

7 STEPS

**the U.S. President Can Take to
Promote Change in Cuba
By Adapting the Embargo**



SEVEN STEPS THE U.S. PRESIDENT CAN TAKE TO PROMOTE CHANGE IN CUBA BY ADAPTING THE EMBARGO

Executive Summary:

Change, however gradual, is taking place in Cuba. At the same time, the administration of President Barack Obama has used its authority under the embargo—through exceptions, executive actions, regulations, and licensing adjustments—to take tentative steps to loosen restrictions on travel, remittances, and telecoms activity by U.S. companies.

A careful reading of U.S. policy goals toward Cuba and the set of regulations and laws governing the U.S. embargo on Cuba reveal a series of changes that are essential to ensuring the U.S. administration's goal of encouraging independent economic and political activity in Cuba. More important, they are also legally possible and within the President's authority under existing regulations. To that end, we propose the following steps that President Obama can take to encourage private organizations and individuals to directly and indirectly serve as catalysts for meaningful economic change in Cuba.

- **Grant exceptions for commerce—including sales and imports—for businesses and individuals engaged in certifiably independent (i.e., non-state) economic activity.**
- **Allow for the export and sale of goods and services to businesses and individuals engaged in certifiably independent (i.e., non-state) economic activity.**
- **Allow licensed U.S. travelers to Cuba to have access to U.S.-issued pre-paid cards and other financial services—including travelers' insurance.**
- **Expand general licensed travel to include U.S. executives and their duly appointed agents to Cuba in financial services, travel and hospitality-related industries, such as banking, insurance, credit cards, and consumer products related to travel.**
- **Expand general licensed travel to include: law, real estate and land titling, financial services and credit, and any area defined as supporting independent economic activity.**
- **Allow for the sale of telecommunications hardware—including cell towers, satellite dishes, and handsets—in Cuba.**
- **Allow for the possibility for Cuba to request technical assistance from International Financial Institutions (IFIs) in the area of economic and institutional reform.**

In a separate annex (Annex I) this document lays out the legal and statutory basis for Presidential authority to make these necessary reforms to further U.S. policy to Cuba.

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Change, however gradual, is taking place in Cuba. A series of economic reforms announced by President Raúl Castro in 2010 set out policies that authorize and give greater space to private enterprise. The reforms are already creating an incipient independent economic sector.

At the same time, the administration of President Barack Obama has used its authority under the embargo—through exceptions, executive actions, regulations, and licensing adjustments—to take tentative steps to loosen restrictions on travel, remittances, and telecoms activity by U.S. companies.

Unfortunately, the changes on both sides have not gone far enough. The two countries remain in diplomatic deadlock—creating an opportunity for private groups to provide channels to share information and build contacts.

Over the last three years, through its Cuba Working Group, Americas Society and Council of the Americas (AS/COA) have held discussions and hosted Cuban scholars and public officials at private events in New York, Washington DC and Miami. Since their founding, AS/COA have played a critical role in bringing together the public and private sectors to engage with and foster policy reform and entrepreneurship. Today, more than ever, there is room to create dialogue with all parties around market reforms, economic development and opening, private enterprise, and entrepreneurship in Cuba.

A careful reading of U.S. policy goals toward Cuba and the set of regulations and laws governing the U.S. embargo on Cuba reveal a series of changes that are essential to ensuring the U.S. administration's goal of encouraging independent economic and political activity in Cuba. More important, they are also legally possible and within the President's authority under existing regulations. To that end, we propose the following steps that President Obama can take to encourage private organizations and individuals to directly and indirectly serve as catalysts for meaningful economic change in Cuba. We explain the regulatory and legal authority for all these steps in Annex I below.

1 Grant exceptions for commerce—including sales and imports—for businesses and individuals engaged in certifiably independent (i.e., non-state) economic activity.

