

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

Republic of Cuba government-operated companies request payment terms of 1-3 years for imports, regardless of product value; Exporters market invoices at 14% to 20% discount.

U.S. companies had opportunities- US\$110 million & 35 Offices; Cuba Hesitate(d)(s)

Almost every country that exports products to Republic of Cuba government-operated companies has companies that have used *invoice-at-a-discount transactions*. The countries with the largest number of companies using these options are *Canada, Italy, Panama and Spain*. No United States company has reported using invoice-at-a-discount-transactions.

Approximately 50% of companies exporting to Republic of Cuba government-operated companies have used invoice-at-a-discount transactions. Approximately 20% of their account receivables from Republic of Cuba government-operated companies use invoice-at-a-discount transactions and 80% of their account receivables from Republic of Cuba government-operated companies are non-eligible receivables (not considered creditworthy to obtain invoice-at-a-discount options) and where exporters have the financial means to absorb delay-of-payment and/or losses.

The use of invoice-at-a-discount transactions has remained consistent during each of the last three years. The government of the Republic of Cuba prefers government-to-government transactions which are less transparent and have opaque repayment flexibility.

Republic of Cuba government-operated companies have been requesting payment terms of one (1) year to three (3) years, whether the product value is US\$5,000.00 or US\$1,000,000.00 or more.

There is an increasing use by suppliers of products to Republic of Cuba government-operated companies offloading the account receivable on a non-recourse basis to a third-party financier, which purchases the receivable at a discount to its face or future value. The discount has generally ranged from **14%** per annum for Republic of Cuba government-operated companies with consistent repayment histories to **18%-20%** for those with problematic repayment histories.

For example, if the product to be exported is priced at US\$1,000,000.00, and the Republic of Cuba government-operated company, which is requesting one-year terms, has a poor repayment history, a third-party purchaser of the account receivable in conjunction with the transaction might require an 18% discount, so the exporter would receive US\$820,000.00 (loan-to-value advance rate) for a product valued at US\$1,000,000.00 unless the sales price has been increased by US\$180,000.00, which is often the result so that the exporter is fully-compensated in the transaction.

The following example is where commercial terms are a single payment of US\$1,000,000.00 to be made twenty-four (24) months after shipment of the product to the Republic of Cuba. This commercial credit could be evidenced by any of the following:

(1) A written promise in the contract to make payment of US\$1,000,000.00 using electronic transfer on the appointed date. Assignment of this type of transaction requires notice to and consent by the purchaser.

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

(2) A Bill of Exchange (Promissory Note) drawn on the Republic of Cuba government-operated company for US\$1,000,000.00, with a payment date of twenty-four (24) months after shipment of the product to the Republic of Cuba. A Bill of Exchange is a stand-alone negotiable statutory instrument, regulated and enforced under Republic of Cuba law. Its endorsement to a third-party financier neither requires notification nor consent of buyer/debtor, but it must be collected into an account at a Republic of Cuba government-operated financial institution in the Republic of Cuba.

(3) A deferred-payment Letter of Credit issued at the request of the Republic of Cuba government-operated company using a Republic of Cuba government-operated financial institution in favor of the exporter, specifying via SWIFT message, payment of US\$1,000,000.00 on a date twenty-four (24) months after shipment of product to the Republic of Cuba. Letters of Credit are internationally-regulated standard bank obligations, in theory with recourse to **SWIFT** arbitration, etc. Assignment of proceeds is perfected via notification by the exporter to the issuing bank, which must confirm the assignment to the new creditor, and therefore, de facto, exercises control and consent over the assignment.

Each of the above-referenced instruments may be transferred to a third-party financier willing to make payment to the exporter: cash today, against the transfer of the collection rights arising from the sale of the product to the Republic of Cuba government-operated company.

Do companies that export to the Republic of Cuba that make use of a third-party to unload the debt obligation also seek third-party insurance on their remaining account receivable exposure? In the transactions outlined above, repayment is based upon the good faith of the Republic of Cuba government-operated company and Republic of Cuba government-operated financial institution.

A Chief Financial Officer (**CFO**) of a company might have concerns since the purchaser is seeking one to two years to make payment and the company has already determined risk necessitates off-loading the account receivable at a discount to a third-party; and thus the likelihood of repayment as promised is defined as uncertain.

