

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

New York, New York

Telephone (917) 453-6726 • E-mail: council@cubatrade.org

Internet: <http://www.cubatrade.org> • Twitter: @CubaCouncil

Facebook: www.facebook.com/uscubatradeandeconomiccouncil

LinkedIn: www.linkedin.com/company/u-s--cuba-trade-and-economic-council-inc-

Senator Heitkamp Is Misleading

Senator Rubio Is Misleading

U.S. Taxpayer Funding Is To Be Directed In Cuba; That's OK For U.S. Exporters

New OFAC Regulation(s) May Negatively Impact All Travelers To Cuba

Reminder Of TSREEA In 2000 Which Codified No Travel For Tourism

Might The Conference Committee Remove Amendment- And Protect Travel?

There is, which is not inconsistent with the political process, creatively-written statements by Members of the United States Senate with respect to the meaning of S.Amdt 3364 (The Honorable Marco Rubio R- Florida) and S. 3042 ("Farm Bill") which included a provision by The Honorable Heidi Heitkamp (D- North Dakota) relating to the Republic of Cuba.

Neither Senator is being as accurate as they need to be...

For the United States business community, the change to S. 3042 is significant; and it's far more likely to be of immediate financial value to the government of the Republic of Cuba than to United States food product and agricultural commodity exporters.

The likelihood of a return in value to United States taxpayers, as Members of the United States Senate have posited, of US\$28.00 returned for every US\$1.00 in expenditures of FMD and MAP throughout the world, and now to include the Republic of Cuba, will be challenging to measure- but it will be important to measure and the United States Department of Agriculture (USDA) should focus upon the cost-benefit analysis.

On 28 June 2018, the United States Senate, by a vote of 86-11, approved the Agriculture Improvement Act of 2018.

On 21 June 2018, the United States House of Representatives passed H.R. 2, the 748-page **Agriculture and Nutrition Act of 2018** by a vote of 213-211.

Now S. 3042 and H.R. 2 will be subjected to a conference committee with final language submitted to The White House for signature.

On 18 June 2018, the United States Senate Committee on Agriculture, Nutrition, & Forestry reported, on a vote of 20-1, S. 3042, the 1,210-page The Agriculture Improvement Act of 2018 which included an amendment on page 248 [Link To Text] authored by Senator Heitkamp: ***"To provide for the use of market access program and foreign market development cooperator program funds in Cuba."*** In Fiscal Year 2018, the total expenditures for these two programs was US\$200,287,394.00.

A representative of a member of the United States Senate Committee on Agriculture, Nutrition, & Forestry shared ***"[t]here is no set amount of funds that would be made available specifically for Cuba. The amendment would only allow producers and agricultural trade associations who are already utilizing these programs to also use them to promote their goods in Cuba. So to that point, yes these funds are only going towards agriculture producers who are represented by trade associations and state regional trade groups."***

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

On 27 June 2018, Senator Rubio reported, via Twitter, that *“I have decided to block the addition of any new amendments to #FarmBill until they either accept the Cruz amendment striking the use of taxpayer \$ for promotions in #Cuba or they accept my amendment that prohibits taxpayer \$ being spent at business owned by Cuban military.”*

Then, in remarks on the floor of the United States Senate later in the day, Senator Rubio said: **“I’m not going to object to the ability for American farmers to market our products to a market,”** he said. **“In the end, it’s food. What I do think we should not allow, however, is the ability to spend taxpayer money in properties and in other places on the island that are owned and controlled by the Cuban military.”**

From an interview in Politico: Under current law, U.S. producers are free to travel to Cuba to meet with importers on their own dime, said Olivia Perez-Cubas, a spokeswoman for Rubio. *“Taxpayer dollars shouldn’t be used to subsidize private U.S. industries to travel to Cuba, especially when that money goes into the pocket of the Cuban military,”* she said.