This can include allowing U.S. businesses and vendors to buy products and services from independent actors—artwork, merchandise, materials, and other goods and services—in Cuba for re-sale in the United States. While such products are likely to be small-scale, a commerce exception for sale of goods in the U.S. would open up markets for independent entrepreneurs and artists, further empowering them as well as educating U.S. consumers about their activities and goods, thus providing additional income and support to independent economic actors.

Legal Basis: Although, multiple Congressional statutes (e.g., 22 U.S.C. § 6040(a) and 22 U.S.C. § 7028) have re-stated the regulatory prohibition on the importation of Cuban goods under 31 C.F.R. § 515.204, no legislation appears to codify the restriction. Thus, the President may modify 31 C.F.R. § 204's complete prohibition on the importation of Cuban goods to permit some exceptions.

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2 Allow for the export and sale of goods and services to businesses, agricultural cooperatives and individuals engaged in certifiably independent (i.e., non-state) economic activity.

Existing licensing regulations can be amended to establish a presumption of approval for specific categories of items deemed to support the U.S. stated policy goal of promoting independent economic activity on the island. Since 2000, legislation has allowed the export of a broad range of agricultural products and a limited range of medicines and medical devices. This should be expanded to include other inputs in demand by independent businesses, including—but not limited to—goods such as: art supplies, food preparation equipment, agricultural inputs (such as seeds and fertilizer), bookkeeping and basic electronic materials, and equipment required for retail sales to independent businesses and farmers.

Legal Basis: Consistent with Proclamation 3447, the President and the Commerce Department maintain executive branch authority to enforce restrictions and establish exceptions related to Cuba, including those set forth in the Export Administration Regulations (EAR). Restrictions imposed by the Cuba Democracy Act (CDA) of 1992 and 31 C.F.R. § 515.559(a) do not limit the ability of the President to issue new licensing exceptions for exports. In fact, President Obama most recently added an entirely new licensing exception to permit the “export and re-export to Cuba of donated consumer communications devices that are necessary to provide efficient and adequate telecommunications services between the United States and Cuba.” Note: even past U.S. sanctions on the Burmese government contained similar provisions that allowed export or re-export of financial services.

3 Allow licensed U.S. travelers to Cuba to have access to U.S.-issued pre-paid cards and other financial services, including insurance.

Currently, U.S. travelers to Cuba have no access to U.S. bank accounts, credit cards, debit cards, or other basic financial services. With few exceptions, U.S. travelers are forced to carry cash with them to Cuba. Allowing travelers access to electronic payment systems would help ensure their safety and security while studying or traveling on the island. Moreover, authorizing new electronic payment systems would facilitate the U.S. administration’s goal of promoting people-to-people contacts, and empower Cubans and facilitate private economic activity by allowing counterparts in the U.S. to transfer money to relatives and independent entrepreneurs on the island.

Legal Basis: While there is a clear regulatory prohibition under 31 C.F.R. § 515.201(a)(3) and 31 C.F.R. § 515.560(e)(1)-(2) concerning transfers of credit and the use of credit and debit cards, there is still no specific prohibition on the President’s authority to modify current regulations to permit the use of credit or debit cards, with the exceptions of agricultural sales and any transaction involving confiscated property by a U.S. national. Excluding these limited exceptions, the President retains the authority to change these existing regulations. Moreover, there is legal and financial precedence. Major global credit/debit card networks routinely process Cuba-originating transactions for non-U.S. cardholders. Acceptance of card-based payments is growing rapidly on the island. And despite U.S. restrictions, funds are already being moved to Cuba electronically in a number of ways. [SEE ANNEX II]

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4 Expand general licensed travel to include U.S. executives and their duly appointed agents to Cuba in financial services, travel and hospitality-related industries, such as banking, insurance, credit cards, and consumer products related to travel.

Allowing private-sector representatives from these sectors to travel will permit industry representatives to develop the necessary infrastructure and commitments that will allow for the use of U.S.-issued credit cards, pre-paid cards, and insurance—all essential for ensuring the safety and security of U.S. travelers to Cuba under the current policy. Moreover it will expand the opportunities for financial support to independent entrepreneurs inside Cuba and opportunities for access to information.

