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-

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DRAFT OF PREPARED REMARKS (subject to editing)

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John S. Kavulich
President

Good morning…..

President Obama & President Castro Can Do More...
Who Has Leverage? Sabotage? Chum To Lures. Advocacy/Legislation.

During the last two decades, many of my interactions with companies have commenced with the sales department, then rather rapidly escalated to the general counsel….

The questions- From sales: ***What can we do, what can't we do***.

From the general counsel: ***What should we do and what shouldn't we do***.

This connective remains.

When President Obama addressed the nation in December 2014, he wore a dark suit, stood at a podium, and for fifteen minutes shared what he wanted to do to, with, and for the 11.3 million citizens of the Republic of Cuba residing along the 800-mile archipelago.

When President Castro addressed his nation the same day, he wore a military uniform, sat at a desk, and spoke with vagueness for five minutes.

Optics matter.

President Obama solidified a legacy- he took a chance, mended country relationships, removed some imagery issues, and created focuses upon United States policy towards Cuba, Cuba policy towards the United States, and the commercial, economic and political landscape existing within Cuba. Which leaves us where?

The initiatives proposed by President Obama (some of which were unsuccessfully attempted by predecessors) are designed to tear at the social fabric of Cuba; with a goal of recreating a middle class and a professional class abridged by the 1959 Revolution… a challenging landscape today defined by those who have (through earnings or remittances) and those who have not.

President Obama's message… *Create your worth as opposed to the government of Cuba determining your worth. Be what you can, what you want... not what you're told to be.*

What has the government of Cuba agreed to or done since December 2014 (as of 24 November 2015):

- Re-establish diplomatic relations
- Re-open its embassy in Washington, DC
- Authorize the re-opening of the United States Embassy in Havana
- Hosted visits by three (3) members of the Obama Administration Cabinet: The Honorable John Kerry, United States Secretary of State; The Honorable Penny Pritzker, United States Secretary of Commerce; The Honorable Thomas Vilsack, United States Secretary of Agriculture
- Hosted a visit by The Honorable R. Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection
- More than fifty (50) representatives of the government of Cuba have visited the United States in 2015
- More than thirty (30) representatives of the United States government have visited Cuba in 2015
- Continue to decrease food product/agricultural commodity purchases authorized by the Trade Sanctions Reform and Export Enhancement Act (TSREEA) of 2000; down approximately 38% compared to 2014
- Increase healthcare product purchases authorized by the Cuban Democracy Act (CDA) of 1992. Healthcare product exports (cash-only with verification requirements) permitted by the CDA have increased nearly **fourfold** thus far in 2015 compared with 2014
- Authorize a direct correspondent banking agreement with Florida-based Stonegate Bank
- Authorize Stonegate Bank to issue a Debit MasterCard for use in Cuba (10,000 current locations); with expansion in 2016 for use at ATM locations in Cuba
- Authorize Cuba government-operated Banco Popular de Ahorro to establish lines of credit up to US$400.00 for licensed independent businesses; but continue to prohibit the entities to import products directly, requiring purchases through government-operated companies
- Creating a uniform commercial code and mortgage regulations
- Authorize roaming agreements between Cuba government-operated ETECSA and New York-based Verizon Wireless (indirect) & Kansas-based Sprint (direct)
- Increase by ETECSA to forty-three (43) Wi-Fi areas (parks and urban) for wireless Internet access; twelve (12) additional sites are expected to be operational by the end of 2015
- Authorize Alabama-based Cleber LLC to have a tractor warehouse/assembly facility to be located in Mariel Special Development Zone. The company is awaiting authorization from the OFAC/BIS. Investment required for the first year is approximately US$1.4 million; with total investment projected at US$5 million
- Resumption of direct long-distance telephone service through and agreement between ETECSA and New Jersey-based IDT Corporation
- Not disrupt the in-country and out-of-country operations of California-based Airbnb
- Discuss the re-establishment of regularly-scheduled commercial airline service (Civil Aviation Agreement- CAA)- although this has been complicated by issues of reciprocity and by the self-preservation interests of currently-operating charter companies. CAA expected by the end of 2015

