

U.S. TRAVEL RESTRICTIONS TO CUBA: OVERVIEW AND EVOLUTION

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This paper is the first part of a larger work in progress, titled “U.S. Travel Restrictions to Cuba: Overview, Implications, and Challenges,” that will provide an in-depth and comprehensive look of U.S. travel restrictions to Cuba. This paper provides the backdrop for the travel restrictions, a chronology of their evolution, and an overview of current regulations. It also recounts the growth in U.S.-based travel to Cuba beginning in 1990, when the end of massive Soviet aid prompted the development of the tourist industry in a quest for hard currency revenues. The second and third parts are in progress and will be incorporated into the larger work for future publication. The second part will look at Cuba’s tourist industry—its evolution, characteristics, and prospects for growth. The third part will examine the implications of current U.S. travel restrictions, the arguments for and against them, and the policy debate.

U.S. TRAVEL RESTRICTIONS TO CUBA¹

Travel by Americans abroad is considered by the United States government to have “significant foreign policy implications and can damage the national interest.”² In that context, the United States currently maintains restrictions on travel on persons subject to U.S. jurisdiction to four countries: Cuba, Libya, Iraq, and North Korea. The travel restrictions do not actually forbid travel to these locations, but rather limits, in some cases, the use of U.S. passports and/or direct transportation there, and, in call cases limit the ability to spend money there unless licensed by the U.S. Treasury Department.³ These restrictions, in fact, derive from economic sanctions that currently exist against a total of 26 countries pursuant to Presidential and Congressional mandates. Cuba is also one of seven countries—together with North Korea, Iran, Libya, Iraq, Sudan and Syria—designated by

1. The information for this section has been taken from the following U.S. government sources: Cuban Assets Control Regulations (Title 31, Part 515 of the U.S. Code of Federal Regulations) and “What You Need To Know About The U.S. Embargo: An Overview of the Cuban Assets Control Regulations,” Office of Foreign Assets Control, Department of the Treasury; Consular Information Sheet for Cuba, Department of State, May 30, 2003, updated November 2, 2003; website of the U.S. Interest Section in Havana website; Susan B. Epstein and Dianne E. Rennack, “Travel Restrictions: U.S. Government Limits on American Citizens’ Travel Abroad,” Congressional Research Service Report for Congress, August 30, 2001; Mark P. Sullivan, “Cuba: U.S. Restrictions on Travel and Legislative Initiatives for the 107th Congress, Congressional Research Service Report for Congress, Update for August 29, 2002; Statement by Secretary of State Madeline Albright, U.S. Department of State, January 5, 1999; and Statement of R. Richard Newcomb, Director, Office of Foreign Assets Control, before the Committee on Foreign Relations, United States Senate, Hearings on Travel and Trade with Cuba, October 2, 2003.

2. Cuba Brief, Section on Travel to Cuba, White House, 2002.

3. Sanctions vary by country. For example, all travel transactions with Iraq are prohibited, whereas exceptions are made for Libya for travel by close family members (upon registration), journalists, and travel to arrange sales of licensed products (agricultural commodities and medicines). A 2001 Congressional Research Service report compares Cuba’s sanctions to those that apply to North Korea, where the use of U.S. passports is allowed subject to certain conditions, whereas there was an additional level of sanction with respect to Iraq and Libya, where the use of U.S. passports was not allowed. See OFAC’s website (op.cit.) and Epstein and Rennack (2001).

the State Department as supporting international terrorism; most of these countries are subject to comprehensive economic sanctions.⁴

The purpose of the travel restrictions is to limit transactions that would result in U.S. dollars ending up in the hands of the sanctioned government. Originally, sanctions were imposed on Cuba as a result of the Castro government's (1) uncompensated taking of American property, considered the largest by a foreign government in U.S. history;⁵ (2) subversion of Latin American democracies; and (3) the Castro regime's gross human rights abuses, including the mass execution of political opponents and dissidents by the Castro regime. As a result, the stated objective of the embargo is to deny funds to the Castro regime for internal repression and international subversion and to serve as retaliation for the uncompensated confiscation of U.S. properties on the island. It has been regarded by successive U.S. Administrations as a means "to support and encourage a peaceful transition to democracy and a free market in Cuba."⁶

The U.S. Supreme Court has noted on several occasions that travel by Americans abroad can be regulated and limited within the bounds of due process and has specifically upheld the constitutionality of limitations on travel to Cuba.⁷

The Office of Foreign Assets Control (OFAC) of the U.S. Treasury Department administers the economic sanctions, including travel regulations, imposed for foreign policy or national security reasons. OFAC plays a key role in the implementation, administration and enforcement of the sanctions. Several laws provide the legal foundation for the embargo and affect travel.⁸

- **The Trading with the Enemy Act (TWEA) of 1917**, and its 1933 amendment,⁹ which empower the President to regulate or prohibit all commercial transactions with a foreign nation during time of war or national emergency.¹⁰ In 1962, President Kennedy declared a state of emergency with respect to Cuba, which has been extended repeatedly.

4. Written Statement of R. Richard Newcomb, Director Office of Foreign Assets Control, U.S. Department of the Treasury, Before the Committee on Governmental Affairs United States Senate, Hearings on Terrorism Financing: Origination, Organization and Prevention, July 31, 2003.

5. In 1960, the Cuban government seized more than \$1.8 billion of property owned by U.S. citizens and corporations without payment of compensation. The U.S. Foreign Claims Settlement Commission evaluated and certified 5,911 claims for use in future negotiations with the Cuban government and determined that certified claimants were entitled to 6% per annum interest on the value from the date of seizure. Their current estimated value ranges from \$6.4 billion (at simple interest) to \$20.1 billion (at compounded interest). See "What are U.S. property claims against Cuba?," Joint Corporate Committee on Cuba Claims. (Formed in 1975, the Joint Corporate Committee on Cuban Claims is a non-profit organization of claimants that supports the U.S. policy of requiring the Cuban government to return or arrange compensation for properties seized or provide an adequate settlement before full trade and diplomatic relations are restored.)

6. Written Statement of R. Richard Newcomb Director, Office of Foreign Assets Control, United States Department of the Treasury, before the Subcommittee on Human Rights and Wellness Committee on Government Reform U.S. House of Representatives, October 16, 2003.

7. A 1996 challenge to limit travel-related transactions on grounds that the government lacked sufficient foreign policy rationale was rejected by the Ninth District Court. *Zemel v. Rusk* (1965) and *Regan v. Wald* (1984).

8. For a detailed review of the legal foundation for the embargo until 1993, see Matías F. Travieso-Díaz, "Requirements For Lifting the U.S. Trade Embargo Against Cuba," *Cuba in Transition—Volume 3*, Association for the Study of the Cuban Economy, Washington, DC, 1993.

9. Trading with the Enemy Act of October 6, 1917, amended by Public Law in 1994. (After 1977, restrictions on countries including Cuba for which a state of emergency has been declared, have been grandfathered under the National Emergencies Act (NEA) and the International Emergencies Economic Powers Act (IEEPA) of 1977, which serves as the primary statutory authority for a Presidential declaration of a national emergency in peacetime for the purpose of imposing economic sanctions. R. Newcomb (July 31, 2003).)

10. The TWEA was amended in 1994.

- **The Foreign Assistance Act of 1961**,¹¹ which conferred President Kennedy the authority to impose the embargo by authorizing the suspension of all trade benefits and foreign assistance to Cuba “until Cuba demonstrates significant progress in instituting democratic reforms and compensates U.S. citizens whose properties were confiscated.”
- **The 1992 Cuban Democracy Act (CDA)**,¹² also commonly known as the Torricelli Law, responded to changes in Cuba after the end of Soviet Communism and the economic support by the Soviet bloc. This law took a novel approach by defining U.S. policy as fostering a peaceful transition to democracy and economic prosperity in Cuba with a combined application of sanctions and incentives.¹³ It contains a number of humanitarian exemptions on the embargo (such as donations of food, the sale of medicine and medical supplies), and authorized telecommunications’ payments, direct mail delivery to Cuba, and assistance to support non-violent democratic change in Cuba. The Act also added civil penalty authority for the Treasury Department to enforce sanctions and required the creation of an administrative hearing process for civil penalty cases and the establishment of an OFAC office in Miami to assist in administering and enforcing embargo restrictions.¹⁴
- **The 1996 Cuban Liberty and Democratic Solidarity Act** (also know as the Helms-Burton Law)¹⁵ codified the embargo, including the travel restrictions, and preserved the humanitarian pro-

visions of the CDA. Section 112, “Reinstitution of family remittances and travel to Cuba,” calls on the President to, “before considering the reinstatement of general licenses for travel to Cuba by individuals resident in the United States who are family members of Cuban nationals who are resident in Cuba, insist on such actions by the Cuban Government as abrogation of the sanction for departure from Cuba by refugees, release of political prisoners, recognition of the right of association, and other fundamental freedoms.” Section 109 also authorized the President to furnish assistance and provide other support for individuals and independent nongovernmental organizations to support democracy-building efforts for Cuba; this included (4) Support for visits and permanent deployment of independent international human rights monitors in Cuba.

- **The Trade Sanctions Reform and Export Enhancement Act of 2000** restricted the President’s discretionary authority to authorize travel-related transactions to, from, or within Cuba by restricting travel-related transactions to those twelve categories defined in OFAC’s Code of Regulations related to Cuba.

Chronology

U.S. travel restrictions to Cuba have been modified on numerous occasions. Following is a brief chronology of the most significant events and changes affecting travel to Cuba.

11. The FAA grants the President discretion to furnish assistance to Cuba when deemed to be in the interest of the United States. (For a summary of laws regulating the embargo on Cuba before the Helms-Burton law of 1996, see Javier J. Rodriguez, Nicolas Gutierrez, Jr., and James Meyer, “A synopsis and analysis of U.S. laws relating to the economic embargo on Cuba,” *International Law Quarterly*, Winter 1993.)

12. The Cuban Democracy Act, United States Code Title 22, Foreign Relations Intercourse, Chapter 69.

13. The CDA’s Section 6002 (Statement of policy) reads: It should be the policy of the United States— (1) to seek a peaceful transition to democracy and a resumption of economic growth in Cuba through the careful application of sanctions directed at the Castro government and support for the Cuban people; (2) to maintain sanctions on the Castro regime so long as it continues to refuse to move toward democratization and greater respect for human rights; (3) to be prepared to reduce the sanctions in carefully calibrated ways in response to positive developments in Cuba.

14. R. Newcomb (October 2, 2003).

15. Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, P.L. 104-114, codified in Title 22, Sections 6021-6091 of the U.S. Code.

