

What To Ask About Organizations Focusing Upon The Republic Of Cuba

IRS REQUESTED TO INVESTIGATE “PRIVATE BENEFITS” OF CUBA ORGANIZATION- The Internal Revenue Service (IRS) of the United States Department of the Treasury in Washington, D.C., and other entities, have been requested to investigate whether officers and members of the board of directors of the a new business organization focusing upon the Republic of Cuba are violating regulations with respect to the receipt of private benefits. A result could be a revocation of the 501(c)(6) status, if such status has been received; issues relating to the Securities and Exchange Commission (SEC), for publicly-held companies that are members of the organization; and issues relating to the Foreign Agents Registration Act (FARA) administered by the United States Department of Justice in Washington, D.C., for members of the organization and for officers and directors of the organization.

According to the IRS, “*Section 501(c)(3) provides that the assets of an organization cannot inure to the benefit of private shareholders or individuals.*”

As of 26 March 2005, on the Internet site of the organization, there is “Links” listing. Under the section “NON-GOVERNMENT ORGANIZATIONS” the first link is to “Cuba Business Consultants” which does not identify consultants. Rather, the link goes directly to the Internet site of one consultant- the president of the organization. No other consultants are listed, although the first link uses the word “consultants.”

As of 26 March 2005, on the Internet home page of the organization, The third highlighted listing is a link to a document, “DOING BUSINESS IN CUBA: LESSONS LEARNED,” which, when accessed, links to “DOING BUSINESS IN CUBA and LESSONS LEARNED by [name], President of [consulting company name] and [name of organization]. The name of the consulting organization is highlighted with a direct link to the consulting company.

In January 2005, the Internet site of the organization included the following: “*Special Consulting: Agreement with [consultant’s company] to provide specialized consulting services at special fees for the Association and its members. Members with specific consulting service requirements can contract with [consultant’s company] for such services as assistance with U.S. Government travel and export licenses, assistance with trips to Cuba, and other services of an individual company nature.*”

According to the 12 January 2005 memorandum from the consultant, membership to the board of directors of the organization is for sale- which should be construed as a violation of good corporate governance. Members of a board of directors for a not-for-profit business organization should be elected on the basis of qualifications, not whether there is a payment. By definition, a membership-based not-for-profit organization is responsible to its membership and, thus, all members “*have a voice.*” According to the consultant’s memorandum: “**Special Board Membership: For an annual fee of \$4,500, the member will be invited to sit on the USCTA Board of Directors and/or Advisors and have a voice in the management and direction of the**

U.S.-Cuba Trade Association.” [NOTE: appearance of text has not been changed from what was published in the consultant’s memorandum.]

During the last several years, not-for-profit organizations have been subject to increasing federal, state, and local scrutiny. Given that there have been documented instances of what could be construed as unethical behavior by an officer of the new business organization focusing upon the Republic of Cuba, one would reasonably expect that members of the organization would have concern and that companies considering becoming a member of the organization would have legal counsel thoroughly investigate the allegations before committing funds to the organization.

However, there is a unique divergence between examples of possible unethical behavior and the level of concern with respect to the organization. The more examples that are documented, the more members the organization obtains. A disturbing conclusion may include that an embrace of the organization is deemed more important than the behavior of the organization due to the influence of the government of the Republic of Cuba. Thus, perhaps, a direct correlation between support for the organization and transactions with the government of the Republic of Cuba.

The U.S.-Cuba Trade and Economic Council **does not believe it is appropriate** for a director, officer, employee, or advisor of a not-for-profit organization to seek, provide, or direct revenue producing activity to an entity controlled or affiliated with a director, officer, employee, or advisor of the organization. Relevant agencies of the United States government believe such activities (private benefits) inconsistent with not-for-profit purposes.

The presidency of the U.S.-Cuba Trade and Economic Council is a non-compensated position and the current president neither provides Republic of Cuba-related consulting services nor has financial relationships with Republic of Cuba-related service providers.]

In the opinion of the U.S.-Cuba Trade and Economic Council, it is unethical for a consultant focusing upon one country to at the same time be the primary officer/director of a not-for-profit organization focusing upon the same country. Information and access available to the president/officers/directors of a national business organization is often proprietary, competitive, and far more valuable than information provided to individual consultants. **There is an inherent conflict of interest.** There is a debasing of the legitimacy of the organization.

“No other not-for-profit organization within the United States has provided more information, without compensation, about the Republic of Cuba than has the U.S.-Cuba Trade and Economic Council. The organization has an educational mandate which is taken seriously.”

When a member of a not-for-profit business organization seeks guidance from the president of the organization, the member need not fear whether **1)** information provided to the president will be used by the president for personal gain and/or **2)** information provided to the member will be used by the president for personal gain. Why would anyone want to place an organization in such a position? The not-for-profit statute is not intended **a)** to mask the provision of private benefits to officers and directors of the organization; **b)** use member-funded assets for personal gain and **c)** they should not be consultancies in disguise. Individuals accepting the reins of a not-for-profit organization do so with a measure of altruism, not with an expressed purpose of expecting monetary gain for themselves and their associates.

There have been reports that representatives of the government of the Republic of Cuba have “directed” United States-based companies to become members of the new business organization focusing upon the Republic of Cuba if the companies seek to either obtain transactions or retain transactions authorized by the *Trade Sanctions Reform and Export Enhancement Act (TSRA)* of

2000, which re-authorized the direct commercial (on a cash basis) export of food products (including branded food products) and agricultural products (commodities) from the United States to the Republic of Cuba, irrespective of purpose. There have been reports that United States-based companies have become members of the organization for the specific purpose of obtaining or retaining commercial transactions with the government of the Republic of Cuba. If accurate, there would be a question as to the governance of the organization- whether officers and/or directors of the organization are controlled, directly or indirectly, by the government of the Republic of Cuba, which might necessitate registration under the Foreign Agents Registration Act (FARA)

From the United States Department of Justice: The purpose of FARA is to insure that the American public and its law makers know the source of information (propaganda) intended to sway public opinion, policy, and laws. **Q. What constitutes an agent?** A. An agent of a Foreign principal is any individual or organization which acts at the order, request, or under the direction or control of a foreign principal, or whose activities are directed by a foreign principal who: 1. engages in political activities, or 2. acts in a public relations capacity for a foreign principal, or 3. solicits or dispenses any thing of value within the United States for a foreign principal, or 4. who represents the interests of a foreign principal before any agency or official of the U.S. government. **Q. How does the Act work?** A. 1. The Act requires every agent of a foreign principal to register with the Department of Justice and file forms outlining its agreements with, income from, and expenditures on behalf of the foreign principal. These forms are public records and must be supplemented every six months. 2. The Act also requires that informational materials (formerly propaganda) be labeled with a conspicuous statement that the information is provided by the agents on behalf of the foreign principal. The agent must provide copies of such materials to the Attorney General. 3. Any agent testifying before a committee of Congress must furnish the committee with a copy of his most recent registration statement. 4. The agent must keep records of all his activities and permit the Attorney General to inspect them. **Q. When does one register?** A. One must register within ten days of agreeing to become an agent and before performing any activities for the foreign principal. **Q. Does the Act limit an agent's lobbying and publishing informational materials (propaganda) for a Foreign principal?** A. No, the Act requires only registration. **Q. Are there criminal penalties for violating the Act?** A. Yes, failure to register, keep accounts, mark informational materials, provide a congressional committee with a copy of the agent's most recent registration, and agreeing to a contingent fee are crimes.

