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1ST SESSION

H. R. 1737

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 HOUSE OF REPRESENTATIVES

MARCH 26, 2009

Mr. MORAN of Kansas (for himself, Mr. DELAHUNT, Ms. EDWARDS of Maryland, Mrs. EMERSON, Mr. BERRY, Mr. DAVIS of Tennessee, Mr. BOUSTANY, Mr. PAUL, Mr. CONAWAY, Mr. ROSS, Mr. FLAKE, Mr. THOMPSON of Mississippi, Mr. MCGOVERN, Mr. SNYDER, Mr. BROWN of South Carolina, Mr. BOOZMAN, Mr. NEUGEBAUER, and Mr. WALZ) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committees on the Judiciary, Financial Services, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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 2009”.

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) According to the United States Department
8 of Agriculture, Foreign Agricultural Service, the
9 total value of United States exports of agricultural
10 products shipped to Cuba since 2000 when such
11 sales were first authorized by Congress is approxi-
12 mately \$2,511,600,000, excluding transportation,
13 port fees, and insurance costs beyond the port of ex-
14 portation. During the 2001, 2002, 2003, 2004,
15 2005, 2006, 2007, and 2008 calendar years Cuba
16 purchased from United States exporters approxi-
17 mately \$4,600,000; \$139,800,000; \$247,600,000;
18 \$383,900,000; \$346,000,000; \$320,800,000;
19 \$431,200,000; and \$691,103,000 in food and agri-
20 cultural products, respectively. Cuba is therefore an
21 important source of revenue for United States agri-
22 culture and its affiliated industries, such as manu-
23 facturers and distributors of value-added food prod-
24 ucts.

25 (3) To be competitive in sales to Cuban pur-
26 chasers, United States exporters of agricultural

1 products and their representatives, including rep-
2 resentatives of United States air or sea carriers,
3 ports, and shippers, must have ready and reliable
4 physical access to Cuba. Such access is currently un-
5 certain because, under existing regulations, United
6 States exporters and their representatives must
7 apply for and receive special Department of the
8 Treasury licenses to travel to Cuba to engage in
9 sales-related activities. The issuance of such licenses
10 is subject to both administrative delays and periodic
11 denials. A blanket statutory authorization for sales
12 and transport-related travel to Cuba by United
13 States exporters will remove the current bureau-
14 cratic impediment to agricultural product sales en-
15 dorsed by Congress when it passed the Trade Sanc-
16 tions Reform and Export Enhancement Act of 2000.

17 (4) On many occasions visas to enter the
18 United States have been delayed and often denied to
19 prospective Cuban purchasers of products authorized
20 under the Trade Sanctions Reform and Export En-
21 hancement Act of 2000. The result has been that
22 family farmers and other small producers and dis-
23 tributors of agricultural products who lack the re-
24 sources to fund sales delegations to Cuba have been
25 denied access to potential purchasers in that coun-

1 try. A simple solution is to issue visas to Cuban na-
2 tionals who demonstrate an itinerary of meetings
3 with prospective United States exporters of products
4 authorized under the Trade Sanctions Reform and
5 Export Enhancement Act of 2000. In addition, visas
6 should be issued to Cuban phytosanitary inspectors
7 who require entry into the United States to conduct
8 on-premise inspections of production and processing
9 facilities and the products of potential United States
10 exporters.

11 (5) The Trade Sanctions Reform and Export
12 Enhancement Act of 2000 requires “payment of
13 cash in advance” for United States agricultural ex-
14 ports to Cuba. Some Federal agencies responsible
15 for the implementation of the Trade Sanctions Re-
16 form and Export Enhancement Act of 2000 have ex-
17 pressed the view that “cash in advance” requires
18 that payment be received by a United States ex-
19 porter in advance of shipment of goods to Cuba. In-
20 deed, in late 2004 payments due United States ex-
21 porters from purchasers in Cuba were frozen in
22 United States banks while the terms of those pay-
23 ments were reviewed unnecessarily. This action by
24 the Department of the Treasury has created a cli-
25 mate of commercial uncertainty that has inhibited

1 agricultural sales to Cuba under the Trade Sanc-
2 tions Reform and Export Enhancement Act of 2000.

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

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

1 Cuban purchasers to purchase more United States
2 origin agricultural products.

3 (b) PURPOSE.—The purpose of this Act is to restate
4 the intent of Congress with respect to the Trade Sanctions
5 Reform and Export Enhancement Act of 2000, to remove
6 impediments to present and future sales of United States
7 agricultural products to Cuba under such Act, and to oth-
8 erwise facilitate such sales.

9 **SEC. 3. TRAVEL TO CUBA IN CONNECTION WITH AUTHOR-**
10 **IZED SALES ACTIVITIES UNDER THE TRADE**
11 **SANCTIONS REFORM AND EXPORT ENHANCE-**
12 **MENT ACT OF 2000.**

13 Section 910 of the Trade Sanctions Reform and Ex-
14 port Enhancement Act of 2000 (22 U.S.C. 7209) is
15 amended by striking subsection (a) and inserting the fol-
16 lowing:

17 “(a) AUTHORIZATION OF TRAVEL RELATING TO
18 COMMERCIAL SALE OF AGRICULTURAL COMMODITIES,
19 MEDICINE, AND MEDICAL DEVICES.—

20 “(1) IN GENERAL.—The Secretary of the
21 Treasury shall promulgate regulations under which,
22 at a minimum, the travel-related transactions de-
23 scribed in paragraph (2) may be authorized by spe-
24 cific license or general license for travel to, from, or
25 within Cuba in connection with—

1 “(A) commercial export sales and transpor-
2 tation of agricultural commodities, medicine,
3 and medical devices pursuant to this Act; and

4 “(B) sales and marketing activities of agri-
5 cultural commodities, medicine, and medical de-
6 vices pursuant to this Act.