- On **February 3, 1962**, President Kennedy issued Proclamation 3447, under the authority granted by the Foreign Assistance Act of 1961, officially imposing a trade embargo against Cuba that prohibited “the importation into the United States of all goods of Cuban origin and all goods imported from and through Cuba.”¹⁶ A series of laws had been enacted from 1960 to that time that had essentially cut off all trade between the U.S. and Cuba.¹⁷
- On **July 9, 1963**, pursuant to the President’s directive and under the Trading With the Enemy Act, the Department of the Treasury’s Office of Foreign Assets Control (OFAC) issued a more comprehensive set of prohibitions, the Cuban Import Regulations.¹⁸ These effectively banned travel by prohibiting any transactions with Cuba.
- In **March 1977** President Carter lifted the restrictions on U.S. travel to Cuba by issuing a general license for travel-related transactions and allowed direct flights to Cuba. At that time, Cuba had massive economic support from the Soviet Union and severely restricted tourists travel by all foreigners. Soon, Cuba initiated a military intervention in Africa that cooled the “rapprochement.”
- In **April 1982**, the Reagan Administration reimposed restrictions on travel to Cuba, although it allowed for certain categories of travel, including travel by U.S. government officials, employees of news or film making organizations, persons engaging in professional research, or persons visiting their close relatives.
- In **June 1993** the Clinton Administration added two more categories of authorized travel under specific license from OFAC: “for clearly defined educational or religious activities” and “for activities of recognized human rights organizations.”
- In **August 1994** President Clinton announced measures against the Cuban government in response to an escalation in the number of Cubans fleeing in rafts to the United States. The Administration tightened travel restrictions by prohibiting family visits under a general license and allowing specific licenses for family visits only “when extreme hardship is demonstrated in cases involving extreme humanitarian need” such as terminal illness or severe medical emergency. In addition, professional researchers were required to apply for a specific license, whereas since 1982 they had been able to travel freely under a general license.
- In **October 1995** President Clinton announced measures to ease some U.S. restrictions on travel and other activities with Cuba, with the overall objective of promoting democracy and the free flow of ideas. General licenses were allowed for transactions related to travel by Cuban Americans making yearly visits to close relatives in “circumstances that demonstrate extreme humanitarian need.” This reversed the August 1994 action that required specific licenses, but required that people traveling for this purpose more than once in a 12-month period needed to apply to OFAC for a specific license. The new measures also allowed for specific licenses for free-lance journalists traveling to Cuba.
- On **February 26, 1996**, following the shoot-down of two U.S. civilian planes by Cuban fighter jets, President Clinton took several measures against Cuba, including the indefinite suspension of charter flights between Cuba and the United States. Qualified licensed travelers could still go to Cuba through third countries.

16. 31 CFR Part 515 (the “Regulations”).

17. The first sanctions were imposed in 1960 as a result of the confiscation of U.S. properties on the island. President Eisenhower placed most U.S. industrial export licenses to Cuba (excluding non-subsidized food, medicines and medical supplies) under trade restrictions and reduced the quota of Cuban sugar in the U.S. market to zero. Travel restrictions were not included. (Proclamation 3447, 27 Fed. Reg. 1085, 3 C.F.R., 1059-63 Comp., p. 157.)

18. “Treasury Dept. Cracks Down on Cuba Travel,” The Associated Press, Washington, 03/24/03.

- On **March 20, 1998**, following Pope John Paul II's trip to Cuba in January, President Clinton announced several changes in U.S. policy toward Cuba, including the resumption of licensing for direct charter flights to Cuba. On July 2, OFAC issued licenses to nine air charter companies to provide direct passenger flights from Miami to Havana.
- On **January 5, 1999**, the Clinton Administration announced additional measures to increase people-to-people exchanges and support the Cuban people. These included authorizing direct passenger charter flights from additional U.S. cities other than Miami. In August of that year, the State Department announced that direct flights to Cuba would be allowed from New York and Los Angeles.
- On **May 13, 1999**, OFAC issued a number of changes that loosened restrictions on certain categories of travelers to Cuba in response to President Clinton's January 1999 announcement. Travel for professional research became possible under a general license, and travel for a wide range of educational, religious, sports competition, and other activities became possible with specific licenses authorized by OFAC on a case-by-case basis. In addition, those traveling to Cuba to visit a close family member under either a general or specific license only needed to "demonstrate humanitarian need."
- In **October 2000**, Congress approved the Trade Sanctions Reform and Export Enhancement Act of 2000 (Title IX of P.L. 106-387), that included a provision that prohibited travel-related transactions for "tourist activities." This has been interpreted as circumscribing the authority of OFAC to issue specific travel licenses on a case-by-case basis within the categories of travel already allowed by the existing regulations.
- On **July 12, 2001**, OFAC published regulations pursuant to the provisions of the Trade Sanctions and Export Enhancement Act of 2000. The following day, President Bush announced

that he had asked the Treasury Department to enhance and expand the capabilities of OFAC to prevent, among other things, "unlicensed and excessive travel."

- On **March 24, 2003** the Treasury Department announced regulatory changes. No new licenses would be issued for "people-to-people educational exchanges" that had become a loophole for groups to travel to Cuba on "essentially tourists trips." The list of licensable humanitarian activities was enlarged to include construction projects intended to benefit legitimately independent civil society groups and educational training within Cuba and elsewhere on topics including civic education, journalism, advocacy, and organizing. The amount of money that could be taken as gifts for Cuban citizens was raised to \$3,000 (equivalent to up to ten of the allowed remittances in a three month period for any individual in Cuba).¹⁹

Current U.S. Regulations on Travel to Cuba

Authorized ("licensed") travel: The Cuba Assets Control Regulations, issued by the U.S. Treasury Department, affect all persons subject to U.S. jurisdiction -U.S. citizens and permanent residents wherever they are located, all people and organizations physically in the United States, and all branches and subsidiaries of U.S. organizations throughout the world. Its jurisdiction extends to transactions, anywhere in the world, involving property in which Cuba or a national thereof has any interest whatsoever, direct or indirect.

OFAC authorization by way of a license is required to engage in any transactions related to travel to, from, and within Cuba. Only select categories of travelers are licensable, although, as we have seen, these have varied over the years.

OFAC has a Miami office that handles around 90% of license applications—those related to visits to close relatives. Nearly 20,000 such applications were processed during 2002. This process is handled very promptly due to its humanitarian component i.e., for

19. *Federal Register*, Vol. 68, No. 56, March 24, 2003.

family reunification. OFAC reports that it reviews and mails the licensing response generally within 24 hours of receipt. OFAC's national office in Washington handles the remaining categories of travel, which brought in more than 1,000 license applications in 2002. With the advent of OFAC's recently streamlined processing procedures and the assignment of additional staff, it reports processing most license applications not requiring interagency review within ten days of receipt.

U.S. citizens and residents traveling under a general or specific license from OFAC may spend money on travel in Cuba without obtaining special permission for travel-related expenses (hotels, meals, ground transportation, etc.) not exceeding the U.S. government's per diem rate, currently \$166 per day. The cost of telephone calls is exempt from the per diem. Per diem rates for Cuba are based upon the "Per Diem Rate for Foreign Areas" issued by the Department of State for U.S. government officials in temporary official duty abroad. The per diem is adjusted periodically and may be checked on the internet at the Department of State website.²⁰ OFAC also generally authorizes the expenditure of "additional money for transactions directly related to the activities" for which a license was issued. Most licensed travelers may also spend additional money for transactions directly related to the activities for which they received their license.²¹ The per diem may also be exceeded for travel-related transactions incident to the purpose of visiting close relatives (e.g. to purchase transportation within Cuba visit close relatives who live great distances from each other). Specific exemptions to

the per diem authorization can also be requested from the OFAC.

Licensed travelers may also spend an additional \$100 to the per diem allowance on the purchase of Cuban merchandise to be brought back with them to the United States as accompanied baggage (cigar, rums, crafts, etc.), but this \$100 authorization may be used only once in any 6-month period. Purchases of services unrelated to travel or a licensed activity, such as non-emergency medical services, are prohibited. The purchase of artwork, publications, and informational materials (books, magazines, music tapes, CD ROM's, photographs, films, posters, phonograph records, microfilm, microfiche, compact disks, and newswire feed, etc.) is not limited or restricted.

In any one-year period, only \$500 may be paid in fees levied by the Cuban government for travel to Cuba.

"Fully hosted" travelers whose travel and other expenses are absorbed by an individual or entity not subject to U.S. law (in Cuba or a third country) are exempt from requiring a license to travel to Cuba, but must provide supporting documentation as evidence.²² A "fully hosted" traveler must travel to the Republic of Cuba by way of third countries. They are not subject to spending limits,²³ but are prohibited from providing any unauthorized services to Cuba or to Cuban nationals or within Cuba.

All persons on board vessels must be authorized travelers to engage in travel-related transactions in Cuba, such as purchase meals, pay for ground transportation, lodging, dockage or mooring fees, cruising fees, entertainment, incidentals, visas, entry or exit fees.²⁴

20. <http://www.state.gov/www/perdiems/index.html>.

21. For example, journalists traveling in Cuba under the journalism general license may spend money over and above the current per diem for extensive local transportation and other costs that are directly related to covering a story in Cuba.

22. The U.S.-Cuba Trade and Economic Council warns of increased enforcement of travel restriction regulations with respect to travelers claiming "fully hosted" status and urges "extreme caution" if traveling under this category. (<http://www.cubatrade.org/>).

23. Certain restrictions apply.

24. The U.S. Coast Guard requires that vessels traveling to Cuba obtain a \$25 permit to depart the Florida Security Zone. Such notification is required under Presidential Proclamation 6867 (by President Clinton in March 1996, extended by President Bush in February 2002), which established a "security zone" around the coast of South Florida essentially to keep Cuban exiles out of high-seas confrontations with Cuban patrol boats. (See www.whitehouse.gov/news/releases/2002/02/20020227-8.html.) The Coast Guard webpage warns vessels planning to travel to Cuba of the need to comply with all existing OFAC regulations regarding expenditures in Cuba. It clarifies: "OFAC presumes that any boater who sails to Cuba has made expenditures in Cuba unless that presumption is rebutted as set forth in 31 C.F.R. 515.420 - up to \$250,000 fine and ten years in prison." (OFAC Fact Sheet "Cuba: Civil Penalties Rights and Procedures," March 24, 2003.)

OFAC presumes that any boater who sails to Cuba has made expenditures in Cuba unless that presumption is rebutted as set forth in the Cuba regulations. Penalties of up to \$250,000 fine and ten years in prison may be levied.

In March 2003, OFAC regulations were amended to allow licensed travelers on direct flights to carry family remittances totaling up to \$3,000 (in addition to his/her per diem) regardless of the number of close relatives in Cuba to receive the funds. Children under 18 are prohibited from carrying remittances on direct flights.

General licenses: Presently, general licenses are authorized for persons whose travel falls into the categories:

- Journalists and supporting broadcasting or technical personnel (regularly employed in that capacity by a news reporting organization and traveling for journalistic activities).
- Official government travelers (traveling on official business).
- Members of international organizations of which the United States is also a member (traveling on official business).
- Persons traveling once a year to visit Cuban nationals who are close relatives. (Additional trips within one year will need an OFAC specific license).
- Full-time professionals whose travel transactions are directly related to professional research in their professional areas, provided that their research: (1) is of a noncommercial academic nature; (2) comprises a full work schedule in Cuba; and (3) has a substantial likelihood of public dissemination.
- Full-time professionals whose travel transactions are directly related to attendance at professional meetings or conferences in Cuba organized by an international professional organization, institution, or association that regularly sponsors such meetings or conferences in other countries.

- Amateur or semi-professional athletes or teams traveling to participate in Cuba in an athletic competition held under the auspices of the relevant international sports federation.

Specific licenses for academic institutions: Specific licenses may be issued by OFAC to authorize travel transactions related to certain educational activities by students or employees affiliated with a licensed academic institution accredited by an appropriate national or regional accrediting association. Such licenses must be renewed after a period of two years. The following categories of travelers affiliated with the licensed academic institution are authorized under these licenses:²⁵

- Undergraduate or graduate students participating in a structured educational program as part of a course offered at a licensed college or university.
- Persons doing noncommercial Cuba-related academic research in Cuba for the purpose of qualifying academically as a professional (e.g. research toward a graduate degree).
- Undergraduate or graduate students participating in a formal course of study at a Cuban academic institution provided the Cuban study will be accepted for credit toward a degree at the licensed U.S. institution.
- Persons regularly employed in a teaching capacity at a licensed college or university who plan to teach part or all of an academic program at a Cuban academic institution.
- Secondary school students participating in educational exchanges sponsored by Cuban or U.S. secondary schools and involving the students' participation in a formal course of study or in a structured educational program offered by a secondary school or other academic institution and led by a teacher or other secondary school official. A reasonable number of adult chaperones may accompany the students to Cuba.

