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Five Essential Elements For Cuba Legislation To Be Successful:

1. MAP/FMD Funding Needs To Be Requested From USDA
2. Solve Home BancShares Mystery Because It's An Achilles Heel
3. Exporters Need To Be Public- Who Will Provide Payment Terms?
4. Financial Institutions Need To Be Public- Who Will Provide Financing?
5. FAR Amendments Are Coming From Four Senators; Get In Front Of Them

There has yet to be a United States agricultural commodity exporter or United States financial institution who has publicly stated they would today provide payment terms and/or financing and what those payment terms and financing terms would be for Republic of Cuba government-operated entities to purchase agricultural commodities and food products. That absence- which has remained consistent since 2000, is an Everest-like legislative hurdle. *Lacking pressure, why would the Trump Administration do anything that it does not want to do?*

Current Export Statistics

United States agricultural commodity and food product exports to the Republic of Cuba for the first quarter of 2019 have increased 30.1% compared to the same period in 2018.

Trade Sanctions Reform and Export Enhancement Act of 2000 (**TSREEA**) exports (agricultural commodities and food products) since first use by the Republic of Cuba in December 2001 are **US$5,967,305,815.00** through March 2019. TSREEA requires that payments be made on a cash-in-advance basis; no other payment terms are permitted.

Clinton Administration: US$0.00. **Bush** Administration: US$2,697,501,426.00. **Obama** Administration: US$2,700,145,234.00. **Trump** Administration: US$569,659,155.00 (through March 2019).

Legislative Checklist

There is an eighteen-year-old legislative graveyard filled with headstones of initiatives that were "*on the cusp*" of success.

But for one moment in 2018, those legislative initiatives whose fates have been preordained and with headstones engraved in advance absent the date of internment were focused one country: Republic of Cuba.

During the second quarter of 2019, the goal once again will be tee-up a change United States law from requiring payment-of-cash-in-advance for exports to the Republic of Cuba to authorizing, but not requiring, exporters to extend payment terms and for financial institutions to provide financing/loans for exports to the Republic of Cuba.

Members of the United States Congress should want to avoid the fate of the cemetery. They can by not believing there is always a "*pathway forward*" and by reining-in those who belittle constituencies required for a successful legislative journey- and that includes those within the Trump Administration.

Supporters also need to accept the reality of the legislative marketplace with respect to the Republic of Cuba- the country is itself a commodity and supporters and opponents will need to negotiate an acceptable bicameral price for legislation to become law.

Supporters will also need to have at the ready a response to: The government of the Republic of Cuba may not be blamed for weather. However, the government of the Republic of Cuba can be blamed for not investing (or permitting viable direct foreign investment) in infrastructure to lessen the impact of weather upon the country's ability to produce agricultural commodities and food products. *Why should the Republic of Cuba have access to payment terms and financing when rather than seek assistance from the Russian Federation to improve consumable infrastructure, it sought a reported US$45 million to finance the purchase of vehicles for use by the military? What predicts the government will repay its obligations as contracted with United States companies and financial institutions? Rather than repay monies it owes; the focus is to increase the mobility of the military rather than increasing the mobility of farmers by importing US$50 million in tractors?"*

And, the nearer (economically, commercially and politically) the Republic of Cuba is or is perceived to be to Venezuela, the easier will be a "*pathway forward*" for members of the United States Congress and for the Trump Administration to disengage from any legislative effort to change United States statutes.

Separating the Republic of Cuba from Venezuela (and the Russian Federation and People's Republic of China) has become increasingly challenging for members of the United States Congress while becoming less problematic for the Trump Administration to maintain that connectivity due to actions by the respective governments as reported by media.

Finally, the Trump Administration has made operational Title III of the Cuban Liberty and Democratic Solidarity Act of 1996 (known as "*Libertad Act*"). Title III authorizes lawsuits in United States District Courts against companies and individuals who are using a certified claim or non-certified claim where the owner of the certified claim or non-certified claim has not received compensation from the Republic of Cuba or from a third-party who is using ("*trafficking*") the asset. With Title III activity already in the courts, there may be little legislative interest in simultaneously promote legislation that will be deemed by detractors as beneficial to the government of the Republic of Cuba.

Nearing Five Months And No Applications To Use MAP/FMD Funds In Cuba

According the United States Department of Agriculture (**USDA**) no request has been made to use the Republic of Cuba provision in H.R. 2, the five-year Agriculture Improvement Act, known as the "*Farm Bill*" signed into law on 20 December 2018 by The Honorable Donald J. Trump, President of the United States.

The *Farm Bill* includes a provision authorizing the use in the Republic of Cuba of funding from the USDA for Market Access Program (**MAP**) and Foreign Market Development (**FMD**).

Advocates maintained that the *Farm Bill* provision was critical to "*laying the groundwork*" for increasing exports of agricultural commodities and food products to the Republic of Cuba.