Legal Basis: According to 31 C.F.R. § 212.560(a), travel is permitted to Cuba under twelve specific categories. [See Annex IV for complete list] These categories are subject to interpretation and the President has set prior precedent in this area when he amended the Cuban Assets Control Regulations (CACR) by expanding the meaning of each travel category. Two specific categories are relevant here. One possibility is for the President to adapt “professional meeting” category to permit other commercial activities, as President Obama did in 2009 to permit travel-related transactions of telecommunications services and facilities. The second is to more broadly interpret the category allowed in “support of the Cuban people.”

5 Expand general licensed travel to include: law, real estate and land titling, financial services and credit, and any area defined as supporting independent economic activity.

Expanding general licensing for legal experts, organizations with an established interest and experience in training, financing, and supporting entrepreneurs (i.e. Endeavor, ACCION International, Women’s World Banking, among others) as well as scholars in the above areas—beyond those just covered under research or people-to-people contacts—will assist in the exchange of information, experiences and standards in these areas. Doing so would help provide a push to the island’s opening for the sale of property and the formation of small businesses and help in the creation of a legal foundation or legal capacities in those areas.

Legal Basis: See number 4 above.

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6 Allow for the sale of telecommunications hardware—including cell towers, satellite dishes, and handsets—in Cuba.

On April 13, 2009, the President issued a memorandum containing directives designed to increase the free flow of information to the Cuban people and expand communications links between the United States and Cuba by, among other things allowing for U.S. telecom providers to enter into agreements to establish fiber-optic cable and satellite telecommunications facilities linking the United States and Cuba, allow U.S. service providers to enter into roaming service agreements with Cuban providers, and for allow for the donation of consumer communications devices (CCDs) such as mobile phone systems, computers and satellite receivers. What they did not do was allow for the sale of hardware (handsets, cell towers, etc.) that would make many of these activities feasible or sufficiently profitable. As a result, the private sector response has been minimal.

Legal Basis: The language for the CDA’s prohibition on investment in the domestic infrastructure in Cuba (often cited as the regulatory constraint in this regard) is not stated as a statutory prohibition, but rather clarifies that the section shall not be construed to authorize investment in the domestic telecommunications network in Cuba. Thus, although the CDA does not itself authorize investments in Cuba’s domestic network, it does not rule out the possibility that the President retains the authority to do so under the EAR.

7 Allow for the possibility for Cuba to request technical assistance from International Financial Institutions (IFIs) in the area of economic and institutional reform.

The U.S. executive should lay the groundwork to facilitate the ability of the Cuban government to receive technical assistance from the International Monetary Fund (IMF), World Bank, and the Inter-American Development Bank (IDB) if they request it in areas of market-oriented reforms.

Legal Basis: Section 104 of Helms-Burton requires the U.S. representative to any of the international development banks such as the IMF, World Bank and IDB to oppose Cuba’s membership. Given that this provision is included as Congressional legislation under Helms-Burton, the President has no authority to modify this element of the embargo. However, there is an intermediate step: short of allowing Cuba to become a full member of an IFI, the U.S. can give its tacit consent to allow Cuba to request assistance from the IMF, the World Bank or the IDB.

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ANNEX I

THE REGULATORY AND LEGAL BASIS FOR THE 7 RECOMMENDATIONS

Introduction—Legal Framework

Beginning with the Trading with the Enemy Act of 1917 (TEWA)¹ Congress has enacted approximately seven different pieces of legislation that have been used to maintain the U.S. embargo against Cuba since the Castro regime.² However, while Congress is responsible for enacting the various pieces of legislation that gave rise to the Cuban embargo, the President along with the Secretary of the Treasury and the Secretary of Commerce are principally responsible for the bulk of the sanctions imposed on Cuba.