25. Persons traveling under these licenses must carry a letter from the licensed U.S. institution stating the institution's license number and how the person meets the criteria for travel with that license.

- Full-time employees of a licensed institution organizing or preparing for the educational activities described above.
- Cuban scholars teaching or engaging in other scholarly activities at a licensed college or university in the United States. Licensed institutions may sponsor such Cuban scholars, including payment of a stipend or salary, which may be remitted back to Cuba.

Specific licenses for religious organizations: Specific licenses may be issued to religious organizations, which, in turn, may authorize individuals affiliated with the organization to travel under its auspices.²⁶

Other specific licenses: Specific licenses may be issued on a case-by-case basis for the following activities:

- Humanitarian projects and support for the Cuban people.
- Free-lance journalism.
- Professional research and professional meetings.
- Religious activities.
- Public performances, clinics, workshops, athletic and other competitions or exhibitions.
- Activities of private foundations or research and educational institutions.
- Exportation, importation, or transmission of information or informational materials.
- Activities related to licensed exportations (marketing, sales negotiation, accompanied delivery, or servicing of exports of food and agricultural commodities, medical products or other authorized exports).
- Family reunification exceeding the one visit per year authorized with a general license.

Travel services providers: U.S. travel service providers, such as travel agents, carriers, and tour operators,

handling travel arrangements to, from, or within Cuba must also be licensed by OFAC to engage in such activities. OFAC is also charged with compliance oversight of the direct charter flights to Cuba currently authorized to carry licensed travelers from Miami, Los Angeles and New York.

At present, OFAC's Miami office regulates activities of 202 entities nationwide licensed to: (1) provide travel and carrier services to authorized travelers; and (2) remit funds to Cuban households on behalf of individuals who are subject to U.S. jurisdiction as authorized under the Regulations. Almost two-thirds of these licensed entities are headquartered in Miami.²⁷

Enforcement²⁸

Any person subject to U.S. jurisdiction determined to have traveled to Cuba without an OFAC general or specific license is *presumed* to have engaged in prohibited travel-related transactions unless he/she can provide substantiating documentation of compliance with regulations. Failure to comply with OFAC regulations may result in civil penalties and criminal prosecution upon return to the United States.

OFAC works with the U.S. Customs Service to enforce Cuba travel restrictions. As returning Cuba travelers are identified by Customs agents and inspectors at ports of entry in the United States or at U.S. Customs Pre-Clearance Facilities in Canada or the Bahamas, those travelers who do not claim a general or specific license from OFAC to engage in Cuba travel-related transactions are routinely referred to OFAC for investigation and civil penalty action. In addition, OFAC is contacted by individuals concerned that it take enforcement action against what they view as U.S. tourist travel to Cuba. Both OFAC's Washington and Miami offices investigate alleged violations of the regulations, while the Miami office also processes enforcement referrals from the U.S. Customs Service and the U.S. Coast Guard.²⁹

26. Ibid.

27. R. Newcomb (October 2, 2003).

28. This section relies heavily on the Statement by R. Newcomb (October 2, 2003), and two excellent overviews, Sullivan (2003 and 9/2002).

29. Newcomb, October 2, 2003.

In 2002-03, OFAC considerably enhanced the transparency of its procedural framework for the enforcement of all economic sanctions programs. On January 29, 2003 it published in the *Federal Register* the "Economic Sanctions Enforcement Guidelines."³⁰ These guidelines include a schedule of proposed civil monetary penalties for unauthorized travel-related transactions with Cuba as well as a schedule of proposed civil monetary penalties for unauthorized transactions involving the provision of travel, carrier and remittance services to Cuba. In addition, on February 11, 2003 OFAC also published in the *Federal Register* disclosure guidelines involving civil penalties.³¹ This came after a process that followed the publication in June of 2002, of a proposed rule announcing a new practice of releasing certain civil penalty enforcement information on a routine basis. OFAC received thirty-two public comments on the proposed rule, including from financial institutions, law firms, trade associations, individuals, and a public interest group. Finally, in April 2003 information on civil penalty proceedings against individuals became routinely available at OFAC's website on an aggregate basis, encompassing individuals who have engaged in unauthorized travel-related transactions involving Cuba.

Enforcement, reportedly lax for many years, has been tightened since 2001, when President Bush issued a statement that he had asked the Treasury Department to enhance and expand the enforcement capabilities of the Office of Foreign Assets Control.³² Until recently, few people seem to have been taking enforcement very seriously. A Florida man fined by OFAC speaks for numerous anecdotal accounts: "I

could take you to probably fifteen boats out here in the anchorage that go to Cuba all the time. There are two guys that I know of who have children over there, wives and children. They go over all the time. There's a guy who works on my engine, a mechanic, and he takes his motorcycle over there on his boat and plays in Cuba for three or four months, and he never checks in and he never checks out."³³

OFAC is said to have issued a total of 766 enforcement letters in 2001,³⁴ a steep increase from what has been reported by the media for previous years: 188 in 2000, 120 in 1999, 72 in 1998, 78 in 1997, and 46 in 1996.³⁵ The number of letters in 2002 and 2003 is unknown, as several calls to OFAC requesting confirmation of those numbers plus updated data on enforcement and licensing failed to produce the information. But, the websites of groups opposing restrictions have been protesting loudly the increased "harassment" and "witch hunt" by OFAC.³⁶ A November 2002 letter by the President of the U.S.-Cuba Sister City Association to its members refers to a rise in OFAC enforcement letters and reflects the general sentiment expressed by many of these groups: "These letters are meant to intimidate people, as well as gather information about other people they might go after, and are part of increased government harassment stepped up under this administration in its attempts to erode relations between our nations. It is not acceptable, nor is it constitutional. We will not be cowed." This is a very different tone than the description of a return from Cuba in the website for the *Venceremos Brigade*, which over the years has sent 8,000 people there: "Members and organizers of the Brigade reported only minimal or no questioning at

30. *Federal Register*, Volume 68, No. 19 (January 29, 2003).

31. *Federal Register*, Volume 68, No. 28 (February 11, 2003).

32. The White House, "Statement by President Bush on Cuba: Toward a Democratic Cuba," July 13, 2001.

33. Kirk Nielsen, "The Will Adams Embargo: The sad saga of how the feds hounded a senior citizen over, what else, Cuba," *Miami New Times*, January 9, 2003.

34. Sullivan (2003, p.7).

35. Information provided by Rob Nichols, Treasury's Deputy Assistant Secretary for Public Affairs. In Nielsen (2003).

36. See for example letters by Lisa Valanti, President of the U.S.-Cuba Sister City Association, "How to respond to OFAC harassment of U.S.-Cuba Sister Cities members," November 8, 2002, and a letter to supporters of October 23, 2002, both posted on the group's website, <http://www.uscsca.org/ofacharass.htm>.

all by the U.S. Customs officials, who generally scanned their passports and waved them through. The few *brigadistas* who were asked such questions as “Did you spend any money in Cuba?” refused to answer—as is their legal right—and passed through without incident. No one was asked where they had been...”³⁷

The prosecution of embargo violations entails a range of measures from initial letters of inquiry to settlements or the imposition of actual penalties. The Treasury Department sends out enforcement letters to suspected violators. Investigative findings are referred for civil penalty consideration with an administrative record containing the evidence of transactions involving Cuba. OFAC, however, reports giving people “an opportunity to respond and sometimes drops its case based on the explanation.”³⁸ In fact, a settlement may be negotiated with OFAC to resolve the matter informally. Individuals who have received pre-penalty notices have the right to an agency hearing in Washington, as well as to a pre-hearing discovery, including the review of all non-privileged documents that OFAC used as the basis for issuing the pre-penalty. If a penalty and/or forfeiture is eventually imposed, individuals have the right to seek judicial review of the final agency action in a federal court.³⁹

In September 2003, OFAC revised its administrative penalty procedures to afford travelers to Cuba additional opportunities to present mitigating factors for consideration before a final penalty ensues. Administrative law judges (ALJs) are to preside at the review of the penalty assessments if the right to an administrative hearing has been invoked. Until very recently

it appears OFAC was unable to fully enforce this regulation for lack of staff and/or resources. A January 2003 news article reported that for ten years the Treasury Department hadn’t had any administrative law judges to conduct such hearings, on staff.⁴⁰ Cubalinda.com, a Cuban tourism promotion website, in its recommendations to help Americans avoid fines for unlicensed travel posted this message: “If the record of the past five years is any guide, after a hearing is requested OFAC will then file away the case because no appeals hearings have been held, nor have any judges been appointed to hold such hearings. Through the date of this posting, October 14, 2002, the legal processing of all such cases has stopped at that stage, and therefore no fines have been imposed when the request for hearing was made on time.”⁴¹

As of late, this problem seems to have been addressed. At an October 2, 2003, congressional hearing, OFAC’s Director reported that they “have made progress ... to initiate hearings before an administrative law judge on the imposition of civil penalties for engaging in unauthorized travel-related transactions.”⁴² In fact, letters sent by OFAC that same month announced plans to hold hearings under the administrative law judges and inform alleged violators that they will be given the choice of an administrative trial or paying a \$1,000 fine for each charge.⁴³ At the end of October 2003, an OFAC officer verified that two attorneys from other government agencies had been assigned as independent law judges to hear the cases, a process which would very soon actually begin.⁴⁴ As of October 2003, around 50 cases had been referred for a hearing by OFAC to the Treasury Department’s Office of General Counsel.

37. <http://www.venceremosbrigade.org/>.

38. Kevin Sullivan, “Americans defy Cuba embargo,” *Washington Post*, October 31, 2001, p. A23.

39. “Civil Penalties: Rights and Procedures” (3/24/03).

40. Nielsen (2003).

41. http://www.cubalinda.com/English/General_Info/G_InfoSpecialInfoUSCitizen.asp. Cubalinda.com is the winner of the 2002 ICub@ prize for best business and commerce website in Cuba.

42. R. Newcomb (October 2, 2003).

43. Rone Tempest, “Curbs on Travel to Cuba Feared,” *L.A. Times*, October 18, 2003.

44. Telephone interview with OFAC official (name withheld on request), October 30, 2003.

Most had the assistance of public interest legal organizations.⁴⁵

Criminal penalties for violating the sanctions range up to ten years in prison, \$1,000,000 in corporate fines, and \$250,000 in individual fines. Civil penalties up to \$55,000 per violation may also be imposed. In 2003, actual penalties were reportedly usually in amounts ranging from \$2,000-\$7,000.⁴⁶ According to a report from October 2001, attributed to a Treasury Department spokesman, the average threatened fine was about \$7,500.⁴⁷

From October 1992, the effective date of OFAC's civil penalty authority, to April 1999, the Treasury Department had collected more than \$2 million in civil monetary penalties for Cuba embargo violations.⁴⁸ From January 1996 through June 2002, 6,398 travel cases were opened for investigation and 2,179 cases were referred for civil penalty enforcement action from \$3,000 to \$7,500, but the majority of cases are settled in amounts reflecting the mitigation range outlined in the Enforcement Guidelines. Updated information was not available at the time of this writing.