Statements from members of Congress included: "… *an important first step to regaining our presence in Cuba*." Yet, not one request to the USDA.

Most observers reasonably concluded that legislative advocates- within the United States Congress and organizations located in Washington DC and located outside of the beltway would have prominently *teed-up* at least one high-profile applicant to request funding on 21 December 2018- regardless of whether the USDA was expected to approve including the Republic of Cuba in Fiscal Year 2019 allocations. Unfortunately, for some advocates having the USDA deny the allocation would be of greater value than the USDA approving the allocation- another avenue to seek funding for advocacy.

Why Won't Exporters Say They Will Provide Payment Terms?

There is no lack of support from exporter-supported organizations promoting that the accessibility to payment terms and financing for agricultural commodities and food products is important to a normalized commercial bilateral relationship with the Republic of Cuba.

However, some of these organizations (and their members) refuse to take positions with respect to specific components of legislation and regulations relating to the transaction process. For example, Direct Correspondent Banking Agreements (**DCBA).**

There is a lack of credibility when an organization supports legislation yet none of the members of the organization will support the legislation by specifically sharing how they would use the legislation if it became law.

There is a lack of support by individual exporters- and having those exporters be specific as to how they would use the proposed legislation if that legislation became law.

The lack of public support from specific exporting companies stating on-the-record (at hearings, in media releases, etc.) that they would today provide payment terms- and what those payment terms would be, to Republic of Cuba government-operated entities is harmful to any legislative effort.

Will the exporter provide financing based upon the credit report provided by Republic of Cuba government-operated Empresa Cubana Importadora Alimentos (**Alimport**), under the auspice of the Ministry of Foreign Trade of Cuba (MINCEX)? Will Alimport provide financial statements?

Alimport has received up to two years to make payment for rice imported from Vietnam; and Alimport (and all Republic of Cuba government-operated entities) generally seek a minimum of 180-days with a preference for 360-days to make payment for imports. Will United States exporters provide the same?

Important to note that in 1999 and 2000, United States exporters opposed including a provision within the Trade Sanctions Reform and Export Enhancement Act (TSREEA) that would authorize payment terms for agricultural commodity and food product exports from the United States to the Republic of Cuba.

There were two reasons: **First,** United States exporters believed that if payment terms were authorized in the TSREEA, the first delay or default by any Republic of Cuba government-operated entity reported by the media would be disastrous for all exporters- and would likely result in an immediate halt of payment terms; and members of the United States Congress would have a choir of recrimination singing "*I Told You So*." **Second**, although the lack of payment terms might result in less revenues from exports to the Republic of Cuba, there would be no risk to United States exporters or to the Republic of Cuba; and the Republic of Cuba could be presented (and it has been for eighteen years) to naysayers as the "*safest export market in the world for United States companies*." Absent payment terms, the Republic of Cuba would be required to make purchases from the United States based upon quality of product and time of delivery for product along with whether such purchases would influence the political process in the United States.

After eighteen (18) years of payment-of-cash-in-advance for purchases, the Republic of Cuba could make a legitimate argument that authorizing payment terms, even with limited "*toe-in-the-water*" transactions, would be reasonable.

Philosophically, United States companies and financial institutions believe that their owners and managers should determine credit worthiness of a potential customer rather than the United States government.

Why Won't Financial Institutions Say They Will Providing Financing?

There continues to be a lack of public support from financial institutions stating on-the-record (at hearings, in media releases, etc.) that they would today provide loans to Republic of Cuba government-operated entities based upon the credit profiles of those entities.

Would today Greenwich Village, Colorado-based **CoBank** or New York, New York-based **J.P. Morgan Chase & Co.** provide financing to United States companies who seek to export agricultural commodities and food products to the Republic of Cuba? Will CoBank or J.P. Morgan Chase & Co. provide financing based upon the financial statements provided by Alimport? Will Alimport provide financial statements?

For perspective, review an article referencing a 14 September 2016 hearing before the Committee on Agriculture of the United States House of Representatives. Significant to note that the individual quoted in an exchange with Representative Crawford is now Senior Director for Western Hemisphere Affairs at the National Security Council (**NSC**) in The White House:

https://www.cubatrade.org/blog/2016/9/17/from-inside-us-trade-lawmaker-pledges-to-push-ahead-on-cuba-trade-bill-after-house-hearing?rq=cobank

When New York, New York-based **The Trump Organization** transfers funds to the United States from one of the seven countries which host four of its hotels and seven of its golf clubs, The Trump Organization does not use a third country; it uses a straight line- a financial institution electronically transfers the funds from Canada, Dubai, Indonesia, Ireland or the United Kingdom to New York City. The Trump Organization does not want to waste time or waste money. The Trump Organization uses financial institutions with direct correspondent banking accounts.

One United States-based financial institution has a partial DCBA with Republic of Cuba government-operated Banco Internacional de Comercia SA (**BICSA**), a member of Republic of Cuba government-operated Grupo Nuevo Banca SA, created by Corporate Charter No. 49 on 29 October 1993 and commenced operation on 3 January 1994.