In 1963, pursuant to the President's authority under the Foreign Assistance Act of 1961,³ President Kennedy issued Proclamation 3447 that declared an embargo on Cuba and directed the Secretary of the Treasury and the Secretary of Commerce to enact regulations necessary to prohibit exports and imports to and from Cuba.⁴ The Secretary of the Treasury has since created the Cuban Assets Control Regulations (CACR) which prohibits persons subject to the jurisdiction of the United States from engaging in transactions in Cuba or with Cuban nationals, particularly with respect to travel-related transactions. Furthermore, pursuant to Export Administration Act of 1979, the Secretary of Commerce established the Export Administration Regulations (EAR), which prohibits all exports and re-exports to Cuba of U.S.-origin goods, software, and technology unless the export has been authorized according to a specific license or exception. Under both regulatory regimes, both the Secretary of the Treasury and the Secretary of Commerce have the authority to modify the regulations as they believe are in the best interest of U.S. Foreign policy.⁵ Thus, because the Secretary of the Treasury and Secretary of Commerce serve at the pleasure of the President, the President has significant authority to control the various prohibitions and licenses created by the CACR and the EAR.

However, since the enactment of the CACR in 1963 and the EAR in 1979, Congress has made inroads into the Cuban embargo regulatory scheme. Given that the CACR and the EAR are regulations and not statutes, any Congressional legislation that directly addresses an area of the sanctioning regime will trump any prohibition or authority established in the CACR or the EAR. Thus, if Congress enacted a specific statute prohibiting a particular type of conduct related to the Cuban Embargo, the President cannot amend the CACR or EAR in order to permit the conduct.

The most relevant piece of legislation to this point has been the Cuban Liberty and Solidarity Act of 1996.⁶ Often referred to as "Helms-Burton," the Cuban Liberty and Solidarity Act was enacted to strengthen the effect of the Cuban embargo by codifying all current regulations into law. But despite many claims that Helms-Burton has prevented the President from modifying the Cuban embargo, the language of Helms-Burton does no such thing. Instead, Helms-Burton codified all regulations used to impose the Cuban embargo in effect as of March 1, 1996 by reference only, and therefore included the provisions that permit the Secretary of the Treasury and the Secretary of Commerce to modify the CACR and EAR.⁷ Thus Helms-Burton does little to actually freeze the CACR or the EAR short of providing that the President may not lift the Cuban embargo in its entirety until the President determines that a transition or a democratically elected government has taken power in Cuba.

Given the current framework of legislation and regulations, in order to determine whether or not the President has the authority to modify provisions of the Cuban Embargo, it must be determined whether or not this area of the CACR or the EAR has been superseded by Congressional enactment.

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Recommendations

1 Grant exceptions for commerce—including sales and imports—for businesses and individuals engaged in certifiably independent (i.e., non-state) economic activity.

- **Regulatory Prohibition(s)**
 - 31 C.F.R. § 515.204 prohibits the importation of any Cuban origin goods, goods located in or transported from Cuba, or goods derived in whole or in part from Cuba, unless expressly authorized by the Secretary of the Treasury.
 - 31 C.F.R. § 515.506(c)(3) expressly declines to authorize the importation of any Cuban origin merchandise acquired incident to travel in Cuba.
- **Statutory Prohibition(s)**
 - None
 - 22 U.S.C. § 6040(a) “notes” that 31 C.F.R. § 515.204 prohibits the importation of goods from Cuba, but does not codify or expressly prohibit such activity.
 - 22 U.S.C. § 7028 acknowledges that Congress did not attempt to alter any prohibitions on the importation of goods from Cuba under 31 C.F.R. § 515.204. However, Congress did not codify or otherwise mandate the enforcement of this regulation.
- **Presidential Authority**
 - Although, multiple Congressional statutes have re-stated the regulatory prohibition on the importation of Cuban goods, no legislation appears to codify the restriction. Thus, the President may modify 31 C.F.R. § 204’s complete prohibition on the importation of Cuban goods to permit some exceptions.

2 Allow for the export and sale of goods and services to businesses, agricultural cooperatives and individuals engaged in certifiably (i.e., non-state) economic activity.

