

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-

The 116th United States Congress will have Republic of Cuba-related legislation introduced in the United States House of Representatives and in the United States Senate.

If legislation becomes law, it will be a result of mixing the perspectives of two members of the United States Congress:

The Honorable **Marco Rubio** (R- Florida): *“What the Cuban government is trying to do is they are trying to create an economic dictatorship to build on the military one and the political one.”*

The Honorable **Rick Crawford** (R- Arkansas 1st District): *“I applaud my Senate colleagues for working to get this provision into their bill and I worked hard to make sure it made it into the final conference report. The Heitkamp amendment is an important first step towards exporting American agriculture goods into Cuba... We look forward to building on this momentum in the 116th Congress.”*

The unknowns for the legislative contest in the 116th United States Congress are **a)** what will be in the initial legislative language **b)** what will be in the final legislative language and **c)** will any of the legislative language become law.

The likely legislative match-up will include **one boxer** supporting language to re-authorize United States companies and United States financial institutions to provide, should they believe in their interests to do so, payment terms and financing to Republic of Cuba government-operated entities for purchase of agricultural commodities and food products from the United States. The **other boxer** will be supporting language that **1)** prohibits- or rather does its best to do so, any benefit to the Revolutionary Armed Forces of the Republic of Cuba (**FAR**) and its commercially-focused entities **2)** provides greater benefits for purchases by non-Republic of Cuba government-operated entities (i.e. private cooperatives, private farms, self-employed) and **3)** requires a stipulated settlement process for the 5,913 certified claimants- who want prompt support from the Trump Administration.

The legislative language guide will be based upon a provision in the recently-enacted H.R. 2 (The “Farm Bill”) which authorized the use in the Republic of Cuba of funding from the United States Department of Agriculture (**USDA**) for Market Access Program (**MAP**) and Foreign Market Development (**FMD**). The provision in the *Farm Bill* was co-authored (reluctantly) 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. That is the reason the provision became law.

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*

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

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.

Penalizing the government of the Republic of Cuba for permitting the FAR to have a substantive role in the commercial, economic and political infrastructure throughout the country of 11.3 million citizens is unlikely to have opposition in the United States Congress (and certainly not within The Trump Administration) and unlikely to have opposition from United States companies, United States financial institutions and rational advocacy organizations.

There is a *legislative inevitability* to re-authorizing (a change in United States law is required) United States companies and United States financial institutions to provide, should they believe in their interests to do so, payment terms and financing to Republic of Cuba government-operated entities for purchase of agricultural commodities and food products from the United States.

Management of United States companies and United States financial institutions believe they, not the United States government, should determine whether a customer is worthy of payment terms or financing and worth the risk of incurring a delay or default.

A change in United States law will expectantly arise a response from the government of the Republic of Cuba similar to that after the **Trade Sanctions Reform and Export Enhancement Act** (TSREEA) was enacted in 2000- that it would not purchase a grain of rice or a kernel of corn because payment terms and financing were not re-authorized.

United States companies and United States organizations, after expending two years advocating for the TSREEA, were appalled by the position of the government of the Republic of Cuba and, as a result, substantially decreased their collective focus upon the Republic of Cuba. United States exporters had quietly opposed a provision to the TSREEA to include payment terms and financing for fear a delay or default would doom future legislative and regulatory changes; the goal was to construct a multi-year track record from which future legislation would emerge.

More than one year later, in December 2001, the government of the Republic of Cuba made its first purchases (US\$4,318,906.00) of corn and poultry under TSREEA; stating the purchases were a “*one-off*” to supplement requirements after a hurricane and there should be no expectation for additional purchases.

Since December 2001, the Republic of Cuba has purchased, on a cash-in-advance basis, more than US\$5.8 billion in agricultural commodities and food products from United States companies.

