

## U.S.-Cuba Trade and Economic Council, Inc.

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**GENERAL PAYMENT GUIDELINES FOR TSRA-AUTHORIZED TRANSACTIONS WITH CUBA-** The following are general guidelines for Republic of Cuba-related financial transactions (“Cash Against Documents” and “Letter of Credit”) for exports to the Republic of Cuba under provisions of the *Trade Sanctions Reform and Export Enhancement Act* (TSRA) of 2000, which re-authorized the direct commercial export (on a cash basis) of food products and agricultural products to the Republic of Cuba, irrespective of purpose. Please note that the following are general guidelines; export credit managers, bank representatives, and legal counsel should be consulted when necessary.

Seller and buyer agree to contract terms and then prepare a contract. NOTE: Some larger contract financial terms are being denominated in Euros, so there is a currency conversion fee that needs to be included in the contract so that the seller receives the exact U.S. Dollar value as prescribed in the contract. U.S. Dollars may also be used in contract terms.
Obtain license (using Internet-based procedure) from the Bureau of Industry and Security of the United States Department of Commerce in Washington, D.C.
Obtain required health certifications from the United States Department of Agriculture (APHIS and/or FSIS) that will be acceptable to the Ministry of Agriculture of the Republic of Cuba. These health certifications can be obtained from the buyer, APHIS, FSIS, or from some State Department of Agricultures.
Establish shipping date(s) and method (sea or air). The buyer generally handles the chartering of the vessel or aircraft, but on some occasions the buyer asks the seller to coordinate the transportation from the United States to the Republic of Cuba, when such a decision has greater economic value or provides additional efficiencies.
Load shipment at United States-based port or United States-based air cargo facility. The contract for the loading of vessel or aircraft can be written as to commence only after seller has confirmed payment from buyer.
Create required documents (Bill of Lading and/or Mate’s Receipt) as required by the contract. Seller may want to retain a port agent (at a nominal fee) to coordinate document preparation and delivery.
Have United States-based freight forwarder (or appropriate representative), vessel, or air cargo service retain all original documents that authorize the vessel or aircraft to unload in the Republic of Cuba. If the contract permits the cargo to be delivered to the Republic of Cuba in advance of seller receiving payment, then cargo is not to be unloaded in the Republic of Cuba until seller confirms that payment has been received from the buyer.
Send (e-mail, facsimile, or courier) required documents (Bill of Lading, Mate’s Receipt, Invoice, Health Certifications, etc.) to paying bank (generally Paris, France-based <b>BNP Paribas</b> ; Paris, France- based <b>Societe General</b> ; or Toronto, Canada-based <b>Scotiabank</b> ). Buyer is to provide all bank information.
Paying bank notifies buyer in the Republic of Cuba of receipt of documents from seller and requests authority to transfer funds from buyer’s account to the seller’s account (funds may be denominated in U.S. Dollars and transferred to any United States-based bank or non-United States-based bank).
Buyer advises paying bank of authority to transfer funds to the seller.
Paying bank notifies seller of authority to transfer funds to seller.
Seller’s bank advises receipt of funds in seller’s account.
Seller releases documents to buyer and products may then be <b>a)</b> loaded at port or air cargo facility in the United States or <b>b)</b> unloaded from vessel and/or aircraft in the Republic of Cuba.

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The buyer may use an irrevocable L/C from a non-Republic of Cuba-based bank (or a foreign subsidiary of a United States-based bank) to the seller, not from a Republic of Cuba government-operated bank to the seller or from the buyer to the seller. A confirmed L/C could be required if the seller has concerns with respect to the credit worthiness of the non-Republic of Cuba-based bank. The L/C terms generally include the seller receiving payment when the product is loaded for transport to the buyer or when the product is delivered to the airport or port in the buyer's country, but not unloaded and transferred to the buyer. The L/C can be issued by the non-Republic of Cuba-based bank before the products are loaded by the seller onto a vessel or aircraft. Seller should note that under Article 13(b) of the Uniform Commercial Practices (UCP) Code, a bank has a reasonable period not to exceed seven (7) working days to examine the documents required by the L/C that are to be presented to the bank, thus the seller and buyer should accommodate this potential delay with respect to the settlement of the transaction. The seller should generally receive payment within twenty-four hours to forty-eight hours after the bank has completed its review of the required documents at the buyers's bank. The period of time for receipt of payment from the bank depends upon the location of the seller's bank.