7 “(2) AUTHORIZED TRAVEL-RELATED TRANS-
8 ACTIONS.—The travel-related transactions referred
9 to in paragraph (1) are the following:

10 “(A) All transportation-related trans-
11 actions ordinarily incident to travel to and from
12 Cuba.

13 “(B) All transactions ordinarily incident to
14 travel anywhere within Cuba.

15 “(C) The importation of Cuba-origin infor-
16 mation and information materials.

17 “(D) Remittances to nationals of Cuba
18 who are members of the remitter’s immediate
19 family.

20 “(E) All transactions incident to the proc-
21 essing and payment of checks, drafts, travelers’
22 checks, and similar instruments negotiated in
23 Cuba by any person authorized pursuant to this
24 Act to engage in financial transactions in Cuba.

1 “(3) SALES AND MARKETING ACTIVITIES DE-
2 FINED.—

3 “(A) IN GENERAL.—In paragraph (1), the
4 term ‘sales and marketing activities’—

5 “(i) means any activity that is under-
6 taken by a United States person in order
7 to explore the market in Cuba for the sale
8 of agricultural commodities, medicine, and
9 medical devices pursuant to this Act; and

10 “(ii) includes exhibiting, negotiating,
11 marketing, surveying the market, and de-
12 livering and servicing agricultural commod-
13 ities, medicine, and medical devices pursu-
14 ant to this Act.

15 “(B) UNITED STATES PERSON DEFINED.—
16 In subparagraph (A), the term ‘United States
17 person’—

18 “(i) means the Federal Government,
19 any State or local government, or any pri-
20 vate person or entity of the United States;
21 and

22 “(ii) includes a full-time employee, ex-
23 ecutive, sales agent or consultant of a pro-
24 ducer, manufacturer, distributor, shipper,
25 United States air or seaport, or a carrier

1 of agricultural commodities, medicine, and
2 medical devices authorized for sale pursu-
3 ant to this Act, as well as an exhibitor,
4 representative, or member of a national or
5 State trade organization that promotes the
6 interests of a producer, manufacturer, or
7 distributor of such products.”.

8 **SEC. 4. ISSUANCE OF VISAS TO CONDUCT ACTIVITIES IN**
9 **ACCORDANCE WITH THE TRADE SANCTIONS**
10 **REFORM AND EXPORT ENHANCEMENT ACT**
11 **OF 2000.**

12 (a) ISSUANCE OF VISAS.—Notwithstanding any other
13 provision of law, in the case of a Cuban national whose
14 itinerary documents an intent to conduct activities, includ-
15 ing 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, a consular officer (as defined in section
19 101(a)(9) of the Immigration and Nationality Act (8
20 U.S.C. 1101(a)(9))) may issue a nonimmigrant visa under
21 section 101(a)(15)(B) of such Act (8 U.S.C.
22 1101(a)(15)(B)) to the national, if the national is not in-
23 admissible to the United States under section 212 of such
24 Act (8 U.S.C. 1182).

25 (b) PERIODIC REPORTS.—

1 (1) IN GENERAL.—Not later than 45 days after
2 the date of enactment of this Act and every 3
3 months thereafter the Secretary of State shall sub-
4 mit to the Committees on Finance, Agriculture, Nu-
5 trition, and Forestry, and Foreign Relations of the
6 Senate and the Committees on Agriculture, Ways
7 and Means, and Foreign Affairs of the House of
8 Representatives a report on the issuance of visas de-
9 scribed in subsection (a).

10 (2) CONTENT OF REPORTS.—Each report shall
11 contain a full description of each application received
12 from a Cuban national to travel to the United States
13 to engage in purchasing activities pursuant to the
14 Trade Sanctions Reform and Export Enhancement
15 Act of 2000 and shall describe the disposition of
16 each such application.

17 **SEC. 5. CLARIFICATION OF PAYMENT TERMS UNDER THE**
18 **TRADE SANCTIONS REFORM AND EXPORT EN-**
19 **HANCEMENT ACT OF 2000.**

20 Section 908(b)(4) of the Trade Sanctions Reform and
21 Export Enhancement Act of 2000 (22 U.S.C. 7207(b)(4))
22 is amended—

23 (1) in subparagraph (B), by striking “and” at
24 the end;

1 (2) in subparagraph (C), by striking the period
2 at the end and inserting “; and”; and

3 (3) by adding at the end the following:

4 “(D) the term ‘payment of cash in ad-
5 vance’ means, notwithstanding any other provi-
6 sion of law, the payment by the purchaser of an
7 agricultural commodity or product and the re-
8 ceipt of such payment by the seller prior to—

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

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

13 **SEC. 6. AUTHORIZATION OF DIRECT TRANSFERS BETWEEN**
14 **CUBAN AND UNITED STATES FINANCIAL IN-**
15 **STITUTIONS UNDER THE TRADE SANCTIONS**
16 **REFORM AND EXPORT ENHANCEMENT ACT**
17 **OF 2000.**

18 Notwithstanding any other provision of law, the
19 President may not restrict direct transfers from a Cuban
20 financial institution to a United States financial institu-
21 tion executed in payment for a product authorized for sale
22 under the Trade Sanctions Reform and Export Enhance-
23 ment Act of 2000 (22 U.S.C. 7201 et seq.).

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