According to an insurance marketplace expert, “...there are credit insurance companies/brokers, but they are usually small and challenging to locate. A policy written by these insurance companies/brokers can be problematic- if there is an issue, the policy generally does not pay-out, only extends the cover (at no further cost) until the matter is resolved. Large commodity trading companies are generally the sole users of this type of insurance as their ability to place a portfolio of global risks makes them attractive counterparts for the insurers; they use most of what limited capacity exists in this marketplace.” Generally, an account receivable is sold without recourse to a vendor or a receivable is insured and retained by a vendor.

Under provisions of some United States statutes and regulations and policies, durables and non-durables may be exported directly from the United States to the Republic of Cuba if the end-user complies with requirements of, individually or collectively, the Office of Foreign Assets Control (**OFAC**) of the United States Department of the Treasury, Bureau of Industry and Security (**BIS**) of the United States Department of Commerce, and United States Department of State (**DOS**).

The most expansive payment-term latitude for direct product exports/imports and provision of services opportunities from the United States to the Republic of Cuba are **1**) healthcare (medical equipment, medical instruments, medical supplies, pharmaceuticals, research collaboration, product testing, product marketing) and **2**) individuals working independently and those registered and/or unofficially operating among the 205 categories of authorized self-employed in the

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

Republic of Cuba and 3) agricultural interests where there is a substantive component of independence (defined by the OFAC/BIS/DOS) in terms of ownership and/or operation (thus far, the sourcing of coffee and charcoal have qualified for direct export to the United States).

Payment for the export of products relating to the aforementioned categories do not require payment of cash-in-advance; payment terms may be extended by the exporter and/or through third-parties (within or outside of the United States). The government of the Republic of Cuba does not permit self-employed individuals and independent/quasi-independent entities (primarily agricultural-related cooperatives) to directly import products on their own account, directly export on their own account, nor do self-employed individuals have access to wholesale marketplaces.

Had the government of the Republic of Cuba authorized United States companies to engage the full range of regulatory and policy changes implemented by the Obama Administration from 17 December 2014 through 20 January 2017 at the OFAC, BIS and DOS, **approximately US\$110 million** could have been delivered (as exports to self-employed/cooperatives and as Direct Foreign Investment(DFI)) throughout the Republic of Cuba, but primarily in the city of Havana and approximately **thirty-five** (35) United States companies (including law firms) would have established representative offices in the Republic of Cuba and hired three hundred (300) to five hundred (500) Republic of Cuba nationals to provide direct and indirect services.

Representatives of United States companies who discussed opportunities with representatives of the government of the Republic of Cuba believe there are solutions to encountered management/operational issues, some of which involve Republic of Cuba nationals establishing legally-operating entities (rather than as licensed self-employed) with personnel hiring and import authorization.

However, the government of the Republic of Cuba has thus far been unwilling to authorize Republic of Cuba nationals to establish legally-operating entities from which to engage hotel management, ground transportation, delivery, product sales, product distribution, and product service. There are Republic of Cuba government-operated companies that representatives of United States companies believe inefficient, inflexible and incapable of achieving consistent standards because they are “*government-operated*.”

NOTE: Government of Vietnam-operated Vinafood (1 & 2) have provided payment terms to Republic of Cuba government-operated Alimport of two (2) years to pay for rice (25% to 30% broken). United States producers can provide this product; however, payment terms, if statutorily permitted, without the use of United States government guarantee programs, would be cash-on-delivery to 30 days; and for credit-worthy customers, generally not exceed sixty (60) days to ninety (90) days. No United States company which has exported product(s) to the Republic of Cuba since 2001 has publicly stated what payment terms it would currently provide if authorized by statute. Since December 2001, more than US\$5.3 billion in agricultural commodities and food products have been exported directly from the United States to the Republic of Cuba on a cash-in-advance basis as required by the Trade Sanctions Reform and Export Enhancement Act (**TSREEA**) of 2000. The government of the Republic of Cuba prefers to purchase food products and agricultural commodities from government-operated exporters where either the exporter or the government of the Republic of Cuba accesses government export-payment guarantee programs. Approximately US\$18 million in healthcare products have been directly exported from the United States to the Republic of Cuba since 1992 under provisions of the Cuban Democracy Act (**CDA**); healthcare product exports within provisions of the CDA are not subject to cash-in-advance requirements.