions conducted in the form of *cash-against-documents* fulfilled the *cash-in-advance* condition.”⁵⁸ However, as it would happen frequently, “[s]hipments would leave the departure port [in the U.S.] while the financial transaction was [still] in process,”⁵⁹ thus placing “the seller . . . at risk until the money [was] received from the buyer.”⁶⁰ To minimize this risk, exporters would retain ownership over the goods until they received payment in full.⁶¹ In response to this growing tendency, many transactions involving B.I.S. licensed goods “were [increasingly] blocked because U.S. financial institutions questioned whether cash-against-document transactions were, in fact, permitted under the cash in advance rule.”⁶²

In 2005, O.F.A.C. clarified “the term *cash-in-advance* . . . to mean that the seller must [have] receive[d] payment before the vessels carrying the goods le[ft] the port at which they were loaded.”⁶³ Furthermore, O.F.A.C. ruled that “cash-against-documents transactions would not be permitted after March 24, 2005.”⁶⁴

As mentioned, besides cash in advance, third country financing—through letters of credit—is the other payment option provided by the C.A.C.R. This financing is available as long as no U.S. depository institution, including U.S. banks’ foreign subsidiaries,⁶⁵ subsidiaries located in the U.S. of a foreign entity, nor the Federal, State or local government, or any private person or entity of the U.S., directly finances the transaction with a Cuban national or the Cuban government.⁶⁶ However, U.S. banks may advise or confirm foreign bank letters of

⁵⁷ O.F.A.C., *supra* note 4, at 16.

⁵⁸ U.S. INTERNATIONAL TRADE COMMISSION, U.S. AGRICULTURAL SALES TO CUBA: CERTAIN ECONOMIC EFFECTS OF U.S. RESTRICTIONS 3-5 (2007) (footnote omitted), <http://www.usitc.gov/publications/332/pub3932.pdf>.

⁵⁹ *Id.*

⁶⁰ See Nicole Rollender & Janet Plume, *Roll the Dice: The Risks of Dealing with Cuba*, FLA. SHIPPER 7 (2005), <http://www.tabpi.org/2006/ops21.pdf>.

⁶¹ U.S. INTERNATIONAL TRADE COMMISSION, *supra* note 58, at 3-5 (“Upon receipt of payment, the seller would [then] authorize the transfer of the documents necessary to transfer ownership of the product to the Cuban buyer.”).

⁶² *Id.* As such, “[i]f payment were not received before goods were shipped, U.S. exports could have been, in effect, extending credit to [Cuba].” *Id.* at 3-6, n.25.

⁶³ *Id.* at 3-6 (citing Cuban Assets Control Regulations, 70 Fed. Reg. 9225 (Feb. 25, 2005) (codified at 31 C.F.R. pt. 515); Cuban Assets Control Regulations, 75 Fed. Reg. 10996, 10997 (Mar. 5, 2010) (codified at 31 C.F.R. pt. 515)).

⁶⁴ *Id.*

⁶⁵ 31 C.F.R. § 515.533(a)(2)(ii) states that no “entity organized under the laws of the United States . . . (including foreign branches)” may finance the transaction. 31 C.F.R. § 515.533(a)(2)(ii).

⁶⁶ 22 U.S.C. § 7207 (2006).

credit as well as any of the transactions authorized pursuant to 31 C.F.R. § 515.533(a).⁶⁷

In practice, letters of credit for U.S. exports to Cuba are often issued by European banks and,⁶⁸ as such, are Euro-denominated, thus requiring a currency conversion —along with its conversion fee— so that the U.S. seller receives the U.S. dollar amount as stated in the contract.⁶⁹ Once the carrier providers are selected, usually by the buyer, and the shipping dates established, either the buyer or the seller, as applicants, would have to order the issuance of a letter of credit from a third country bank. A Cuban buyer acting as the applicant may ask that the *Banco Exterior de Cuba*, or Exterior Bank of Cuba (BEC),⁷⁰ on behalf of the buyer, request the issuance of the letter of credit from the third country bank. Irrevocable letters of credit are issued for these transactions, although they can also be modified as sight or confirmed letters of credit according to the parties' interests and preferences.⁷¹ Confirmed letters of credit may be preferable, especially "if the seller has concerns with respect to the credit worthiness" of the third country issuing bank,⁷² in which case the seller's advising and confirming bank will assume most of the transaction's risks, yet it will nevertheless guarantee the payment of the agreed upon amounts.

