

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-

Will Arkansas Senator Boozman And Supporters Learn From Previous Legislative Strategies?

Will Arkansas Companies Provide Payment Terms? Embarrassing If Not

Will Arkansas Bank Provide Financing For Transactions? Embarrassing If Not

Essential For Use Confirmation Prior To Introducing Legislation

No Need To Hurry- Focus First On Getting Everything Supportive In Place

Direct Correspondent Banking Remains An Integral Component

The Honorable John Boozman (R- Arkansas) a two-term member of the United States Senate who is anticipated to seek re-election in November 2022, plans to re-introduce legislation to change *cash-in-advance* payment terms required by the Trade Sanctions Reform and Export Enhancement Act (TSREEA) of 2000 for United States agricultural commodity and food product exports to the Republic of Cuba.

Senator Boozman is the ranking member of the Committee on Agriculture, Nutrition, and Forestry. Senator Boozman is a member of the Committee on Appropriations Subcommittee on State, Foreign Operations, and Related Programs.

Three companies in the State of Arkansas with connectivity to the Republic of Cuba include Springdale, Arkansas-based **Tyson Foods** (2020 revenues approximately US\$43 billion); Stuttgart, Arkansas-based **Riceland Foods** (2020 revenues approximately US\$1.3 billion); and Conway, Arkansas-based **Home BancShares** (2020 assets approximately US\$17 billion) among others. *Will Senator Boozman ensure each of the three have statements of support issued in conjunction with the introduction of legislation?*

Absent a compelling narrative to precisely demonstrate how benefits of a statutory change to the *cash-in-advance* payment terms for agricultural commodity and food product exports from the United States to the Republic of Cuba will immediately be measurable, quantifiable, and visible, proponents within the United States Congress and outside of the United States Congress will find a legislative highway robust with bipartisan obstacles.

Learn From The Past

The public roll-out of legislation should include contingent executed contracts between United States exporters (including at least one United States financial institution) and Republic of Cuba government-operated Empresa Comercializadora de Alimentos (**Alimport**), the primary contracting entity for agricultural commodity and food product exports from the United States to the Republic of Cuba.

Executed contingent contracts are permitted by the Office of Foreign Assets Control (**OFAC**) of the United States Department of the Treasury and by the Bureau of Industry and Security (**BIS**) of the United States Department of Commerce.

Proponents of legislation would be wise to placate opponents by including a provision in the legislation requiring a first-year semi-annual report from the BIS to appropriate committees of the United States Congress. The reports would include whether payment terms or financing provided to Republic of Cuba entities by United States exporters and United States financial institutions are in arrears. This is an unappealing and commercially intrusive provision, but may be an appropriate additive to placate opponents.

The following are examples of executed contingent contracts with payment term laddered transactions which should be negotiated promptly and ideally executed and then confirmed in tandem with the introduction of

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

legislation. The execution of these contracts will serve as confidence-building mechanisms for United States exporters and for the government of the Republic of Cuba.

An executed contingent contract for poultry valued at US\$1 million whereby the United States exporter will provide Alimport with payment terms of fifteen (15) days.

- An executed contingent contract for corn valued at US\$1 million whereby the United States exporter will provide Alimport with payment terms of thirty (30) days.
- An executed contingent contract for soybeans valued at US\$1 million whereby the United States exporter will provide Alimport with payment terms of forty-five (45) days.
- An executed contingent contract for woodpulp valued at US\$1 million whereby the United States exporter will provide Alimport with payment terms of sixty (60) days.
- An executed contingent contract for rice valued at US\$1 million whereby the United States exporter will provide Alimport with payment terms of ninety (90) days.
- An executed contingent contract for pork valued at US\$1 million whereby a United States financial institution will provide directly to Alimport or indirectly through the United States exporter with payment terms of one hundred twenty (120) days.

This last executed contingent contract is essential because it includes the participation of a financial institution. Would today Greenwich Village, Colorado-based **CoBank** (2020 assets approximately US\$159 billion), Conway, Arkansas-based **Home BancShares** (2020 assets approximately US\$17 billion), or New York, New York-based **J.P. Morgan Chase & Co.** (2002 assets approximately US\$3 trillion) for example provide financing to a United States exporter for a transaction relating to the Republic of Cuba?

Will CoBank or Home BancShares or J.P. Morgan Chase & Co. among others provide direct or indirect financing based upon the financial statements provided by Alimport? Will Alimport (<https://www.alimport.com.cu>) provide financial statements? Will Republic of Cuba government-operated financial institutions provide financial statements?

Instructive to note that Government of Vietnam-operated Vinafood 1 & Vinafood 2 have provided payment terms to Alimport of two years to pay for rice (25%/30% broken). Not unique for non-United States companies exporting products to the Republic of Cuba to anticipate waiting up to one year or more than one year for payment from Republic of Cuba government-operated entities; and to factor these delays into their pricing.

Importance Of Direct Correspondent Banking To Changing Payment Terms

In 2017, Home BancShares through its Centennial Bank subsidiary purchased Pompano Beach, Florida-based Stonegate Bank (2017 assets approximately US\$2.9 billion). In 2015, the OFAC authorized Stonegate Bank to have an account with Republic of Cuba government-operated Banco Internacional de Comercia SA (**BICSA**). However, because the Obama Administration would not authorize BICSA under a general or specific license from the OFAC to have an account with Stonegate Bank, United States export-related funds were sent and received through Panama City, Panama-based Multibank, which had extensive dealings with the Republic of Cuba before its purchase in 2020 by Bogota, Colombia-based Banco de Bogota (2002 assets approximately US\$6 billion) when all activities ceased relating to the Republic of Cuba.