- **Regulatory Prohibition(s)**
 - 15 C.F.R. § 746.2 prohibits a variety of exports of U.S. goods to Cuba. This regulatory provision sets forth various licensing exceptions and special licenses that permit the exportation of certain goods to Cuba, however, none apply to the goods described by the recommendation.
 - 31 C.F.R. § 515.559 prohibits the exportation of goods to Cuba which require special licenses pursuant to 15 C.F.R. § 746.2 unless the good meets a series of requirements listed within 31 C.F.R. § 515.559(a)-(b). Importantly, a special license will only be authorized for goods relating to (1) contracts that were entered into prior to October 23, 1992; (2) medicine or medical devices (subject to additional restrictions); or (3) telecommunications equipment.

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- **Statutory Prohibition(s)**

- 22 U.S.C. § 6005(a)(1) codifies the restrictions for issuing special licenses for exports to Cuba found within 31 C.F.R. § 515.559.

- **Presidential Authority**

- The President will have the authority to amend 15 C.F.R. § 746.2 to permit additional licensing exceptions for the exportation of goods discussed in the recommendation. However, the President's ability to create additional special licenses is restricted by the limitations imposed by 31 C.F.R. § 515.559 and 22 U.S.C. 6005(a)(1).

3 Allow licensed U.S. travelers to Cuba to have access to U.S.-issued pre-paid cards and other financial services—including travelers' insurance.

- **Regulatory Prohibition(s)**

- 31 C.F.R. § 515.201(a)(1) prohibits all transfers of credit by or through any banking institution or person subject to the jurisdiction of the United States.
- 31 C.F.R. § 515.560(e) prohibits the use of credit cards, debit cards, or other instruments for travel expenditures within Cuba.
- 31 C.F.R. § 515.560(c)(5) only permits transactions incident to travel in Cuba to be conducted using "currency, which is defined as money, cash, drafts, notes, travelers' checks, negotiable instruments, or scrip having a specific and readily determinable face value or worth, but which does not include gold or other precious metals in any form."

- **Statutory Prohibition(s)**

- 22 U.S.C. § 6033(a) prohibits the financing of any transactions involving confiscated property claimed by a U.S. national.
- 22 U.S.C. § 7207(b) prohibits the financing of agricultural sales in terms other than in cash.

- **Presidential Authority**

- The President may modify the current regulations to permit the use of credit cards and other financial services in Cuba subject only to the minor limitations imposed by 22 U.S.C. § 6033(a) and 22 U.S.C. § 7207(b).

4 Expand general licensed travel to include U.S. executives and their duly appointed agents to Cuba in financial services, travel and hospitality-related industries, such as banking, insurance, credit cards, and consumer products related to travel.

- **Regulatory Prohibition(s)**

- 31 C.F.R. § 515.560(a) prohibits all travel to, from, or within Cuba except travel incident to activities which fall into one of twelve different licensing categories.

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- 31 C.F.R. § 515.564(a)(2)-(3) limits travel for “professional meetings” to those organized by international professional organizations or for commercial telecommunications transactions.
- 31 C.F.R. § 515.574 limits travel to provide “support for the Cuban people” to include a non-exhaustive list of activities such as: activities for recognized human rights organizations; activities for independent organizations supporting democracy in Cuba; and activities by non-governmental organizations to promote independent activity within Cuban civil society.
- **Statutory Prohibition(s)**
 - 22 U.S.C. § 7209(b) prohibits all travel to, from, or within Cuba that does not fall into a category set forth in 31 C.F.R. § 515.560(c). The President may not add any additional travel category to 31 C.F.R. § 515.560(c).
- **Presidential Authority**
 - The President may permit additional general licensed travel only to the extent the President is able to broaden the scope of one of the current twelve travel categories.⁸ Presently, none of the twelve categories directly incorporate the activities detailed in the recommendation; however, no legislation prohibits the President from altering the meaning of each category. The most applicable travel categories are 31 C.F.R. § 515.560(a)(4)—“Professional research and professional meetings”—or 31 C.F.R. § 515.560(8)—“Support for the Cuban people.” The President may amend the provisions that define these travel categories—31 C.F.R. § 515.564(a)(2)-(3) and 31 C.F.R. § 515.574—in order to permit the desired activity.