While representatives of the government of the Republic of Cuba publicly profess their neutrality with respect to consultant or organization selectivity, the government of the Republic of Cuba does seem to embrace those whom it can control, directly or indirectly, as confirmed through statements or actions. For example, a statement by a consultant: "*CIMEX [Republic of Cuba government-operated Corporacion Cimex S.A.] and all these entities I mentioned operate as free from Government control and oversight as any private sector firm in any country in the world. They borrow on the international financial markets for their own account, they are audited by leading Western accounting firms, and they are flexible to undertake any business deal they want.*" An individual familiar with the statements and the consultant, said, "*I never understood that Cuba government-owned companies including Cimex, Cubanacan, Gaviota, Habanos, Cubana, etc., which exist in a centrally-planned economy, operate so similarly to General Electric, General Motors, Microsoft, Target, Time Warner, and other United States-based companies. Gaviota, for example, is owned by the Revolutionary Armed Forces of Cuba. The statements by the consultant are astonishing in their ignorance- most important, however, is the motive behind the statements... to whom was the consultant seeking to cur favor?*" This consultant is embraced by the government of the Republic of Cuba.

Some companies have reported that representatives of the government of the Republic of Cuba

have stated that they, the companies, have received fewer contracts due to the perception that they are not more actively engaged in advocacy.

ECONOMIC EYE ON CUBA®- 21 March 2005: On 3 January 2005, a Washington, D.C.-based consultant issued a memorandum to promote the formation of a national business organization, to be located (on a paid basis) in the office of the consultant, because “*there is no association or organization aimed specifically at business with Cuba.*” According to the memorandum, “*There have been efforts in the past to start such an organization which have not been successful because of apparent lack of interest and therefore adequate funding.*” These statements are false. First, there is an “*organization aimed specifically at business with Cuba*” and that organization, the U.S.-Cuba Trade and Economic Council (<http://www.cubatrade.org>), was established in 1994. During the last ten years, some of the largest corporations in the world, from a variety of industry sectors, have been members of the organization. Second, several years ago the consultant established an organization, the U.S.-Cuba Trade Association (<http://www.uscuba.org>). Comparisons of the value of the information contained on the respective Internet sites are encouraged.

U.S.-Cuba Trade and Economic Council, Inc. Internet Site

Established in 1994, the U.S.-Cuba Trade and Economic Council provides an efficient and sustainable educational structure in which the United States business community may access accurate, consistent, and timely information and analysis on matters and issues of interest regarding United States-Republic of Cuba commercial, economic, and political relations. The U.S.-Cuba Trade and Economic Council does not take positions with respect to United States-Republic of Cuba political relations. The organization is a private, not-for-profit, membership-based corporation that accepts neither United States government funding nor non-United States government funding

The U.S.-Cuba Trade and Economic Council was the first and only organization within the United States to have received letters of cooperation from the Chamber of Commerce of the Republic of Cuba, the Ministry of Foreign Trade of the Republic of Cuba, the Ministry for Foreign Investment and Economic Cooperation of the Republic of Cuba, the Ministry of Tourism of the Republic of Cuba, the Ministry of Public Health of the Republic of Cuba, the Ministry of the Steel-Mechanical and Electronic Industry of the Republic of Cuba, the Ministry of Foreign Affairs of the Republic of Cuba, and the National Assembly of the Republic of Cuba.

The U.S.-Cuba Trade and Economic Council is the source of record of the United States business community for nonpartisan commercial information and economic information relating to the Republic of Cuba. The organization is referenced every day by media, companies, governments, academics, and individuals from throughout the world.

The U.S.-Cuba Trade and Economic Council interacts with officials of The White House, United States Department of State, United States Department of Commerce, United States Department of Agriculture, United States Department of the Treasury; and with members and staff of the United States Congress. The organization also interfaces with representatives from other country governments.

The U.S.-Cuba Trade and Economic Council has a focus on issues including United States law and United States government regulations relating to commercial activities within the Republic of Cuba by United States-based companies and travel to the Republic of Cuba by representatives of United States-based businesses. There continue to be changes relating to the export of food products, agricultural products, healthcare products, advertising, travel, promotion, exhibitions, and the entertainment industry.

The following items represent **information in the memorandum written by the consultant** and information on the Internet written by the consultant and information written by the U.S.-Cuba Trade and Economic Council:

The following is a statement of purpose of the U.S.-Cuba Trade and Economic Council, a statement that has been available on the Internet site of the organization for almost ten years. Are the word choices by the consultant coincidental? “*Established in 1994, the U.S.-Cuba Trade and Economic Council provides an efficient and sustainable educational structure in which the United States business community may access accurate, consistent, and timely information and analysis on matters and issues of interest*”

regarding United States-Republic of Cuba commercial, economic, and political relations. The U.S.-Cuba Trade and Economic Council does not take positions with respect to United States-Republic of Cuba political relations. The organization is a private, not-for-profit, membership-based corporation that accepts neither United States government funding nor non-United States government funding.”

In the consultant’s memorandum, the “goal, objectives, and strategy” for his national business organization: “To protect the current trade between U.S. firms and Cuba and to expand and increase the potential for future business between the United States and Cuba. Provide the U.S. business community with reliable, accurate, and timely information on all issues surrounding trade and business in and with Cuba; promote the full normalization of commercial relations between the United States and Cuba; help U.S. companies understand and know how to undertake business with Cuba. To create a mechanism through which companies, organizations, and interested parties can be informed on a regular and timely manner about issues related to trade and business with Cuba in order for them to take whatever action is deemed appropriate in their self interest.”

According to the consultant’s memorandum, he will “create and launch the U.S.-Cuba Trade Association (USCTA) which will serve as a focal point for private sector efforts aimed at developing and strengthening economic and commercial ties between companies in the United States and commercial entities and partners in Cuba.” The use of the “create” in the statement is **not correct**. **The USCTA was in fact established several years ago**, with “administrative offices” in Norcross, Georgia. According to the Internet site, “The U.S.-Cuba Trade Association – founded to serve as a focal point for private sector efforts aimed at developing and strengthening economic and commercial ties between companies in the United States and commercial partners in Cuba. Some of the Board of Advisors shown below will also serve on the Board of Directors as indicated by *. The Board is still in formation but includes: [the consultant]* [as] president [of the USCTA]; Alfredo Duran, former President, Cuba Committee for Democracy; Lawrence Edge*, president, World Development Federation; Alex Lopez* president, Interplanner; Phil Peters, vice president, Lexington Institute; Daniel Waltz*, partner, Patton Boggs LLP; and Lissa Weinmann*, executive director, Americans for Humanitarian Trade with Cuba.” The consultant has engaged in commercial activities and/or has relationships with each of these individuals.

In the consultant’s memorandum, the consultant listed the following membership categories: “Corporate Member: \$1,500; Corporate Member under \$1 million in annual revenues: 1,000; State Government Agency: 750; Other Trade Associations: 500; Educational and non-profits: 500; Individuals: 100; For those willing and in a position to help in launching this effort by providing upfront fees for a two year membership, the fees would be: Corporate Member: \$2,500; Corporate Member under \$1 million in annual revenues: 1,500; State Government Agency: 1,250; Other Trade Associations: 750; Educational and non-profits: 750; Individuals: 150”

On the Internet site of the USCTA, the consultant listed the following membership categories: “Corporate (\$1,500/member) – private-sector firms, corporations, organizations or individuals with a commercial interest in furthering trade and commerce between Cuba and the United States. Government Agencies (\$1,000/member) – with an interest in furthering trade and commerce between Cuba and the United States. Associate (\$895/member) - individuals, organizations and companies based outside of the U.S. with a commercial interest in supporting the Association with respect to trade and commerce between Cuba and the US. Academic/Non-profit (\$500/member) – academic institutions and non-profit associations which support the mission and objectives of the Association”

According to the consultant’s memorandum, “A preliminary estimate is that the expenses for the first year of operations will require \$75,000. This is comprised of one year’s salary for a junior person to set up data base, establish e-mail alert system, monitor Congressional initiatives, and liaise with members on a regular basis; office rent [which would presumably be paid to the consultant], telephones and faxes; basic computer and other equipment purchase; start-up legal and accounting fees; and design and monthly maintenance of the web site. A coordinator will be hired to undertake the initial steps mentioned above. Once members join, a Board of Directors will be chosen. [The consultant] will serve as interim USCTA President until such time as the Board elects a permanent President. Offices will be located in Washington [in the office of the consultant]. After the US\$75,000.00 is secured, the consultant ‘would then charge the association 10% of additional monies raised as compensation.’”

