



ASSEMBLY — 37TH SESSION

ECONOMIC COMMISSION

Agenda Item 54: Other issues to be considered by the Economic Commission

IMPACT OF THE UNITED STATES ECONOMIC, COMMERCIAL AND
FINANCIAL EMBARGO AGAINST CUBA IN THE
CIVIL AVIATION SECTOR

(Presented by Cuba)

EXECUTIVE SUMMARY

This working paper aims to once again inform the international civil aviation community through updated information and evidence, about the **extraterritorial nature of this embargo**, the violations of the Chicago Convention on account of the measures of the United States economic, commercial, and financial embargo against Cuba, as well as the impact of the embargo on the development of Cuban civil aviation, preventing the participation of Cuban airlines in international air transport activities.

Action: The Assembly is invited to:

- a) analyze the information set out in this working paper and appendices related to the impact of the United States economic and commercial embargo against the Republic of Cuba in terms of civil aviation;
- b) recognize that the unilateral measures imposed by one Member State against another Member State affect its aviation development and constitute a clear violation of the principles and objectives of the Chicago Convention, and they also create negative precedents which could affect other States within the international aviation community;
- c) urge the ICAO Secretary General to continue providing information to the Secretary-General of the United Nations on the impact on Cuban civil aviation of the economic, commercial, and financial embargo imposed by the United States against the Republic of Cuba in terms of the response which ICAO should submit to the United Nations, by virtue of the resolution which is presented every year entitled “The need to put an end to the economic, commercial, and financial embargo imposed by the USA”; and
- d) request that the President of the Council present a report to the Council every year as long as these impacts remain in effect.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objectives D and E.
<i>References:</i>	Doc 7300, <i>Convention on International Civil Aviation</i>

¹ Spanish version provided by Cuba.

1. INTRODUCTION

1.1 In 1960, the United States Government established an economic, commercial and financial embargo against the Republic of Cuba. Since then, all of the country's economic sectors have been noticeably affected, including the civil aviation sector.

1.2 The United States economic, commercial and financial embargo against Cuba violates the principles set out in the Introduction to the *Convention on International Civil Aviation* (Doc 7300).

1.3 From 1992, at the 47th Session to the 64th Session in 2009, the United Nations General Assembly has consecutively approved, by an overwhelming majority, the resolutions entitled "The need to put an end to the economic, commercial, and financial embargo imposed by the USA against Cuba". At the last United Nations General Assembly, on 28 October 2009, Resolution 64/6 with the same title was approved with 187 votes in favour.

1.4 For more than 15 years, Cuba has provided the ICAO Assembly with documents outlining the impact on its civil aviation industry of the effects of the United States economic, commercial and financial embargo against Cuba. This new working paper outlines some of the latest events and economic effects caused by this unlawful embargo. We should point out there has been no reduction in these effects, and that they have actually increased. The evidence which is set out herein shows the obsessive persecution by the United States Government in applying the embargo, hindering the development of Cuban civil aviation, including in terms of points of detail.

2. ANALYSIS OF THE IMPACT

2.1 **Effects which show the extraterritorial nature of the United States regulations and the embargo against Cuba**

2.1.1 It is impossible to implement modernization of the automatic check-in and baggage system installed in the terminal areas. The Society of International Aeronautical Telecommunications (SITA) has demonstrated that on account of the United States commercial embargo, it is unable to implement the elements required for the check-in system contracted by the Cuban Airports and Aeronautical Services Company (ECASA), which has had to turn to another European company to solve the problem that has been created. This has led to greater expenditure and delays which have affected the service.

2.1.2 The supply of spare parts and pieces for the Bandeirante EMB-110 civil aircraft operated by the Cuban airline "Aerocaribbean, S.A" and produced by the Brazilian aviation consortium EMBRAER was refused. Their purchase was only possible through Trading companies or intermediaries with the resulting delays and an increase in costs of between 20 and 40 per cent of their sale value. (evidence in Appendix 1)

2.1.3 The refusal of the United States Department of State to grant an export license to the British company Pascall Electronics Limited, subcontracted by the Canadian company Intelcan Technosystems Inc., to supply the required equipment for the modification to the Doppler effect of an MRL-5 Meteorological Radar. It is significant that the British company Pascall Electronics Limited was purchased in 2005 by the United States Defence and Space consortium EMRISE Co. (evidence in Appendix 2).