Senator Heitkamp responded with a statement: *“This amendment passed unanimously with overwhelming bipartisan support during markup of the farm bill in the Senate Agriculture Committee... This amendment would do nothing to lift current restrictions on doing business with the Cuban government, and it would provide a much-needed opportunity for American producers when so many of our important trade relationships are suffering from uncertainty.”*

This is the text of and LINK to the amendment submitted by Senator Rubio which was approved by the United States Senate:

<https://www.congress.gov/amendment/115th-congress/senate-amendment/3364/actions?q=%7B%22search%22%3A%5B%22S.Amdt.+3364%22%5D%7D>

1. S.Amdt.3364 to S.Amdt.3224 — 115th Congress (2017-2018) Purpose: To prohibit the use of funds to carry out programs in Cuba in contravention of the National Security Presidential Memorandum prohibiting transactions with entities owned, controlled, or operated by or on behalf of military intelligence or security services of Cuba. Amends Bill: H.R.2 Sponsor: Sen. Rubio, Marco [R-FL] (Submitted 06/28/2018) (Proposed 06/28/2018) Latest Action: 06/28/18 Amendment SA 3364 agreed to in Senate by Unanimous Consent. (All Actions)

S.Amdt.3364 to S.Amdt.3224 115th Congress (2017-2018)

AmendmentHide Overview

Amends Bill: H.R.2 — Agriculture and Nutrition Act of 2018

Sponsor: Sen. Rubio, Marco [R-FL] (Submitted 06/28/2018, Proposed 06/28/2018)

Latest Action: 06/28/2018 Amendment SA 3364 agreed to in Senate by Unanimous Consent.

On 28 June 2018, Senator Rubio issued the following through Twitter: **Rubio Keeps Taxpayer Dollars Out of the Cuban Regime's Pocket.** Washington, D.C. – U.S. Senator Marco Rubio (R-FL) today issued the following statement after the Senate adopted his amendment to the Agriculture Improvement Act of 2018, commonly known as the 2018 Farm Bill, to prevent U.S. taxpayer funds for agricultural export promotion from going to the Cuban regime: *“American taxpayer dollars should never go into the pocket of the Cuban regime. That is why we worked to ensure that taxpayer funds for agricultural promotion will not be going to the oppressive Cuban military and its subsidiaries.”*

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

On 28 June 2018, Senator Heitkamp issued the following statement: “*Her amendment to boost trade with Cuba. Heitkamp and Boozman successfully included their bipartisan amendment to allow USDA to use its existing export market development programs to create, expand, and maintain a strong Cuban export market for U.S. agricultural producers and processors— at no additional cost to U.S. taxpayers. This change in USDA policy would provide some needed relief from low American commodity prices by fostering a new, reliable trade relationship, boosting agricultural export revenue, and increasing export volume for American farmers and ranchers. This builds on Heitkamp’s efforts to boost trade with Cuba going back to 2015, when she first introduced legislation to lift the ban on private banks and companies offering credit for agricultural exports to Cuba.*”

Senator Heitkamp is inaccurate to submit that her amendment will be “*at no additional cost to U.S. taxpayers.*” Accurate that the amendment does not specifically allocate new Republic of Cuba-specific United States taxpayer funds, but it does permit the eighty-nine (89) United States-based entities (and potentially others in Fiscal Year 2019) who obtained US\$200,287,394.00 for use in FMD and MAP expenditures in Fiscal Year 2018 to seek authority from the USDA to use United States taxpayer funds for Republic of Cuba-focused activities. The amendment as passed by the United States Senate does authorize the use of United States taxpayer funds in the Republic of Cuba.

Senator Rubio is inaccurate to submit that his amendment to Senator Heitkamp’s amendment ensures that “*taxpayer funds for agricultural promotion will not be going to the oppressive Cuban military and its subsidiaries.*” United States taxpayer funds may continue to weave their way to companies controlled by the Revolutionary Armed Forces (FAR) of the Republic of Cuba, albeit indirectly. Here’s why:

In November 2017, the United States Department of State in Washington DC published a list (<https://www.state.gov/e/eb/tfs/spi/cuba/cubarestrictedlist/275331.htm>) of Republic of Cuba government-operated entities that were to be restricted from engagement by travelers (and United States companies) subject to United States jurisdiction.

The list identifies entities affiliated with and/or controlled by (Grupo de Administracion Empresarial (GAESA) and FAR. The wording with respect to compliance is “*Direct financial transactions with certain entities and subentities under the control of, or acting for or on behalf of, the Cuban military, intelligence, or security services are also generally prohibited.*” Significant the document also contains “**** Entities or subentities owned or controlled by another entity or subentity on this list are not treated as restricted unless also specified by name on the list. ***.*”

Republic of Cuba government-operated **Havanatur** (reported to be controlled by GAESA and thus FAR) is not on the list. The majority of travelers subject to United States jurisdiction use the services of Havanatur.

