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Memorandum To The National Security Council- Hurry Up.

In advance of or in conjunction with the meeting of President Barack Obama and President Raul Castro at the United Nations in New York City in September 2016...

Regulations Need Be Issued; Here They Are.

All parties need time to adjust, adapt, accept and implement.

7 September 2016: The United States business community has increasing concerns that the Obama Administration does not appreciate the enormity of the impact of the dwindling days until Inauguration Day upon Republic of Cuba-focused initiatives.

There will be no changes to United States statutes relating to the Republic of Cuba during the remaining days of the Obama Administration; there were never going to be any changes to the Cuban Democracy Act (1992), Libertad Act (1996) or Trade Sanctions Reform and Export Enhancement Act (2000) given the political dynamic existing during the final two-years of this two-term president. There were unavailed opportunities when the President's party controlled the United States Congress from 2009 to 2011.

Prudent to remember that the last change in United States law relating to the Republic of Cuba will be sixteen years next month.

Legislative history has shown the Republic of Cuba to be a low-value commodity; to be traded away in most instances because it lacks importance. The legislative calendar is littered with Members of Congress pronouncing they would not permit legislation unrelated to the Republic of Cuba to proceed unless issues relating to the Republic of Cuba were resolved. In the end, no Member of Congress was going to seek to hold appropriation or other legislation of national importance because of the Republic of Cuba.

In the fifteen years (December 2001) since the resumption of direct exports of food products and agricultural commodities from the United States to the Republic of Cuba, United States companies have received approximately US\$5.2 billion from the Republic of Cuba. Since the inauguration of President Obama, exports of food products and agricultural commodities have decreased from US\$528.4 million in 2009 to US\$170.5 million in 2015; thus far in 2016, at US\$120.0 million, they have decreased 2% for the first seven months of the year.

Healthcare product (medical instruments, medical equipment, medical supplies, pharmaceuticals) exports from the United States to the Republic of Cuba in 2009 were US\$85,408.00; and in 2015 were US\$4,896,966.00. Thus far in 2016, exports were US\$617,315.00.

Since 17 December 2014, the Republic of Cuba has received (from United States visitors) and has saved (cost of business operations due to changes in United States regulations) in excess of US\$1 billion.

One Republic of Cuba government-operated company has contracted with a United States-based company for one (1) piece of agricultural equipment. There have been no other durable-defined product exports from the United States to the Republic of Cuba since 17 December 2014.

Useful to remember that while the Trade Sanctions Reform and Export Enhancement Act (TSREEA) included, with the support of the United States business community, a re-authorization of exports (on a cash basis, which was also supported by the United States business community but opposed by agricultural organizations and by the government of the Republic of Cuba) for food products and agricultural

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commodities, the legislative balance insisted upon by opponents was a codification of authorized travel categories (which excluded tourism); they were successful.

Legislation currently considered by the United States Congress may well result in a “*path forward*” balance in order to obtain support from opponents- and that equilibrium could include unintended, but predictable consequences- a limitation upon United States companies as to which entities within the Republic of Cuba are authorized for commercial engagement (i.e., military-affiliated).

Opponents to further changes in United States law have twenty-four years of precedent (1992, 1996, 2000); and they have prevented statutory changes in the last 631 days (since 17 December 2014) during which the President of the United States has sought to make the Republic of Cuba a significant component of his two-term (eight-year) legacy.

For the Obama Administration, there may be non-Republic of Cuba considerations that will stifle additional regulatory changes- the importance of hearings for a nominee to the United States Supreme Court and approval of the Trans-Pacific Partnership (TPP).

For the Obama Administration, the use of regulatory authority was always the only efficient pathway for creating changes to the commercial, economic and political bilateral landscape with the Republic of Cuba.

The Obama Administration focus must be upon departing at 12:00 pm on 20 January 2017 with only statutory impediments remaining throughout this bilateral landscape. In this way, all that can be done will have been done.

As a result, the government of the Republic of Cuba will need to reconcile with the reality of opportunities available for engagement or continued posturing about what statutes remain in place as reason(s) for awaiting any further deepening of commercial relationships.

The Obama Administration (at the direction of the National Security Council at The White House) does plan to issue changes to existing regulations and issue new regulations before 20 January 2016. That’s the good news.

There is peril in a “*Regulation Dump*” immediately before Inauguration Day, rather than doing so as soon as possible.... Doing all of it.

All parties need time to adjust, adapt, accept and implement.

The Obama Administration does not seem to appreciate the importance for United States companies and the government of the Republic of Cuba to have sufficient time for regulations to be vetted by legal counsel, dissected to determine if they are viable, and then if possible implemented.

There needs to be time for subsequent regulatory revisions so there are not what will be significant delays during the settling-in of the next Administration.

Regulators at departments and agencies throughout the United States government are generally paralyzed during the first months (or year or more) of any new Administration as they await placement of political appointees for policy guidance.

This freezing of decision-making would be heightened due to the political sensitivities of anything relating to the Republic of Cuba in 2017 as the anticipation focuses upon 24 February 2018, the retirement of President Castro- and how to entice changes by him during his final months in office or await and provide incentives to his successor, First Vice President of the Council of State of the Republic of Cuba, Miguel Diaz-Canel (DOB 20 April 1960). That is what the United States Congress will be analyzing.

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

The Obama Administration needs to make the changes to existing regulations and issue new regulations as soon as possible.

There are desires among some in The White House to synchronize announcements with the final meeting of President Obama and President Castro; that means during the week that includes 20 September 2016.

Earlier would be preferred so that the two heads of state would be able to discuss how the regulatory announcements were received by the United States business community and in Havana.

Go all in; the government of the Republic of Cuba has not fully reciprocated, is not fully reciprocating and is unlikely to fully reciprocate to a depth which would balance the Obama Administration initiatives with the Castro Administration responses. So, the choice is awaiting what will not arrive or finishing the task as forcefully as possible.

The successor to President Obama will unlikely be focused upon regulatory changes certainly at the beginning, and likely through the beginning of their term in office. And, with President Castro retiring on 24 February 2018, there may well be an incentive to withhold regulatory changes until a successor is in place and governing. So, President Obama should go “*all in*” and leave only for his successor the shepherding of a legislative agenda.

What Would Be Helpful

- Authorize all commercial activity under a general license from the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury and Bureau of Industry and Security (BIS) of the United States Department of Commerce, including Direct Foreign Investment (DFI)
- Issue a general license from the OFAC for all vessels pursuant to the 180-day provision of the Cuban Democracy Act (CDA) of 1992
- Authorize all transactions with Republic of Cuba government-operated companies
- Authorize all imports under general license
- Authorize all exports under general license
- Authorize Republic of Cuba government-operated financial institutions to have accounts with United States-based financial institutions for the purpose of correspondent activities
- File motions to dismiss unwarranted civil judgements against the Republic of Cuba
- Announce specific progress for the settlement of the 5,913 claims certified with the Foreign Claims Settlement Commission (FCSC) within the United States Department of Justice

The mathematics are simple, the fewer days remaining in the Obama Administration, the fewer days for United States companies to make the greatest advantage of the initiatives implemented since 17 December 2014.

It's time to be practical rather than political.