2.1.4 During the tender process for the Ground Support Equipment in January of this year, to be used in two important Civil Aviation Remodeling Projects in Cuba - Terminal No. 2 at “José Martí” International Airport and “Juan Gualberto Gómez” Varadero International Airport - attempts were made to obtain offers for the cargo loader and self-propelled transporter equipment (Commander 15 and CPT-7 models respectively). This equipment is manufactured in North America, produced by the JBT Co. consortium. Both have positive technical benefits, competitive prices and product representation on the international market. This was not possible on account of the refusal by this manufacturer, including via its Spanish branch, JBT Aero Tech.

2.1.5 Impact on INTERNET sales of the Cubana de Aviación airline. Online sales of the Cubana de Aviación S.A. airline reopened on 28 January 2009 with a new marketing structure and they started achieving significant increases in their sales figures. However, on 22 May of the same year, these operations were drastically interrupted when the bank acquiring the funds from the online sales received notifications from North American company VISA regarding the use of cards issued in the United States to purchase tickets and the violation of the regulations of the United States Embargo against Cuba by working with the Cubana de Aviación airline.

2.1.6 From this point on, there were a series of communications between the airline and the bank acquiring the funds, until in the end the airline could not continue working with this financial entity to support its electronic business (evidence in Appendix 3).

2.1.7 The airline itself, Cubana de Aviación, was affected by the embargo on a financial transfer ordered by the airline via banks in other countries. Banco Popular Español S.A. (BPESA) informed the airline of the embargo imposed by the Office of Foreign Assets Control (OFAC) of the United States on a transfer ordered by the management of the airline in Madrid in December 2008 to be sent to Moscow. The amount of €107,770.95 which was sent by BPESA through Wachovia Bank was seized by the OFAC (evidence in Appendix 4).

2.2 **Violations of the Chicago Convention**

2.2.1 The Torricelli and Helms-Burton anti-Cuban laws continue to do considerable damage to Cuban civil aviation. The ban on North American citizens freely travelling to Cuba and the ban on Cuban airlines operating in the United States has had a significant financial impact as the airlines are unable to serve this air traffic. This reduces the volume of operations at our airports and limits the movement of passengers. Furthermore, these laws prohibit the purchase of aircraft technology, equipment, parts, pieces, products and services.

2.2.2 The United States economic, commercial and financial embargo against Cuba violates the principles set out in the Introduction to the Chicago Convention, which states that international civil aviation should be operated in a safe and orderly manner and that international air traffic services should be established on the basis of equality of opportunities and should be operated soundly and economically.

2.2.3 The economic, commercial, and financial embargo, with its discriminatory measures, also violates the regulations and provisions of the Chicago Convention and, in particular, Article 44, Sections a), c), d), f), g), h) and i) which establish among the aims and objectives of ICAO: encouraging the development of international air transport; meeting the needs of the people of the world in this respect, ensuring that the rights of the Contracting States are fully respected and avoiding discrimination between them and generally promoting the development of all aspects of international civil aviation. It also violates Articles 77 and 79, which plead for the non-prevention of two or more member States constituting joint air transport operating organizations and from pooling their air services on any routes or

in any regions through the conduct of their government or one or more airlines designated by the government. In this respect, among other examples, we have had difficulties in forming joint agreements with other airlines.

2.3 Additional expenses from purchasing goods and supplies in different markets and at different prices

2.3.1 The United States, on account of its proximity, should be the market where Cuba purchases most of its airport equipment. Since this is vetoed by the embargo, Cuba is obliged to purchase from distant markets, such as the European and Asian markets.

2.3.2 For this reason, in a single year, additional expenses of USD \$14,633,013.00 were incurred which included the purchase of special airport equipment, the automation of air terminals, cooling equipment, maintenance of ATR 42/72 aircraft, simulators for these aircraft, parts, pieces and other fuel tanks, parts for lorries carrying fuel equipment; fuel gas taps, baggage handling systems, air-conditioning systems, repairs and maintenance of ATR aircraft, flight simulators for ATR pilots, parts and pieces of automatic doors and other equipment.