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

Without bilateral direct correspondent banking accounts, the payment process for funds from the United States to the Republic of Cuba and from the Republic of Cuba to the United States remains triangular rather than a straight line- which would be more efficient, more secure, more transparent, more timely (same day versus two or more days), and less costly.

TSREEA Background

The TSREEA re-authorized the direct commercial (on a cash-in-advance basis) export of food products (including branded food products) and agricultural commodities from the United States to the Republic of Cuba, irrespective of purpose. The TSREEA does not include healthcare products, which remain authorized and regulated by the Cuban Democracy Act (CDA) of 1992. Healthcare products are not subject to the cash-in-advance payment requirement.

Since the first TSREEA-authorized exports in December 2001 (corn and poultry), United States agricultural commodity and food product exports from the United States to the Republic of Cuba is **US\$6,426,913,324.00** through 31 May 2021.

Products exported consistently include chicken leg quarters, chicken meat, chicken legs, soybeans, soybean oil cake, soybean oil, corn, phosphates, woodpulp, herbicides, brewing/distilling dregs, pork, wheat, powered milk, rice, and peas & lentils, among others. [LINK To U.S. Export History](#)

Learning From 2018 Farm Bill

The necessity for executed contingent contracts to accompany the public roll-out of any legislation is to learn from the disastrous legislative strategy in 2018 when *legislative advocates* maintained that inserting a Market Access Program (MAP) and Foreign Market Development (FMD) provision in the *Farm Bill* 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, there was not one application to the United States Department of Agriculture (USDA) in 2018 or 2019- and since 2019 a total of eight applications were received by the USDA to use MAP and/or FMD.

Most observers of the legislative process 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 publicize in advance they would use the provision if it became law or at least one high-profile applicant to immediately and publicly request funding when the *Farm Bill* became law on 21 December 2018.

The most significant impact of a shockingly low number of MAP/FMD requests in 2018, 2019, 2020, and 2021 is what the lack of interest portends for other legislative efforts in the United States Congress to rescind prohibitions upon the provision of payment terms for agricultural commodity and food product exports from the United States to the Republic of Cuba. Since 2019, a total of eight applications were received by the USDA to use MAP and/or FMD.

MAP & FMD Programs At USDA

In 2018, *legislative advocates* maintained that inserting a Market Access Program (MAP) and Foreign Market Development (FMD) provision in the *Farm Bill* 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, there was not one application to the USDA in 2018 or 2019.

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

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 publicize in advance they would use the provision if it became law or at least one high-profile applicant to immediately and publicly request funding when the *Farm Bill* became law on 21 December 2018.

The most significant impact of a shockingly low number of MAP/FMD requests in 2018, 2019, 2020, and 2021 is what the lack of interest portends for other legislative efforts in the United States Congress to rescind prohibitions upon the provision of payment terms for agricultural commodity and food product exports from the United States to the Republic of Cuba.

Use to date of USDA MAP/FMD Republic of Cuba-focused funding provisions in the 2018 *Farm Bill* has been anemic. Since 2018, One entity has used MAP funding in the Republic of Cuba. No entity has used FMD funding in the Republic of Cuba. The USDA reported no applications were rejected.

Since 2019, a total of eight applications were received by the USDA to use MAP and/or FMD. According to the USDA, “Although the table indicated nine expressions of interest over two years, these represent fewer than nine organizations as some of the organizations applied in multiple years. The earlier table only included those entities that expressed interest in Cuba directly, not anyone that sought to add Cuba to a regional program.”

According to the USDA, at least one participant in 2021 and 2020 sought to add the Republic of Cuba to a regional program for MAP, but none for FMD. No entity pursued or was rejected for activities in the Republic of Cuba through a regional program. In some respects, that some entities applied more than once, but did not ultimately use MAP and/or FMD in the Republic of Cuba is more consequential because it begs the question- why did the entities apply, but not choose to use MAP and/or FMD in the Republic of Cuba?

One entity received MAP funding (US\$60,000.00) in the Republic of Cuba- Denver, Colorado-based **Potatoes USA** which in November 2020 delivered to the Republic of Cuba 33,118 pounds of potato seeds valued at US\$44,760.00. Sample costs are ineligible for MAP or FMD funding.

In 2020, one (1) entity applied to use, but did not use FMD funding and four (4) entities applied to use MAP funding while one (1) entity (Potatoes USA) used MAP funding. From the USDA, “... any unspent funds would normally remain in participants’ agreements, available for the agency to approve for plans a participant submits in a future year.”

In 2021, no entity applied to use FMD funding, and three entities applied to use MAP funding, but no entity has yet used MAP funding. From the USDA, “Most MAP programs operate on a January to December year, however, some run on a July to June year.

The regulations allow groups to continue already approved activities up to thirty days after the end of the program year. Thus, the latest a participant could continue an activity funded by MAP 21 would be July 30, 2022, if their MAP 21 program began June 1, 2021. A participant would have until the end of January 2022, if their MAP program began January 1, 2021. The MAP regulations allow a participant to file claims up to six months after the end of the program year.” In 2021, sixty-seven (67) entities received funding for MAP and twenty-one (21) entities received funding for FMD.

LINK To Previous Analysis:

[USDA Accepting MAP/FMD Applications For Funding Use In Cuba; Since 2018, Only 8 Applications And 1 Use May 05, 2021](#)