Of particular ethical concern- on the Internet site of the USCTA, “Special Consulting: Agreement

with [consultant's company] to provide specialized consulting services at special fees for the Association and its members. Members with specific consulting service requirements can contract with [consultant's company] for such services as assistance with U.S. Government travel and export licenses, assistance with trips to Cuba, and other services of an individual company nature."

The U.S.-Cuba Trade and Economic Council **does not believe it is appropriate** for a director, officer, employee, or advisor of a not-for-profit organization to seek, provide, or direct revenue producing activity to an entity controlled or affiliated with a director, officer, employee, or advisor of the organization. Relevant agencies of the United States government believe such activities (private benefits) inconsistent with not-for-profit purposes. The presidency of the U.S.-Cuba Trade and Economic Council is a non-compensated position and the current president neither provides Republic of Cuba-related consulting services nor has financial relationships with Republic of Cuba-related service providers.]

In the opinion of the current president of the U.S.-Cuba Trade and Economic Council, it is unethical for a consultant focusing upon one country to at the same time be the primary officer/director of a not-for-profit organization focusing upon the same country. Information and access available to the president/officers/directors of a national business organization is often proprietary, competitive, and far more valuable than information provided to individual consultants. **There is an inherent conflict of interest.** There is a debasing of the legitimacy of the organization.

"No other not-for-profit organization within the United States has provided more information, without compensation, about the Republic of Cuba than has the U.S.-Cuba Trade and Economic Council. The organization has an educational mandate which is taken seriously."

When a member of a not-for-profit business organization seeks guidance from the president of the organization, the member need not fear whether **1)** information provided to the president will be used by the president for personal gain and/or **2)** information provided to the member will be used by the president for personal gain. Why would anyone want to place an organization in such a position? The not-for-profit statute is not intended **a)** to mask the provision of private benefits to officers and directors of the organization; **b)** use member-funded assets for personal gain and **c)** they should not be consultancies in disguise. Individuals accepting the reins of a not-for-profit organization do so with a measure of altruism, not with an expressed purpose of expecting monetary gain for themselves and their associates.

According to the consultant's memorandum, the names of members of the USCTA will be made public. *"There are some organizations dealing with Cuba whose membership is a secret. USCTA will be transparent and open and its members listed on its web site and other Association materials."* There is transparency in what the consultant seeks to do; although what is transparent may be what the consultant believes has been camouflaged.

The consultant's memorandum references, but does not identify, an organization whose membership is "secret," however the consultant's memorandum also provides an extensive list of organizations whom the consultant expresses are involved with Republic of Cuba-related issues. The U.S.-Cuba Trade and Economic Council was not included in this listing. When the U.S.-Cuba Trade and Economic Council was established in 1994, the commercial, economic, and political environment relating to United States-Republic of Cuba commercial, economic, and political relations was quite different than 2004. United States-based and non-United States-based companies that became members of the organization **specifically requested** that their names not be made public- primarily for competitive reasons, but there were also public sector considerations (including consumer boycotts). During the last ten years, some members of the organization have publicized their membership. The organization chose, and still chooses, to permit members to determine how they present themselves. In addition, by not actively publicizing member names, the organization would gain members on the basis of the value of the organization, not "bootstrapping" one company against another.

According to the consultant's memorandum, the USCTA will *"Provide to members a monthly newsletter on business and political events related to Cuba. Arrangements have already been made with Cuba*

Trade and Investment News, which is currently published in Tampa, Florida to be mailed to each member as part of its membership.”

The U.S.-Cuba Trade and Economic Council deems inappropriate for an organization to rely on third-party publications as a means of informing members, as members of organizations make annual membership dues payments to access value **from those directly managing the organization**. Third-party publications must be **in addition to** in-house publications. The ECONOMIC EYE ON CUBA©, which is provided to members of the U.S.-Cuba Trade and Economic Council, is read by senior-level executives of United States-based companies, senior-level executives of non-United States-based companies, government officials (United States, Republic of Cuba, and other countries), organizations, and newspaper, magazine, television, and radio journalists from throughout the world. The ECONOMIC EYE ON CUBA© is the most widely-sourced publication for commercial information regarding the Republic of Cuba. The U.S.-Cuba Trade and Economic Council previously provided, in addition to the ECONOMIC EYE ON CUBA©, the magazine Business Tips on Cuba, which was published by a Republic of Cuba government-operated entity. The publication ceased operations several years ago.

According to the consultant’s memorandum, “The regulations governing any and all activities related to lobbying Congress, providing information to members of Congress, and undertaking any effort to influence policy are strict and clear. Since one of the activities of USCTA will be just this, it will be necessary to satisfy any and all such regulations and register USCTA accordingly. This will offer all members, staff, directors, and officers full legal protection. Legal assistance will be required. Similarly it is necessary for all activities of USCTA to be fully transparent with regard to all finances. An accounting firm will be also required to guarantee all safeguards in this area.”

The U.S.-Cuba Trade and Economic Council does not take positions with respect to United States-Republic of Cuba political relations. This decision was taken in 1994 as a means to provide the organization with credibility- information provided by the organization would be deemed tainted if the organization was engaged in lobbying. In addition, if a 501(c)(6) not-for-profit business organization engages in political activity, a corresponding proportion of membership dues are not tax deductible.

**Concerns About Previous Activities Of The Consultant And Others
As Published (2001 To 2004) In The ECONOMIC EYE ON CUBA© newsletter**

NOTE: Some of the regulations and policies of the United States government referenced in issues of the ECONOMIC EYE ON CUBA© during the period 2001 through 2004 may have changed, and may not be reflective of current regulations or policies of the United States government.

ECONOMIC EYE ON CUBA©- 20 September 2004: On 8 October 2004, a Washington, D.C.-based consultant delivered a presentation, “*Doing Business In Cuba And Lessons Learned*” at an event in Tampa, Florida. The consultant stated that Republic of Cuba government operated companies (Corporacion Cimex S.A., Cubalse S.A., Cubanacan Corporacion S.A., Grupo de Turismo Gaviota, ITH, TRD, Caribe, and Caracol) “*operate as free from day-to-day Government control and oversight as any private sector firm in any country in the world.*” The consultant continued, “*But they only have one shareholder; the Government of Cuba. If they make their profit targets and operate with acceptable margins, they keep going. If they do not, people are fired, new management is inserted, and changes are made. What could be more capitalistic than this?*”

The consultant delivered a similar statement on 19 September 2000 before the Washington, D.C.-based United States International Trade Commission (ITC), a portion of which follows: “*CIMEX [Republic of Cuba government-operated Corporacion Cimex S.A.] and all these entities I mentioned operate as free from Government control and oversight as any private sector firm in any country in the world. They borrow on the international financial markets for their own account, they are audited by leading Western accounting firms, and they are flexible to undertake any business deal they want.*”

An individual familiar with the statements and the consultant, said, “*I never understood that Cuba government-owned companies including Cimex, Cubanacan, Gaviota, Habanos, Cubana, etc., which exist in a centrally-planned economy, operate so similarly to General Electric, General Motors, Microsoft, Target, Time Warner, and other United States-based companies. Gaviota, for example, is owned by the Revolutionary Armed Forces of Cuba. The statements by the consultant are astonishing in their ignorance- most important, however, is the motive behind the statements... to whom was the consultant seeking to cur favor?*”

A Portion Of An Article From The Associated Press (30 December 2004)

“HAVANA – Moving to further centralize the communist state's control over the economy, the government's Central Bank announced Thursday that individual state companies would no longer handle foreign exchange. Beginning Saturday a single government account will be established for foreign currency and for convertible Cuban pesos, an exchangeable currency that trades 1-1 to the U.S. dollar and that is now used as the primary form of legal tender on the island. Under a series of steps to be introduced in the coming months, state enterprises will relinquish control over foreign exchange and convertible Cuban peso accounts. Any profits from sales or services will have to be deposited into that single government account. The move will severely limit any remaining autonomy inside the various state enterprises. It will also effectively turn back an earlier government policy calling for state enterprises to move toward self-financing by pouring earned foreign income back into their operations. Also, a state company that now wishes to buy any goods or services available only in foreign currency will need special approval from a new Foreign Exchange Approval Committee. The announcement was the latest in a series of moves in recent months aimed at reasserting government control over the economy in general, and over foreign currency income in particular.”