2.3.3 The United States has a monopoly on the manufacture of commercial aircraft and on the components, parts, and technology used on a global scale by manufacturers in other countries. The United States also holds a significant percentage of shares in other consortiums in the commercial aviation industry and in the aircraft maintenance industry, which means that Cuba is unable to purchase aircraft which uses advanced technology and which guarantees better efficiency of air operations.

2.3.4 This situation has meant that we have had to use less efficient aircraft and rent aircraft under unusual and unfavourable conditions. For these reasons, the Cuban Airlines were affected, in 2009 alone, to the tune of USD \$12,737,234.00 connected with the use of less efficient aircraft and USD \$42,236,783.31 from the rental of aircraft.

2.4 Other impacts

2.4.1 Various United States airlines, such as Miami Air, American Eagles, Gulf Stream, Sky King and others, systematically operate charter flights from the United States to Cuba. Cuba provides them with all of the facilities which they need for their operations to various parts of the country such as: Havana, Cienfuegos, Santa Clara, Camaguey, Holguín and Santiago de Cuba. However, the United States Government will not authorize Cuban airlines to operate to the United States, on the basis of Section 515.201 (a) of the "Cuban Assets Control Regulation", 31 C.F.R. Part 515, which states that without a specific license, a Cuban aircraft landing in Miami may constitute prohibited behaviour and the aircraft could be decommissioned.

2.4.2 Furthermore, the ban on United States citizens visiting Cuba as tourists is still in force, which means that the Cuban and United States airlines are unable to serve this type of traffic. Likewise, Cuban air traffic companies are affected by not being able to offer passenger, load and baggage handling services, on-board catering, sale of fuel and other aviation liquids, air navigation services, tax on the use of airport services, etc. Based on the studies carried out on estimates of North American visitors to Cuba, the lost income during the period covered by the report was USD \$205,484,638.00 and from 1960 to April 2010 it stood at USD \$2,957,208,977.00.

2.4.3 The results from 1 May 2009 to 23 April 2010 (the period being analyzed) show that the impact was USD \$265,830,210.20 and the overall total impact since 1960 is USD \$3,483,389,548.00.

3. CONCLUSIONS

3.1 Although the actions set out in this paper, which have had a significant economic impact on Cuban civil aviation throughout these years, have been aimed at limiting the development of our aviation industry, we have increased our efforts to ensure that the services which we provide for the international community meet the required quality and security guarantees and comply with the regulations and Standards issued by the ICAO, and that all of the activities we carry out meet the principles referred to in the Convention on International Civil Aviation.

3.2 In view of this evidence, the Cuban delegation is morally obliged to once again alert the international air community of the inadmissibility of the imposition of unilateral measures by one member State against another member State of the Convention, violating the principles and objectives of said Convention and creating negative precedents which could affect other States within this community.

Adjunto No. 1

Denegación de solicitud de oferta de compra de repuestos para aeronaves tipo Bandeirante, EMB-110 del fabricante EMBRAER, -Brasil

De: Rodolfo Relova [mailto:rodolfo.relova@aviaimport.avianet.cu]

Enviado el: lunes, 08 de marzo de 2010 16:34

Para: 'Gilberto Reina'

CC: 'Aviaimport - Dir. Comercial'

Asunto: Bloqueo

Gilberto,

Como acordamos, más abajo la respuesta de EMBRAER a nuestra solicitud de trabajo directo. Corta, pero concisa.

Otra muestra de que el bloqueo funciona.

Saludos, Relova

De: raraujo@embraer.com.br [mailto:raraujo@embraer.com.br]

Enviado el: Viernes, 30 de Octubre de 2009 10:39 a.m.

Para: lazaro.rodriguez@aviaimport.avianet.cu; cediniz@embraer.com.br

Asunto: Fw: EMB 110

Dear Lazaro

Embraer can not sell this parts for you but I am sending all the datas to COMAF.

Give till next Thursday to close the cotation.

best regards

Rinaldo Ramos de Araújo

Latin America Customer Support Manager

Phone 55 12 3927-8203

Fax 55 12 3927- 2615

Mobile 55 12 8144 2651

Email raraujo@embraer.com.

Adjunto No. 2

Carta de Pascal LC con solicitud de extensión de la carta de crédito.