In March 2018, the Miami, Florida-based publication Cuba Standard reported that a New York, New York-based attorney received verbal confirmation from a representative of the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury in Washington DC that at least one Trump Administration travel-related narrative believed true by many is not accurate.

It is the *process* of engagement that defines the impact upon travelers. The meaning of “*direct*” and “*indirect*” are relevant. If a payment to an entity on the list maintained by the United States

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

Department of State (which has not been updated since its initial publication) is made indirectly, that indirectness may satisfy the OFAC requirement.

From one experienced legislative observer: *“The Rubio legislation will require a new rule making by OFAC. We’ll see if the OFAC takes its traditional position that independent due diligence is required by United States companies to determine whether a Republic of Cuba entity is owned, controlled etc. by a different Republic of Cuba entity - in this case the due diligence must focus on whether the proposed recipient of United States taxpayer money is “operated by or on behalf” of the FAR. If so, it can’t receive that United States taxpayer money. Also, we might see a new OFAC rule in the context of a new statute (i.e. Senator Rubio’s amendment) addressing the word “direct” to eliminate the pass-through deals currently permitted with third party intermediaries to get around the State Department’s Prohibited Cuban Entities List.”*

And added, *“There could have been some sloppy lobbying work- and a result could be impactful, collaterally, on all visitors to Cuba.”*

Link To Analysis:

<https://www.cubatrade.org/blog/2018/3/10/2b05qodxrf4d2m8qego70oflydtezl?rq=kempinski>

What Is FMD & MAP?

For Fiscal Year 2018, the USDA allocated US\$173,802,447.00 in taxpayer funds to sixty-six (66) participants [see list at end of analysis or use link] under the Market Access Program (MAP), an average of US\$2,633,370.00 per distribution.

<https://www.fas.usda.gov/programs/market-access-program-map/map-funding-allocations-fy-2018>

MAP: “Through the Market Access Program (MAP), FAS partners with U.S. agricultural trade associations, cooperatives, state regional trade groups and small businesses to share the costs of overseas marketing and promotional activities that help build commercial export markets for U.S. agricultural products and commodities.

MAP reaches virtually every corner of the globe, helping to build markets for a wide variety U.S. farm and food products. FAS provides cost-share assistance to eligible U.S. organizations for activities such as consumer advertising, public relations, point-of-sale demonstrations, participation in trade fairs and exhibits, market research and technical assistance. When MAP funds are used for generic marketing and promotion, participants must contribute a minimum 10-percent match. For promotion of branded products, a dollar-for-dollar match is required.

Each year, FAS announces the MAP application period and criteria in the Federal Register. Applicants apply for MAP through the Unified Export Strategy (UES) process, which allows eligible organizations to request funding from multiple USDA market development programs through a single, strategically coordinated proposal. FAS reviews the proposals and awards funds to applicants that demonstrate the potential for effective performance based on a clear, long-term strategic plan.”

For Fiscal Year 2018, the United States Department of Agriculture (USDA) allocated US\$26,484,947.00 in taxpayer funds to twenty-three (23) cooperators [see list at end of analysis or use link] under the Foreign Market Development Program (FMD), an average of US\$1,021,084.00 per distribution.

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

<https://www.fas.usda.gov/programs/foreign-market-development-program-fmd/fmd-funding-allocations-fy-2018>

FMD: “The Foreign Market Development (FMD) Program, also known as the Cooperator Program, helps create, expand and maintain long-term export markets for U.S. agricultural products. Under the program, FAS partners with U.S. agricultural producers and processors, who are represented by non-profit commodity or trade associations called “*cooperators*,” to promote U.S. commodities overseas.

The FMD program focuses on generic promotion of U.S. commodities, rather than consumer-oriented promotion of branded products. Preference is given to organizations that represent an entire industry or are nationwide in membership and scope.

FMD-funded projects generally address long-term opportunities to reduce foreign import constraints or expand export growth opportunities. For example, this might include efforts to: reduce infrastructural or historical market impediments, improve processing capabilities, modify codes and standards, or identify new markets or new uses for the agricultural commodity or product.

Each year, FAS announces the FMD application period and criteria in the Federal Register. Organizations apply for the FMD program through the Unified Export Strategy (UES) process, which allows applicants to request funding from multiple USDA market development programs through a single, strategically coordinated proposal. FAS reviews the proposals and awards funds to applicants that demonstrate the potential for effective performance based on a clear, long-term strategic plan.”