5 Expand general licensed travel to include: law, real estate and land titling, financial services and credit, and any area defined as supporting independent economic activity.

The President does not have the authority to add more categories of licensed travel as explained in Question (2). However, The President will have authority to amend or redefine the existing travel categories—most specifically the categories focused on travel in support of the Cuban people or for professional meetings.

6 Allow for the sale of telecommunications hardware—including cell towers, satellite dishes, and handsets—in Cuba.

- **Regulatory Prohibition(s)**
 - None
 - 31 C.F.R. § 515.54⁹ currently permits all transactions of common carriers incident to the use of cables, satellite channels, radio signals, or other means of telecommunications for the provision of services between Cuba and the U.S.
- **Statutory Prohibition(s)**

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- 22 USC § 6004(e)(5) declines to authorize any U.S. person from investing in the domestic telecommunications network within Cuba. Thus, U.S. individuals may not invest funds to physically link telecommunications devices with the Cuban domestic network.

- **Presidential Authority**

- The President has the authority to amend the current regulations in order to further enhance telecommunications connections between the U.S. and Cuba. Importantly, 22 U.S.C. § 6004(e)(5) does not prohibit investment in the Cuban telecommunications network. Instead, the statute only states that it does not authorize such activity. Notably, much of what this recommendation seeks to accomplish has already been enacted by the President under 31 C.F.R. § 515.542.⁹ The only additional amendments that may be necessary are those that will clarify the ability of telecommunications providers to invest or link with the Cuban domestic network.



Promote Cuba’s engagement with International Financial Institutions (IFIs) to create opportunities for gradual process of confidence building through technical and development assistance

- **Regulatory Prohibition(s)**

- None

- **Statutory Prohibition(s)**

- 22 U.S.C. § 6034(a) requires the U.S. representative of any international financial institution to oppose by voice or vote the admission of Cuba as a member of such institution unless the President determines that a democratically elected government has come to power in Cuba.

- **Presidential Authority**

- The President has no authority to permit Cuba to become a member of any international financial institution (“IFI”), limiting the ability of the U.S. to promote Cuba’s engagement with IFIs. However, 22 U.S.C. § 6034(a) only applies to issues of Cuba’s admission as a member of an IFI. To the extent the President wishes to otherwise engage in a policy to increase Cuba’s engagement with IFIs without seeking Cuba’s admission as a member, the President may do so.

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ANNEX II

EXAMPLES OF EXISTING BANKING TRANSACTIONS WITH CUBA

- Wire transfers through third-country banks (fees range from 2.5 to 5.0 percent);
- Fund transfers through U.S. government approved remittance forwarders, which have agreements with Cuban financial services provider Fincimex S.A.;
- Funds transferred from the United States to Canada-based TransCard Canada Ltd. In 2010, TransCard processed approximately 100,000 transactions;
- U.S. residents abroad can authorize non-U.S. citizens in Cuba to use credit cards issued by non-U.S. banks that they agree to pay the balance on; and
- There is also some experience for the authorization of electronic payment systems for licensed U.S. travelers to Cuba. Since 2005, Caribbean Transfer has become a major forwarder of remittances through prepaid cards.

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ANNEX III EXCEPTIONS TO SANCTIONS ON BURMA

- In December of 2008, OFAC amended General License Number 14 to authorize the exportation or re-exportation of financial services to Burma in support of any organization or individual engaged in not-for-profit humanitarian or religious activities in Burma.
- In July 2012 OFAC issued General License No. 16 which authorized the exportation of U.S. financial services to Burma. Due to the continued risk of human rights abuse, it does not authorize the exportation of financial services to the Burmese Ministry of Defense, state or non-state armed groups (which includes the military), or any entity owned by them. It also prohibits the exportation of financial services to any person blocked under the Burma sanctions program.
- The Secretary of State waived the ban on new U.S. investment in Burma set forth in the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1997.