Pascal

Mr Andrew McGregor
Intelcan Technosystems Inc
69 Auriga Drive
Ottawa
Canada K2E 722

Date 11th May 2009

Extension of Letter of Credit for Radar Receiver. PO: 008126_008127

Dear Andrew,

After consultations with our legal team and the various government departments, we received confirmation that an export license application was required for the Receiver based on the end destination, and under the jurisdiction of the US Office of Foreign Assets Control.

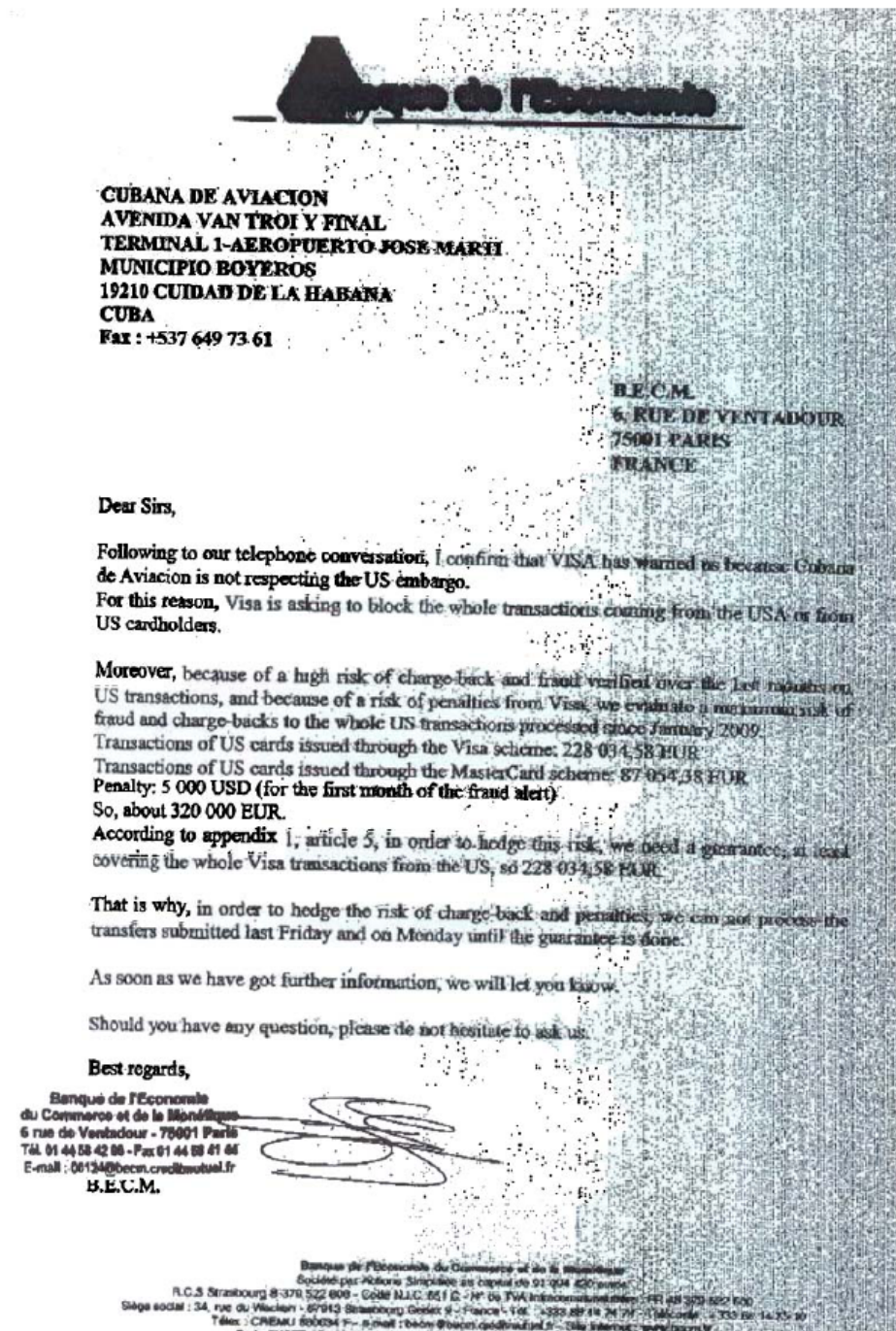
As you understand the current L/C expires shortly and Pascal respectfully requests an extension of 6 months to the validity of the Letter of Credit.

