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TITLE XVII -- CUBAN DEMOCRACY ACT OF 1992

SEC. 1701. SHORT TITLE.

This title may be cited as the "Cuban Democracy Act of 1992".

SEC. 1702. FINDINGS.

The Congress makes the following findings:

1. The government of Fidel Castro has demonstrated consistent disregard for internationally accepted standards of human rights and for democratic values. It restricts the Cuban people's exercise of freedom of speech, press, assembly, and other rights recognized by the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on December 10, 1948. It has refused to admit into Cuba the representative of the United Nations Human Rights Commission appointed to investigate human rights violations on the island.
2. The Cuban people have demonstrated their yearning for freedom and their increasing opposition to the Castro government by risking their lives in organizing independent, democratic activities on the island and by undertaking hazardous flights for freedom to the United States and other countries.
3. The Castro government maintains a military-dominated economy that has decreased the well-being of the Cuban people in order to enable the government to engage in military interventions and subversive activities throughout the world and, especially in the Western Hemisphere. These have included involvement in narcotics trafficking and support for the FMLN guerrillas in El Salvador.
4. There is no sign that the Castro regime is prepared to make any significant concessions to democracy or to undertake any form of democratic opening. Efforts to suppress dissent through intimidation, imprisonment, and exile have accelerated since the political changes that have occurred in the former Soviet Union and Eastern Europe.
5. Events in the former Soviet Union and Eastern Europe have dramatically reduced Cuba's external support and threaten Cuba's food and oil supplies.

6. The fall of communism in the former Soviet Union and Eastern Europe, the now universal recognition in Latin America and the Caribbean that Cuba provides a failed model of government and development, and the evident inability of Cuba's economy to survive current trends, provide the United States and the international democratic community with an unprecedented opportunity to promote a peaceful transition to democracy in Cuba.
7. However, Castro's intransigence increases the likelihood that there could be a collapse of the Cuban economy, social upheaval, or widespread suffering. The recently concluded Cuban Communist Party Congress has underscored Castro's unwillingness to respond positively to increasing pressures for reform either from within the party or without.
8. The United States cooperated with its European and other allies to assist the difficult transitions from Communist regimes in Eastern Europe. Therefore, it is appropriate for those allies to cooperate with United States policy to promote a peaceful transition in Cuba.

SEC. 1703. STATEMENT OF POLICY.

It should be the policy of the United States --

1. to seek a peaceful transition to democracy and a resumption of economic growth in Cuba through the careful application of sanctions directed at the Castro government and support for the Cuban people;
2. to seek the cooperation of other democratic countries in this policy;
3. to make clear to other countries that, in determining its relations with them, the United States will take into account their willingness to cooperate in such a policy;
4. to seek the speedy termination of any remaining military or technical assistance, subsidies, or other forms of assistance to the Government of Cuba from any of the independent states of the former Soviet Union;
5. to continue vigorously to oppose the human rights violations of the Castro regime;
6. to maintain sanctions on the Castro regime so long as it continues to refuse to move toward democratization and greater respect for human rights;
7. to be prepared to reduce the sanctions in carefully calibrated ways in response to positive developments in Cuba;
8. to encourage free and fair elections to determine Cuba's political future;
9. to request the speedy termination of any military or technical assistance, subsidies, or other forms of assistance to the Government of Cuba from the government of any other country; and
10. to initiate immediately the development of a comprehensive United States policy toward Cuba in a post-Castro era.