As reported by OFAC's Director to Congress: "There are a few organizations and individuals who

view travel to Cuba as an act of civil disobedience..."⁴⁹ The National Lawyers Guild posts a form letter on its website for travelers to challenge OFAC penalties with the following preamble: "OFAC's regulations regarding transactions incidental to travel, and OFAC's demand for information pursuant to such regulations constitute discriminatory enforcement of the laws on the basis of national origin and political viewpoint, in violation of the First and Fifth Amendments to the Constitution of the United States."⁵⁰ Several non-profit legal organizations, such as the New York-based Center for Constitutional Rights and the National Lawyers Guild are representing clients who have received letters of inquiry or pre-penalty notices from OFAC related to travel to Cuba. The Center for Constitutional Rights, headquartered in New York city, has a Cuba Travel Project, to "defend Americans who exercise this basic constitutional right." The CCR maintains that the embargo "is a deliberate end-run around First Amendment guarantees of freedom to travel" and is said to represent from 300 to 400 individuals accused of violating the ban.⁵¹ The National Lawyers Guild, which has a Cuba Subcommittee under its International Committee, uses its members' legal skills to "help normalize relations and end the travel restrictions and U.S. economic blockade." It has a network

45. R. Newcomb (October 16, 2003).

46. Sullivan (2003, pp. 8-9). Officially, the "Traveler Violations/Amounts for Prepenalty Notices" are: (1) Tourist travel-related transactions: First trip: \$7,500, Each additional trip: \$10,000; (2) Business travel-related transactions: First trip: \$15,000, Each additional trip: \$25,000; (3) Travel-related transactions involving unlicensed visits to close relatives: First trip: warning letter, Each additional trip—Prior to agency notice: \$1,000, Subsequent to agency notice: \$4,000; (4) Travel-related transactions where no specific license was issued but where there is evidence that the purpose of the travel fits within one of the categories of licensable activities: Each trip prior to agency notice: \$3,000, Each trip subsequent to agency notice: \$10,000. Federal Register, Volume 68, No. 19, January 29, 2003.

47. The Treasury Department source also said many of those cases began during the Clinton Administration and were simply enforcing the law, not responding to political pressure. (K. Sullivan (2001).)

48. Some of the corporate penalties paid are: (1) C&T Charters, Inc. paid a \$125,000 penalty settlement for allegations of acting as the operator of charter flights between Nassau and Havana without OFAC authorization, and for record keeping deficiencies found during compliance audits by OFAC; (2) Wilson International Services, Inc. paid \$61,000 to settle alleged record keeping deficiencies found during OFAC audits; and (3) Harper's Bazaar paid \$31,000 in settlement of allegations that it engaged in unlicensed payments for travel expenses in 1998 for a photo shoot in Cuba. (See Hearing of the Senate Appropriations Committee, Subcommittee on Treasury and General Government, Federal News Service, February 11, 2002; and Rafael Lorente, "Senator Demands End to Cuba Travel Ban; Hundreds Fined Under Crackdown," *Sun-Sentinel*, Fort Lauderdale, August 18, 2001, p. 6A.)

49. Newcomb (October 20, 2003).

50. <http://www.nlg.org/>.

51. The Center for Constitutional Rights' website reports representing 300 individuals (<http://www.ccr-ny.org/v2/legal/cuba/cuba.asp>). A *Miami New Times* article reports that number to be 400 (Nielsen, 2003).

of lawyers for legal assistance with basic training in this area and sample letters to challenge OFAC penalties.⁵²

Since 2001, the Bush Administration has made several announcements that enforcement of travel and embargo restrictions would be tightened.⁵³ The most recent came on October 10, 2003, when the President made a special appearance at the Rose Garden to deliver a statement on the toughening of Cuba policy. As the first of three measures, he announced “strengthening re-enforcement of those travel restrictions to Cuba that are already in place.”⁵⁴ The President went on to explain: “We allow travel for limited reasons, including visit to a family, to bring humanitarian aid, or to conduct research. Those exceptions are too often used as cover for illegal business travel and tourism, or to skirt the restrictions on carrying cash into Cuba. We’re cracking down on this deception.” In addition, he reported having instructed the Department of Homeland Security to increase inspections of travelers and shipments to and from Cuba in order to enforce the law. “We will also target those who travel to Cuba illegally through third countries, and those who sail to Cuba on private vessels in violation of the embargo.”⁵⁵

OFAC’s Director, testifying before Congress a few days after the President’s speech, declared that OFAC would work closely with the Department of Homeland Security’s Bureau of Customs and Border Protection, at all ports, but in particular at the New York, Los Angeles Airport, and Miami airports. In addition, Homeland Security would monitor closely at other locations used by unlicensed travelers and remittance couriers to travel to and from Cuba via third countries. He also announced enhanced investigation and enforcement efforts against individuals and companies that provide travel and remittance services to Cuba without an OFAC license.⁵⁶ The Homeland Security Department issued a statement that it would increase inspection of all persons traveling directly to Cuba and arriving back directly from Cuba.⁵⁷

The tightened enforcement of the last few years is said to have been mostly directed at travelers not of Cuban descent, while an allegedly growing number of Cuban Americans⁵⁸ are believed to be traveling more than once a year as allowed under current general licensing rules. U.S. representative Jeff Flake (R-Ariz.), claims that U.S. authorities “pay no attention to Cuban Americans even as they harass and level fines against Americans who go to the island.”⁵⁹ Although current OFAC regulations do not define

52. <http://www.nlg.org/>.

53. David Phinney, “Law on Travel to Cuba Criticized,” *The Miami Herald*, February 12, 2002, p. 20A, as cited in Sullivan (2003).

54. In addition to greater enforcement of travel restrictions, President Bush underscored his commitment to breaking the information blockade imposed on the Cuban people by the regime and announced two other initiatives to promote freedom in Cuba: 1. The creation of a Commission for Assistance to a Free Cuba, co-chaired by Secretaries Powell and Martinez and comprised of U.S. executive branch agency representatives, and 2. Improvements in immigration procedures to encourage safe and legal migration and an increase in the number of new migrants admitted from Cuba. (Remarks by President Bush on Cuba, The White House, Washington, October 10, 2003. Also see: “White House Outlines New Initiatives on Cuba: Restrictions on American travel to the island to be tightened,” 10 October 2003, Bureau of International Information Programs, U.S. Department of State, <http://usinfo.state.gov>.)

55. The White House, Press Office, October 10, 2003, www.whitehouse.gov.

56. Mr. Newcomb also described other measures being taken to improve enforcement. (Oral Statement of R. Richard Newcomb Director, Office of Foreign Assets Control United States Department of the Treasury, before the Subcommittee on Human Rights and Wellness Committee on Government Reform U.S. House of Representatives, October 16, 2003.)

57. “DHS Enhancing Enforcement of Travel Restrictions to Cuba,” Press release, U.S. Department of Homeland Security, Office of the Press Secretary, October 10, 2003. Distributed by the Bureau of International Information Programs, U.S. Department of State, <http://usinfo.state.gov>.

58. For the purposes of this paper, “Cuban-American” is used to designate all U.S. based travelers of Cuban heritage, regardless of their residence status or citizenship.

59. Larissa Ruiz Campos, “Younger travelers send number of holiday trips to Cuba soaring,” *The Miami Herald*, December 25, 2002.

what “humanitarian need” should or does mean in order for a person with close relatives in Cuba to travel under a general license, Rep. Flake has stated that “their relatives always seem to get sick around the same time, like Christmas and other major holidays.”⁶⁰ The National Lawyers Guild for its part, reports: “The imposition of any penalties is also discriminatory. Such conduct is arbitrary and capricious and in violation of the Administrative Procedure Act. In this respect, it is noted that substantial numbers of Cuban-Americans and others travel to Cuba with the knowledge of OFAC, in apparent violation of the Cuban Assets Control Regulations, but without consequence.”⁶¹ A report by The Lexington Institute echoes this view, declaring the October 10 presidential announcement of tighter enforcement “a signal that Cuban Americans, who have faced no penalties to date for violations of regulations governing travel and delivery of family remittances, may now be scrutinized like other travelers.”⁶²

Marazul Charters, the largest travel service provider to Cuba in the United States, reports a very different situation regarding their direct charter flights to Cuba from Miami, New York and Los Angeles. A Marazul Vice President clarified in late October 2003 that: “People who travel to visit family more than once a year tend to have good reason for it—to

visit a relative who’s sick or for some type of real family emergency. Plus, they travel with a specific license from OFAC, which they get with our help. It’s a very easy and simple for Cuban Americans to get these licenses and travel legally.”⁶³

According to Marazul, persons of Cuban heritage traveling multiple times a year outside of regulations are mostly engaged in unlicensed business transactions and tend to travel through third countries. These persons are known as “mules,” and carry cash into Cuba, presumably as family remittances that skirt the travel restrictions and remittance limits.⁶⁴ The cost of the trip is typically a deterrent for frequent travel, particularly for the most recently arrived from Cuba, who are said to have the greatest propensity to travel while having the lower income.⁶⁵ On the other hand, almost any person of Cuban heritage who travels once a year could actually be traveling for other purposes—recreational, sentimental, exploring business opportunities, and even as a “mule,” carrying cash for others. Reportedly, it is very easy for persons of Cuban heritage to obtain a specific license from OFAC to travel in beyond the one visit limit.⁶⁶

But a number of Cuban Americans are said to be traveling to Cuba more than once a year without requesting a specific license from OFAC and young

60. Tracey Eaton, “8 vow to have U.S.-style meeting in Cuba,” *The Dallas Morning News*, March 11, 2003.

61. NLG Cuba Subcommittee Action Alert July 2001, “Prompt Action needed to defend the right to travel to Cuba: NLG Builds a Cuba Travel Referral Network” http://www.nlg.org/cuba/Cuba_travel_alert_7.htm.

62. “President Bush Courts Old Miami,” *U.S.-Cuba Policy Report*, October 17, 2003, Lexington Institute.

63. Marazul VP Armando Garcia reports that all they have to do is sign a form letter and they usually get their license from OFAC within a week. (Telephone interview with Armando Garcia, Vice President of Marazul Charters, Inc., from Miami, October 31, 2003.)

64. Current remittance limits allow individuals 18 or older under U.S. jurisdiction to send to any individual in Cuba or to a Cuban national in a third country “individual-to-household” cash remittances of up to \$300 in any consecutive three-month period, provided that no member of the household is a senior-level Cuban government or senior-level Cuban communist party official. \$1,000 per payee on a one-time basis may also be sent as an “emigration-related” remittance to enable the payee to emigrate from Cuba to the United States. A licensed traveler may carry up to ten of his or her own \$300 household remittances to Cuba. (“What You Need To Know About The U.S. Embargo,” OFAC, op.cit.).

65. The 2002 U.S. Census confirms that the number of Cuban immigrants arrived after 1980 in proportion to the total Cuban American population has been growing and by the late 1990’s constituted two thirds of the total. Recent immigrants take time to adjust and, while doing so, have lower socioeconomic status than the average Cuban American population. The 2002 Census puts the Cuban American population at 1,241,685, with a mean income of \$36,193 a year (median income of \$27,000 a year) for 1997-2000. Thomas Boswell and Guarioné Díaz, “A demographic profile of Cuban Americans,” The Cuban American National Council, Inc., September 2002, pp. iii, 8 and 30.

66. A. Garcia (2003).

Americans of Cuban heritage with no close relatives visiting to “discover their roots.” It would take supervision inside Cuba to determine if there are actual relatives in Cuba to be visited once a year. If so, how could the U.S. government establish whether the alleged family relationship is a “close” enough relative? If a license for a second or third family visit is requested, how can OFAC corroborate the compelling humanitarian nature of the request? It seems that enforcement of Cuban American travel will continue to be particularly difficult under current regulations.

In sum, the effects of President Bush’s October 10, 2003 announcement of a “strengthening re-enforcement” of travel restrictions remain to be seen. The 766 enforcement letters in 2001 constituted a 76% jump from the year before, but were still only 1.9-3% of the estimated 25,000 to 40,000 U.S.-based travelers skirting the licensing procedure. Although enforcement seems to have been stepped up in 2002 and 2003, it may still be a mere drop in the bucket. Nonetheless, after the most recent presidential announcement, the more visible implementation of increased enforcement measures may well have a considerable multiplier effect in the disposition to travel and actually risk penalties, both by Cuban Americans and travelers not of Cuban heritage.