However, because BICSA does not have an account with the United States-based financial institution, a fully-operational direct correspondent relationship does not exist, and a multi-country triangular payment process continues- financial institutions in third countries have received fees on more than US$5.8 billion in transactions during the last eighteen years.

In 2015, the Office of Foreign Assets Control (**OFAC**) of the United States Department of the Treasury authorized Pompano Beach, Florida-based **Stonegate Bank** (2017 assets approximately US$2.9 billion) to have an account with BICSA. Stonegate Bank provides commercial operating accounts for the Embassy of the Republic of Cuba in Washington, DC and the Permanent Mission of the Republic of Cuba to the United Nations in New York City; the financial institution also handles other types of OFAC-authorized transactions.

In September 2017, Stonegate Bank was purchased by Conway, Arkansas-based **Home BancShares** (2018 assets approximately US$14 billion) through its Centennial Bank subsidiary.

The Obama Administration did not authorize BICSA under a general OFAC license or reportedly in the OFAC license issued to Stonegate Bank for it to have an account with Stonegate Bank, so Stonegate Bank has processed some transactions through **Panama City, Panama-based Multibank**, which has dealings with the Republic of Cuba.

One signature from Ms. **Andrea Gacki**, Director of the OFAC, can permit two-way direct correspondent transactions rather than the three-way transaction process that has existed for seventeen years.

The augmentation of the OFAC license would be consistent with the export-focused mandates from the Trump Administration to the USDA and United States Department of Commerce (**USDOC**).

Previously, officials within the OFAC and United States Department of State shared that if a license application were submitted, the license application would likely be approved.

That license would immediately benefit United States agricultural commodity and food product exporters from the first transaction- United States exporters will get paid more transparently, safer, faster and with less cost for each payment they receive from the Republic of Cuba.

Ports in **Alabama, Florida, Georgia, Louisiana, Mississippi, Texas and Virginia** would also benefit by a more efficient transaction process and vessel departure schedule as United States exporters would have confirmation of payment delivery in a more consistent manner- paperwork delays would be fewer due to not having to await documentation from outside of the United States.

To date, Home BancShares has refused to disclose the reason(s) it has not sought authorization from the OFAC for BICSA to have an account with Home BancShares.

If each financial institution had an account with the other, the implementation of Direct Correspondent Banking (**DCB**) services would be operable- meaning that third-country financial institutions would no longer receive a commission for each United States-Republic of Cuba transaction. *DCB saves money, saves time, is more transparent, and safer.*

Ironically, the four (**4**) members of the House of Representatives and two (**2**) members of the United States Senate from Arkansas (exporter of poultry, rice, etc.) have not demonstrated an interest in public engagement with Home BancShares to implement DCBA.

Amendments Are Coming; Get In Front Of Them

Any proposed legislation to authorize payment terms and financing for exports of agricultural commodities and food products from the United States to the Republic of Cuba should include a prohibition provision relating to the Revolutionary Armed Forces of the Republic of Cuba (**FAR**) because The Honorable **Marco Rubio** (R- Florida), The Honorable **Rick Scott** (R- Florida), The Honorable **Robert Menendez** (D- New Jersey) and The Honorable **Ted Cruz** (R- Texas), each of Cuban descent, will seek to add, and succeed in adding an amendment to any legislation.

If advocates believe that they can "*roll*" these four members of the United States Senate, they are delusional. The most effective strategy is to negotiate early rather than risk an amendment, secondary amendment or "*killer amendment*."

The Republic of Cuba-related provision within the recently-enacted *Farm Bill* became law, somewhat ironically, because of one (**1**) United States Senator representing the State of Florida- who initially opposed the provision, but supported the provision when language was added which prohibited the use of United States taxpayer funds with entities in the Republic of Cuba controlled by the military. The United States business community did not oppose that prohibition.

The *Farm Bill* includes a provision authorizing the use in the Republic of Cuba of funding from the USDA for Market Access Program (**MAP**) and Foreign Market Development (**FMD**).

The provision in the *Farm Bill* was co-authored by two members of the United States Senate: The Honorable **Heidi Heitkamp** (D- ND), who lost her 2018 re-election, and Senator Rubio.

Senator Heitkamp agreed to include language submitted by Senator Rubio that would prohibit MAP and FMD funding to be used with Republic of Cuba entities that are controlled by the FAR, consistent with policies of the Trump Administration.

The specific language: ***"(d) Cuba. — Notwithstanding section 908 of the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. 7207) or any other provision of law, funds made available under this section may be used to carry out the programs authorized under sections 222 and 223 in Cuba. Funds may not be used as described in the previous sentence in contravention with directives set forth under the National Security Presidential Memorandum entitled 'Strengthening the Policy of the United States Toward Cuba' issued by the President on June 16, 2017, during the period in which that memorandum is in effect.***