SEC. 1704. INTERNATIONAL COOPERATION

- a. Cuban Trading Partners -- The President should encourage the governments of countries that conduct trade with Cuba to restrict their trade and credit relations with Cuba in a manner consistent with the purposes of this title.
 - b. Sanctions Against Countries Assisting Cuba. --
 - 1. Sanctions. -- The President may apply the following sanctions to any country that provides assistance to Cuba:
 - A. The government of such country shall not be eligible for assistance under the Foreign Assistance Act of 1961 or assistance or sales under the Arms Export Control Act.
 - B. Such country shall not be eligible, under any program, for forgiveness or reduction of debt owed to the United States Government.
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- 1. Definition of Assistance. -- For purposes of paragraph (1), the term "assistance to Cuba"
 - A. means assistance to or for the benefit of the Government of Cuba that is provided by grant, concessional sale, guaranty, or insurance, or by any other means on terms more favorable than that generally available in the applicable market, whether in the form of a loan, lease, credit, or otherwise, and such term includes subsidies for exports to Cuba and favorable tariff treatment of articles that are the growth, product, or manufacture of Cuba;
 - B. includes an exchange, reduction, or forgiveness of Cuban debt owed to a foreign country in return for a grant of an equity interest in a property, investment, or operation of the Government of Cuba (including the government of any political subdivision of Cuba, or any agency or instrumentality of the Government of Cuba) or of a Cuban national; and
 - C. does not include --
 - i. donations of food to non-governmental organizations or individuals in Cuba, or
 - ii. exports of medicines or medical supplies, instruments, or equipment that would be permitted under section 1705(c)
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- 1. Applicability of Section. -- This section, and any sanctions imposed pursuant to this section, shall cease to apply at such time as the President makes and reports to the Congress a determination under section 1708(a).

SEC. 1705. SUPPORT FOR THE CUBAN PEOPLE.

- a. Provisions of Law Affected. -- The provisions of this section apply notwithstanding any other provision of law, including section 620(a) of the Foreign Assistance Act of 1961, and notwithstanding the exercise of authorities, before the enactment of this Act, under section 5(b) of the Trading with the

Enemy Act, the International Emergency Economic Powers Act, or the Export Administration Act of 1979.

- b. Donations of Food. -- Nothing in this or any other Act shall prohibit donations of food to nongovernmental organizations or individuals in Cuba.
- c. Exports of Medicines and Medical Supplies. -- Exports of medicines or medical supplies, instruments, or equipment to Cuba shall not be restricted --
 - 1. except to the extent such restrictions would be permitted under section 5(m) of the Export Administration Act of 1979 or section 203(b)(2) of the International Emergency Economic Powers Act;
 - 2. except in a case which there is a reasonable likelihood that the item to be exported will be used for purposes of torture or other human rights abuses;
 - 3. except in a case in which there is a reasonable likelihood that the item to be exported will be reexported; and
 - 4. except in a case in which the item to be exported could be used in the production of any biotechnological product.
- a. Requirements for Certain Exports. --
 - 1. Onsite Verifications. -- (A) Subject to subparagraph (B), an export may be made under subsection (c) only if the President determines that the United States Government is able to verify, by onsite inspections and other appropriate means, that the exported item is to be used for the purposes for which it was intended and only for the use and benefit of the Cuban people.
 - A. Subparagraph (A) does not apply to donations of non-governmental organizations in Cuba of medicines for humanitarian purposes.
 - 1. LICENSES. -- Exports permitted under subsection (c) shall be made pursuant to specific licenses issued by the United States Government.
- a. TELECOMMUNICATIONS SERVICES AND FACILITIES. --
 - 1. Telecommunications Services. -- Telecommunications services between the United States and Cuba shall be permitted.
 - 2. Telecommunications Facilities. -- Telecommunications facilities are authorized in such quantity and of such quality as may be necessary to provide efficient and adequate telecommunications services between the United States and Cuba.
 - 3. Licensing of Payments to Cuba. --
 - A. The President may provide for the issuance of licenses for the full or partial payment to Cuba of amounts due Cuba as a result of the provision of telecommunications services authorized by this subsection, in a manner that is consistent with the public interest and the purposes of this title,

except that this paragraph shall not require any withdrawal from any account blocked pursuant to regulations issued under section 5(b) of the Trading with the Enemy Act.