- Agree to a (limited) resumption of United States Postal Service operations; expected by the end of 2015
- Permit a substantial revenue increase from United States visitors (charter flights, pleasure craft, general aviation aircraft, and third-country transit). Thus far in 2015, United States visitors to Cuba (authorized, unauthorized, family, non-family), who have the highest net profit margin per person of any visitor to the country, have increased approximately almost 40%.
- The Ministry of Science, Technology, and Environment (CITMA) of the Republic of Cuba signed a Memorandum of Understanding (MOU) with the National Oceanic and Atmospheric Administration (NOAA) and the National Park Service (NPS). "The MOU aims to facilitate joint efforts concerning science, stewardship, and management related to Marine Protected Areas (MPAs). The MOU also includes a sister MPA program to foster conservation and understanding of natural marine resources in both countries, sharing technical and scientific data, and promoting education and outreach initiatives."
- Signed a joint statement with the United States Department of State on environmental cooperation including coastal and marine protection, the protection of biodiversity including endangered and threatened species, climate change, disaster risk reduction, and marine pollution.

What has the government of Cuba not (or perhaps not yet) agreed to or done since December 2014 (as of 24 November 2015):

- Authorize ferry services
- Authorize United States companies to export products directly to the 200+ categories of licensed independent businesses
- Authorize credit cards (although this has substantial compliance issues for United States financial institutions; New York-based MasterCard has removed its "*block*" on credit cards issued by United States financial institutions using its brand). There are approximately 10,000 points of sale in Cuba.
- Authorize United States companies (non-manufacturing/assembly) to have an operational presence (including hiring Cuban nationals, obtaining office space, establish bank accounts)
- Authorize United States businesses to engage in loan and lease programs to licensed independent businesses
- Confirm itineraries for all commercial vessels operating people-to-people programs
- Purchase communications/telecommunications equipment or permit the provision of internet services (California-based Google & Facebook), although there are security, pricing and sourcing reasons not to purchase the equipment or permit the provision of such services
- Respond in a timely manner to inquiries from United States companies

Thus far, the following products may be exported to Cuba:

"*materials for use by the private sector to construct or renovate privately-owned buildings including privately-owned residences, businesses, places of worship and buildings for private sector social or recreational use; goods for use by private sector entrepreneurs such as auto mechanics, barbers and hairstylists and restaurateurs; and tools and equipment for private sector agricultural activity. It is intended to facilitate Cuban citizens' lower-priced access to certain goods to improve their living standards and gain greater economic independence from the state. It also enables the export and re-export to Cuba of items to further support civil society in Cuba*."

The government of Cuba is focused upon accepting those initiatives that will earn it revenues rather than those initiatives that will be an expense to them and revenue to a United States-based company.

Earlier this year at an event in Tampa, Florida, Matthew Borman, Deputy Assistant Secretary of the United States Department of Commerce, confirmed that authorized products from the United States would be permitted to be sold through Cuba government-operated retail stores, as long as the United States-based exporter used "*due diligence*" to confirm that the products were available to the citizens of Cuba. "*We recognize the current structure is that of using government entities… If we took the position that the Cuban government couldn't touch anything, then nothing would happen*."

President Obama could have permitted payment terms/financing for the products included thus far in the 2015 initiatives; he decided to avoid further issues with the United States Congress. Currently, healthcare products, food products and agricultural products must be paid for on a cash basis.

Is The Obama Administration Sabotaging Its Initiatives?

On 9 September 2015, the United States Department of Agriculture (USDA) reported to the United States House of Representatives Committee on Foreign Affairs Subcommittee on Terrorism, Non-Proliferation, and Trade:

"As this subcommittee knows, the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSREEA) lifted the ban on agricultural exports to Cuba that had been restricted under the embargo for decades. Despite that opening, U.S. government agencies – including USDA – remain statutorily prohibited from providing export assistance and any credit or guarantees for exports to Cuba. As Secretary Vilsack has said, he cannot currently use a single dollar of trade promotion funding for our trade with Cuba. These restrictions apply to the Foreign Agricultural Service's successful cooperative market development programs like the Market Access Program and the Foreign Market Development Program."