Since a standard standby letter of credit requires the buyer's default with the payment for the shipped goods in order to entitle the exporter-beneficiary to draw on the letter of credit, these would fit in a gray-area —insofar as U.S. exports to Cuba— between payment of cash in advance, cash-against-documents, and third country letters of credit, and could potentially expose the exporter to substantial risk. This is because there can be no other performance by the purchaser except payment in advance, a transaction which must also be carried out through third country banks, or the guarantee of payment through the issuance of a letter of credit *before* the goods leave U.S port to Cuba (and possibly *after* the goods are loaded onto the carrier's vessel).⁷³ Since O.F.A.C. ruled out the

⁶⁷ O.F.A.C., *supra* note 4, at 16.

⁶⁸ Paris, France-based BNP Paribas and Société Générale, as well as Toronto, Canada-based Scotiabank, commonly act as third country financial institutions for exports to Cuba. See U.S.-CUBA TRADE AND ECONOMIC COUNCIL, INC., GENERAL PAYMENT GUIDELINES FOR TSRA-AUTHORIZED TRANSACTIONS WITH CUBA 1, www.cubatrade.org/TSRAGuidelines.PDF. Moreover, third country bank letters of credit are issued pursuant to the U.C.P. *Id.* at 2. See also OTERO NÚÑEZ, *supra* note 54, at 93.

⁶⁹ U.S. INTERNATIONAL TRADE COMMISSION, *supra* note 58, at 3-11. See also U.S.-CUBA TRADE AND ECONOMIC COUNCIL, *supra* note 68, at 1.

⁷⁰ The BEC is a separate, independent bank from the Central Bank of Cuba, with its own assets and legal personality, specialized in Cuban foreign commerce and financing, including letter of credit issuance and negotiation. Nevertheless, the BEC complies with the same rules and regulations applicable to and established by the Central Bank of Cuba. See *Bancos Comerciales*, BANCO CENTRAL DE CUBA, http://www.bc.gob.cu/Espanol/bancos_comerciales.asp#BEC (last visited Aug. 21, 2014).

⁷¹ U.S.-CUBA TRADE AND ECONOMIC COUNCIL, INC., *supra* note 68, at 2.

⁷² *Id.*

⁷³ U.S. INTERNATIONAL TRADE COMMISSION, *supra* note 58, at 3-11, which demonstrates an example of a shipment of U.S. agricultural products to Alimport, states that:

purchaser's option of payment through cash-against-documents, and since it also cannot make direct payments to the exporter, per 31 C.F.R. §§ 515.533(c) and 515.201 (especially after the goods leave U.S. port), the purpose of using a standby letter of credit would be defeated. The use of a standby letter of credit could be interpreted by O.F.A.C. as a financed transaction between the U.S. exporter and the Cuban purchaser or as an acceptance of payment beyond the scope of 31 C.F.R. § 515.533, thus in violation of the C.A.C.R., and the entire transaction could be blocked as a result.

The C.A.C.R.'s option for using irrevocable letters of credit through third countries, as opposed to the older model of cash-against-documents, has been received with mixed opinions and criticism. On one hand, there are those who argue that a U.S. exporter who receives a letter of credit issued by a third country bank "is in a better position than using [*cash against documents*] . . . since . . . [in the latter model] payment is done by the bank upon instructions from the buyer, such instructions being received only after the products have been loaded on the vessel or aircraft."⁷⁴ Conversely, in a letter of credit transaction, "[i]f any terms are given to the buyer, the terms are from the bank."⁷⁵ Thus, one basic argument favoring letter of credit transactions is that they reduce the risk exposure of the U.S. exporter as compared to cash-against-documents transactions.⁷⁶ In essence, "[i]n the global commercial environment, a . . . [letter of credit] is *the same as cash* for a seller, as the seller is not providing credit to the buyer and the buyer is unable to obtain title documents until the bank has reviewed, processed, and effected payment to the seller."⁷⁷

On the other hand, according to interviews and testimony obtained by the ITC for their 2007 report, there was "consensus among exporters and industry officials that eliminating cash-against-documents transactions as an eligible

The letter of credit is irrevocable: the foreign bank releases the funds to the U.S. exporter upon presentation of an invoice indicating that the product is *loaded and ready for shipment*. The Euros are then exchanged into dollars for transfer to the account of the U.S. exporter in a U.S. bank. The product is physically exported *once the U.S. exporter's bank confirms receipt of the released funds*.