- B. If only partial payments are made to Cuba under subparagraph (A), the amounts withheld from Cuba shall be deposited in an account in a banking institution in the United States. Such account shall be blocked in the same manner as any other account containing funds in which Cuba has any interest, pursuant to regulations issued under section 5(b) of the Trading with the Enemy Act.
 - 1. Authority of Federal Communications Commission. -- Nothing in this subsection shall be construed to supersede the authority of the Federal Communications Commission.
 - 2. Prohibition on Investment in Domestic Telecommunications Services. -- Nothing in this subsection shall be construed to authorize the investment by any United States person in the domestic telecommunications network within Cuba. For purposes of this paragraph, an "investment" in the domestic telecommunications network within Cuba includes the contribution (including by donation) of funds or anything of value to or for, and the making of loans to or for, such network.
 - 3. Reports to Congress. -- The President shall submit to the Congress on a semiannual basis a report detailing payments to Cuba by any United States person as a result of the provision of telecommunications services authorized by this subsection.
- a. DIRECT MAIL DELIVERY TO CUBA. -- The United States Postal Service shall take such actions as are necessary to provide direct mail service to and from Cuba, including, in the absence of common carrier service between the two countries, the use of charter service providers.
- b. ASSISTANCE TO SUPPORT DEMOCRACY IN CUBA. -- The United States Government may provide assistance, through appropriate nongovernmental organizations, for the support of individuals and organizations to promote nonviolent democratic change in Cuba.

SEC. 1706. SANCTIONS.

- a. Prohibition on Certain Transactions Between Certain United States Firms and Cuba. --
 - 1. Prohibition. -- Notwithstanding any other provision of law, no license may be issued for any transaction described in section 515.559 of title 31, Code of Federal Regulations, as in effect on July 1, 1989.
 - 2. Applicability to Existing Contracts. -- Paragraph (1) shall not affect any contract entered into before the date of the enactment of this Act.
- a. Prohibition on Vessels. --

1. Vessels Engaging in Trade. -- Beginning on the 61st day after the date of the enactment of this Act, a vessel which enters a port or place in Cuba to engage in the trade of goods or services may not, within 180 days after departure from such port or place in Cuba, load or unload any freight at any place in the United States, except pursuant to a license issued by the Secretary of the Treasury.
 2. Vessels Carrying Goods or Passengers to or from Cuba. -- Except as specifically authorized by the Secretary of the Treasury, a vessel carrying goods or passengers to or from Cuba or carrying goods in which Cuba or a Cuban national has any interest may not enter a United States port.
 3. Inapplicability of Ship Stores General License. -- No commodities which may be exported under a general license described in section 771.9 of title 15, Code of Federal Regulations, as in effect on May 1, 1992, may be exported under a general license to any vessel carrying goods or passengers to or from Cuba or carrying goods in which Cuba or a Cuban national has an interest.
 4. Definitions. -- As used in this subsection --
 - A. the term "vessel" includes every description of water craft or other contrivance used, or capable of being used, as a means of transportation in water, but does not include aircraft;
 - B. the term "United States" includes the territories and possessions of the United States and the customs waters of the United States (as defined in section 410 of the Tariff Act of 1930 (19 U.S.C. 1401)); and
 - C. the term "Cuban National" means a national of Cuba, as the term national is defined in section 515.302 of title 31, Code of Federal Regulations, as of August 1, 1992.
- a. Restrictions on Remittances to Cuba. -- The President shall establish strict limits on remittances to Cuba by United States persons for the purpose of financing the travel of Cubans to the United States, in order to ensure that such remittances reflect only the reasonable costs associated with such travel, and are not used by the government of Cuba as a means of gaining access to United States currency.
 - b. Clarification of Applicability of Sanctions. -- The prohibitions contained in subsections (a), (b), and (c) shall not apply with respect to any activity otherwise permitted by section 1705 or section 1707 of this Act or any activity which may be regulated or prohibited under section 5(b)(4) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)(4)).

SEC. 1707. POLICY TOWARD A TRANSITIONAL CUBAN GOVERNMENT.