On 20 October 2015, the United States Department of Commerce reported that Republic of Cuba-related activities by it (and by extension the United States Government) and The Honorable Penny Pritzker, United States Secretary of Commerce, were restricted and/or prohibited by the TSREEA, title IX, Public Law 106-387 [22 U.S.C. 7207(a)(1)] (TSRA). *Restricted and/or prohibited not by choice (policy), but by law*:

§ 7207. Prohibition on United States assistance and financing

(a) Prohibition on United States assistance

(1) In general Notwithstanding any other provision of law, no United States Government assistance, including United States foreign assistance, United States export assistance, and any United States credit or guarantees shall be available for exports to Cuba or for commercial exports to Iran, Libya, North Korea, or Sudan.

(2) Rule of construction
Nothing in paragraph (1) shall be construed to alter, modify, or otherwise affect the provisions of section 6039 of this title or any other provision of law relating to Cuba in effect on the day before October 28, 2000.

(3) Waiver
The President may waive the application of paragraph (1) with respect to Iran, Libya, North Korea, and Sudan to the degree the President determines that it is in the national security interest of the United States to do so, or for humanitarian reasons.

The United States Secretary of Commerce is the Chief Marketing Officer (CMO) of the United States. The portfolio includes the National Oceanic and Atmospheric Administration (NOAA), Bureau of Industry and Security (BIS), Economic and Statistics Administration, National Institute for Standards and Technology, National Institute for Standards and Technology, United States Patent and Trademark Office, Bureau of the Census, U.S. Foreign and Commercial Service, Economic Development Administration, Minority Business Development Agency, and National Telecommunications and Information Administration.

Given Secretary Pritzker's statements before, during and after her October 2015 visit to Cuba, and citing the subsequently-released October 2015 rationale from the United States Department of Commerce, there is reasonableness to conclude that her visit should not have been permitted. The visit by representatives from BIS and OFAC who accompanied Secretary Pritzker should not have been permitted. The visit by The Honorable Thomas Vilsack, United States Secretary of Agriculture, should not have been permitted.

The use of a United States government aircraft should not have been permitted. The expenditures for the visits should not have been permitted. The webinars hosted by OFAC/BIS should not be permitted. Participation by representatives of the OFAC and BIS in conferences throughout the United States should not be permitted.

The legality of the October/November 2015 visits to Cuba by the Deputy Secretary of Homeland Security, Commissioner of United States Customs and Border Protection, Senior Advisor to the United States Secretary of State, and Assistant Secretary for the Private Sector of the United States Department of Homeland Security need also be questioned as media releases and articles relating to the visits referenced commerce and trade; partial text of a media release from the United States Department of State: *"… attend the inauguration of the U.S.-Cuba Business Council* [an entity created by the United States Chamber of Commerce] *and the opening ceremony of the 33rd annual Havana International Fair (FIHAV); Havana's largest annual multi-sector trade fair…. to meet with government officials and business leaders,…*"

In 2014, the Obama Administration created an expansive Cuba-focused commercial narrative and has enhanced that commercial narrative throughout 2015; doing so despite protestations by Members of Congress (Democrat & Republican) and attorneys that the regulatory decisions were not compliant with United States statutes.

The Obama Administration created OFAC and BIS regulations thus far in 2015 that are specifically designed to re-establish commercial relationships, expand existing commercial relationships and create commercial opportunities for United States companies.

Who benefits from the constrictive interpretation of TSREEA? Those who seek changes to United States law- Obama Administration, Members of Congress, Advocacy Groups, Lobbyists.