Legislative efforts to eliminate travel restrictions⁶⁷

In recent years, several legislative initiatives have sought to change or altogether eliminate travel restrictions to Cuba. Following are some of the highlights:

106th Congress: The Senate took up the issue of travel to Cuba in a June 1999 floor action on the 2000 Foreign Operations Appropriations bill, when an amendment introduced by Senator Dodd (D-CT)

to end the travel restrictions to Cuba was defeated by a 55-43 vote. On November 10, 1999, Senator Dodd introduced identical language as the Freedom to Travel to Cuba Act of 2000 (S. 1919), but no action was taken on the bill.

In the House of Representatives, two initiatives related to travel did not prosper. In January 1999, Congressman (Serrano, D-NY), introduced a bill to allow travel and cultural exchanges between the United States and Cuba. On July 20, 2000 an amendment to the 2001 Treasury Department appropriations bill was approved (232-186) to prohibit funds in the bill from being used to administer or enforce the Cuban Assets Control Regulations with respect to any travel or travel related transaction. Subsequently, the language of the amendment was dropped from the 2001 Treasury Department appropriations bill. A number of other bills introduced in the House to ease the embargo that would have eliminated travel restrictions did not prosper.⁶⁸

The only legislation passed by the 106th Congress related to travel to Cuba tightened the restrictions while allowing agricultural sales to Cuba. On May 4, 2000, the Trade Sanctions Reform and Export Enhancement Act was reported out of the Agriculture Subcommittee of the House Appropriations Committee as an amendment to the FY01 Agriculture Appropriations Act. The Act lifted all existing unilateral food and medicine sanctions (to Iran, Libya, Sudan, and Cuba) 180 days after enactment if the President and the Congress did not agree to re-impose sanctions and required that any future sanctions on food and medicine obtain Congressional consent.⁶⁹ The bill also prohibited U.S. financing of any sales to Cuba. The same bill also made travel restrictions subject

67. This section relies heavily on Sullivan (2003, p. 15).

68. Sullivan (2000), <http://www.fas.org/man/crs/crscuba.htm#Legislative%20Initiatives%20in%20the%20106th%20Congress>.

69. On October 28, 2000, President Clinton signed it into law the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (HR4461—PL 106-387). Title IX is known as the Trade Sanctions Reform and Export Enhancement Act of 2000. It contains the measures authorizing agricultural sales to Cuba and other countries then facing sanctions. The Treasury and Commerce Department later enacted regulations to reflect the provisions of the Act. (See *Federal Register*, July 12, 2001, Department of Commerce, Bureau of Export Administration, 15 CFR Part 740, et al; and Department of the Treasury, Office of Foreign Assets Control, 31 CFR Part 515, et al. Exports of Agricultural Commodities, Medicines, and Medical Devices to Cuba, Sudan, Libya, and Iran; Cuba Travel-Related Transactions; Final Rules.

to Congressional prerogative and expressly prohibited travel-related transactions for “tourist activities” not authorized in the Code of Federal Regulations, thus restricting travel to the categories already contemplated in the regulations.

107th Congress:⁷⁰ Several measures introduced in the 107th Congress would have eliminated or eased restrictions on travel to Cuba. The House approved in the FY 2002 Treasury Appropriations bill a prohibition on the Treasury Department to use funds to administer or enforce the Cuban embargo with respect to travel or travel-related transactions. The Senate version of the bill, however, did not include this provision, nor did the House-Senate conference report on the bill.

During consideration of the 2003 Treasury Department appropriations bill, the travel issue was part of debate. Secretary of State Colin Powell and Secretary of the Treasury Paul O’Neill stated that they would recommend that the President veto legislation that included a loosening of restrictions on travel to Cuba (or a weakening of restrictions on private financing for U.S. agricultural exports to Cuba). The White House also stated that President Bush would veto such legislation. On July 24, 2002, the House approved the 2003 Treasury Department Appropriations bill containing three amendments that would ease embargo restrictions on Cuba. One was an amendment introduced by Representative Jeff Flake (R-AZ), which passed by a vote of 262-167, that would provide that no funds in the bill could be used to administer or enforce the Treasury Department regulations with respect to travel to Cuba. On July

17, 2002, the Senate Appropriations Committee had reported out its version of the Treasury Department Appropriations bill, with a provision similar to the Flake amendment. Congress did not complete action on the FY2003 Treasury Department appropriations measure before the end of the 107th Congress, so action was deferred until the 108th Congress. Several other legislative initiatives were introduced in the 107th Congress to ease travel restrictions, but no action was taken.⁷¹

108th Congress: A number of legislative initiatives on Cuba have been introduced during the current 108th Congress, in both the Senate and the House.

On September 9th 2003, the House of Representatives voted in favor of two amendments to the Treasury and Transportation Appropriations bill (H.R. 2989) that would bar the Treasury Department from enforcing travel restrictions. An amendment to prevent enforcement of the travel ban, introduced by Representatives Flake and McGovern (D-MA), passed on a vote of 227-188. An amendment that would stop the implementation of new restrictions on “people-to-people” educational travel, introduced by Rep. Davis (D-FL) passed by 246-173.⁷² This came just a few days after a statement of the Office of Management and Budget on the Treasury and Transportation Appropriations bill that contained a clarification of the Administration’s position against weakening Cuba travel sanctions that included the following: “If the final version of the bill contained such a provision, the President’s senior advisors would recommend that he veto the bill.”⁷³ Representative Flake’s amendment received 35 fewer votes in

70. Sullivan, Initiatives in the 107th Congress (August 29, 2002).

71. Several bills were introduced that would have lifted all sanctions on trade, financial transactions, and travel to Cuba: The Cuban Reconciliation Act, introduced January 3, 2001 by Representative Serrano, (H.R.174); identical bills by Senator Baucus and Representative Rangel, the Free Trade with Cuba Act, introduced February 27-28, 2001; and Senator Dodd and Congressman Serrano introduced the Bridges to the Cuban People Act of 2001 (S. 1017 and H.R. 2138) that included removal of all restrictions on travel to Cuba. Several bills were introduced that would have repealed the travel restrictions of the Trade Sanctions Reform and Export Enhancement Act of 2000, e.g, identical bills introduced on February 27-28, 2001, by Senator Baucus (S. 402) and Congressman Rangel (H.R. 797), the Cuban Humanitarian Trade Act of 2001; and Senators Dorgan and Hagel introduced the Cuba Food and Medicine Access Act of 2001 on January 24, 2001. See Sullivan (2002).

72. A third amendment was also introduced by Representatives Flake and Delahunt (D-MA) to end funding for the enforcement of caps on remittances that may be sent to Cuba. It was passed by a vote of 222-196.

73. “Legislative Alert,” *U.S.-Cuba Policy Report*, September 25, 2003, p.3.

2003 than the previous year (262 votes in favor in 2002, 227 in 2003). Some lawmakers who voted in favor in 2002 refrained from voting in 2003⁷⁴ and the newly-elected House Republicans considerably refrained from supporting the measure.⁷⁵ This may indicate a relative weakening of support in the House for lifting travel restrictions in the wake of a crackdown unleashed by the Cuban government on peaceful democracy advocates which has elicited worldwide condemnation.

A few weeks later, on October 23, the Senate unexpectedly began debating the 2004 Transportation-Treasury Appropriations bill and Senator Byron Dorgan (D-ND), along with Senators Craig, Hagel, Enzi, Baucus, Dodd, and Roberts, offered an amendment ending the ban on travel to Cuba with identical language as the Flake travel amendment that had passed the House in September. During the debate, Senator Ted Stevens (R-AK), chair of the Senate Appropriations Committee, made a motion to table the Cuba travel amendment. The roll was called on the motion to table, which was defeated by a vote of 59-36. Subsequently, the Dorgan amendment, barring the use of government money to enforce current travel restrictions, was passed by voice vote.⁷⁶

The Senate had last rejected an easing of travel restrictions in 1999, by a vote of 43 to 55. But, thirteen senators who voted against easing the restrictions four years ago switched sides and voted for it this time.⁷⁷ Several influential Republican senators voted against the President's position, including John W. Warner of Virginia, Chairman of the Armed Ser-

vices Committee, Pat Roberts of Kansas, Chairman of the Intelligence Committee, and many conservatives from farm states—including Senator Inhofe of Oklahoma, Senator Brownback of Kansas, and Senator Hutchison of Texas.⁷⁸

The Senate vote came less than two weeks after President Bush had delivered a special statement on Cuba where he promised to tighten the enforcement of travel ban in an attempt to halt unlicensed tourism there, as it “provides economic resources to the Castro regime while doing nothing to help the Cuban people.”⁷⁹ Senator Max Baucus, co-sponsor of the amendment, said the Senate vote was “a strong repudiation of the president's recent announcement that his administration plans to tighten and increase the travel restrictions.”⁸⁰

The House and Senate amendments do not legalize travel to the island, but rather strip the Treasury Department of its ability to enforce the travel restrictions. Yet, they loudly express where the Congress stands with respect to travel restrictions to Cuba. Nonetheless, neither the Senate nor House votes received the two-thirds margin needed to overturn a presidential veto. But, the bill with the amendments contains vital money for highways, law enforcement and anti-terrorism; the President has a lot of political capital and credibility at stake. Moreover, before Congress adjourns in early December, the bill with the Cuba provisions may become part of a huge omnibus bill. Thus, the Senate action has placed the President and Republican Members of Congress in a potential confrontation.

74. See www.thomas.loc.gov and Ana Radelat, “Lawmakers won't succeed in latest bid to end travel ban,” *CubaNews*, Vol. 11, No. 10, October 2003, p. 2.

75. Rep. Mario Diaz-Balart (R-FL) declared: “I wish to thank the Republican freshman class for their solid support for freedom in Cuba.” *U.S.-Cuba Policy Report*, 9/23/03, op.cit., p. 1.

76. “Senate Passes Cuba Travel Amendment,” Website of the Latin American Working Group, http://www.lawg.org/pages/new%20pages/countries/Cuba/senate_vote_article.htm.

77. Christopher Marquis, “Senate Approves Easing of Curbs on Cuba Travel,” *The New York Times*, October 24, 2003.

78. *Ibid.*

79. The White House, Remarks by President Bush on Cuba, October 10, 2003.

80. For more on the votes see, for example, Frank Davies, “Lifting of ban on travel to Cuba faces obstacles,” *The Tribune*, September 10, 2003; and Jim Abrams, “Senate Votes to End Limits on Cuba Travel,” *The Associated Press*, October 10, 2003.

A “senior Administration official” reiterated that the President’s advisers would recommend a veto if the bill emerges from a House-Senate conference committee with the amendment.⁸¹ But advocates of easing travel restrictions said they had taken steps to prevent the amendment from being stripped away in the Conference Committee.⁸² The Latin American Working Group, a coalition of anti-embargo groups, declared not believing “the House and Senate leadership will let it go through easily. At the very least, it will be much more difficult for the measure to be changed or taken out of the final version of the bill negotiated by the conference committee before it is sent to the President for his signature. And it is possible that a bill with Cuba travel language will reach the President’s desk.” They also pointed out that “because the language that passed the Senate is identical to the amendment that passed the House, it is technically not conference-able.”⁸³ Nonetheless, the Senate’s Republican leadership has reported that it will not allow the bill to get past the Conference Committee.⁸⁴

In addition to the above-described amendments to the Treasury Appropriations bill, the following bills that would affect Cuba travel are pending action:

- **Senate:** In February 2003, Senator Max Baucus (D-MT) introduced the United States-Cuba Trade Act of 2003 (S. 403) to lift the trade embargo on Cuba. Section 5 specifically calls for the elimination of prohibitions on transactions incidental to travel.
- **Senate:** In April of 2003, Senator Michael Enzi (R-WY) introduced the Freedom to Travel Act (S. 950), which was referred to the Committee

on Foreign Relations. As of the end of October 2003, it had 31 co-sponsors.