Food, medicine, and medical supplies for humanitarian purposes should be made available for Cuba under the Foreign Assistance Act of 1961 and the Agricultural Trade Development and Assistance Act of 1954 if the President determines and certifies to the Committee on Foreign Affairs of the House of Representatives and

the Committee on Foreign Relations of the Senate that the government in power in Cuba --

1. has made a public commitment to hold free and fair elections for a new government within six months and is proceeding to implement that decision;
2. has made a public commitment to respect, and is respecting, internationally recognized human rights and basic democratic freedoms; and
3. is not providing weapons or funds to any group, in any other country, that seeks the violent overthrow of the government of that country.

SEC. 1708. POLICY TOWARD A DEMOCRATIC CUBAN GOVERNMENT.

- a. Waiver of Restrictions. -- The President may waive the requirements of section 1706 if the President determines and reports to the Congress that the Government of Cuba --
 1. has held free and fair elections conducted under internationally recognized observers;
 2. has permitted opposition parties ample time to organize and campaign for such elections, and has permitted full access to the media to all candidates in the elections;
 3. is showing respect for the basic civil liberties and human rights of the citizens of Cuba;
 4. is moving toward establishing a free market economic system; and
 5. has committed itself to constitutional change that would ensure regular free and fair elections that meet the requirements of paragraph (2).
- a. Policies. -- If the President makes a determination under subsection (a), the President shall take the following actions with respect to a Cuban Government elected pursuant to elections described in subsection (a):
 1. To encourage the admission or reentry of such government to international organizations and international financial institutions.
 2. To provide emergency relief during Cuba's transition to a viable economic system.
 3. To take steps to end the United States trade embargo of Cuba.

SEC. 1709. EXISTING CLAIMS NOT AFFECTED.

Except as provided in section 1705(a), nothing in this title affects the provisions of section 620(a)(2) of the Foreign Assistance Act of 1961.

SEC. 1710. ENFORCEMENT.

- a. Enforcement Authority. -- The authority to enforce this title shall be carried out by the Secretary of the Treasury. The Secretary of the Treasury shall exercise the authorities of the Trading With the Enemy Act in enforcing this title. In carrying out this subsection, the Secretary of the Treasury shall take the necessary steps to ensure that activities permitted under section 1705 are carried out for the purposes set forth in this title and not for purposes of the accumulation by the Cuban Government of excessive amounts of United States currency or the accumulation of excessive profits by any person entity.
- b. Authorization of Appropriations. -- There are authorized to be appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this title.
- c. Penalties Under the Trading With the Enemy Act. -- Section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16) is amended --

1. by striking "That whoever" and inserting "(a) Whoever"; and
2. by adding at the end the following:

"(b)(1) The Secretary of the Treasury may impose a civil penalty of not more than \$50,000 on any person who violates any license, order, rule, or regulation issued under this Act.

"(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation under paragraph (1) shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States Government.

"(3) The penalties provided under this subsection may not be imposed for --

"(A) news gathering, research, or the export or import of, or transmission of, information or informational materials; or

"(B) clearly defined educational or religious activities, or activities of recognized human rights organizations, that are reasonably limited in frequency, duration, and number of participants.

"(4) The penalties provided under this subsection may be imposed only on the record after opportunity for an agency hearing in accordance with sections 554 through 557 of title 5, United States Code, with the right to prehearing discovery.

"(5) Judicial review of any penalty imposed under this subsection may be had to the extent provided in section 702 of title 5, United States Code."

- a. Applicability of Penalties. -- The penalties set forth in section 16 of the Trading With the Enemy Act shall apply to violations of this title to the same extent as such penalties apply to violations under that Act.

- b. Office of Foreign Assets Control. -- The Department of the Treasury shall establish and maintain a branch of the Office of Foreign Assets Control in Miami, Florida, in order to strengthen the enforcement of this title.

SEC. 1711. DEFINITION.

As used in this title, the term "United States person" means any United States citizen or alien admitted for permanent residence in the United States, and any corporation, partnership, or other organization organized under the laws of the United States.

SEC. 1712. EFFECTIVE DATE.

This title shall take effect on the date of the enactment of this Act.

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