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When A Politician Negotiates A Business Deal

Unintended (For One Side) Consequences To Find “A Proper Path Forward”

Not A Poison Pill- A Poison Fee

How To Define An “Elegant Solution”

133 Years to 1,723 Years For Repayment

The Hurry To Lose? Repeating The Mistake Of 6,000 Days Ago

A proposal by The Honorable Rick Crawford (R- 1st District, Arkansas) to require by statute a 2% transaction fee for agricultural commodity and food product exports from the United States to the Republic of Cuba under provisions of the Trade Sanctions Reform and Export Enhancement Act (TSREEA) of 2000 in return for statutorily authorizing private-sector payment terms for those exports is *not* a solution to a problem- it is an affront to the 5,913 companies and individuals who have waited nearing fifty-seven (57) years for an equitable resolution to the expropriation of assets (29 June 1960).

Representative Crawford is not solving a problem; he is making the existing problem worse and creating additional problems. He may believe that his efforts at bipartisan engagement are creating a space for bipartisan dialogue with a goal of closure. He is not. He is solidifying delay and distraction. Rice from Arkansas will not be flooding the Republic of Cuba marketplace because of his efforts.

United States agricultural commodity and food product exports are approximately US\$5.3 billion since the first deliveries in December 2001 under provisions of the TSREEA.

If the proposed 2% had been collected since the first TSREEA-related exports to the Republic of Cuba, the total thus far would be approximately *US\$106 million- which equates to approximately 6% of the initial value of the certified claims and approximately 1% of the current value of the certified claims.*

United States citizens, owners of privately-held companies, and shareholders of publicly-held companies should not be required to make (reimburse) payments for actions by the government of the Republic of Cuba.

Why would the Trump Administration, which extols the role of exporters in the United States economy, support creating an additional impediment to the one statutorily-permitted category with the greatest history and greatest potential?

Will imports from the Republic of Cuba, for example currently authorized coffee and charcoal, be subject to financial penalties? *Will there be a Nespresso-tax?*

The “*long-term solution*” advocated by grass-roots activists/lobbyists in July 2016 (see below) is not accomplished through the creation of an onerous new statute. This new statute would only serve as a platform for individuals and organizations to seek additional funds to lobby for the repeal of a previous statute. *And, that helps companies in what way?*

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For the privilege of exporting agricultural commodities and food products to the Republic of Cuba, United States companies will be required to earn less for their efforts. This is foolish logic. Through courage of ignorance, the result is a *further delegitimization of the bilateral commercial process*.

To remind: When Members of Congress and their advocates and their lobbyists had an occupant of the Oval Office from 20 January 2009 to 20 January 2017; and who in 2014 (December), 2015, 2016 and 2017 (January) had a focus upon the Republic of Cuba, and could have, by directive, increased the efficiency (by lessening costs) of transactions by authorizing direct correspondent banking- nothing was done.

United States companies which may not have a certified claim will be making payments to those who have certified claims. *This is fair?*

Representative Crawford is advocating absolution for the government of the Republic of Cuba of responsibility for its expropriations. He is advocating for a transfer of responsibility from the government of the Republic of Cuba to a new class of creditors- the 325 million population of the United States who without recourse would indirectly reimburse the government of the Republic of Cuba for expropriating the assets of 5,913 companies and individuals. *This is right?*

There were 8,821 claims of which 5,913 awards certified by the United States Foreign Claims Settlement Commission (USFCSC) were valued at **US\$1,902,202,284.95**. Of these certified claims, thirty (30) United States-based companies hold 56.85% of the total value. The USFCSC permitted interest to be accrued in the amount of 6% per annum; the current value is approximately **US\$8 billion**.

As reported in on 27 May 2017 in The Miami Herald: “Every transaction will have a two percent excise fee that would be collected and administered to certified claimants through the Treasury Department,” he said. “The 2% user fee functions like an excise tax on the total sale, and it is paid by the seller of the agricultural product,” added a staffer from Crawford’s office.... “an end thanks to an “elegant” solution that is part of proposed legislation: a 2 percent user fee on agricultural products sold to the island that would be used to compensate those who have certified claims of properties confiscated by the Cuban government.”

In an eagerness to “accomplish” something, the result may be the creation of a statutory template and judicial precedent impacting United States bilateral and multilateral relationships, as well as, complicate the commercial, economic and political landscape from which to resolve other United States-Republic of Cuba issues. Representative Crawford would be best advised to await 24 February 2018, the inauguration of the next president of the Republic of Cuba, when the bilateral dynamic may well be more... dynamic. Change for the sake of change is not always productive- and can be harmful.

What is unknown- thus far, is if the legislation would define “*certified claimants*” as those among the 5,913 or those whose claims are not among the 5,913.

The definition is critical to determining the value (and legitimacy) of the legislation- and to whom it has value. The 5,913 certified claimants have endured previous occupants (Democrat and Republican) of The White House negating the value and importance of the certified claims and redirecting funds reserved for repayment of the certified claims to satisfy civil judgements unrelated to the certified claims; and the invasion of those funds was supported by those with

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whom Representative Crawford is negotiating his legislation. He has been “*rolled*” in the political context of the term.

How does creating another statutory requirement; impediment to a “*normalized*” bilateral commercial environment positively impact the existing commercial environment?

What is the mechanism for removing the 2% transaction fee from the statute? Until the value of the “*certified claims*” have been repaid? Which value- the original US\$1.9 billion or the current US\$8 billion?

Let's examine the data:

In 2016, the value of TSREEA-related exports was US\$232,064,645.00; and 2% is US\$4,641,292.90. If the highest value TSREEA-related export year is used, US\$710,086,323.00 in 2008; then 2% is US\$14,201,726.46.