Id. (emphasis added). This statement by the I.T.C. also could imply that the 31 C.F.R. § 515.533(a)(2)(i)(A) requirement that payments be made in advance also applies to the 31 C.F.R. § 515.533(a)(ii) & (iii) third country letters of credit, in the sense that the funds guaranteed on the letter of credit must be drawn by the exporter prior to the departure of the shipment from a U.S. port. The statutory language of 31 C.F.R. § 515.533(a)(ii) & (iii) is vague on this matter, but it does not expressly prohibit that as long as a valid letter of credit is in place, the vessel carrying the shipment of U.S. goods to Cuba could depart a U.S. port prior to the exporter's drawing of funds under said letter of credit. See Rollender & Plume, *supra* note 60.

⁷⁴ U.S.-CUBA TRADE AND ECONOMIC COUNCIL, INC., *supra* note 68, at 2.

⁷⁵ *Id.*

⁷⁶ *Id.* at 3.

⁷⁷ *Id.* (emphasis added). However, this all depends on the T.S.R.A. and C.A.C.R.'s interpretation of the definition of cash. *Id.*

method of payment” had negative effects on U.S. exports to Cuba.⁷⁸ Moreover, the C.A.C.R. requirements that letters of credit flow through third country banks also increased transaction costs, “especially for small and medium sized exporters.”⁷⁹ This increase in costs is more evident for those exporters “whose shipments are less than a full vessel load,”⁸⁰ and may be explained as follows:

[B]ecause each discrete shipment on a vessel is required to have a confirmed letter of credit in place before the vessel leaves port, the delay of any single letter of credit delays all shipments on the same vessel. Delays can range from one to ten days, in some cases increasing total shipping costs by \$20,000 to \$40,000.

...
 ... This ... can result in U.S. suppliers being viewed as unreliable.⁸¹

However, the use of letters of credit could prove more beneficial to the Cuban buyer than payment in advance, per 31 C.F.R. § 515.533(a)(2)(i)(A). As previously stated, the Cuban importer, like Alimport, would not wish to retain ownership over the goods while they are still in a U.S. port due to concerns that they could be confiscated.⁸² Under letters of credit, there could be two favorable circumstances:

1. *Receipt of funds prior to U.S. port departure.* The goods could have to be loaded onto the vessel or aircraft in order for the U.S. exporter to obtain the proper documentation required by the issuing bank (such as a bill of lading, an invoice and/or a bill of exchange) for the drawing of the letter of credit funds. Until then, the exporter is still the legal owner of the products. Once the proper documentation is obtained and channeled to the issuing bank, and as soon as the funds are received and confirmed by the exporter’s bank, the vessel with the loaded goods, which would as-of-now be the property of the Cuban buyer, would then be authorized to and could readily depart the U.S. port to Cuba, thus min-

⁷⁸ U.S. INTERNATIONAL TRADE COMMISSION, *supra* note 58, at 3-8. An example of the consequences of O.F.A.C.’s ruling was that Alimport “refused to [further] pay cash in advance because by doing so, the exported products would become Cuban property while still in the U.S. port” and could thus be confiscated by Cuban exiles in the U.S. with legal claims against the Cuban government. *Id.* at 3-6 (footnote omitted).

⁷⁹ *Id.* at 3-11. The I.T.C. adds that if the letter of credit is not issued at the agreed time frame, “the U.S. exporter could incur additional storage charges because the product [would] remain[] in U.S. port storage facilities longer than anticipated.” *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* (footnote omitted). According to Pedro Álvarez, the former Chairman of Alimport, now turned defector of the Republic of Cuba, “the letter of credit option [would] stop small companies from signing deals with Cuba, since an additional \$2,000 to \$3,000 in financing costs wouldn’t be cost-effective for a \$20,000 or \$30,000 contract.” Ana Radelat, *In Wake of Tough New OFAC Regulations, Food Exporters Turn to Letters of Credit*, THE FREE LIBRARY (Mar. 1, 2005), <http://www.thefreelibrary.com/In+wake+of+tough+new+OFAC+regulations,+food+exporters+turn+to+letters...-a0131003904> (last visited Aug. 21, 2014).