For United States companies, most believe that an eighteen-year track record of purchases suffices for shifting to the next stage in re-developing the bilateral commercial landscape between the United States and the Republic of Cuba. **And, that next stage necessarily means having a choice of accepting commercial transaction risk.** The government of the Republic of Cuba is expected to argue that after eighteen years of payments as required, and spending more than US\$5.8 billion, aren't they entitled, haven't they earned the right to move beyond cash-and-carry?

However, the government of the Republic of Cuba is likely to respond to any legislative change (including that within the *Farm Bill* although that provision is about spending funds in the Republic of Cuba, which would logically incur favor rather than scorn) soon after learning that payment terms and financing terms from United States companies and United States financial institutions are not as expansive as required given the abject perilousness of payment reliability by Republic

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

of Cuba government-operated entities, by reducing (but not eliminating) purchases from the United States until it has access to programs *which provide United States government payment guarantees to United States exporters and their customers*. Senator Rubio is likely to require there be no such access in any legislation. Access to the following programs are the “*holly grail*” for the Republic of Cuba and in many respects is the final chapter for re-establishing the bilateral commercial transaction process:

United States Department of Agriculture (USDA)

Commodity Credit Corporation
Export Credit Guarantee Program
Facilities Guarantee Program

Export-Import Bank (ExIm)

Export Working Capital Program
Working Capital Guarantee Program
Loan Guarantee Program
Direct Loan Program
Finance Lease Guarantee Program

Overseas Private Investment Corporation (OPIC)

Direct Loans and Loan Guarantees

Small Business Administration (SBA)

Export Express Program
International Trade Loan Program

For reference: The “*pathway forward*” for Republic of Cuba-focused (more accurately, Republic of Cuba-benefiting) legislative initiatives in the 116th United States Congress, may follow a pathway similar to the following:

On 3 June 2015, The Honorable Marco Rubio (R- Florida), a member of the United States Senate, introduced S. 1489, the “***Cuban Military Transparency Act.***”

S.1489 — 114th Congress (2015-2016) Cuban Military Transparency Act Sponsor: Sen. Rubio, Marco [R-FL] (Introduced 06/03/2015) Cosponsors: (8) Committees: Senate - Foreign Relations Latest Action: Senate - 06/03/2015 Read twice and referred to the Committee on Foreign Relations.

On 25 June 2015, The Honorable Devin Nunes (R- California), a member of the United States House of Representatives, introduced H.R. 2937, the “***Cuban Military Transparency Act.***”

H.R.2937 — 114th Congress (2015-2016) Cuban Military Transparency Act Sponsor: Rep. Nunes, Devin [R-CA-22] (Introduced 06/25/2015) Cosponsors: (49) Committees: House - Foreign Affairs, Financial Services Latest Action: House - 06/25/2015 Referred to the Committee on Foreign Affairs, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee.

On 13 January 2017, The Honorable Rick Crawford (R- Arkansas), a member of the United States House of Representatives, introduced H.R. 525, the “***Cuba Agricultural Exports Act.***”

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

H.R.525 — 115th Congress (2017-2018) Cuba Agricultural Exports Act **Sponsor:** Rep. Crawford, Eric A. "Rick" [R-AR-1] (Introduced 01/13/2017) Cosponsors: (66) Committee: House - Foreign Affairs, Financial Services, Agriculture Latest Action: House - 01/13/2017 Referred to the Committee on Foreign Affairs, and in addition to the Committees on Financial Services, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of.

Current Statistics

United States agricultural commodity and food product exports to the Republic of Cuba continue to decline; **16.1%** thus far in 2018 compared to the same period in 2017- and have done so when commodity inventories have been high, commodity prices have been low and there would have been political value in purchases during a time of pain for United States farmers. Healthcare product exports have also declined; **44.1%** thus far in 2018 compared to the same period in 2017.

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\$5,849,925,838.00** through October 2018: **Clinton** Administration: US\$0.00. **Bush** Administration: US\$2,697,501,426.00. **Obama** Administration: US\$2,700,145,225.00. **Trump** Administration: US\$452,279,187.00. TSREEA requires that payments be made on a cash-in-advance basis; no other payment terms are permitted.