ECONOMIC EYE ON CUBA©- 20 September 2004: On 8 October 2004, a Washington, D.C.-based consultant delivered a presentation, “*Doing Business In Cuba And Lessons Learned*” at an event in Tampa, Florida. The consultant stated that the Cuban Democracy Act (CDA) of 1992, which re-authorized the direct export of healthcare products from the United States to the Republic of Cuba, required United States-based companies to “*provide certification to the U.S. Government of the end user- which patient is consuming which pills or being examined by which medical machine. This condition has proven to be insurmountable.*” The statement is not correct. The Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury in Washington, D.C., and the Bureau of Industry and Security (BIS) of the United States Department of Commerce in Washington, D.C., do not require the information espoused by the Washington, D.C.-based consultant.

According to the BIS: “You must describe here [Commerce Department Multipurpose Application Form BXA-748P] or in the attached letter of explanation the on-site verification/monitoring arrangements you have made to ensure that the items are routed to, and used by, those intended. This should include the name of the party doing the monitoring, the frequency of monitoring and who will retain records of monitoring. The monitoring entity options include, but are not limited to, monitoring by the applicant, religious or charitable groups, western diplomats or international nongovernmental groups. The monitor must keep records of the on-site inspections and make them available to U.S. Government authorities upon request. Records must be retained for five years from the date of export.”

“Items requiring a license are subject to a general policy of denial, except as follows: (1) Medicines and Medical Devices. Applications to export medicines and medical devices as defined in part 772 of the EAR will generally be approved, except: (i) To the extent restrictions would be permitted under section 5(m) of the Export Administration Act of 1979, as amended (EAA), or section 203(b)(2) of the International Emergency Economic Powers Act; (ii) If there is a reasonable likelihood that the item to be exported will be used for purposes of torture or other human rights abuses; (iii) If there is a reasonable likelihood that the item to be exported will be reexported; (iv) If the item to be exported could be used in the production of any biotechnological product; or (v) If it is determined that the United States government is unable to verify, by on-site inspection or other means, that the item to be exported will be used for the purpose for which it was intended and only for the use and benefit of the Cuban people, but this exception shall not apply to donations of medicines for humanitarian purposes to a nongovernmental organization in Cuba.”

United States-based companies have exported, under license from the BIS, substantive quantities of medical equipment, medical instruments, medical supplies, and pharmaceuticals to the Republic of Cuba since 1992.

ECONOMIC EYE ON CUBA©- 26 May 2003: The following are written statements by a Washington, D.C.-based consultant who is a sponsor of a February 2003 conference planned for two days in Cancun, Mexico, and one “*fully hosted*” day in the city of Havana, Republic of Cuba. The first statement is false. The second statement fundamentally misstates the self-proclaimed socialist character of the government of the Republic of Cuba, as confirmed by the electorate in a recent referendum; and equates the commercial, economic, and political environment for companies located in the United States, Canada, Japan, and United Kingdom, among other countries, with the commercial, economic, and political environment for Republic of Cuba government-operated companies.

“*Although the U.S. law allows for the sale of agricultural and medical products, this has not happened. Part of the reason has to do with the Cuban pharmaceutical business itself. But as much, if not more, has to deal with the fine*

print of the U.S. law. Unlike the sale of agricultural products, there is a caveat to the sale of any medical products. In the case of the latter, the seller must provide certification to the U.S. Government of the end user - which patient is consuming which pills or being examined by which product. This condition has proven to be insurmountable. U.S. firms do not have the resources to undertake such verification if indeed one could devise a suitable plan to undertake such an exercise. And the Cuban Government objects on grounds of principle. A change in the U.S. law must be made if any such sales are ever to occur.”

Fact: United States-based companies, through non-United States-based subsidiaries, sold healthcare products to the Republic of Cuba through 1992. The Cuban Democracy Act (CDA), signed into law in October 1992, **a**) prohibited the continuation of healthcare product exports to the Republic of Cuba through non-United States-based subsidiaries of United States-based companies and **b**) re-authorized the direct export of healthcare products from United States-based companies to the Republic of Cuba. Neither the CDA nor the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury requires information as to “*which patient is consuming which pills or being examined by which product.*” The OFAC and the Bureau of Industry and Security (BIS) of the United States Department of Commerce do require that United States-based companies verify (for example, a letter from Republic of Cuba government-operated MediCuba) that the product is **1**) not being re-exported **2**) not being used for torture **3**) not being used for biotechnological research and **4**) not being used in U.S. Dollar-generating activities. Within the provisions of the CDA, United States-based companies have sold, and continue to sell, healthcare products to the Republic of Cuba.

“CIMEX [Republic of Cuba government-operated Corporacion Cimex S.A.] and all these entities I mentioned operate as free from Government control and oversight as any private sector firm in any country in the world. They borrow on the international financial markets for their own account, they are audited by leading Western accounting firms, and they are flexible to undertake any business deal they want.”

ECONOMIC EYE ON CUBA©- 2 November 2002: Members of the U.S.-Cuba Trade and Economic Council have asked for guidance with respect to a February 2003 conference planned for two days in Cancun, Mexico, and one “*fully hosted*” day in the city of Havana, Republic of Cuba. The organizers are marketing the conference as seeking to include Members of the United States Congress, thus, the conference has a proactive political component, which seems unnecessary and, perhaps, detrimental to maintaining a commercial focus. Of concern is the belated disclosure in October 2002 by the organizers that in August 2002 the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury in Washington, D.C., had denied authorization by the organizers to use a license issued by the OFAC to a not-for-profit organization (identified as a sponsor of the conference). Of concern is a Washington, D.C.-based law firm (which is a sponsor of the conference) permitting a letter (dated 26 June 2002) certifying that the conference was in compliance with OFAC regulations to remain in use for marketing purposes through 29 October 2002 (when a new letter was published), when the basis for the 26 June 2002 letter would seem to have been known to be inaccurate since at least August 2002. The belated disclosure by the organizers (and the law firm) of material changes to the conference need be viewed as issues of veracity. The U.S.-Cuba Trade and Economic Council, which neither requested nor has a role in the conference, wrote to the OFAC at the suggestion of members of the organization. The letter from the U.S.-Cuba Trade and Economic Council to the OFAC and the response from the OFAC is provided for your review [see attached]. Of concern is the organizers seem to have interlocking relationships (commercial, etc.) which may compromise the provision of information to participants at the conference. Of concern is the rationale used by the organizers to suggest the expenditure of resources by United States-based companies to travel to Mexico to meet with representatives of Republic of Cuba government-operated entities when the OFAC will issue licenses to representatives of United States-based companies to visit the Republic of Cuba to meet with representatives of Republic of Cuba government-operated entities. Of concern is the failure of the organizers (and the law firm in its 29 October 2002 letter) to disclose in marketing materials that the OFAC has a regulatory presumption that an individual subject to United States law having visited the Republic of Cuba on a “*fully hosted*” basis is presumed to be in violation of regulations administered by the OFAC.