Please be assured we are doing everything in our powers to complete this process as soon as possible and appreciate your understanding on this issue.

For and on behalf of Pascal Electronics Ltd.

Adele MacLachlan
Sales & Marketing Director

PASCALL ELECTRONICS LIMITED
Westridge Business Park, Cothay Way, Ryde, Isle of Wight PO33 1QT
Tel: +44 (0) 1983 817300 Fax: +44 (0) 1983 564708
Email: enquiries@pascal.co.uk web site: www.pascal.co.uk
Registered in England No. 1316674
Registered office: Brunswick Road, Cobbs Wood, Ashford, Kent TN23 1EH
A subsidiary of EMRISE Electronics

Adjunto No. 3**Carta e intercambios que muestran la afectaciones a las ventas por INTERNET de
Cubana de Aviación**

TRADUCCIÓN DOCUMENTO OFICIAL DEL BANCO DE CREDIT MUTUEL RECIBIDO POR EL FAX DE LA DIRECCIÓN DE ECONOMÍA EL 21 DE MAYO DEL 2009

Estimado Señor,

Siguiendo nuestra conversación telefónica, confirmo que VISA ha advertido producto de que Cubana de Aviación no está respetando el embargo de Estados Unidos.

Por esta razón, Visa está pidiendo bloquear el total de transacciones provenientes de Estados Unidos o de propietarios de tarjetas de crédito de Estados Unidos.

Además, producto de un alto riesgo de cargos de los bancos emisores (charge-back) y los fraudes experimentados los últimos meses sobre transacciones de Estados Unidos, y producto de un riesgo de penalidades de Visa, nosotros evaluamos un alto riesgo de cargos (charge-back) a todas las transacciones de Estados Unidos procesadas desde enero 2009.

Transacciones de tarjetas de EEUU emitidas a través del esquema de Visa: **228,034.58 EUR**
Transacciones de tarjetas de EEUU emitidas a través del esquema de MasterCard: **87,054.38 EUR**
Penalidad: 5,000 USD (por el primer mes de la alerta de fraude)
Así, alrededor de **320,000 EUR**

De acuerdo al apéndice 1, artículo 5, para tener una protección a este riesgo, nosotros necesitamos una garantía que como mínimo cubra todas las transacciones de Visa desde los Estados Unidos, es decir, 228, 034.58 EUR.

Por esta razón, para la protección del riesgo de cargos (charge-back) y penalidades, nosotros no podemos procesar las transferencias sometidas el pasado viernes y el lunes hasta que se presente la garantía.

Tan pronto como nosotros tengamos nueva información, se le informaremos

Si usted tiene cualquier pregunta, por favor no dude en preguntárnosla.

Saludos,

BECM

De: MARTY Gaetan [MARTYGA@becm.creditmutuel.fr]
Enviado el: jueves, 05 de marzo de 2009 5:22
Para: María Luisa Queralta Lemes; Alicia Sánchez Perojo; Enrique Pardo Echarte
CC: VEDRUNE Jean-Marc; Frazao Victor
Asunto: RE: Request

Dear Enrique,

Please, find here-bellow some further information about the way we are processing your transactions:

- clearing is done through the international bank card schemes, Visa and MasterCard, which are US corporates.
 - we are directly connected to them, without going through any correspondent bank.
 - MC and Visa, in order to process to clearing of the transactions and settlement of funds, has to go through the issuing bank, which means, if the issuing bank is from the US (or if it is an US subsidiary), that Visa & MC will be connected to this bank.
- Therefore, unless you have an USD or any currency bank account at the BECM (so far, you only have an EUR bank account) or required from us special transactions that may involve another bank, clearing and settlement of your bank card transactions are processed in-house.

We only are connected to Visa & MC, without leading any direct relationship with another bank (US, French or wherever else).

Best regards,

Gaëtan MARTY

De : Enrique Pardo Echarte [mailto:enrique.pardo@cubana.avianet.cu]
Envoyé : mercredi 4 mars 2009 22:18
À : MARTY Gaetan; María Luisa Queralta Lemes; Alicia Sánchez Perojo
Objet : Request

Hello Marty,

I was urged from our Financial Department to ask you the way to avoid a particular risk associated to our condition of US blockaded nation, which I missed to consider in our Contract. This risk is related to the use of US correspondent banks in clearing transaction related to our account. In this case we could be affected by any undesirable action from those banks, so we need to consider any protection from this risk. ¿Could you please investigate a possible way to make an arrangement about this issue?