The message is the Obama Administration knows that it can interpret TSREEA expansively (as it has with regulations issued by previous presidents as the basis for the creation of new regulations; and texts of the CDA and Libertad Act (Helms-Burton) of 1996 and TSREEA), wants to do more, but can't due to statutes…. so push for legislative changes before 20 January 2017.

The Obama Administration created the initiatives and expected that the government of Cuba would reciprocate in a meaningful manner; they have not thus far and have repeatedly stated will not until all statutory and regulatory impediments are removed and reparations are paid.

The Obama Administration appreciates that <u>legislative changes are unlikely</u> before 2018, the retirement of H.E. Raul Castro, President of Cuba, as that moment fulfills a provision of the Libertad Act which conditions changes in United States regulations upon a government which does not include President Castro or former President Fidel Castro. There could be a catalyst for change in advance of 2018, but that would require the government of Cuba to not only authorize, but embrace OFAC and BIS initiatives.

Who does not benefit from the constrictive interpretation of TSREEA? Every United States company that could have an interest toward Cuba and has an interest toward Cuba and is engaged with Cuba… and believes the role of the United States government is to in good faith support and advocate for statutes and implement regulations in the most expansive means possible.

If the visual muscle of the United States government is available to assist food product companies, agricultural commodity growers and traders, healthcare product manufacturers and distributors, telecommunications and communications equipment providers, financial institutions, travel-related services, building material and supply and agricultural equipment and supply companies…. only a contorted and cynical and hyper-political deliberative posturing would decide not to use it.

Further damaging is at least one advocate/lobbyist writing and quoted stating that Secretary Pritzker is "*forbidden by law*" and "*U.S. policy prohibits*" TSREEA activities. Accuracy matters. Was the goal to

create a false narrative? Be duplicitous or simply careless in believing that accuracy in pursuit of a political objective is of no consequence?

If the advocate/lobbyist was informed by the Obama Administration that what Secretary Pritzker could do was a policy decision, then the Obama Administration has an extraordinary credibility issue. When the advocate/lobbyist was asked to provide the statute to support the statement(s), the request was refused. If a citation is sourced, there is a responsibility to provide it- not ask someone else to provide it. Because an individual is an advocate/lobbyist does not equate with having obtained a "*free pass*" with accountability.

The U.S.-Cuba Trade and Economic Council requested perspectives from eight attorneys located in Washington, DC, Miami, Florida, New York City, New York, and London, United Kingdom, as to if the United States Department of Commerce properly interpreted the TSREEA; six attorneys responded by publication date (perspectives are listed based upon the alphabetical order of the attorney's last name).

Attorney One-

"You raise a good question which I think is best answered by stating the Executive Branch as extraordinary constitutional powers that may be exercised by the President at his discretion if he deems action to be in the "national interest." In such situations, sanctions regulations can be superseded."

Attorney Two-

"My take is that Section 7207 does not conflict with the travel/outreach they conducted. Those are authorized under continually expanding OFAC regulations. United States government officials are authorized travelers to Cuba (provided it's not for tourism).

I have to believe she is taking cues from The White House, State, Commerce, and a variety of legal counsel. She has to tread and speak very carefully. We'll never know what she thinks; we can only know what she does and says. Whether she can do more and whether she should are two critical but separate issues. Commerce and OFAC's recently revised regulations do liberalize things considerably, however…. I think she was speaking "off camera"/stage whisper-style to the United States business community as if to say, "hear that? You better do something about it." Of course, who knows what will happen with the presidential election. And the Cubans are certainly not playing easy to get."

Attorney Three-

"That's a bit of a vague statement from Secretary Pritzker. I'm guessing her trade delegations to other countries include helping match-make with investment opportunities for United States companies. I'm guessing that since the embargo still prohibits many types of direct investment in Cuba, maybe she is merely saying that her activities on behalf of United States businesses into Cuba are very different from those into most other countries. I am not aware of any specific statutory limitations on the trade advocacy activities of the secretary. But I'll keep an eye out and pass along anything I see."

Attorney Four-

"A funny idea of the role of secretary of Commerce - authorized United States exports run from agricultural commodities to tractors to wallboard - why can't she promote them?

