

109TH CONGRESS
1ST SESSION

S. 328

To facilitate the sale of United States agricultural products to Cuba, as authorized by the Trade Sanctions Reform and Export Enhancement Act of 2000.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2005

Mr. CRAIG (for himself, Mr. BAUCUS, Mr. ROBERTS, Mr. LUGAR, Mr. HAGEL, Mr. TALENT, Mr. ENZI, Mr. CHAFEE, Mr. CRAPO, Mr. THUNE, Mrs. HUTCHISON, Mrs. MURRAY, Mr. BINGAMAN, Mrs. LINCOLN, Mr. DORGAN, Mr. NELSON of Nebraska, Mr. JOHNSON, Mr. PRYOR, Ms. LANDRIEU, and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To facilitate the sale of United States agricultural products to Cuba, as authorized by the Trade Sanctions Reform and Export Enhancement Act of 2000.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Agricultural Export
5 Facilitation Act of 2005”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

4 (1) The export sector of United States agri-
5 culture makes an important positive contribution to
6 this country's trade balance.

7 (2) The total value of United States exports of
8 agricultural products shipped to Cuba since 2000
9 when such sales were first authorized by Congress is
10 approximately \$1,000,000,000, including transpor-
11 tation, port fees, and insurance costs. In December
12 2001, Cuba purchased approximately \$4,300,000 in
13 food and agricultural products. In 2002, Cuba pur-
14 chased approximately \$138,600,000 in food and ag-
15 ricultural products. In 2003, Cuba purchased ap-
16 proximately \$256,900,000 in food and agricultural
17 products. In 2004, Cuba purchased approximately
18 \$380,000,000 in food and agricultural products.
19 Cuba ranked at the bottom of 226 agricultural ex-
20 port markets for United States companies in 2001;
21 ranked 50th of 226 in 2002; ranked 35th of 219 in
22 2003; and ranked approximately 25th of 228 in
23 2004. Cuba is therefore an important source of rev-
24 enue for United States agriculture and its affiliated
25 industries, such as manufacturers and distributors
26 of value-added food products.

1 (3) To be competitive in sales to Cuban pur-
2 chasers, United States exporters of agricultural
3 products and their representatives, including rep-
4 resentatives of United States air or sea carriers,
5 ports and shippers, must have ready and reliable
6 physical access to Cuba. Such access is currently un-
7 certain because, under existing regulations, United
8 States exporters and their representatives must
9 apply for and receive special Treasury Department
10 licenses to travel to Cuba to engage in sales-related
11 activities. The issuance of such licenses is subject to
12 both administrative delays and periodic denials. A
13 blanket statutory authorization for sales and trans-
14 port-related travel to Cuba by United States export-
15 ers will remove the current bureaucratic impediment
16 to agricultural product sales endorsed by Congress
17 when it passed the Trade Sanctions Reform and Ex-
18 port Enhancement Act of 2000.

19 (4) On many occasions United States visas have
20 been delayed and often denied to prospective Cuban
21 purchasers of products authorized under the Trade
22 Sanctions Reform and Export Enhancement Act of
23 2000. The result has been that family farmers and
24 other small producers and distributors of agricul-
25 tural products who lack the resources to fund sales

1 delegations to Cuba have been denied access to po-
2 tential purchasers in that country. A simple solution
3 is for the Department of State to issue visas to
4 Cuban nationals who demonstrate an itinerary of
5 meetings with prospective United States exporters of
6 products authorized under the Trade Sanctions Re-
7 form and Export Enhancement Act of 2000. In ad-
8 dition, visas should be issued to Cuban
9 phytosanitary inspectors who require entry into the
10 United States to conduct on-premise inspections of
11 production and processing facilities and the products
12 of potential United States exporters.

13 (5) The Trade Sanctions Reform and Export
14 Enhancement Act of 2000 requires “payment of
15 cash in advance” for United States agricultural ex-
16 ports to Cuba. Some Federal agencies responsible
17 for the implementation of the Trade Sanctions Re-
18 form and Export Enhancement Act of 2000 have ex-
19 pressed the view that “cash in advance” requires
20 that payment be received by a United States ex-
21 porter in advance of shipment of goods to Cuba. In-
22 deed, late last year payments due United States ex-
23 porters from purchasers in Cuba were frozen in
24 United States banks while the terms of those pay-
25 ments were reviewed unnecessarily. This action by

1 the Department of the Treasury has created a cli-
2 mate of commercial uncertainty that has inhibited
3 agricultural sales under the Trade Sanctions Reform
4 and Export Enhancement Act of 2000 to Cuba.

5 (6) There is nothing in either the Trade Sanc-
6 tions Reform and Export Enhancement Act of 2000
7 itself or its legislative history to support the view
8 that Congress intended payment to be made in ad-
9 vance of the shipment of goods from this country to
10 Cuba. It was and is the intent of Congress that a
11 seller of a product authorized under the Trade Sanc-
12 tions Reform and Export Enhancement Act of 2000
13 receive payment only before a Cuban purchaser
14 takes physical possession of that product.