Since 29 October 2002, the organizers of the conference are marketing the conference as two days in Cancun, Mexico, and one “*fully hosted*” day in Havana, Republic of Cuba.

The marketing of “*fully hosted*” gatherings to the Republic of Cuba has been subject to protracted scrutiny by the United States government, members of the United States Congress, and media. Generally, there is no reason for a representative of a United States-based company seeking to market to Republic of Cuba-based entities products authorized by the Bureau of Industry and Security (BIS) of the United States Department of Commerce in Washington, D.C., to visit the Republic of Cuba on a “*fully hosted*” basis, as licenses are available from the OFAC. “*Fully hosted*” travel to the Republic of Cuba is authorized by the OFAC; and a license from the OFAC is not required for a “*fully hosted*” visit to the Republic of Cuba. However, the OFAC previously viewed an individual subject to United States law having visited the Republic of Cuba on a “*fully hosted*” basis to be in compliance with regulations administered by the OFAC. The United States Customs Service and the United States Immigration and Naturalization Service (INS) have *increased enforcement* of existing OFAC regulations (especially with respect to

“fully hosted” travelers) at entry points throughout the United States and at pre-clearance entry point operations in other countries.

The OFAC and the United States Customs Service confirm that “fully hosted” travelers should expect the following: **1) A letter from an individual or entity not subject to United States law (or a letter from a United States-based law firm) confirming that the individual subject to United States law was “fully hosted” will not be accepted as “proof” that a visit was “fully hosted.”** **2) The individual subject to United States law will be required to produce receipts for all daily expenses within the Republic of Cuba which demonstrate that all of the expenses were paid by an individual or entity not subject to United States law.** **3) At the entry point to the United States, the United States Customs Service may make a photocopy of the passport of the individual subject to United States law. The passport number may be entered in a permanent database which could subject the individual to secondary inspection(s) at a later date upon returning to the United States from other countries.** **4) The individual subject to United States law will be required to submit a signed letter confirming, under penalty of perjury, that all daily expenses incurred within the Republic of Cuba on behalf of the individual subject to United States law were paid for by an individual or entity not subject to United States law.** **5) The OFAC may send a letter to the individual subject to United States law requiring additional proof that the visit to the Republic of Cuba was “fully hosted.”**

During the last twelve months, there has been a proliferation of Republic of Cuba-focused consultancies, conferences, and organizations within which the directors, advisors, officers, and employees have sometimes unidentified (or unpublicized) material linkage- with a result that the focus is upon creating revenue sources for the principals, rather than providing accurate, consistent, timely, and unbiased information. Some of these organizations formally direct members to consultancies (and, reportedly, also to law firms) controlled by directors and officers of the organization. According to an attorney who handles Republic of Cuba-related matters for United States-based companies, “Clearly, far too many of these consultants and organization principals focus upon enriching themselves, rather than upon providing service to clients or members. A consultant should not be managing an organization when the consultant’s livelihood can be enhanced by the activities of the organization- capitalizing on often proprietary information known only to the organization for personal financial gain. This is, in my opinion, unethical and a conflict of interest. Not-for-profit organizations are not intended to be personal piggybanks. I would hope that the Cuban government feels the same way and I would suspect that the I.R.S. [Internal Revenue Service] would review the situation as well.”

The U.S.-Cuba Trade and Economic Council does not believe appropriate for a director, officer, employee, or advisor of a not-for-profit organization to seek, provide, or direct revenue producing activity to an entity controlled or affiliated with a director, officer, employee, or advisor of the organization. Relevant agencies of the United States government believe such activities inconsistent with not-for-profit purposes.

ECONOMIC EYE ON CUBA©- 19 May 2003: United States-based companies are receiving solicitations from a Washington, D.C.-based consultant for a “U.S.-Cuba Travel Conference” to be held in Cancun, Mexico, in October 2003, including a “fully hosted” visit to the Republic of Cuba. The Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury in Washington, D.C., has not licensed this event; a review has been requested to determine whether the event is subject to licensing- is the organization of and/or participation in an event that may provide value (or service) to a Republic of Cuba national constitute an activity that is prohibited unless licensed by the OFAC. The value (or service) could be defined as marketing- public relations, lobbying, etc. Reportedly, the United States Department of Justice in Washington, D.C., is reviewing whether the organizer of the event is subject to provisions (“agent of influence”) of the Foreign Agents Registration Act of 1938. The United States Department of State in Washington, D.C., is reportedly reviewing whether the event is consistent with United States policy toward the Republic of Cuba.

The organizer of the event has contacted United States-based companies that have exported agricultural products and food products to Republic of Cuba government-operated Empresa Cubana Importadora de Alimentos (Alimport), under the auspice of the Ministry of Foreign Trade of the Republic of Cuba (MINCEX), through provisions of the *Trade Sanctions Reform and Export Enhancement Act (TSRA)* of 2000, which re-authorized the direct commercial (on a cash basis) export of food products (including branded food products) and agricultural products from the United States to the Republic of Cuba, irrespective of purpose.

The organizer of the event has referenced Alimport to extract participation, specifically financing (sponsorship), from these companies. One company representative reported that the tactic is “*extortion, which hopefully Alimport is not a party to; this guy is seeking to line his pockets at our expense... the last event he did in Cancun was clearly a political event- with Danny Glover [an actor] to which our participation was also ‘required.’ The Cubans need to stop tying business with politics and lobbying- especially after recent events in Cuba.*”

Representatives of United States-based companies are advised to request an opinion from the OFAC prior to acceptance of an invitation to participate in any event in a third country organized by an individual subject to United States law where the event is specifically focused upon the Republic of Cuba. Representatives of United States-

based companies are advised to request an opinion from the OFAC prior to acceptance of an invitation to visit the Republic of Cuba on a “fully hosted” basis and not accept a law firm opinion in lieu of an opinion from the OFAC.

According to a Member of the United States Congress, “*This is nuts. Focusing on travel to Cuba as a constitutional issue is one thing, but promoting tourism to Cuba is another. The timing of this event could not be worse. The President clearly believes that revenues from U.S. tourists in Cuba will only maintain the political system in Cuba. The word ‘tourism’ for the President and his advisors is like waving a red cape in front of a bull- especially relating to Florida, for both parties [Democrat and Republican]. These unhelpful references by some of my colleagues to ‘spring break’ and ‘wonderful beaches’ only focus attention on the fact that Cubans are not permitted to go to these ‘wonderful beaches,’ which has nothing to do with U.S. policy. What are these people thinking?’*”

In March 2003, the OFAC issued expanded regulations governing “fully hosted” travel to the Republic of Cuba by individuals subject to United States law. The OFAC and United States Department of State confirm that the focus on “fully hosted” travel was principally a result of activities by a Washington, D.C.-based consultant (in conjunction with a Washington, D.C.-based law firm) who has provided, primarily through gatherings in Cancun, Mexico, “services in Cuba” that have not been licensed by the OFAC. According to the OFAC, an individual subject to United States law who coordinates or participates in a “fully hosted” visit to the Republic of Cuba may be considered as providing a service to a Republic of Cuba national, a prohibited activity unless licensed by the OFAC.

The March 2003 expanded regulation: 5. Amend § 515.420 by revising the introductory text of paragraph (a) and adding a note to paragraph (a) to read as follows: § 515.420 Fully-hosted travel to Cuba. (a) A person subject to the jurisdiction of the United States will not be considered to violate the prohibition on engaging in travel-related transactions in which Cuba has an interest when all costs of, and all transactions related to, the travel of that person (the “fully-hosted” traveler) are covered or entered into by a person not subject to the jurisdiction of the United States, provided that: Note to paragraph (a): The interpretation set forth in this paragraph applies only to a fully-hosted traveler’s travel-related transactions and not to other transactions in Cuba. For example, a fully-hosted traveler is still prohibited from providing services in Cuba to a third-country national.