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**Restrictions imposed by the
Cuba Democracy Act of 1992
do not limit the ability of the
President to issue new licensing
exceptions for exports.”**

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ANNEX IV

12 CATEGORIES OF AUTHORIZED TRANSPORTATION TO AND FROM CUBA

According to 31 C.F.R. § 212.560(c) “transportation to and from Cuba” is authorized as long as it is established under one of the twelve categories in 31 C.F.R. § 212.560(a).¹⁰ These twelve categories include the following:

- 1** Family visits;
- 2** Official business of U.S. government, foreign governments, and certain intergovernmental organizations;
- 3** Journalistic activity;
- 4** Professional research and professional meetings;
- 5** Educational activities;
- 6** Religious activities;
- 7** Public performances, clinic, workshops, athletic and other competitions, and exhibitions;
- 8** Support for the Cuban People;
- 9** Humanitarian projects;
- 10** Activities of private foundations or research or educational institutes;
- 11** Exportation, importation, or transmission of information or informational materials;
- 12** Certain export transactions that may be considered for authorization under existing Department of Commerce regulations and guidelines with respect to Cuba or engaged in by U.S. owned or controlled foreign firms.¹¹

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ENDNOTES

- 1 Pub. L. No. 95-223, 91 Stat. 1625 (1977); 50 U.S.C. §§ 1701-06.
- 2 See Stephen F. Propst, *Presidential Authority to Modify Economic Sanctions Against Cuba*, 3 (Feb. 15, 2011).
- 3 P.L. 87-194, 75 Stat. 424; 22 U.S.C. § 2370.
- 4 Presidential Proclamation 3447 (Feb. 3, 1962).
- 5 31 C.F.R. § 515.201; Presidential Proclamation 3447 (Feb. 3, 1962) (stating that the Secretary of Commerce has the authority to “continue, make, modify, revoke” exceptions to the prohibition on all exports to Cuba). The initial statutory basis for the EAR, the EAA, has since expired but the EAA remains in effect according to executive authority afforded to the President under the TWEA. This, combined with Proclamation 3447, is generally considered to provide the President with significant authority to modify by the EAR. See Stephen F. Propst, *Presidential Authority to Modify Economic Sanctions Against Cuba*, 17 (Feb. 15, 2011).
- 6 P.L. 104-114 (1996); 22 U.S.C. §§ 6021-91.
- 7 See 22 U.S.C. § 6032; see also Stephen F. Propst, *Presidential Authority to Modify Economic Sanctions Against Cuba*, 6-7 (Feb. 15, 2011).
- 8 The President has engaged in similar types of modification to the twelve travel categories in the past. In April 2009 President Obama authorized a new type of travel license related to telecommunications services which fell within the “professional meeting” travel category. The White House, *Memorandum for the Secretary of State, the Secretary of the Treasury, and the Secretary of Commerce: Promoting Democracy and Human Rights in Cuba* (April 13, 2009); see also 31 C.F.R. § 515.564(a)(3).
- 9 See also The White House, *Memorandum for the Secretary of State, the Secretary of the Treasury, and the Secretary of Commerce: Promoting Democracy and Human Rights in Cuba* (April 13, 2009).
- 10 31 C.F.R. § 515.560 (a) (“The travel-related transactions listed in paragraph (c) of this section may be authorized either by a general license or on a case-by-case basis by a specific license for travel related to the following activities . . .”).
- 11 31 C.F.R. § 515.560(a)

The opinions and recommendations expressed in this policy paper are those of the AS/COA Cuba Working Group—a group of private sector representatives and experts who have been convening for five years to discuss human rights and economic conditions in Cuba and U.S.-Cuba policy. They do not represent the opinions or positions of the Americas Society (AS) or the Council of the Americas (COA) or its members or the Boards of Directors of either organization.