Section 7207 applies to foreign assistance (i.e. foreign aid in all its permutations) from the United States to foreign countries. It has nothing whatever to do with US support for private sector exports, unless it involves United States government credit etc., to the foreign nation.

What else was she doing in "technical meetings" with representatives of the United States Department of Commerce and United States Department of the Treasury she brought with her? Explaining how United States exports to Cuba work under the new regulations, i.e. what's now licensed, etc.?

The President has and has exercised the executive power to allow joint ventures in the telecommunications sector; license warehouses and retail outlets; authorize a range of products sales from CCDs (consumer communication devices: Apple phones, computers, printers cameras, etc.); building materials; agricultural products from chewing gum to bourbon; plus everything imaginable in the form of "goods" to Cuban entrepreneurs - but according to an advocate/lobbyist [Engage Cuba], she - the Secretary of Commerce - is "forbidden by law" to promote American exports."

Attorney Five-

"For United States embargo of Cuba, there have been no recently statutory changes which would require an Act of Congress and signature by the President. As you know, OFAC and BIS amended their agency regulations in January 2015 and September 2015. Certainly, she was allowed to bring United States executives to Cuba depending upon the reason for their travel, including business negotiations to purchase from Cuba or sell to Cuba certain products or categories of products."

Attorney Six-

"I think you may be reading this provision too expansively. It would appear that this provision of TSREEA underscores that, even though certain commercial exports to Cuba by United States companies are now being permitted, this does not authorize the United States government to provide the forms of export assistance for these transactions that might otherwise be available for exporters through United States government programs, such as the Ex-Im Bank.

The legislative history seems to suggest that this provision is TSREEA-specific. I don't think it's a broad restraint on United States government advocacy or promotion of the authorized export activities, and to the extent that it does restrict such activities, it would be only with respect to supporting/assisting specific transactions or projects, not broad, generic promotion for the types of exports that have been permitted.

I also don't see this as a broad prohibition on the president taking executive action to ease certain trade restrictions with Cuba or on United States government officials traveling to Cuba to engage in the same type of professional research that private persons are permitted to do."

For Cuba, removal from the Sanctions List provided an immediate benefit, far more to it than to the United States, as Cuba's cost of borrowing has decreased as one calculation of risk decreased- although other risks remain. Companies that may have been avoiding Cuba due to their having meaningful commercial relationships in the United States- and fear of the long-reach of the United States government now feel less uncomfortable with engagement.

The aspirational interest (purported or actual) of the United States business community is **chum** exhibited to governments, financial institutions, agencies (especially those which provide export credit guarantees) and companies.

Visits to Cuba by Members of Congress, Governors, trade organization members, advocacy group supporters, company representatives, and sole proprietors have increased…. None have resulted in payments by Cuba for any of the newly-authorized exports from the United States.

If too many visitors return without commitments for purchases of products sourced from their respective states, the media's generosity may lessen…. as will the interest from political actors and, eventually, companies.

Using the new and revised OFAC and BIS regulations announced in September 2015, the government of Cuba has embarked on a far more ambitious and consequential marketing campaign- and the United States business community has morphed from chum to individual sector lures. From ladled out of a bucket to artfully displayed in a tackle box.

Despite the resistance from the government of Cuba, President Obama should propose to remove existing regulatory restrictions upon Cuba using the United States Dollar for international transactions; the restrictions create burdens for United States companies.

There is expectation amongst some observers that increasing visits to Cuba by high-level officials of the United States government will create pressures upon the government of Cuba by current substantive commercial partners- they will urge the government of Cuba to re-engage with the United States so that they may see a timely and meaningful financial return on their commercial dealings. Eleven months has passed with no demonstration of urgency by the government of Cuba.

What the United States may perceive as "***pressure with a smile***" is perceived by the government of Cuba as weakness and as bait to be used to hook interest from other countries- at the expense of the United States.