⁸² See *supra* text accompanying note 78.

imizing the risk that the products are confiscated by Cuban exiles in the U.S.⁸³ due to a delay in shipment. However, and as previously mentioned, the entire shipment could be hindered if there were other shipments from smaller exporters that were delayed due to issues with their proper receipt of payments.

2. *As long as the exporter has a valid letter of credit, the goods can be shipped without the U.S. exporter's prior drawing of the funds.* Since an irrevocable letter of credit constitutes an as-good-as-cash guarantee of payment assured by either the issuing third country bank or the exporter's advising bank, it could be reasonably held that, as long as the exporter obtains a valid letter of credit prior to shipment, the goods could depart the U.S. port to Cuba before the funds are actually transferred to the exporter's bank.⁸⁴ Thus, the vessel bound for Cuba may leave a U.S. port without the Cuban buyer actually retaining ownership over the products, at least not until the exporter draws the funds. There should be no reason why such an agreement could not be reached between the buyer, the exporter and the issuing and advising bank.

III. SOME STATISTICS

The T.S.R.A. has enhanced trading opportunities for U.S. and Cuba, especially for the export of agricultural and food products from the U.S. According to the 2007 I.T.C. report:

In 2000, U.S. agricultural exports to Cuba were negligible. Following implementation of the [T.S.R.A.] . . . U.S. exports grew rapidly so that by 2004 the [U.S.] was the largest supplier of agricultural products to Cuba. In that year, Cuba imported \$392 million in agricultural goods from the [U.S.], equivalent to 42 percent of its total agricultural imports.⁸⁵

In support of this finding, U.S. International Trade Administration data and statistics show that in 2012, U.S. total exports to Cuba amounted to \$464,458,419, an increase of \$101,141,940, or 21.8%, over the previous year,⁸⁶ placing Cuba as the

⁸³ *Id.*

⁸⁴ See *supra* text accompanying note 73.

⁸⁵ U.S. INTERNATIONAL TRADE COMMISSION, *supra* note 58, at x. See also Berta E. Hernández-Truyol, *Embargo or Blockade? The Legal and Moral Dimensions of the U.S. Economic Sanctions on Cuba*, 4 INTERCULTURAL HUM. RTS. L. REV. 53, 76 (2009) ("The relaxation of sanctions against food and medicines beginning in 2000 found Cuba rising to 138th in 2001 and to 26th in 2004 for U.S. export markets. By 2006, Cuba's ranking had fallen slightly to become the 33rd largest market for U.S. agricultural exports (exports totaling \$328 million).") (footnote omitted).

⁸⁶ See Int'l Trade Admin., *2012 NAICS Total All Merchandise Exports to Cuba*, TRADESTATS EXPRESS, <http://tse.export.gov/TSE/TSEReports.aspx?DATA=SED> (last visited Aug. 21, 2014) [hereinafter *2012 NAICS Total All Merchandise Exports to Cuba*] (enter link above in web browser; then click "State-by-State Exports to a Selected Market"; then select "Individual Countries" below the "Trade Partner" subcategory; then select the country "Cuba"; then select the year "2012" below the "Map Display" subcategory; and to finish, press "Go").

43rd largest importer of U.S. products out of 229 importing countries.⁸⁷ These products were mostly comprised of 49.1% food manufactures,⁸⁸ 43.3% agricultural products,⁸⁹ 5.9% beverages and tobacco products, and 1.8% of miscellaneous, including computer and electronic products,⁹⁰ chemicals,⁹¹ and donations.⁹²

As far as individual U.S. states, Louisiana has been leading the U.S. export trade with Cuba, far exceeding the average exporting activity of the other top five exporting states from 2005 to 2012: Florida, Texas, Virginia, Georgia, and Connecticut.⁹³ As is no surprise, the majority of Louisiana's exports to Cuba (averag-

⁸⁷ U.S.-CUBA TRADE AND ECON. COUNCIL, INC., 2012-2001 U.S. EXPORT STATISTICS FOR CUBA 1 (2014), www.cubatrade.org/CubaExportStats.pdf.

⁸⁸ North American Industry Classification System, 311 *Food Manufacturing*, U.S. CENSUS BUREAU, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=311&search=2012%20NAICS%20Search> (last visited Aug. 21, 2014) ("Industries in the Food Manufacturing subsector transform livestock and agricultural products into products for intermediate or final consumption.").

