STATEMENT OF THE
AMERICAN FARM BUREAU FEDERATION
TO THE
HOUSE COMMITTEE ON AGRICULTURE
REGARDING
REVIEW OF UNITED STATES AGRICULTURAL TRADE WITH CUBA

Presented by:
Charlie Kruse
President
Missouri Farm Bureau Federation

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Good morning, I am Charlie Kruse, President of Missouri Farm Bureau and a soybean and corn producer from Stoddard County, Missouri. In addition, I sit on the Board of Directors for the American Farm Bureau Federation and am Chairman of the AFBF Trade Advisory Committee.

We appreciate the opportunity to provide you our comments on recent actions taken by the Office of Foreign Assets Control (OFAC), Department of Treasury, to restrict the financial terms by which sales of U.S. agricultural products are made to Cuba. Farm Bureau has long-standing policy in support of expanding U.S. trade with Cuba.

Until passage of the Trade Sanctions Reform and Export Enhancement Act (TSREEA) in 2000, the Cuban market was closed to U.S. agricultural exports due to U.S. sanctions imposed in 1963. Since passage of TSREEA, U.S. agriculture has seen its sales to Cuba grow exponentially, and the Cuban export market has grown in importance. According to USDA/FAS[1] our sales have gone from nearly zero in 2000 to almost $400 million in 2004. Our sales to Cuba have almost doubled every year since 2001. Cuba is now our 25th largest export market. Our sales have included a variety of U.S. agriculture products including but not limited to wheat, rice, corn, soybeans, chicken, pork, eggs, dairy products, apples and live animals. But recent changes by OFAC to the regulations that guide acceptable payment terms by the Cuban government could reverse this trend.

On February 22, 2005, OFAC announced that it was redefining "payment of cash in advance." Under the new definition, cash payments from Cuba for U.S. agricultural sales would have to be received by U.S. banks before the product could be shipped from U.S. ports. This new definition is significant in that "payment of cash in advance" is the most commonly used means for receiving payment from Cuba. The new definition reverses the original interpretation and established method for sales to Cuba.

Most contracts made with the Cuban government for the purchase of U.S. agricultural products have used "payment of cash in advance" as the method of payment. Under its original interpretation, U.S. agricultural products could be shipped to Cuba but all certificates, title and ownership of the goods would only be transferred once payment was received from Cuba. OFAC's new regulation ignores the original intent of Congress on "payment of cash in advance"

[1] USDA/FAS Export/Import Statistics for Bulk, Intermediate, and Consumer Oriented (BICO) Foods and Beverages

under TSREEA. This could result in the loss of sales currently under contract in addition to all future sales to the country, and disregards contract sanctity, putting U.S. agriculture in the position of being viewed as an unreliable supplier.

U.S. agriculture has been making sales to Cuba under the original definition of "payment of cash in advance" since the enactment of TSREEA. Concern regarding the method of payment has never been raised by Congress, or until recently, OFAC. Why OFAC chose to review and reinterpret the definition of "payment of cash in advance" is not clear to us. We believe we have followed Congressional intent, as allowed under TSREEA and its regulations, of "payment of cash in advance."

OFAC's disregard of Congressional intent on "payment of cash in advance" has caused members of Congress to draft language to clarify their original position on this issue. Language in the Agricultural Export Facilitation Act of 2005 (H.R. 719) introduced by Reps. Jerry Moran (R-Kan.), "Butch" Otter (R-Idaho) and Jeff Flake (R-Ariz.) clarifies Congress' intent to sell agriculture goods, as authorized by TSREEA, by defining "cash payment in advance" as receipt of payment before transfer of title and release of physical control of goods to the seller. This provision gives all parties, including banks, clear guidance as to the authorized terms of payment. We believe this clarification would assure the terms of sale would not be misinterpreted or overly cumbersome. AFBF supports the Agricultural Export Facilitation Act of 2005 (H.R. 719).

The redefinition of "payments of cash in advance" will be costly to U.S. agriculture producers and companies. This new regulation jeopardizes current and future contractual sales to Cuba. According to Alimport, a Cuban buyer, outstanding agricultural sales contracts for more than 950,000 tons of agricultural products, worth more than $200 million, could be affected by this regulation and are at risk because of current actions by OFAC. The products in jeopardy include corn, rice, wheat, chicken, soybean meal, soybean oil, soybeans, peas, milk, shortening, pork, lentils, chick peas, as well as many other consumer food products.

It is unlikely that Cuba would be willing to accept the newly defined "payment of cash in advance" as they would apply to outstanding contracts. The new definition of "payment of cash in advance" changes the terms under which existing contracts were written and creates a situation where products could be subject to seizure. Under current U.S. law, the U.S. government can seize Cuban assets on American soil. If Cuba purchases U.S. agriculture goods in the manner defined within the regulation, Cuba would risk possible seizure of the product because at the time of payment, ownership is transferred to Cuba while the product is still in U.S. ports.

Under the new regulation OFAC did provide a 30-day implementation period during which any outstanding contract, if filled and paid for by March 24, would not be held under the new regulation. Some of the outstanding contracts will be completed by this date but there are many other contracts with shipment dates for later in the year. While OFAC has mentioned that a special license could be requested to complete these sales, under current contractual terms there is no guarantee that such a license will be granted.

While we must look at the potential losses and risks to the U.S. agriculture sector created by this new regulation, we must also look at the overall issue of contract sanctity raised by these actions. We again do not understand why OFAC would risk possibly nullifying all outstanding contracts

rather than make the changes effective only for new contracts. It is our understanding that not since President Jimmy Carter ordered a complete U.S. grain embargo against the Soviet Union in 1980 have U.S. agricultural export contracts been nullified by an action of the U.S. government.

The sanctity of U.S. agricultural export sales contracts is important to U.S. agriculture in maintaining and growing export market share. Current actions by OFAC will lead Cuba, and possible other purchasers of U.S. agriculture products, to question whether the U.S. is a reliable supplier. These actions may also force Cuba to look to our competitors to fill its agricultural import needs.

While OFAC has tightened the definition of "payments of cash in advance," it will continue to allow purchases to be made through a letter of credit from a third country financial institution, as allowed under TSREEA. While this does not resolve the current situation it is an option for current contracts and future sales, but again this option also comes with its own cost to all parties involved, including U.S. agricultural producers.

If Cuba determines the new definition of "payment of cash in advance" is unacceptable, it is expected that current outstanding contracts with "payments of cash in advance" as the payment option will be nullified after March 24. U.S. companies will need to renegotiate the payment terms of these contracts to replace "payments of cash in advance" with letters of credit. As U.S. exporters renegotiate the payment terms there is nothing prohibiting the Cubans from renegotiating other terms of the contract such as price.

Also, letters of credit come with their own increased financial cost to Cuba because of the risk involved by third country banks. These costs would not only affect future contracts but current renegotiated contracts as well. This could lead to less U.S. agricultural product being purchased because of increased business costs to the Cubans.

We have no explanation why OFAC has taken this action. These new regulations ignore both the spirit of Congress under TSREEA and the sanctity of contractual obligations. These actions come with a cost to U.S. agricultural producers and companies who are dependant on trade. The U.S. encouraged producers to support fair and open trade. We have been advocates for opening new markets and working to maintain and grow our market share in the world. The actions taken by OFAC send the opposite message; reinterpretation will make it more difficult for us to maintain or increase our current Cuban market share.

It is critical to U.S. agricultural trade that this issue be resolved in a manner that does not jeopardize exports, current or future, to Cuba and is clear in its intent as to what is allowed under the law.

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