And the government of Cuba has reiterated, most recently through statements by President Castro and Minister of Foreign Affairs Rodriguez, that before a normalized relationship will exist, reparations valued between US$100 billion and US$1 trillion need settled, the land upon which the United States naval base at Guantanamo Bay must be returned, and there are other issues.

There will be no reparations. The 5,913 claims which have been certified by the U.S. Foreign Claims Settlement Commission- thirty (30) United States-based companies hold approximately 56% of the total value (approximately US$1,851,197,358.00), will need be negotiated. The gradual return of the naval base may become a component of negotiations.

The "*goal posts*" are shifting…. Ironic that throughout decades the United States was accused of constantly adding terms to the list of requirements prior to the normalization of relations between the two countries. In some respects, the government of Cuba has placed an embargo upon the United States.

President Castro is unlikely to view as necessity the concept of <u>quid pro quo</u> as President Obama has little leverage.

The Obama Administration has voiced opposition to existing laws which form a basis for "***the embargo***"- CDA, Libertad Act and TSREEA. The Obama Administration removed Cuba from the Sanctions List. The Obama Administration re-established diplomatic relations, re-opened the United States Embassy in Havana and permitted the government of Cuba to re-open an embassy in Washington, DC.

President Obama is unlikely to rescind existing OFAC and BIS regulations or return Cuba to the Sanctions List or close the respective embassies; and threats to go no further with expansive efforts are of little impact. The President wishes to visit Cuba in 2016. <u>No secret</u>. He may cancel a visit that was not requested.

While the Obama Administration may wish to **condition** a visit by the President to further changes in the commercial, economic and political landscape within Cuba, the government of Cuba recognizes that President Obama's desire to visit Havana is exponentially greater than the host country's believing that a visit is required to further its global interests- during and subsequent to President Obama's time in office.

The only materially impactful means for the United States to currently influence the bilateral timetable of the government of Cuba is to <u>harness, corral</u>, the governments of Argentina, Brazil, Canada, China, France, Germany, Iran, Russia, Spain, United Kingdom, Venezuela and Vietnam whose respective domestic considerations outweigh the value of constricting their mostly newly-energized commercial relationships (thus far more announcement than operational) with Cuba. That's not going to happen.

If President Obama is not prepared to arrive aboard Air Force One at Jose Marti International Airport in Havana and view a commercial, economic and political landscape unchanged or nominally changed with respect to his initiatives of December 2014 through September 2015, then he should not visit Cuba.

Irrespective of initiatives implemented by President Obama, the government of Cuba remains unlikely to permit a United States business presence as envisioned by President Obama.

Such would be disruptive, create unreasonable expectations amongst the citizens (both those residing in Cuba and those residing in the United States), be costly, and be unwelcome.

During the last twenty years, there have been meaningful commercial and economic reforms in Cuba when the government feels compelled to do so by disruptions in trade/finance relationships; there is also a pattern of systematically disrupting and/or dismantling those reforms when the government feels that pressure to maintain them has waned.

With **Venezuela's** increasing commercial and economic challenges, its financial support (discounted oil, financing, payment for workers, etc.) for the government of Cuba is lessening; and other countries (Russia, China, Iran, Brazil, etc.) are unlikely to replace the billions of United States Dollars flowing since 2000. The government Cuba may be unable (or unwilling) to recalibrate changes implemented since 2008.

The government of Cuba struggles with the definition of success- how much may a person make and retain and disperse? Must there be a limitation upon earnings; a level at which the government will seek to mandate, regulate, legislate so that citizen equality is maintained.

Remittances to Cuba, the majority of which originate in the United States and are delivered through Western Union amongst other companies or individuals (mules), were estimated at approximately US$3 billion in 2014 and will likely be of similar value for 2015. The meaningful majority of which flowed to residents in and near Havana where 20% of the country's citizens reside. According to the government of Cuba, licensed self-employment represents approximately 483,000 out of a workforce of 5.4 million.