⁸⁹ N. Am. Indus. Classification Sys., 111 *Crop Production*, U.S. CENSUS BUREAU, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=111&search=2012%20NAICS%20Search> (last visited Aug. 21, 2014) ("Industries in the Crop Production subsector grow crops mainly for food and fiber.").

⁹⁰ N. Am. Indus. Classification Sys., 334 *Computer and Electronic Manufacturing*, U.S. CENSUS BUREAU, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=334&search=2012%20NAICS%20Search> (last visited Aug. 21, 2014) ("Industries in the Computer and Electronic Product Manufacturing subsector . . . [include] manufacture[s] [of] computers, computer peripherals, communications equipment, and similar electronic products, and . . . manufacture[s] [of] components for such products."). Per 15 C.F.R. §§ 740.13 & 746.2, the E.A.R. allows, under limited circumstances, licensed exports of operation and sales technology, software, and updates to Cuba, whenever they are necessary or incidental to the "installation, operation, maintenance . . . and repair of those commodities . . . that are lawfully exported . . . under a license . . ." 15 C.F.R. § 740.13(a) (emphasis added). An example of such technology may be the equipment and software necessary to operate a medical device. See *Trade Sanctions Reform and Export Enhancement Act*, *supra* note 27.

⁹¹ N. Am. Indus. Classification Sys., 325 *Chemical Manufacturing*, U.S. CENSUS BUREAU, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=325&search=2012%20NAICS%20Search> (last visited Aug. 21, 2014) ("The Chemical Manufacturing subsector is based on the transformation of organic and inorganic raw materials by a chemical process and the formulation of products."). The chemical manufacturing subsector consists of various industry groups, including, but not limited to, pharmaceutical and medicine manufacturing, and pesticide, fertilizer, and other agricultural chemical manufacturing. See U.S. Dept. of Labor, Bureau of Labor Statistics, *Chemical Manufacturing: NAICS 325*, BUREAU OF LABOR STATISTICS, <http://www.bls.gov/iag/tgs/iag325.htm> (last visited Aug. 21, 2014).

⁹² 2012 NAICS Total All Merchandise Exports to Cuba, *supra* note 86.

⁹³ *Id.* Louisiana is consistently the highest exporting state, with the following percentages of total U.S. merchandise exports to Cuba figuring in 41.55% in 2005, 41.27% in 2006, 38.76% in 2007, 35.18% in 2008, 33.98% in 2009, 33.06% in 2010, 30.91% in 2011, and 37.99% in 2012. Although Louisiana's export activity had been in somewhat of a decline, except for 2012, total U.S. exports to Cuba are still strong, seeing as other states are increasing their exports to Cuba. It should be clarified that these statistics, insofar as the export activity of the abovementioned states, may reflect state seaport exportation activity, that is, the total value of goods that were exported from seaports within a state, and may not necessarily show the total value of products produced and manufactured, and thus later exported to Cuba, by actual exporters, whether individuals or corporations, within a state. Regardless of the foregoing, in sum, total U.S. exports to Cuba have ranged from as low as \$340,470,678 (2006) to as high as \$711,500,939 (2008).

es calculated from 2005 to 2012) consist of 61.0% agricultural products, 29.5% food manufactures, 9.1% beverages and tobacco products, and 0.4% miscellaneous commodities, such as textiles, paper, chemicals, plastics and rubber products.⁹⁴ In fact, Louisiana's exports to Cuba for 2012 consisted exclusively of agricultural products, food manufactures, beverages and tobacco products, for a total of \$176,451,778.⁹⁵

Puerto Rico, on the other hand, has exported mostly chemicals to Cuba, although it has also exported food manufactures, computer and electronic products. In detail, Puerto Rico exported a total of \$55,413 worth of food manufactures in 2005, a total of \$82,863 in 2008 (composed of \$71,375 worth of chemicals and \$11,488 worth of computer and electronic products), a total of \$17,345.00 in 2009 (composed of \$10,035 worth of computer and electronic products and \$7,310 miscellaneous or unclassified items), a total of \$105,000 worth of chemicals in 2011, and a total of \$167,450 worth of chemicals in 2012, for a total of \$428,071 in exports between 2005 and 2012.⁹⁶