- **House:** In May of 2003 Representative Jeff Flake introduced the Export Freedom to Cuba Act (H.R. 2071) to allow unrestricted travel to Cuba. Referred to the House Committee on International Relations; as of the end of October 2003, it had 78 co-sponsors.

In the United States Congress, the support of the leadership of the majority party is vital for a bill to reach the stage where a hearing and a committee mark-up are held, two necessary steps to reach the floor for debate and vote. The Republican leadership of the Senate has agreed to allow the Freedom to Travel Act (S. 950) to reach the floor for a vote. Reportedly, Senator Richard Lugar (R-IN) struck a deal with Senator Baucus, the bill’s sponsor, to let this happen after Sen. Baucus had placed a hold on the nomination of Roger Noriega for Assistant Secretary of State for Western Hemisphere Affairs.⁸⁵ Ambassador Noriega was confirmed and the bill is expected to come up for a vote before the year’s end.

CUBA’S TRAVEL RESTRICTIONS⁸⁶

General Rules for U.S.-Based Travelers

Visas: Cuba requires a valid passport and an entry permit or visa issued by the Cuban government for all travelers from the United States, both licensed or not. Entering Cuban territory, territorial waters, or airspace (i.e., within 12 miles of the Cuban coast) without prior authorization from the Cuban government may result in arrest or other enforcement action by Cuban authorities. Violators are subject to prison terms of one to three years for illegal entry.⁸⁷

81. Marquis (2003).

82. Ibid.

83. “Senate Passes Cuba Travel Amendment,” www.lawg.org.

84. Lolita Baldor, “GOP Will Keep Cuba Travel Ban Intact,” The Associated Press, October 29, 2003.

85. *U.S.-Cuba Policy Report*, September 23, 2003, p. 7.

86. Information for this section was obtained from the following sources: website of the Cuban Interests Section at Washington DC, <http://www.geocities.com/Paris/Library/2958/espanol/index-espanol.htm>; website of Cuba’s Customs Agency, <http://www.aduana.islagrande.cu/prohi.htm>; and the website of the U.S. Cuba Trade and Economic Council, <http://www.cubatrade.org>.

87. Cuban Penal Code, Law No. 62, Chapter XI Art. 215.

The cost of visas and entry permits has changed slightly over time. Travelers born outside of Cuba, of Cuban heritage but who emigrated before 1970, and who are not traveling in the company of persons who will be visiting family in Cuba are issued A-2 visas. These are valid for “tourism only,” and allow one entry and a maximum stay in Cuba of 21 days. The cost of this visa is US\$50 and is the same regardless of whether travelers are licensed or not by the U.S. government.

A Travel Validity Document (*Vigencia de Viaje*) may be issued for individuals who request multiple entries into Cuba for tourism with a 90-day maximum stay per visit. It is renewable every two years up to six years.

An official visa is used for individuals subject to United States law who are traveling to Cuba for any purpose other than tourism. Visas can be obtained from the Cuban Interests Section in Washington, D.C. A tourist visa can also be obtained from: (1) a travel agent licensed by the OFAC; (2) a non-United States-based travel agent;⁸⁸ (3) at the ticket counter of a non-United States-based airline providing travel to the Republic of Cuba from a country other than the United States; or (4) in some cases, upon arrival at an airport in Cuba.

Departure tax: In addition to obtaining visas to enter the country, all visitors to Cuba must pay US\$20 airport tax at the time of departure.

Customs regulations:⁸⁹ Visitors may bring into the country exempt of duties only their personal effects “in reasonable quantities relative to their length of stay” and up to 44 pounds. Excess baggage is subject to a \$2.00 per pound custom duty if it is allowed in

as personal effects. Up to 10 kilogram of medicines, in original containers, may also be imported free of duties. Any additional imports considered as gifts, are allowed up to US\$250 per year subject to payment of a surcharge of 100% of the value after the first US\$50. Technically, computers are not on the list of forbidden articles for importation, but their value exceeds the US\$250 limit allowed into the country. There is a list of electronic items that may not be imported, including VCRs, DVD players as well as “any article, including literature, that attempts against the internal order and security of the country.” In addition, the following articles must be pre-approved for importation by the Ministry of Communications for visitors who wish to take them into the country: radios and related equipment; faxes, telephones and related equipment; GPS—Guidance Positioning Systems—and satellite antennas, dishes, and other related equipment.

Special Rules for Travelers of Cuban Heritage⁹⁰

Cuba does not allow entry for five years to citizens who have left the country without government authorization (considered an “illegal exit”), including those who left on official missions but remained in third countries under different circumstances than the ones under which they were authorized by the Cuban government.

All Cuban-born residents of the United States, together with U.S. citizens who left Cuba after 1970 are issued an A10 or “PRF” (*Permiso de Reunificación Familiar* or “Family Reunification Permit”) at a cost of \$100,⁹¹ twice the \$50 charged to U.S. citizens and Cubans who left before 1970. This permit is valid for one entry, allows a maximum stay of 21 days stay, and is valid for 90 days from the approval date. The

88. Travel agents tend to mark up the cost of the visa for administrative handling. Marazul charges \$65 for the visa, of which \$50 is payable to the Cuban government. A portion of this amount is non-refundable if the visa is not approved. Armando García (2003).

89. Information obtained at the website for Cuba’s Customs Agency, <http://www.aduana.islagrande.cu>.

90. Website data and telephone information obtained from Marazul Charters, Inc. and the website of the Cuban Interests Section at Washington, D.C.

91. Marazul charges \$115, recently lowered from \$125 (Armando García, 2003, plus information provided by telephone by Marazul Charters, Inc. on December 16, 2002, and fact sheet provided by Marazul in 1998).

\$100 fee is unusually high for Cuba, where the average annual salary is equivalent to \$113.⁹²

A special permit (P59) is issued for Cubans who emigrated before 1959 and have original proof of emigration date. This visa costs \$121, is valid for one entry, allows a maximum of 30 days' stay, and is valid for 30 days from the approval date.⁹³

The Cuban government considers all Cuban-born U.S. citizens who left Cuba after December 31, 1970, to be solely Cuban citizens and requires them to enter and depart Cuba using Cuban passports. These cost \$280 (for a person who has never had a Cuban passport or has a very old one) and are valid for six years from their issuance date but must be renewed every two years (at a cost of \$146). These fees are disproportionately high—equivalent to 2.5 to 1.3 times the average annual salary of a Cuban worker. From the perspective of the United States, using a Cuban passport to enter Cuba does not jeopardize the person's U.S. citizenship, but a U.S. passport must be used to enter and depart the U.S. and to transit any countries en route.

U.S. citizens traveling to Cuba with a Cuban passport (and an A10 entry permit) may be subject to a range of restrictions and obligations, including military service in Cuba. Cuba does not recognize the right or obligation of the U.S. government to protect Cuban-born American citizens, whom the Cuban government views as only Cuban citizens, and consular access is regularly denied to them. Cuban authorities consistently refuse to notify the U.S. Interests Section of the arrest of Cuban-American dual nationals and deny U.S. consular officers access to them. They also withhold information concerning their welfare and proper treatment under Cuban law. The

U.S. Department of State reports that there are known cases of Cuban-American dual nationals being forced by the Cuban government to surrender their U.S. passports. Yet, Cuban-American dual nationals who fall ill may only be treated at hospitals for foreigners that charge in hard currency (except in certain emergencies).⁹⁴

On September 27, 2003, Cuba's Foreign Minister Felipe Pérez Roque announced that the Cuban government planned to stop requiring visas for overseas Cubans visiting the island. The Cuban Foreign Ministry issued a statement on October 2, 2003 confirming that Cubans residing abroad who had a Cuban passport would no longer need to purchase the higher cost entry permits, a decision that would go into effect after the first quarter of 2004. The Ministry, however, clarified that the measure would exclude those who "engage in repugnant or damaging activities against the interests of Cuba."⁹⁵

Travelers not of Cuban heritage accompanying persons of Cuban heritage who travel to visit family are issued a special visa (AO3), which is valid for one entry, allows a maximum of 21 days stay, and is valid for 90 days from the approval date.⁹⁶ Its cost is \$50, the same as for an A-2 tourist visa.

THE GROWTH OF U.S.-BASED TRAVEL TO CUBA

U.S. travel to Cuba became possible only when the Cuban government opened up to foreign tourism and began developing its neglected tourism industry to confront the severe economic crisis that followed the demise of massive Soviet aid to the island. In response, U.S. travel regulations have evolved to reflect the view of the U.S. government that certain travel to Cuba is a means to expose the Cuban people to dem-

92. The average wage in Cuba in 2001 was 245 pesos and the average monthly income of workers 349 pesos, which takes into account other compensation such as bonuses in hard currency convertible pesos, food support, clothing, shoes, toiletries and other consumer items (Oscar Espinosa Chepe, "El salario en Cuba," CubaNet, Havana, July 2002). That translates into US\$9.42 and US\$13.42 at the current exchange rate of 26 pesos to the dollar.

93. Information provided by Marazul Charters, October 15, 2003.

94. Consular Information Sheet, op.cit.

95. "Castro government agrees to drop visa requirement for Cuban exiles," *CubaNews*, Vol. 11, No. 10, October 2003, p. 9.

96. Armando García (2003).

ocratic values. The looser regulations have facilitated increased travel of persons from Cuba to the U.S. who qualify for entry visas and allowed for the streamlining of licensing procedures for qualified U.S. persons traveling to Cuba, including the licensing of multiple visits for qualified individuals and groups. As a result, travel to Cuba increased rapidly.⁹⁷

There are, at present, many options to travel to Cuba from the United States. In recent years prices have also declined considerably, becoming very competitive with other Caribbean locations. The number of charter and direct flights from three U.S. cities (Miami, Los Angeles, and New York) to several different Cuban cities has increased significantly. Three direct flights leave from New York weekly and there are daily flights between Miami and La Habana and on a less frequent schedule to Holguín, Santiago, Cienfuegos and Camagüey. According to a Cuban government tourism official, U.S.-Cuba direct flights increased by 38% from 1999 to 2003.⁹⁸

Travel to Cuba through a third country is also relatively easy—there are daily flights from Cancún and Nassau, as well as regular flights from other Central American and Caribbean destinations.

Most U.S.-based visitors reportedly travel on the direct charter flights. Technically, all visitors who take the direct flights from the U.S. must provide evidence that they have a specific license or are authorized under a general license. Travelers without a license generally defy the travel restrictions by going through third countries such as Mexico, Jamaica, and Bahamas. As a general rule, in order to encourage tourist earnings, Cuban immigration authorities do

not stamp these visitors' passports, a practice that is advertised in tourist promotion websites of Cuban tourism enterprises and of U.S. or Canadian groups associated with Cuban entities.

The U.S. government does not have data on the actual number of U.S.-based travelers who visit Cuba. The State Department does not collect statistics on Americans traveling to Cuba and OFAC maintains that there are so many general licenses (for which individuals do not have to apply) that it is not possible to arrive at an accurate number. In addition, specific licenses may be granted for travel that is never completed. This may explain the discrepancy in estimates by U.S. government officials. For example, in congressional testimony in February 2002, OFAC Director Richard Newcomb estimated that 150,000-200,000 Americans traveled to Cuba in 2001, about one-third without permission from OFAC.⁹⁹ Yet, in October of 2003, Roger Noriega, Assistant Secretary of State for Western Hemisphere Affairs, reported that about 200,000 Americans—half of them Cuban-Americans visiting their families—traveled legally to Cuba in 2002.¹⁰⁰

Data from Cuban Sources

There are many discrepancies in Cuban government statistics regarding U.S.-based travel to Cuba. This is a common occurrence when researching any other economic sector in Cuba.