Remittances might decrease over time as fewer individuals of Cuban descent who reside in the United States (south Florida and northern New Jersey) have immediate family members residing within Cuba. The population of Cuba continues to age, and those who arrived in the United States from Cuba in the 1950's and 1960's, parents and grandparents today, are expiring- resulting in decreased immediate family connections who might be the recipients of remittances. There is less emotional connective tissue between a mother & father, brother & sister than first & second cousins.

If President Obama's initiatives are permitted by the government of Cuba, there will be further exacerbation of fissures between white Cubans (primarily of Spanish descent) and black Cubans (primarily of African descent). Havana will further solidify commercially, economically and politically as the fulcrum upon which the remainder of the 800-mile long archipelago revolves. Santiago de Cuba, the second-largest city at the eastern tip of the country, will be left behind.

Thus, the government of Cuba is in a period of cautiousness and a full-on re-engagement with the United States is problematic as the policy of the United States remains to seek commercial, economic and political change within Cuba.

Any re-engagement with the United States results in uncertainty… the government of Cuba dislikes uncertainty.

The government of Cuba neither trusts the intentions of United States companies nor the intentions of the United States government.

Regardless of the receptiveness by the government of Cuba, the Obama Administration has issued expansive regulations during the last eleven months; and plans to issue new regulations and to revise existing regulations in an ever-more expansive manner.

Will the OFAC license Maryland-based Marriott Corporation to manage a hotel located in Cuba? If they ask, probably in 2016. Will Illinois-based John Deere be permitted to export farm products to government

of Cuba-operated entities rather than entities relatively independent of the government of Cuba? Probably yes in 2016.

There will likely be an expansion of imports from the limited list within the new initiatives- if there are manageable political issues entangling the two countries.

Modest imports of specialty-market products including organic sugar, organic coffee, organic chocolate and confections, each of which might find venues such as ***Whole Foods Market or Trader Joe's***.

- Tobacco (cigars) and alcohol (rum).
- Nickel and cobalt imports will be debated.
- Healthcare research relationships will increase as will opportunities for healthcare products.

United States companies should protect their intellectual property by **registering their trademarks** and patents in Cuba, which is permitted and more than 4,000 are registered.

Much attention has been proffered about the telecommunications initiatives…. Consider this exporter conundrum…. Apple, Cisco Systems, Motorola Solutions, Qualcomm, etc. receive this inquiry from the Ministry of Communications of Cuba: "***If we purchase your equipment, how do we know the equipment will not be compromised before it arrives or have an ability to be compromised from abroad after its installation? Will you augment the specifications of equipment so we may monitor all voice, text, data and email traffic flowing through the equipment?***" These questions will necessitate a dialogue between sales department, general counsel….and OFAC and BIS and the United States Department of State.

As for United States-based companies retaining <u>outside counsel</u>, I advise caution… As was the U.S.S.R. in the 1980's and 1990's, Cuba is a useful marketing tool for law firms; and there are examples of law firms using the time of clients to educate themselves. Due diligence is a must. *Make certain that the attorney you retain knows more than you do about Cuba.*

Some United States-based companies rely on individuals of Cuban descent, whether residing in the United States or other countries, to be advisors, guides, consultants, partners, etc., in the process of determining the viability of entering the Cuba marketplace. United States regulations provide a tactical advantage for individuals of Cuban descent in contrast to those with no family connection to Cuba.

Some United States-based companies rely on the services of advocacy groups- not-for-profit entities that, for a fee or donation, will create an itinerary; or serve as a "fixer" in advance of, during, and presumably, after a visit. Some of these entities are creatures of creation by the government of Cuba- they exist at the behest of the favor of the government of Cuba; so their agenda is that of the government of Cuba… which may, or may not, be the agenda of the United States-based company.

As for independent consultants, important to confirm that they are providing a service as opposed to seeking to become a partner; a consultant should perform a task and then move on to the next client. Important to be confident that the consultant is only working for the company making the payment. The government of Cuba perceives consultants as an unnecessary creator of a triangular relationship when a straight line would be preferred.