Finally, industry experts remain optimistic that U.S. export relations and transactions with Cuba will continue to increase in the near future.⁹⁷ This prediction seems consistent with the rise in U.S. export activity to Cuba in 2012, which was preceded the lower grossing years of 2010 and 2011,⁹⁸ although the increased 2012 activity may actually reflect an increase in the price of the products shipped to Cuba. Notwithstanding the apparent success of U.S. exports in 2012, "[i]ncome from tourism, remittances, and [Cuban] exports will ultimately determine Cuba's ability to [further] import foods from the United States. As the Cuban market matures and world economic conditions improve, this product mix will shift toward more high-value and processed foods."⁹⁹ This could, in

⁹⁴ See Int'l Trade Admin., *2012 NAICS Total All Merchandise Exports from Louisiana to Cuba*, TRADESTATS EXPRESS, <http://tse.export.gov/TSE/TSEReports.aspx?DATA=SED> (last visited Aug. 21, 2014) (enter link above in web browser, then click "Export Product Profile to a Selected Market", then select "Individual States" below the "State/U.S. Region" subcategory, then select "Louisiana". Proceed to select "Individual Countries" below the "Trade Partner" subcategory, then select the country "Cuba", then select the year "2012" below the "Chart Display" subcategory, and to finish, press "Go").

⁹⁵ *Id.*

⁹⁶ See Int'l Trade Admin., *2012 NAICS Total All Merchandise Exports from Puerto Rico to Cuba*, TRADESTATS EXPRESS, <http://tse.export.gov/TSE/TSEReports.aspx?DATA=SED> (last visited Aug. 21, 2014) (enter link above in web browser, then click "Export Product Profile to a Selected Market", then select "Individual States" below the "State/U.S. Region" subcategory, then select "Puerto Rico". Proceed to select "Individual Countries" below the "Trade Partner" subcategory, then select the country "Cuba", then select the year "2012" below the "Chart Display" subcategory, and to finish, press "Go"). Puerto Rico exported 0.02% of the total of U.S. exports to Cuba in 2005, 0.01% in 2008, 0.0033% in 2009, 0.03% in 2011, and 0.04% in 2012, respectively. See also *2012 NAICS Total All Merchandise Exports to Cuba*, *supra* note 86.

⁹⁷ ROSSON & ADCKOCK, *supra* note 48.

⁹⁸ U.S. exports to Cuba totaled \$363,112,464 in 2010 and \$363,316,479 in 2011. See *2012 NAICS Total All Merchandise Exports to Cuba*, *supra* note 86.

⁹⁹ ROSSON & ADCKOCK, *supra* note 48, at 5.

turn, present an opportunity for Puerto Rico manufacturing and exports to Cuba as well.

CONCLUSION

U.S. exports to Cuba still remain highly regulated and authorized exports are closely scrutinized by the corresponding federal agencies. The process for obtaining all the necessary licenses and authorizations is tedious and painstakingly detailed. The U.S. embargo on Cuba is ultimately still in force; that situation has not changed. As a result of this tense relationship between the U.S. and Cuba, both countries meticulously supervise these import-export transactions. Furthermore, exporters should keep in mind that, even though the process of applying for and obtaining licenses is seemingly fastidious, the import-export transactions are generally approved as long as exporters follow the necessary procedures. For those U.S. exporters that can manage through these processes without losing interest in exporting to Cuba all together, the reward can be plentiful and well worth the hassle.

As previously stated, contractual negotiations and agreements between the U.S. and Cuba can be executed securely through the payment and financing options provided by the C.F.R. Although the implementation of these payment regulations can be somewhat imprecise, and potentially costly, the fact that U.C.P. and other I.C.C. Uniform Regulations can be adopted upon mutual agreement between the parties and participating banks affords uniformity and consistency over the import-export transactions.

On a different note, the Cuban market for agricultural products, medicines and other medical devices, as well as the other previously mentioned commodity exports, provides good opportunities for U.S. exporters. These opportunities may also extend to Puerto Rico exporters, who also have to follow the same licensing procedures as its mainland U.S. counterparts. In fact, Puerto Rico has already exported products to Cuba, and although these exports were few in number and value, they nonetheless serve to show that Puerto Rico has the capacity, interest, and potential to further increase its exporting activity to Cuba. These potential rewards and benefits are possible, however, largely through the T.S.R.A. legislation, and as long as U.S. exporters comply with the E.A.R. and the C.A.C.R. requisites, exporting to Cuba will remain a safe and promising enterprise.