Although “fully hosted” travel to the Republic of Cuba is authorized by the OFAC, there is a regulatory position by the OFAC that an individual subject to United States law having visited the Republic of Cuba on a “fully hosted” basis is presumed to be in violation of regulations administered by the OFAC. The presumption of violation by the OFAC has often not been disclosed in marketing materials for “fully hosted” visits to the Republic of Cuba.

Previously, the OFAC viewed an individual subject to United States law having visited the Republic of Cuba on a “fully hosted” basis to be in compliance with OFAC regulations.

The United States Department of Homeland Security has *increased enforcement* of existing OFAC regulations (especially with respect to “fully hosted” travelers) at entry points throughout the United States and at pre-clearance entry point operations in other countries.

ECONOMIC EYE ON CUBA©- 7 October 2002: Representatives of United States-based of companies have reported receiving an increasing number of solicitations from organizations, companies, consultants, and law firms to participate in conferences and for visits to the Republic of Cuba. The receipt of these solicitations has increased since the conclusion of the *U.S. Food & Agribusiness Exhibition* held at the Palacio de Convenciones de la Habana (Pabexpo) in the city of Havana, Republic of Cuba, from 26 September 2002 through 30 September 2002. The following is some advice for consideration:

First. Representatives of United States-based companies are advised to avoid visiting the Republic of Cuba under the auspice of a license not issued to the United States-based company unless the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury in Washington, D.C., specifically confirms that such travel is authorized. Representatives of United States-based companies are advised not to rely on an opinion from a law firm as to whether a third-party license is valid for travel to the Republic of Cuba; rather, contact the OFAC at telephone (202) 622-2480 or facsimile (202) 622-1657 to request a written opinion. The OFAC does issue non-company specific licenses, such as to PWN Exhibicon International LLC for the *U.S. Food & Agribusiness Exhibition*, but these licenses specifically define a commercial purpose, not an educational or other purpose. The OFAC has issued licenses to United States-based companies valid for multiple visits to the Republic of Cuba during a one-year period. Draft letters to the OFAC are available at no cost on the Internet at <http://www.cubatrade.org>

Second. When visiting the Republic of Cuba, representatives of United States-based companies and United States-based commercial organizations are advised to request a briefing (commercial, economic, and political) from representatives of the United States Interests Section in the city of Havana. A briefing may be scheduled by contacting Mr. Kevin Whitaker, Coordinator- Office of Cuban Affairs at the United States Department of State in Washington, D.C., at telephone (202) 746-9273 or facsimile (202) 736-4476.

Third. When visiting the Republic of Cuba, representatives of United States-based companies and United States-based commercial organizations are advised to maintain a meeting schedule specifically- related to purpose of the visit as authorized by the OFAC. For example, a visit to a Republic of Cuba government-operated biotechnical facility would not be appropriate for representatives of a United States-based food product company; nor would meetings with officials of the government of the Republic of Cuba that are of a singular political nature. A meeting schedule inconsistent with the provisions of a license from the OFAC may result in the OFAC implementing additional licensing restrictions.

Fourth. Given the increasing scrutiny by agencies of the United States government with respect to commercial activities by United States-based companies relating to the Republic of Cuba, representatives of United States-based companies receiving solicitations (consulting, conference, event, travel services, etc.) from a United States-based company, United States-based consultant, or United States-based organization are advised to request a copy of the OFAC license upon which the solicitation is based. If questions remain, contact the OFAC; Bureau of Industry and Security (BIS) of the United States Department of Commerce in Washington, D.C.; and Office of Cuban Affairs at the United States Department of State in Washington, D.C., to determine whether the company, consultant, or organization has been or is the subject of any United States government agency enforcement action or other interest.

Fifth. There are United States-based consultants that have licenses from the OFAC to provide services to United States-based companies with respect to marketing BIS-authorized products to Republic of Cuba-based entities; United States-based companies are advised to obtain a copy of the OFAC license from the United States-based consultant. Retaining consultants and attending conferences are not necessary to assist United States-based companies with TSRA-authorized transactions. The government of the Republic of Cuba has a preference to engage directly with representatives of United States-based companies rather than through United States-based consultants, who, in some cases, have reportedly requested fees up to US\$10,000.00 to prepare documents (often one-page in length) for submission to the OFAC or to the BIS. The use of legal counsel may be of value in certain instances with respect to drafting of contracts and compliance with OFAC regulations and BIS regulations. At this time, the most cost-effective means for United States-based companies to obtain ongoing marketing services within the Republic of Cuba is through the use of a Republic of Cuba-based distributor or agent with a specific knowledge base (verifiable performance record), or through the use of a non-Republic of Cuba-based distributor or agent which has a permanent presence within the Republic of Cuba.

Sixth. Verify that no director, officer, employee, or advisor of the organization, company, consultancy, or law firm has an affiliation with consultancies or other entities that market Republic of Cuba-related services, resulting in “*packaging*” or “*cross-marketing of services*” which may be a conflict of interest and, therefore, result in questionable objectivity, due to cooperative financial incentives amongst the parties. The U.S.-Cuba Trade and Economic Council does not believe appropriate for a director, officer, employee, or advisor of a not-for-profit organization to seek, provide, or direct revenue producing activity to an entity controlled or affiliated with a director, officer, or advisor of the organization. Relevant agencies of the United States government clearly find such activities inconsistent with not-for-profit purposes.

ECONOMIC EYE ON CUBA®- 7 April 2003: The Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury in Washington, D.C., has issued expanded regulations governing “*fully hosted*” travel to the Republic of Cuba by individuals subject to United States law.

5. Amend § 515.420 by revising the introductory text of paragraph (a) and adding a note to paragraph (a) to read as follows: § 515.420 Fully-hosted travel to Cuba. (a) A person subject to the jurisdiction of the United States will not be considered to violate the prohibition on engaging in travel-related transactions in which Cuba has an interest when all costs of, and all transactions related to, the travel of that person (the “fully-hosted” traveler) are covered or entered into by a person not subject to the jurisdiction of the United States, provided that:

Note to paragraph (a): The interpretation set forth in this paragraph applies only to a fully-hosted traveler’s travel-related transactions and not to other transactions in Cuba. For example, a fully-hosted traveler is still prohibited from providing services in Cuba to a third-country national.

The OFAC and United States Department of State in Washington, D.C., confirm that the impetus for the focus on “fully hosted” travel to the Republic of Cuba was principally a result of activities by a Washington, D.C.-based consultant (in conjunction with a Washington, D.C.-based law firm) who has provided, primarily through gatherings in Cancun, Mexico, “services in Cuba” that have not been licensed by the OFAC. According to the OFAC, an individual subject to United States law who coordinates or participates in a “fully hosted” visit to the Republic of Cuba may not provide a service to a Republic of Cuba national, unless that service has been licensed by the OFAC. A service may be defined as coordinating visits by individuals subject to United States law to the Republic of Cuba which incur a benefit to a Republic of Cuba national.

Representatives of United States-based companies are advised to request an opinion from the OFAC prior to acceptance of an invitation to visit the Republic of Cuba on a “fully hosted” basis and not accept a law firm opinion

in lieu of an opinion from the OFAC.

Although “fully hosted” travel to the Republic of Cuba is authorized by the OFAC, there is a regulatory position by the OFAC that an individual subject to United States law having visited the Republic of Cuba on a “fully hosted” basis is presumed to be in violation of regulations administered by the OFAC. The presumption of violation by the OFAC has often not been disclosed in marketing materials for “fully hosted” visits to the Republic of Cuba.