15 (7) At present it is the policy of the United
16 States Government to prohibit direct payment be-
17 tween Cuban and United States financial institu-
18 tions. As a result, Cuban purchasers of products au-
19 thorized under the Trade Sanctions Reform and Ex-
20 port Enhancement Act of 2000 must route their
21 payments through third country banks that charge
22 a fee for this service. Allowing direct payments be-
23 tween Cuban and United States financial institu-
24 tions will permit the United States exporters to re-
25 ceive payment directly to their financial institutions

1 within hours instead of days and will eliminate an
2 unnecessary transactional fee, thereby allowing
3 Cuban purchasers to purchase more United States
4 origin agricultural products.

5 (8) Trademarks and trade names are vital as-
6 sets of the United States companies that export
7 branded food products, including those who today or
8 in the future may sell such products to Cuba under
9 the Trade Sanctions Reform and Export Enhance-
10 ment Act of 2000. Hundreds of United States com-
11 panies have registered their trademarks in Cuba in
12 order to ensure the exclusive right to use those
13 trademarks when the United States trade embargo
14 on that country is lifted. Moreover, following the en-
15 actment of the Trade Sanctions Reform and Export
16 Enhancement Act of 2000, many United States
17 companies are today exporting branded food prod-
18 ucts to Cuba where they hope to establish their
19 brands with Cuban purchasers in order to benefit
20 from current sales under the Trade Sanctions Re-
21 form and Export Enhancement Act of 2000, as well
22 as position themselves for the larger post-embargo
23 market for United States goods in Cuba.

24 (9) Sales to Cuba of branded products of
25 United States companies contribute to the liveli-

1 hoods of American workers and the balance sheets
2 of United States businesses. Those sales depend on
3 the security of United States trademarks and trade
4 names protected in Cuba by reciprocal treaties and
5 agreements for the protection of intellectual prop-
6 erty. Among such treaties and agreements are the
7 Agreement on Trade-Related Aspects of Intellectual
8 Property Rights (TRIPS) and the Inter-American
9 Convention for Trademark and Commercial Protec-
10 tion.

11 (10) The United States District Court for the
12 Southern District of New York ruled that section
13 211 of the Department of Commerce and Related
14 Agencies Appropriations Act, 1999 abrogates, with
15 respect to Cuba, the Inter-American Convention on
16 Trademarks and Commercial Protection. The court's
17 ruling was affirmed by the United States Court of
18 Appeals for the Second Circuit.

19 (11) Cuba's international remedy under cus-
20 tomary international law (as codified by Article 60
21 of the 1969 Vienna Convention on Treaties), for a
22 breach by the United States of the Inter-American
23 Convention, is to suspend or revoke the protections
24 Cuba currently affords United States trademarks
25 and trade names.

1 (12) In order to preserve the rights of United
 2 States nationals holding trademarks in Cuba, includ-
 3 ing those engaged in authorized sales under the
 4 Trade Sanctions Reform and Export Enhancement
 5 Act of 2000 now and in the future, the United
 6 States must repeal section 211 of the Department of
 7 Commerce and Related Agencies Appropriations Act,
 8 1999 and the United States must comply with all
 9 treaty obligations owed Cuba as they relate to trade-
 10 marks and trade names.

11 (b) PURPOSE.—The purpose of this Act is to remove
 12 impediments to present and future sales of United States
 13 agricultural products to Cuba under the Trade Sanctions
 14 Reform and Export Enhancement Act of 2000 and to oth-
 15 erwise facilitate such sales.

16 **SEC. 3. TRAVEL TO CUBA IN CONNECTION WITH AUTHOR-**
 17 **IZED SALES ACTIVITIES.**

18 Section 910 of the Trade Sanctions Reform and Ex-
 19 port Enhancement Act of 2000 (22 U.S.C. 7209) is
 20 amended by inserting after subsection (b) the following:

21 “(c) GENERAL LICENSE AUTHORITY FOR TRAVEL-
 22 RELATED EXPENDITURE IN CUBA BY PERSONS ENGAG-
 23 ING IN TSREEA OF 2000 SALES AND MARKETING AC-
 24 TIVITIES IN THAT COUNTRY AND TSREEA-RELATED
 25 TRANSPORTATION ACTIVITIES.—

1 “(1) IN GENERAL.—The Secretary of the
2 Treasury shall authorize under a general license the
3 travel-related transactions listed in subsection (c) of
4 section 515.560 of title 31, Code of Federal Regula-
5 tions, for travel to, from, or within Cuba in connec-
6 tion with activities undertaken in connection with
7 sales and marketing, including the organization and
8 participation in product exhibitions, and the trans-
9 portation by sea or air of products pursuant to this
10 Act.