Thanks and best regards,

Enrique Pardo Echarte
e-commerce
Cubana de Aviación, S.A.
enrique.pardo@cubana.avianet.cu
T: (537)6497606

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Adjunto No. 4

Carta No. 1

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DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

CASE No. CU-78510

BANCO POPULAR ESPAÑOL, S.A.
Velazquez, 34
MADRID, 28004 Spain

Attn: Juan Carlos Torres

Dear Sir or Madam:

This letter responds to your application of March 16, 2009 to the Office of Foreign Assets Control ("OFAC") requesting the release of the following blocked funds transfer:

Originator:	CUBANA DE AVIACION SA
Originating Bank:	Banco Popular Espanol SA
Value Date:	22-DEC-08
Amount:	USD 149,993.00
Beneficiary Bank:	COAYRUMM ADMIRALTEISKY BB LTD, MOSCOW
Beneficiary:	CUBANA DE AVIACION SA, MOSCOW RUSSIA

Wachovia Bank N.A. properly blocked this transfer pursuant to U.S. sanctions administered by OFAC. In accordance with 31 C.F.R., Ch. V and/or applicable Executive orders, all property in which a sanctions target has an interest and that comes within possession or control of a person subject to U.S. jurisdiction is blocked. Full copies of the relevant regulations and Executive orders are available at OFAC's Website at <http://www.treas.gov/offices/enforcement/ofac/>, or upon written request to OFAC.

Under these regulations and Executive orders, a U.S. financial institution is required to block all wire transfers in which a sanctions target has an interest and that come within the institution's possession or control, even if the institution is an intermediary and the underlying transaction does not otherwise involve a person subject to U.S. jurisdiction. An interest in property sufficient to require blocking may be an interest of any nature whatsoever, direct or indirect. A blocked wire transfer is generally placed into an interest-bearing account, and the holder is prohibited from engaging in any transaction in such property or from exercising any rights, powers, or privileges with respect to such property, absent authorization from OFAC. Once a wire transfer has been blocked, OFAC does not recognize attempts to extinguish the interest of the sanctions target in the transfer by, for example, canceling the original payment instructions or effecting a second payment to the beneficiary.

As reflected by your application or by information otherwise available to OFAC, the blocked funds transfer in question involves an interest of a sanctions target described in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, **Specially Designated National Empresa Cubana de Aviacion**. It is OFAC's policy to license the release of blocked property only in limited

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circumstances, most of which do not involve commercial activity. Upon review, OFAC has determined that this blocked funds transfer does not fall within those limited circumstances. Accordingly, licensing the release of the blocked funds would be inconsistent with OFAC policy, and your request is denied. You may request reconsideration of this decision and provide additional information as described on OFAC's website at www.treas.gov/offices/enforcement/ofac/faq/answer.shtml#62.

Sincerely,

 5/15/09

Clara Y. David
Chief, TWEA Licensing Section
Office of Foreign Assets Control

Date

Carta No. 2



902 301 000
www.grupobancopopular.es

MADRID URB. 56
C/ Luisa Fernanda, 8
28008 Madrid

CUBANA DE AVIACIÓN S.A.
c/ Princesa 25 – 1º
28008 MADRID

Madrid, a 02 de junio de 2009

Muy Señores nuestros:

Les informamos que la OFFICE OF FOREIGN ASSETS CONTROL (OFAC), dependiente del DEPARTMENT OF THE TREASURY de USA, ha denegado nuestra solicitud a fin de proceder a liberar los fondos retenidos por dicho organismo, importe de la transferencia realizada el 19 de diciembre de 2008, por 107.770,95 Euros.

Les adjuntamos fotocopia de dicha comunicación, indicándoles que en caso de iniciar Vds. directamente nueva solicitud ante la OFFICE OF FOREIGN ASSETS CONTROL (OFAC) pueden contar con nuestra colaboración.

Quedamos a su disposición, saludándoles atentamente.

BANCO POPULAR ESPAÑOL
Av. Urb. 56 - Luisa Fernanda - 28003 MADRID
Por Poder