A University of Florida Cuba expert who travels to the island and has access to government sources estimates that since 1994, the number of individuals subject to U.S. law traveling to Cuba without OFAC licenses increased on average 19% to 21%, while legal visits rose by 9% to 11%.¹⁰¹

97. Part II of the greater work on travel restrictions will examine in greater detail diverse aspects of the growth in all categories of travel by U.S., including people-to-people exchanges and travel by Cuban Americans.

98. Reported by Berto Pérez, head of Havanatur, in "Vuelos desde EEUU a Cuba han crecido un 38 por ciento por año," EFE, La Habana, 4 octubre 2003. It should be noted that the same Cuban government official stated that the number of U.S. travelers to Cuba grew at a rate of 61% per year in the last five years, which is not consistent with information given by other Cuban government representatives.

99. Hearing of the Senate Appropriations Committee (February 11, 2002).

100. A. Radelat (2003).

101. Paolo Spadoni, "The Role of the United States in the Cuban Economy," (2003), in this volume.

Table 1. Data from Cuban Officials on U.S. Visitors to Cuba in 2002

Source	Not Cuban-Americans	Unlicensed Not Cuban-Americans	Cuban-Americans	Total
Prensa Latina, December 2001	70,000	N/A	130,000	200,000
Prensa Latina, February 2002	78,800	N/A	107,000	185,800
Granma, January 2003	N/A	50,000	N/A	180,000
EFE (Min. Tourism), October 2003	80,000	40,000	N/A	N/A
AP (Min. Tourism), October 2003	77,000	35,000	N/A	N/A

In 1999, an estimated 182,000 U.S. citizens (about 120,000 Cuban Americans) are reported to have traveled to Cuba. If this figure is correct, the United States accounted for more travelers to the island than any other country, except Canada.¹⁰²

For 2000, Cuban Foreign Minister Felipe Pérez Roque reported that 120,000 Cuban Americans and 80,000 Americans of non-Cuban origin traveled to Cuba.¹⁰³ The U.S.-Cuba Trade and Economic Council reported that approximately 22,000 U.S. citizens visited that year without OFAC authorization.¹⁰⁴

For 2001, news agency Reuters reported that around 176,000 Americans visited Cuba (the breakdown for Cuban Americans is not available), with an estimated 25,000 visiting without licenses traveling through third countries.¹⁰⁵ *The Economist* informed of approximately 125,000 Cuban Americans and 79,000 U.S. citizens of non-Cuban origin visiting that year, representing about 11.5% of total arrivals to the island. About 50,000 were tourists who traveled via third countries, with or without their government's authorization.¹⁰⁶ For U.S. citizens not of Cuban de-

cent, the number of arrivals peaked at about 90,000.¹⁰⁷

For 2002, public statements about the number of U.S. visitors by Cuban government officials have become more common, yet discrepancies still abound. For example, the Cuban official newspaper *Granma* reported that in December 2002, at least 26,500 passengers reserved seats in 260 flights from Miami, compared to 144 flights in November.¹⁰⁸ A large increase in flights is typical for December, the month when travel agencies report their highest volume of travelers as Cuban-Americans visit family and other travelers take holiday vacations. But, a very similar report in *El Nuevo Herald*, based on the same travel agency sources, puts the number of flights in December at 240, twenty fewer than reported by *Granma*, a difference that results in 3,820 fewer passengers for the month of December.¹⁰⁹ This is a typical problem with data coming from Cuban official sources. Table 1 illustrates the discrepancies in the data provided by different official sources.

Working with the figures cited by Cuban sources can be a dizzying proposition. Prensa Latina, the news agency of the Cuban government, reported in December 2002 that 70,000 Americans of non-Cuban

102. Spadoni (2003).

103. Andrew Cawthorne, "Cuba's economic linchpin, tourism, up 10.7 percent," Havana, Reuters, July 3, 2001.

104. U.S.-Cuba Trade and Economic Council (USCTEC). 2002 *Commercial Highlights* <http://www.cubatrade.org/2002Lst.pdf>.

105. "U.S. travel agents scope out Cuba tourism," Reuters, Havana, November 22, 2002. (Reuters has journalists in Cuba with access to government officials.)

106. "Embargo or not, US is now Fidel Castro's economic partner," *The Economist*, January 7, 2003.

107. Spadoni (2003), citing interview with a Cuban economist in Havana, May 27, 2003.

108. Jean Guy Allard, "Record de visitantes procedentes de EE.UU.," *Granma Internacional*, January 7, 2003.

109. This calculation uses the 93% capacity of flights that carry 206 passengers, as reported by one of the travel agencies running direct charters to Cuba, C&T Charters. Ruiz Campos (2002).

origin and more than 130,000 Cuban Americans had visited in 2002,¹¹⁰ bringing the total number of U.S. visitors to 200,000. Yet, a *Prensa Latina* report a few months later cites Foreign Minister Pérez Roque as stating that 78,800 Americans and 107,000 Cuban-Americans traveled to Cuba in 2002 (a total of 185,800).¹¹¹ *Granma*, Cuba's official news daily, meanwhile, indicated in January 2003 that around 54,000 Americans traveled to Cuba in 2002, of which 50,000 went through third countries in violation of travel restrictions.¹¹² Meanwhile, a University of Florida researcher interviewed a Cuban economist in Havana in May of 2003, who reported 216,000 U.S. visitors in 2002 (equivalent to 12.8% of arrivals from all countries).¹¹³ The Ministry of Tourism reported to the Spanish News Agency EFE that 80,000 U.S. tourists arrived in 2002, half of which (40,000) were not licensed.¹¹⁴ Presumably this figure is only for Americans not of Cuban heritage. Miguel Figueras, adviser to Cuba's Tourism Ministry, for his part stated that some 77,000 U.S. citizens not of Cuban heritage visited the island in 2002—half (35,000) considered to have done so illegally with respect to the U.S. government.¹¹⁵ Taking all these figures together, we can estimate that around 80,000 Americans not of Cuban heritage traveled to Cuba in 2002, 35,000 to 50,000 without authorization from OFAC. The total number of U.S.-based travelers ranged between 180,000 and 200,000, bringing the total of Cuban-American travelers between 100,000 to 120,000.

For 2003, Tourism Minister Ibrahim Ferradaz reported in October that Cuba will have received 230,000 annual visitors from the United States by the end of the year—150,000 of Cuban heritage and nearly all of the remaining 80,000 skirting U.S. licensing regulations. This, he stated, would make up 12% of all tourists traveling to Cuba, expected to amount to 1.9 million at year-end 2003.¹¹⁶ It is not entirely clear if he was citing projected numbers for 2003, but it can be assumed that was the case.

U.S. travel to Cuba declined in 2001 and 2002 with respect to the level reached in 2000, arguably due to the overall decline in international tourist travel connected with the economic downturn and the September 11 terrorist attacks. But for 2003, Cuban government officials are anticipating a 15% rise from 2000 arrivals. This may be in part because some travelers are trying to travel before December 31, ahead of the expiration on that date of licenses for non-accredited educational exchanges (as per Treasury Department change in regulations of March of 2003).¹¹⁷

Regardless of the discrepancies, if the numbers from Cuban official sources are fairly accurate, there has been a steady and significant increase in U.S.-based travel to Cuba in the last decade, irrespective of travel restrictions aside, involving both legal and unlicensed travel, and travelers of Cuban heritage and not.. From 1990 through year-end 2003, 1.3 million U.S.-based travelers will have visited Cuba (almost 67% of them will have been of Cuban heritage), out of total reported tourist arrivals of a little over 15 million (Table 2). U.S. travelers accounted for 2.9%

110. "Aseguran que fracasará política EEUU para aislar a Cuba La Habana," *Prensa Latina*, 26 de diciembre de 2002.

111. "Cuba demanda sustitución de organismos financieros internacionales," *Prensa Latina*, La Habana, 5 de febrero de 2003.

112. Allard (2003).

113. Spadoni (2003).

114. "Vuelos..."(EFE, 2003).

115. John Rice, "Industry Group Pushes Freer Travel to Cuba," Cancún, Mexico, *The Associated Press*, October 18, 2003.

116. Pablo Alfonso, "Vital para Cuba el turismo norteamericano," *El Nuevo Herald*, 19 de octubre de 2003.

117. OFAC eliminated non-accredited educational travel approved since 1999, which had grown to the point that any person who enrolled in and paid for a program or tour organized by a licensed educational or cultural institution could travel. The licenses already granted would not be renewed and would be allowed to expire—all by December 31, 2003. OFAC issued a statement that said these trips were "involving minimal substantive contact with Cuban nationals" and were being abused, consisting primarily of tourist travel that was undercutting the intent of the regulation. R. Richard Newcomb (10-16-03).

Table 2. U.S. Visitors as a Percentage of Total Visitors to Cuba: 1990-2003

	U.S. Visitors		Total Visitors (thousands)	U.S. Visitors as % of Total Visitors
	Total	Not Cuban-Americans Cuban-Americans		
1990	9,975	7,375 2,600	340.3	2.9
1991	15,833	11,233 4,600	424	3.7
1992	24,650	10,500 14,600	460.6	5.4
1993	34,511	14,715 19,400	544.1	6.3
1994	51,437	17,937 33,500	617.3	8.3
1995	59,972	20,672 39,300	745.5	8.0
1996	85,413	27,113 58,300	1,004.30	8.5
1997	106,656	34,956 71,700	1,170.10	9.1
1998	141,678	46,778 94,900	1,415.80	10.0
1999	N/A	N/A N/A	1,602.80	N/A
2000	200,000	80,000 120,000	1,773.90	11.2
2001	176,000	50,000 126,000	1,774.5	9.2
2002	185,800	78,800 107,000	1,680	11.1
2003	230,000	80,000 150,000	1,900	12.1
Total	1,321,925	480,079 841,900	15,453	

Note: For simplification, “Not Cuban-American” refers to U.S.-based travelers not of Cuban heritage, while “Cuban-American” is used to designate all U.S. based travelers of Cuban heritage, regardless of their residence status or citizenship.

Source: Sources: For 1990-1998: Cited in Spadoni (2003). Based on Oficina Nacional de Estadísticas, *Anuario Estadístico de Cuba*, 1996, 1998, and 2000; Alvarez A. and Amat D., “El mercado emisor turístico estadounidense hacia el Caribe,” Facultad de Economía, Universidad de la Habana, Trabajo de diploma, 1996; World Tourism Organization; *Yearbook of Tourism Statistics*, 2003 and previous editions. For 2000-2002: Information from diverse Cuban officials, as cited elsewhere in this paper. For 2003, estimated; see text.

of all visitors in 1990, 8.3% in 1994, and 12.1% in 2003. By 1995, the United States was already the fourth largest source of visitors to the island (after Canada, Italy, and Spain).¹¹⁸ In 2003, the United States was the third largest source of visitors to Cuba.¹¹⁹

Data from Licensed Travel Service Providers in the U.S.

The Miami Herald ran a December 25, 2002 article that cites interviews with travel agencies providing service to Cuba from the Miami International Airport as well as airport authorities. They all reported a steep increase in the number of travelers to Cuba in 2002.¹²⁰ Following is some of the information disclosed:

- At least 26,500 passengers were booked on 240 flights out of Miami in December 2002.

- At Miami International Airport, a total of 99 flights left between December 16 and 24, and an additional 11 were scheduled for Christmas Day.
- A total of 144 flights left from Miami to Cuba in November 2002.
- C&T Charters, one of the travel agencies interviewed, reported 27 flights to Cuba in December 2002 compared to its average of 16 monthly flights, flying about 5,000 travelers in December, up from the average of 3,200 passengers per month in January-November. For the whole month of December, C&T reported a 93 percent capacity in airplanes that have 206 seats.
- Reservations for December 2002 were up an estimated 35 percent to 40 percent compared to December 2000, when Miami experienced its highest level of bookings since 1959.