11 “(2) DEFINITIONS.—In this subsection, the
12 term ‘sales and marketing activities’ means any ac-
13 tivity with respect to travel to, from, or within Cuba
14 that is undertaken by a United States person in
15 order to explore the market in that country for the
16 sale of products pursuant to this Act or to engage
17 in sales activities with respect to such products. The
18 term ‘sales activities’ includes exhibiting, negoti-
19 ating, marketing, surveying the market, and deliv-
20 ering and servicing products pursuant to this Act.
21 Persons authorized to travel to Cuba under this sec-
22 tion include full-time employees, executives, sales
23 agents and consultants of producers, manufacturers,
24 distributors, shippers, United States air and sea
25 ports, and carriers of products authorized for sale

1 pursuant to this Act, as well as exhibitors and rep-
2 resentatives and members of national and State
3 trade organizations that promote the interests of
4 producers and distributors of such products.

5 “(3) REGULATIONS.—The Secretary of the
6 Treasury shall promulgate such rules and regula-
7 tions as are necessary to carry out the provisions of
8 this subsection.”.

9 **SEC. 4. SENSE OF CONGRESS THAT VISAS SHOULD BE**
10 **ISSUED.**

11 (a) SENSE OF CONGRESS.—It is the sense of Con-
12 gress that the Secretary of State should issue visas for
13 temporary entry into the United States of Cuban nationals
14 whose itinerary documents an intent to conduct activities,
15 including phytosanitary inspections, related to purchasing
16 United States agricultural goods under the provisions of
17 the Trade Sanctions Reform and Export Enhancement
18 Act of 2000.

19 (b) PERIODIC REPORTS.—

20 (1) IN GENERAL.—Not later than 45 days after
21 the date of enactment of this Act and every 3
22 months thereafter the Secretary of State shall sub-
23 mit to the Committees on Finance, Agriculture, Nu-
24 trition, and Forestry, and Foreign Relations of the
25 Senate and the Committees on Agriculture, Ways

1 and Means, and International Relations of the
 2 House of Representatives a report on the issuance of
 3 visas described in subsection (a).

4 (2) CONTENT OF REPORTS.—Each report shall
 5 contain a full description of each application received
 6 from a Cuban national to travel to the United States
 7 to engage in purchasing activities pursuant to the
 8 Trade Sanctions Reform and Export Enhancement
 9 Act of 2000 and shall describe the disposition of
 10 each such application.

11 **SEC. 5. CLARIFICATION OF PAYMENT TERMS UNDER**
 12 **TRADE SANCTIONS REFORM AND EXPORT EN-**
 13 **HANCEMENT ACT OF 2000.**

14 Section 908(b)(1) of the Trade Sanctions Reform and
 15 Export Enhancement Act of 2000 (22 U.S.C. 7207(b)(1))
 16 is amended by inserting after subparagraph (B) the fol-
 17 lowing:

18 “(C) Notwithstanding any other provision
 19 of law, the term ‘payment of cash in advance’
 20 means the payment by the purchaser of an agri-
 21 cultural commodity or product and the receipt
 22 of such payment by the seller prior to—

23 “(i) the transfer of title of such com-
 24 modity or product to the purchaser; and

1 “(ii) the release of control of such
2 commodity or product to the purchaser.”.

3 **SEC. 6. AUTHORIZATION OF DIRECT TRANSFERS BETWEEN**
4 **CUBAN AND UNITED STATES FINANCIAL IN-**
5 **STITUTIONS.**

6 Notwithstanding any other provisions of law, the
7 President may not restrict direct transfers from a Cuban
8 financial institution to a United States financial institu-
9 tion executed in payment for a product authorized for sale
10 under the Trade Sanctions Reform and Export Enhance-
11 ment Act of 2000.

12 **SEC. 7. ADHERENCE TO INTERNATIONAL AGREEMENTS**
13 **FOR THE MUTUAL PROTECTION OF INTEL-**
14 **LECTUAL PROPERTY, INCLUDING REPEAL OF**
15 **SECTION 211.**

16 (a) REPEAL OF PROHIBITION ON ENFORCEMENT OF
17 RIGHTS TO CERTAIN UNITED STATES INTELLECTUAL
18 PROPERTIES AND TRANSFER OF SUCH PROPERTIES.—

19 (1) REPEAL.—Section 211 of the Department
20 of Commerce and Related Agencies Appropriations
21 Act, 1999 (section 101(b) of division A of Public
22 Law 105–277; 112 Stat. 2681–2688) is repealed.

23 (2) REGULATIONS.—The Secretary of the
24 Treasury shall promulgate such regulations as are
25 necessary to carry out the repeal made by paragraph

1 (1), including removing any prohibition on trans-
2 actions or payments to which subsection (a)(1) of
3 section 211 of the Department of Commerce and
4 Related Agencies Appropriations Act, 1999 applied.

5 (3) FURTHER REGULATIONS.—The Secretary of
6 the Treasury shall amend the Cuban Asset Control
7 regulations (part 515 of title 31, Code of Federal
8 Regulations) to authorize under general license the
9 transfer or receipt of any trademark or trade name
10 subject to United States law in which a designated
11 national has an interest. The filing and prosecution
12 of opposition and infringement proceedings related
13 to any trademark or trade name in which a des-
14 ignated national has an interest and the prosecution
15 of any defense to such proceedings shall also be au-
16 thorized by general license.

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