The 18 September 2015 new and revised regulations from the OFAC and BIS in conjunction with the previously-issued regulations resulted in:

- An <u>evisceration of legislative efforts</u> within the United States Congress; and
- A <u>reallocation of funding</u> resources away from Washington, DC-based advocacy organizations working in support of the legislative efforts

United States-based companies are viewing the "***end the embargo***" landscape during the remaining months of the Obama Administration as exclusively a focused exercise upon the issuance of new regulations and the revision of existing regulations.

There is little value in funding legislative efforts when there is unlikely to be legislation enacted into law before January 20th 2017. Some advocacy groups have begun tacking their focus from the 114th United States Congress to the 115th United States Congress and to the next occupant of The White House; that's not going to work- too many unknowns and too few resources better directed elsewhere. Members of Congress may see their efforts to obtain contributions from United States-based companies lessen or evaporate.

There are unlikely to be statutory changes in United States law relating to Cuba until at minimum 2018, the retirement of President Castro as that moment fulfills a provision of the Libertad Act which conditions a government which does not include President Castro or former President Fidel Castro. This could change, but that would require the government of Cuba to not only authorize, but embrace initiatives offered by President Obama.

Another intended or unintended consequence of September 18th 2015, Members of Congress and advocacy groups have reversed their **2015 mantra** that the United States must do more to obtain more from the government of Cuba and have re-adopted the 2001 to 2014 perspective that the government of Cuba needs to change its policies and its laws and its regulations to authorize United States-based companies to commercially engage; reverse the decline of food product and agricultural product imports permitted by the TSREEA- made more efficient through regulatory changes and revisions in 2015.

Expect the Obama Administration to continue regulatory changes- such as lessening restrictions on what may be exported from the United States for use by the self-employed, permit payment terms/financing for some products… and to include individuals and entities with government of the Cuba-relationships so by the end of his term in office, the export of products and provision of services, bilaterally, are such that an interruption would be politically unpalatable for either political party as the commercial/service landscape will be too ensconced on a state-by-state basis.

The government of Cuba will continue to use the imagery of the United States flag in front of the embassy as a marketing tool…. "***They're back… and unless you want to be behind them, you better hurry and enter the market***." The statement may not be accurate, but will be effective.

However, important to appreciate that residing 93 miles south of Key West, Florida, is Cuba, not Dubai…. It can only import what it can afford… and companies need appreciate this fact. The country has a poor commercial payments record and has issues relating to sovereign debt.

Since Decatur, Illinois-based **Archer Daniels Midland Company** (ADM) delivered in December 2001 the first agricultural commodities sourced from five states and processed through the Port of New Orleans, Louisiana, United States companies have received more than **US$5 billi**on from Cuba. During this same period, approximately **US$10 million** in healthcare products were delivered to Cuba under provisions of the CDA. All sales were on a cash basis as required by United States law.

If Cuba views the 2015 United States initiatives as a means for it to influence the political process in the United States, then likely will be increased purchases of products under provisions of the TSREEA and CDA and communications/telecommunications equipment/products; and purchases of building materials/supplies and agricultural equipment and supplies.

But, Cuba will also evaluate whether greater leverage exists from neither creating nor increasing purchasing levels as a means of encouraging those impacted United States-based parties to seek further regulatory and legislative changes.

For President Obama, the goal is to create a commercial, economic, and political landscape that has matured to the point whereby regardless of who takes office on 20 January 2017, there will be too great a consequence for disruption. For this landscape to root, however, the government of Cuba must permit United States businesses to access the marketplace through opportunities that are meaningful (and visible).

While a new President might attempt to alter the travel category qualifying and reporting requirements; with a goal of lessening the number of visitors from the United States to Cuba, established commercial activities would be, perhaps grudgingly, maintained.

If the government of Cuba continues to respond to each overture as "***good, but not enough***," consequences will alight from Members of Congress and representatives of United States business, "***We don't need Cuba today as much as Cuba may wish to believe or have others believe***."

Thank you.