Previously, the OFAC viewed an individual subject to United States law having visited the Republic of Cuba on a “fully hosted” basis to be in compliance with OFAC regulations.

The United States Customs Service and the United States Immigration and Naturalization Service (INS) have *increased enforcement* of existing OFAC regulations (especially with respect to “fully hosted” travelers) at entry points throughout the United States and at pre-clearance entry point operations in other countries.

ECONOMIC EYE ON CUBA®- 5 February 2001: A company becoming a member of the U.S.-Cuba Trade and Economic Council has reported receiving a solicitation from a consultant with respect to **a)** sponsorship opportunities and **b)** participation in a multi-day “fully hosted” business-focused gathering planned to be held in the city of Havana, Republic of Cuba, in June 2001. The marketing of “fully hosted” gatherings to the Republic of Cuba has been subject to protracted scrutiny by the United States government, United States Congress, and by media organizations. Although “fully hosted” travel to the Republic of Cuba is authorized by the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury, there is a written regulatory position by the OFAC that an individual subject to United States law having visited the Republic of Cuba on a “fully hosted” basis is presumed to be in violation of regulations administered by the OFAC. Previously, the OFAC viewed an individual subject to United States law having visited the Republic of Cuba on a “fully hosted” basis to be in compliance with regulations administered by the OFAC. There have been occasions when the presumption of violation by the OFAC has not been disclosed in marketing materials for “fully hosted” visits to the Republic of Cuba. The United States Customs Service and the United States Immigration and Naturalization Service (INS) have reportedly *increased enforcement* of existing OFAC regulations (especially with respect to “fully hosted” travelers) at entry points throughout the United States and at pre-clearance entry point operations in other countries. There are categories under which the OFAC will provide specific licenses (some valid for multiple visits during a one year period) to representatives of United States-based companies to visit the Republic of Cuba. Extreme caution should be taken when considering a “fully hosted” visit to the Republic of Cuba.

The OFAC has provided licenses (in some cases issued within twenty-four hours; normal processing is 14 to 30 days) to visit the Republic of Cuba to identify commercial opportunities for agricultural products, air charter services, artwork, communications, cultural events, entertainment, exhibitions, farm supplies, food sales, informational materials, medical equipment, medical instruments, medical supplies, medicated products, medicines, money transfer services, package delivery services, pharmaceuticals, publications, telecommunications; and travel services.

ECONOMIC EYE ON CUBA®- 23 September 2002: At least three individuals subject to United States law engaged in unauthorized marketing activities during the *U.S. Food & Agribusiness Exhibition* held at the Palacio de Convenciones de la Habana (Pabexpo) in the city of Havana, Republic of Cuba, from Thursday 26 September 2002 through Monday, 30 September 2002. These individuals were not exhibitors and each knew that such activity was not authorized. These individuals distributed marketing materials and solicited clients, knowing that such activity was specifically prohibited by the organizer (and requested by the exhibitors) of the *U.S. Food & Agribusiness Exhibition*, Westport, Connecticut-based PWN Exhibicon International LLC.

At least one of the individuals [the consultant] continued to engage in the unauthorized marketing activity after being advised to cease the unauthorized marketing activity by both the organizer of the *U.S. Food & Agribusiness Exhibition* and by representatives of Republic of Cuba government-operated Empresa Cubana Importadora Alimentos (Alimport), under the auspice of the Ministry of Foreign Trade of Cuba (MINCEX).

These marketing activities were not authorized by the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury in Washington, D.C. If an exhibitor received a consulting services solicitation or other type of solicitation during the *U.S. Food & Agribusiness Exhibition* from an individual subject to United States law, please contact PWN Exhibicon International LLC at telephone (203) 222-8660; Facsimile (203) 222-8335; or e-mail: pwnathan@aol.com

Given the increasing scrutiny by agencies of the United States government with respect to commercial activities by United States-based companies relating to the Republic of Cuba, representatives of United States-based companies receiving solicitations (consulting, conference, event, travel services, etc.) from a United States-based company,

consultant, or organization are advised to contact the OFAC; Bureau of Industry and Security (BIS) of the United States Department of Commerce in Washington, D.C.; and Office of Cuban Affairs at the United States Department of State in Washington, D.C., to determine whether the company, consultant, or organization has been or is the subject of any United States government agency enforcement action or other interest.

According to many representatives of the United States-based companies that participated in the *U.S. Food & Agribusiness Exhibition*, a goal was to identify Republic of Cuba-based companies and non-Republic of Cuba-based (specifically non-United States-based) companies who can be retained (generally on a commission basis) as agents or distributors to market agricultural products and food products throughout the Republic of Cuba.

Retaining United States-based consultants and attending conferences are not necessary to assist United States-based companies with TSRA-authorized transactions. Information is available (generally at no cost) through a variety of sources including the Cuban Interests Section in Washington, D.C., and Alimport. The government of the Republic of Cuba has continued to reiterate a preference to engage directly with representatives of United States-based companies rather than through consultants, who, in some cases, have reportedly requested fees up to US\$10,000.00 to prepare documents (often one-page in length) for submission to the OFAC. The use of legal counsel may be of value in certain instances with respect to drafting of contracts and compliance with TSRA provisions. The most cost-effective means for United States-based companies to obtain ongoing marketing services within the Republic of Cuba is through the use of a Republic of Cuba-based distributor or agent, or through the use of a non-Republic of Cuba-based distributor or agent which has a permanent presence within the Republic of Cuba.

ECONOMIC EYE ON CUBA®- 22 April 2002: A United States-based agricultural commodity organization has reported that a Washington, D.C.-based law firm informed a state agricultural organization that without retaining the law firm for up to US\$10,000.00, the organization might wait for six to eight months to obtain a travel license from the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury in Washington, D.C.

In November 2001, an executive of a United States-based agricultural commodity company reported that a Washington, D.C.-based consultant requested US\$5,000.00 to draft a travel license request to the OFAC. The “*disgusted*” executive did not make the payment, but did contact the OFAC for assistance and reported the name of the consultant to the OFAC. The OFAC assisted the company at no cost. The company has since signed contracts with Republic of Cuba government-operated Empresa Cubana Importadora de Alimentos (Alimport) for the export of agricultural commodities to the Republic of Cuba. Officials of the government of the Republic of Cuba reported at the time that the consultant’s actions “*reflect[ed] poorly on our country, even though we are not involved.*”

Representatives of United States-based food product companies, agricultural product companies, and healthcare product companies, among others, may visit the Republic of Cuba under license from the OFAC. A license application may consist of a one-page letter (on company letterhead) stating the purpose of the visit and information about the company; which may then be mailed (at a cost of at least US\$.34) or sent by facsimile (202) 622-1657 to the OFAC. For additional information, please contact the OFAC at telephone (202) 622-2480.

Members of the U.S.-Cuba Trade and Economic Council have reported receiving solicitations from a Washington, D.C.-based consultant to participate in an “*educational exchange visit*” to the Republic of Cuba under a license from the New York, New York-based Center for Cuban Studies which, according to the solicitation, is “*authorized, under license CU-68847 to designate individuals to travel to Cuba for educational purposes.*” The OFAC, which issued the referenced license to the Center for Cuban Studies, is reportedly reviewing whether the purpose of the visit, as outlined in the solicitation, is authorized. The purpose of the visit for “*only professional executives*” seems designed to market an opportunity for representatives of United States-based companies to visit the Republic of Cuba- even if the purpose of the visit would not be licensed by the OFAC if reviewed on its own merit. Representatives of United States-based companies are advised to review the OFAC categories for authorized commerce-related travel to the Republic of Cuba and, if appropriate, apply directly to the OFAC for a license to visit the Republic of Cuba. The OFAC has discontinued an expansive view of the regulations governing travel to the Republic of Cuba by individuals subject to United States law, and a provision contained in the Trade Sanctions Reform and Export Enhancement Act (TSRA) of 2000 reduced, and in some cases eliminated, the ability of the OFAC to interpret travel-related categories. Any representative of a United States-based company receiving a solicitation for travel to the Republic of Cuba should directly contact the OFAC and submit the complete text of the received solicitation to the OFAC for an opinion and not rely on the opinion of third parties.