118. In 1995, Canada (143,541) was the most important source of visitors to Cuba, followed by Italy (114,767), Spain (89,501), and the United States (59,972). In 1998, Canadian travelers to Cuba were 215,644, followed by Italians (186,688), Germans (148,987), and persons from the United States (141,678). See Spadoni (2003).

119. Spadoni (2003).

120. Ruiz Campos (2002).

The above allows us to indulge in an exercise that, admittedly, is not based on verifiable data or proven assumptions, but may point to under-reporting of the total number of U.S.-based travelers by Cuba. Following are a few inferences from the above information:

- An average of 8.4 direct charter flights left from Miami to Cuba daily in December 2002. An average of 4.6 direct charter flights left from Miami to Cuba in November 2002. An average of 110 passengers traveled in December from Miami (26,500 passengers in 240 flights).
- C&T Charters reported a number of passengers that matches the number of flights at the cited capacity both for the average month of the year (January to November) as well as for December.¹²¹ From these data we can calculate that C&T Charters had a 19% share of the direct charter market from Miami in December 2002 (5,000 passengers out of a total of 26,500).
- If the same 19% share is assumed for the months of January to November,¹²² the total number of travelers in direct flights just from Miami for the year 2002 would amount to 203,767.¹²³
- If 26,500 passengers for December are added to an equivalent share of passengers per flight for November (144 flights at an average of 110 passengers per flight), times eleven months for the period January–November, a total of 200,740 passengers would have traveled in direct charter flights in 2002 just from Miami.

All of the above calculations for travelers going directly to Cuba in charter flights from Miami suggest levels that exceed the total number of visitors from the U.S. (both of Cuban heritage and not), coming from all three U.S. cities offering direct charter flights plus all third country flights (which, as we have seen, was reported by Cuba as ranging between 180,000 and 200,000).

If the information provided by Miami travel agents is roughly accurate, the figures provided by the Cuban government for U.S.-based travel seem to underestimate actual flows. Two scholars who have done in-depth research on the subject had already pointed this problem regarding the statistics on Cuban-American visits to Cuba. They pointed out that, while Cuban sources report that individuals of Cuban descent visiting the island between 1994 and 1996 were about 20,000 per year, U.S. sources estimate the number at approximately 40,000 in 1994 and 100,000 per year between 1995 and 1999.¹²⁴

Revenues derived by Cuba from U.S. based visitors

At present, travelers from the U.S. reportedly spend about \$200 million a year in Cuba,¹²⁵ or around 11% of Cuba's total gross revenues from tourism. It is not known how this figure, provided by a Cuban government official, was derived or what it includes. But, it would represent around 200,000 U.S.-based visitors spending an average of \$1,000 per trip, which is on the low side (\$200 per day if the average stay is 5 days, \$143 per day for a 7-day stay). By our calculations, between 1990 and 2003 Cuba has received approximately \$1.5 to \$1.7 billion in gross

121. Approximately 93% capacity corresponds to the figures provided by C&T (3,200 passengers in 16 flights in November and 5,000 passengers in 27 flights in December).

122. The monthly passengers data provided by C&T Charters seems to match the number of passengers reported vis-à-vis the number of flights both for November and for December. The same 93% capacity holds true (3,200 passengers in 16 flights in November and 5,000 passengers in 27 flights in December).

123. C&T's 3,200 passengers for November represent 19% of a total 16,132 travelers per month. This monthly average times eleven months equals 177,452 passengers, plus 26,315 in December, brings the total number to 203,767.

124. Susan Eckstein and Lorena Barberia, "Cuban-American Cuba Visits: Public Policy, Private Practices," Mellon-MIT-Inter-University Program on Non-Governmental Organizations (NGOS) and Forced Migration, 2001, note 8, p.13.

125. Quote attributed to John Kavulich, President of the U.S.-Cuba Trade and Economic Council. In Andres Oppenheimer, "U.S. may tighten Cuba travel," *The Miami Herald*, December 15, 2002.

revenues from U.S.-based visitors, estimated conservatively.¹²⁶

There are three general types of U.S. based travelers considered “tourists” for the purposes of this paper. The data used by the Cuban government and travel agencies, refers to all visitors as “tourists.” But, there are traditional tourists, tourists on family visits, and tourists traveling for professional reasons. Cuban-Americans generally exhibit significantly different itineraries and expenditure patterns, as they tend to stay longer, travel more to all parts of the island, some stay with relatives rather than at hotels, they have much more direct contact with the locals, undertake activities less associated with the tourist market, make dollar purchases on the island for their relatives, and carry remittances to leave behind. Thus, the revenues derived from travel by Cuban-Americans are probably much higher than is being reported. The same may be true, to a lesser degree, for professionals who must incur higher costs for transportation or other business-related services.

There is no limit to the amount of cash that can be brought into Cuba, although the use of credit cards by U.S. based travelers is not possible. Cuban-Americans have found it increasingly easy to spend their dollars in services and purchases of Western goods for their relatives at the well-stocked state-owned dollar stores, which have the telling name of “tiendas de recuperación de divisas” or “stores to recover hard currency.” Strict Customs regulations regarding what can be imported into the country as gifts for relatives promote purchases at these hard currency stores, said to mark up items at up by an average of 240%. This is likely not included in Cuban official data of revenues from tourism.

Revenues from U.S.-based Cuban NGO’s co-sponsoring educational exchanges are also in all likelihood not represented in revenues from tourism.

Revenues from fees charged to U.S. tourists for visa applications, passport fees for persons born in Cuba, Customs duties, and departure taxes would also bring the amount of total revenues up. These fees are likely to be excluded from reported revenues per tourist and, instead, incorporated into the budgets of state agencies such as Customs, the airport, and the Ministry of Foreign Affairs. If we use the amount estimated for these fees, of an average of \$233 per tourist, an additional roughly \$308 million will have been collected from U.S. travelers by the Cuban government between 1990 and 2003. For 2003 alone, we can estimate that Cuba will receive about \$53.5 million in fees from 230,000 visitors (see Table 3).

There are three other potential side effects of travel that may be generating additional hard currency revenues for Cuba. Determining whether or not this hypothesis holds true and, if so, the approximate dollar amounts, is outside the bounds of this study. But their economic impact may be considerable.

First, when visiting family members become aware of their relatives’ need, they also tend to make purchases at stores on the island selling goods in hard currency. What percentage of the sales of these stores is attributable to visitors from the United States is unknown. Others also have access to those stores: Cubans receiving remittances, those employed in the foreign sector with access to dollar tips and bonuses, visiting or resident foreigners and others with access to hard currency.

Second, visits to the island to see relatives expose Cuban Americans to the stark living conditions of their loved ones. Both logic and observation lead to the

126. If we were to apply the \$166 per diem rate used by the State Department, a 5-day stay would bring expenditures to \$830 per traveler and a 7-day stay would generate \$1,162, with \$966 the average of the two. This would translate into \$1.5 billion in expenditures for the number of U.S. tourists reported in Table 2 above. Yet, it must be considered that OFAC regulations recognize and contemplate the higher expenses required by professionals and those visiting family who must travel within the island—that would raise the expenditure per visitor. In fact, gross revenues per tourist per year for Cuba were reported by the U.S.-Cuba Trade and Economic Council (*Economic Eye on Cuba*, 20 January 2003 to 26 January 2003) to have increased from \$948 in 1991 to \$1,475 in 1995, decreasing steadily until 2001, to \$1,037, and then rising to \$1,049 in 2002. If an average of \$1,262, the higher range points (\$1,475 and \$1,047), is instead applied to calculate the expenditures per tourist from the U.S., it would translate into around \$1.7 billion.

Table 3. Estimated Annual Revenues in Fees Collected by Cuba from U.S.-based Travelers (2003 Projected) U.S. dollars

	Cuban-Americans	Not Cuban-Americans	Total
Number of Travelers	150,000	80,000	230,000
Visa applications ^{ab}	11,767,500	4,000,000	15,767,500
Passport fees ^c	18,179,500		18,179,500
Departure taxes ^d	3,000,000	1,600,000	4,600,000
Customs' duties ^e	15,000,000		15,000,000
Totals	47,947,050	5,600,000	53,547,050

a. Entry fees for Cuban Americans were calculated based on 2000 U.S. Census data that indicates that almost two-third of Cubans are foreign born and 54.6% arrived before 1970, from Boswell and Díaz, "A demographic profile of Cuban Americans," The Cuban American National Council, Inc., September 2002, p. 8 and Table 11 (p. 32). 45.4% of Cuban Americans traveling to Cuba were assigned the \$100 entry permit fee corresponding to those who left after 1970 and 54.6% were assigned the \$50 visa fee corresponding to those who left before 1970.

b. Non-Cuban Americans were all assumed to have paid a \$50 visa fee.

c. Passport fees were calculated based on the same Census data, based on the requirement that all Cuban American visitors who left after 1970 (45.4% of all Cuban Americans) must enter the country with a Cuban passport. For estimation purposes, this was simplified to assume that each visitor is only a one-time visitor for the year and would require either a new passport or a renewal. Thus, an average passport fee of \$213 was assigned for estimation purposes (the range in fees is \$280 for a new passport valid six years and \$146 for renewals required every two years). All remaining travelers from the U.S. were not assigned a passport fee, as they are assumed to enter Cuba with their U.S. passport.

d. Departure tax is US\$20 for all visitors.

e. Up to \$250 in gifts may be brought into the country per year; the first \$50 free of duties, the remaining \$200 taxed at 100%. For the purposes of the calculation, 50% of Cuban American visitors were considered as paying the \$200 duty to bring in gifts for relatives.

hypothesis that this encourages economic support, which possibly translates into future remittances, either in a steadier and/or higher level if remittances were being sent before travel took place and starting if they were not, or by widening their reach to additional family members or households.¹²⁷ In 1993, the Cuban government legalized the holding of dollars,

which until then had been punishable with prison. In addition, the severity of the economic crisis had a devastating effect on the population, generating extreme hardship and need for humanitarian support. Remittances were temporarily suspended by President Clinton in 1996 after the downing of two U.S. civilian aircraft, but were restored in 1998.¹²⁸ Although during the time they were suspended it is said that remittances were still being sent illegally with travelers or via third countries, the reauthorization eased the logistics and make remitting money to Cuba a very common occurrence. As a result, remittances to Cuba from the U.S. are estimated between around \$500 million to \$1 billion annually. That would translate into around \$3 to \$6 billion respectively for the 6 years 1998 to 2003. If our logic applies, a percentage of this total could be attributed to increased travel by Cuban Americans.

Third, the reunification with family and friends and the reaffirmation of sentimental ties tends to encourage more frequent telephone contact with loved ones on the island or new telephone communications with a wider circle of people with whom the traveler became acquainted or in closer contact during the trip to Cuba. Also, planning family visits requires communications. Almost all calls originate in the U.S., as Cubans generally lack the economic means to pay for outgoing long-distance calls. From September 1996 to September 2003, payments to Cuba by U.S. telecommunications companies have amounted to \$482,616,162, almost half a billion dollars.¹²⁹ Although we cannot determine what percentage of that income might have been generated by an increase in calls from the U.S. to Cuba as attributable to travel, it may be significant.

127. To confront the severe economic crisis, in 1993, the Cuban government legalized the holding of dollars, which had been illegal until then and was penalized with jail, oftentimes for years. This prompted a steep rise in remittances (estimates by economists and reports from Cuba vary widely).

128. At present, OFAC regulations permit any person under U.S. jurisdiction to send remittances of up to \$300 every three months to any one household in Cuba. (Cuban Assets Control Regulations, op.cit.)

129. The 1996 Cuban Liberty Act requires that U.S. telecommunications companies report their revenues paid to Cuba bi-annually (U.S. Cuba Policy Report, September 30, 2003.)