At this rate, repayment of the original value of the certified claims, US\$1,902,202,284.95, would take approximately 400 years based upon the 2016 value and approximately 133 years based upon the 2008 value.

If the approximate US\$8 billion current value of the certified claims is used, the repayment schedule ranges from approximately 563 years (2008) to 1,723 years (2016).

There are credible individuals, organizations and other entities who estimate unfettered TSREEA-related (meaning no restrictions) exports to the Republic of Cuba could be US\$2 billion annually (equating to approximately 100% of current and 70% of potential agricultural commodity and food product imports by the Republic of Cuba). Using that valuation, the 2% fee would be US\$40 million; and certified claimants could be repaid in approximately 47 years to 200 years depending upon which certified claim total value is used in the calculation.

NOTE: Each of the previous analyses do not account for a continuation of the 6% per annum interest permitted by the FSFCSC.

Those members of the United States Congress with whom Representative Crawford has “*negotiated*” thus far succeeded in creating the same type of unrelated trade-off as those who negotiated the TSREEA.... a statutory codification of twelve (12) categories of authorized travel to the Republic of Cuba and a specific prohibition on travel related to tourism. Representative Crawford is making the same poorly-thought-out agreement as did his Republican colleagues more than **6,000** days ago.

With agricultural commodity and food product exports a low-profit margin exercise, often with margins in the low single digits, how does adding 2% to the pricing of an export assist with increasing the quantity and value of exports? And, there would be additional transaction costs to the exporter to transfer the funds to the Office of Foreign Assets Control (**OFAC**) of the United States Department of the Treasury; and there would be costs to the OFAC to manage and audit the statutory requirement. Meaning an increased budget and increased cost to the United States taxpayer.

Representative Crawford may be seeking to create a socialist (collective) solution to what was considering by many to be a communist-inspired problem from 1960: He wants those who had

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nothing to do with the problem to pay for its resolution. Person A steals from Person B and then Person A requires Persons C, D, E, F, etc., to repay Person B; and those persons had nothing to do with the original transgression.

There Are Other Ways

United States companies have identified reasonable options for resolving the 5,913 certified claims, including the retention of an outside specialist:

<http://www.cubatrade.org/blog/2016/12/1/zigs56x0gme3a9rqg7aecx9vf2gqgk?rq=feinberg>

Background- U.S. Food Product/Agricultural Commodity Exports To Cuba

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 TSREEA.

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. No United States financial institution has publicly stated that it would provide financing for those exports.

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. Requesting payment terms of one-year to three-years is not uncommon.

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). The Republic of Cuba annually imports approximately 200,000 metric tons to 400,000 metric tons of rice, primarily from Vietnam and People's Republic of China. Republic of Cuba annual domestic requirements are approximately 700,000 metric tons. The Republic of Cuba does grow a small quantity of rice. 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 according to United States exporters.

12 July 2016 (Blog Post)

"There is real momentum," said The Honorable Mark Sanford (R- South Carolina), a member of the United States House of Representatives, last week. He then had no mention of the events of last week on his www.house.gov page as of 9 July 2016.

"...a proper path forward and we agreed to find a solution that does a number of things," said The Honorable Rick Crawford (R- Arkansas), a member of the United States House of Representatives, last week. He also shared *"a long-term solution," "thorough examination," and "deliberative process across each relevant committee of jurisdiction."* Representative Crawford then had no mention of the events of last week on his www.house.gov page as of 9 July 2016.

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“... a historic compromise” and “major step forward,” said Washington, DC-based EngageCuba, adding *“reached an agreement to find a long-term solution to provide credit for the export of agricultural commodities to Cuba.”* And, the organization’s president offered this to those who have opposed his efforts, *“their position is no longer tenable.”* Is this a winning-votes strategy by a grass-roots organizer or a self-professed effective advocate/consultant/lobbyist?

“...redouble its efforts with this Congress,” said Washington, DC-based U.S. Agriculture Coalition for Cuba. Would this be the 114th Congress about to recess for the upcoming elections, with few remaining legislative days before formally adjourning in December 2016?

The government of the Republic of Cuba could not have been enthusiastic when their advocates engineered not one, but two, legislative failures within twenty-four (24) hours.

The result all but assures no legislation in the 114th Congress and simultaneously harms the foundations for advocacy in the 115th Congress- during which issues relating to the Republic of Cuba will again not be a priority for the leadership in either the United States House of Representatives or the United States Senate; or probably the next president.

Why are advocates focusing upon legislation when regulation and policy change are more efficient mechanisms by which to expand the commercial, economic and political relationship between the United States the Republic of Cuba during the remaining 192 days of the Obama Administration?

One reason, jobs- their own that is. Did the Members of Congress coordinate their efforts with the self-appointed Republic of Cuba policy advocates? If so, how should responsibility for the failures be apportioned?

Links To Relevant Blog Posts

<https://static1.squarespace.com/static/563a4585e4b00d0211e8dd7e/t/57863b1d15d5dbb0fab811e3/1468414753520/CrawfordSanfordCubaAdvocacy.pdf>

<http://www.cubatrade.org/blog/2016/7/12/cuba-last-weeks-mistakes-by-members-of-congressadvocates-could-hurt-us-companies?rq=crawford>

<http://www.cubatrade.org/blog/2016/12/1/zigs56x0gme3a9rqg7aecx9vf2gqgk?rq=certified%20claims>

<http://www.cubatrade.org/blog/2017/3/23/bs7ttt17jsf0bkyle6b4kitf69whwj?rq=crawford>

<http://www.cubatrade.org/blog/2016/8/6/obama-administration-wont-see-dismissal-of-civil-judgements-against-cuba-to-help-certified-claimants?rq=certified%20claims>

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