**The following is an edited (for clarity) statement from an executive of a non-United States-based bank with respect to the use of a confirmed, irrevocable “on sight payment” Letter of Credit (L/C) for TSRA-authorized transactions with the Republic of Cuba:** The United States-based seller is not extending credit terms to Republic of Cuba government-operated Empresa Cubana Importadora Alimentos (Alimport), under the auspice of the Ministry of Foreign Trade of the Republic of Cuba, when a non-Republic of Cuba-based bank issues a L/C payable at sight at the counters of the non-Republic of Cuba-based bank. Once the L/C is issued by a bank, the L/C constitutes an irrevocable payment undertaking from the bank in favor of the beneficiary, as per the ICC Uniform Customs and Practice for Documentary Credits (UCP 500, revision 1993). Upon receipt of shipping documents, the bank has seven working days to verify that the documents conform to the terms of the L/C. In practice, and for TSRA-authorized transactions with Alimport, verification of shipping documents is completed by the bank in an abbreviated period. Once the L/C is issued, the bank has the obligation to remit the funds to the seller if documents presented by the seller conform to the terms of the L/C. Consequently, the seller receiving a L/C issued by a non-Republic of Cuba-based bank prior to products being transported from the United States is in a better position than using “Cash Against Documents (CAD)” since in CAD payment is done by the bank upon instructions from the buyer, such instructions being received only after the products have been loaded on the vessel or aircraft. The L/C is the most secured payment instrument that a seller can obtain.

**The following is an edited (for clarity) statement from an executive of a United States-based company with respect to the use of a confirmed, irrevocable “on sight payment” L/C for TSRA-authorized transactions with the Republic of Cuba:** The bank is correct in their statement. The L/C is a contractual obligation between the seller/shipper and the bank and based upon the documents required and presented under the credit. If any terms are given to the buyer, the terms are from the bank. Under normal trade, a L/C is considered as good as cash (if you agree that the credit rating of the bank is acceptable; BNP Paribas, for example, is a rated AA- by Standard & Poors), but you do not receive the funds until after the bank receives and processes the documents. Then, the bank makes payment to the seller, and this process can be another forty-eight hours to seventy-two hours before the funds are confirmed in the seller's bank. Under Article 13(b) of the UCP, a bank has “... reasonable time not to exceed seven working days...” to examine documents after receipt. After documents are deemed in order, payment is effected which will be normal transfer time of forty-eight hours to seventy-two hours. Under the worst case scenario, a “sight” payment L/C could

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take ten working days after the seller delivers the documents to the bank. Obtaining the documents to present to the bank can be a seven day to fourteen day process, depending upon the efficiencies of the seller and buyer. Properly constructed, a L/C transaction is much more secure than a CAD transaction. The issue is what is considered “cash” under the TSRA. In the global commercial environment, a L/C is the “same as cash” for a seller, as the seller is not providing credit to the buyer and the buyer is unable to obtain title documents until the bank has reviewed, processed, and effected payment to the seller.

**The following is the text of the TSRA relating to payment terms for exports from the United States to the Republic of Cuba:** “No United States person may provide payment or financing terms for sales of agricultural commodities or products to Cuba or any person in Cuba, except in accordance with the following terms (notwithstanding part 515 of title 31, Code of Federal Regulations, or any other provision of law): **(A)** Payment of cash in advance. **(B)** Financing by third country financial institutions (excluding United States persons or Government of Cuba entities), except that such financing may be confirmed or advised by a United States financial institution. Nothing in this paragraph authorizes payment terms or trade financing involving a debit or credit to an account of a person located in Cuba or of the Government of Cuba maintained on the books of a United States depository institution.”