ECONOMIC EYE ON CUBA®- 15 October 2001: The Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury in Washington, D.C. may review the activities of a United States citizen who is a member of the Board of Advisors of a Canada-based publicly-held company with “*interests solely*

in Cuba.” Under provisions of the Trading with the Enemy Act (1963), the individual could be subject to criminal penalties ranging up to ten years in prison and US\$250,000.00 in fines and/or civil penalties ranging up to US\$55,000.00. Reportedly of specific interest to the OFAC may be whether the individual has been compensated by the Canada-based company or provided services to the Canada-based company. The individual, a United States-based consultant, was appointed on 26 June 2000 as a member of the Board of Advisors of Calgary, Canada-based Cubacan Exploration Inc. [However, a current biography written by the individual states that he “*is on the Board of Cubacan, a Canadian firm currently operating in Cuba.*” Cubacan Exploration Inc. [listed on the Canadian Venture Exchange (CDNX) with shares trading under the symbol CCX; A Warrants trading under the symbol CCX.WT.A; and B Warrants trading under the symbol CCX.WT.B] reported on 26 June 2000 that the company was a “*junior oil and gas exploration company with interests solely in Cuba.*” On 10 August 2001, Cubacan Exploration Inc. reported that the company was a “*junior oil and gas exploration company with interests solely in Cuba.*” On 11 September 2001, Cubacan Exploration Inc. reported that the company was a “*junior oil and gas exploration company with interests in Cuba.*” Cubacan Exploration Inc. has an office in the city of Havana, Republic of Cuba.

Unknown is whether the individual has been compensated (direct or indirect) by Cubacan Exploration Inc., or what services (direct or indirect) the individual has provided to Cubacan Exploration Inc. The Cuban Assets Control Regulations (CRF Part 515 of the Code of Federal Regulations) state that persons subject to U.S. jurisdiction may not provide, unless licensed to do so by the OFAC, any marketing services or sales services to a non-United States-based company with respect to that company’s Republic of Cuba-related commerce.

Cubacan Exploration Inc. is not currently listed by the OFAC as a “*Specially Designated National*” which would prohibit transactions with Cubacan Exploration Inc., by individuals subject to United States law.

ECONOMIC EYE ON CUBA®- 12 November 2001: United States-based agricultural commodity company has reported that a Washington, D.C.-based consultant requested US\$5,000.00 to draft a travel license request for submission to the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury in Washington, D.C. An executive of the company, who said that he was “*disgusted,*” did not make the payment, but did contact the OFAC for assistance and reported the name of the consultant to the OFAC. The OFAC assisted the company at no cost. Officials of the government of the Republic of Cuba report that they do not condone the consultant’s actions as “*it reflects poorly on our country, even though we are not involved.*”

United States law authorizes representatives of United States-based food product companies, agricultural product companies, and healthcare product companies, among others, to visit the Republic of Cuba under license from the OFAC for marketing-related activities. A license application may consist of a one-page letter (on company letterhead) stating the purpose of the visit and information about the company; which may then be mailed (at a cost of US\$.34) or sent by facsimile (202) 622-1657 to the OFAC. For additional information, please contact the OFAC a telephone (202) 622-2480 or access <http://www.treas.gov/ofac> on the Internet.

ORGANIZATION SELLING BOARD OF DIRECTORS MEMBERSHIP- On 12 January 2005, a Washington, D.C.-based consultant issued a second memorandum (the first was issued on 3 January 2005) to promote the formation of a national business organization, to be located (on a paid basis) in the office of the consultant, because, according to the 3 January 2004 memorandum, “*there is no association or organization aimed specifically at business with Cuba.*” This statement is false. According to the 3 January 2005 memorandum, “*There have been efforts in the past to start such an organization which have not been successful because of apparent lack of interest and therefore adequate funding.*” This statement is not accurate. According to the 12 January 2005 memorandum, the consultant is **a)** selling board of director memberships **b)** has appointed himself as interim president of the “*new*” organization **c)** appointed an individual with whom the consultant has engaged in commercial activities as a member of the interim board of directors and **d)** appointed a chairman of the board of directors.

According to the 12 January 2005 memorandum from the consultant, membership to the board of directors of the organization is for sale- a violation of good corporate governance. Members of a board of directors for a not-for-profit business organization should be elected on the basis of qualifications, not whether there is a payment. By definition, a membership-based not-for-profit organization is responsible to its membership and, thus, all members “*have a voice.*”

According to the consultant’s memorandum: “**Special Board Membership: For an annual fee of \$4,500, the member will be invited to sit on the USCTA Board of Directors and/or Advisors and have a voice in the management and direction of the U.S.-Cuba Trade Association.**” [NOTE: appearance of text has not been changed from what was published in the consultant’s memorandum.]

Also of grave concern: On the Internet site of the USCTA, *“Special Consulting: Agreement with [consultant’s company] to provide specialized consulting services at special fees for the Association and its members. Members with specific consulting service requirements can contract with [consultant’s company] for such services as assistance with U.S. Government travel and export licenses, assistance with trips to Cuba, and other services of an individual company nature.”*

According to the Washington, D.C.-based Internal Revenue Service (IRS) of the United States Department of the Treasury in Washington, D.C., *“Section 501(c)(3) provides that the assets of an organization cannot inure to the benefit of private shareholders or individuals.”* Clearly, the consultant expects that **a)** serving as president of a not-for-profit organization **b)** having individuals with whom the consultant has or has had a commercial relationship with serve on the board of directors of the not-for-profit organization and **c)** having individuals representing organizations from whose membership the consultant expects to obtain clients for the consultant’s consulting company serve on the board of directors of the not-for-profit organization, will provide financial benefit to the consultant.

The U.S.-Cuba Trade and Economic Council **does not believe it is appropriate** for a director, officer, employee, or advisor of a not-for-profit organization to seek, provide, or direct revenue producing activity to an entity controlled or affiliated with a director, officer, employee, or advisor of the organization. Relevant agencies of the United States government believe such activities (private benefits) inconsistent with not-for-profit purposes. The presidency of the U.S.-Cuba Trade and Economic Council is a non-compensated position and the current president neither provides Republic of Cuba-related consulting services nor has financial relationships with Republic of Cuba-related service providers.]

In the opinion of the current president of the U.S.-Cuba Trade and Economic Council, it is unethical for a consultant focusing upon one country to at the same time be the primary officer/director of a not-for-profit organization focusing upon the same country. Information and access available to the president/officers/directors of a national business organization is often proprietary, competitive, and far more valuable than information provided to individual consultants. **There is an inherent conflict of interest.** There is a debasing of the legitimacy of the organization.

“No other not-for-profit organization within the United States has provided more information, without compensation, about the Republic of Cuba than has the U.S.-Cuba Trade and Economic Council. The organization has an educational mandate which is taken seriously.”

When a member of a not-for-profit business organization seeks guidance from the president of the organization, the member need not fear whether **1)** information provided to the president will be used by the president for personal gain and/or **2)** information provided to the member will be used by the president for personal gain. Why would anyone want to place an organization in such a position? The not-for-profit statute is not intended **a)** to mask the provision of private benefits to officers and directors of the organization; **b)** use member-funded assets for personal gain and **c)** they should not be consultancies in disguise. Individuals accepting the reins of a not-for-profit organization do so with a measure of altruism, not with an expressed purpose of expecting monetary gain for themselves and their associates.