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ECONOMIC EYE ON CUBA©
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Special Report

Secretaries Pritzker, Vilsack & Lobbying Group… State Department Violates US Law

Based Upon 2016 Actions by State Department, Representatives of U.S. Companies Could Have Participated in 2015 Visits by Secretaries Pritzker & Vilsack and Benefited from Them

Evolution of Legal Thinking or Political Calculation?

In 2015, why would two Obama Administration cabinet members and a Washington, DC-based not-for-profit lobbying group advocate a legal and policy positions that would prohibit and/or restrict the ability of departments to **1)** promote United States companies to a government and **2)** assist United States companies with meeting government entities that might purchase products and/or services from the companies?

In 2016, why does the United States Department of State take a decision which undermines those legal and policy positions? The answer may be due to the less than expected commercial engagement by Republic of Cuba government-operated entities with United States-based companies and unlikely successful legislative initiatives before 20 January 2017.

On 9 September 2015, Mr. Phil Karsting, Administrator of the Foreign Agricultural Service (FAS) of the United States Department of Agriculture, at a hearing stated "*… the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) 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 6 October 2015 (and 15 October 2015), Mr. James Williams, president of Engage Cuba, which advocates further changes to United States law and United States policy relating to the Republic of Cuba, wrote "*U.S. policy prohibits our own Secretary of Commerce from promoting American exports during her trip to Cuba*."

On 8 October 2015, The Honorable Penny Pritzker, United States Secretary of Commerce, who visited the Republic of Cuba from 6 October 2016 to 7 October 2016, was interviewed by National Public Radio (NPR). The interviewer said "*For example, she was not allowed to bring any American executives along to strike business deals on this trip*." Secretary Pritzker said "*I can't have a trade mission*."

On 9 October 2015, Mr. James Williams, president of Engage Cuba, which advocates further changes to United States law and United States policy relating to the Republic of Cuba, was quoted saying Secretary Pritzker was "*forbidden by law to promote American exports.*"

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 Secretary Penny Pritzker, were restricted and/or prohibited not be choice (policy), but law, by the Trade Sanctions Reform and Export Enhancement Act (TSREEA) of 2000, title IX, Public Law 106-387 [22 U.S.C. 7207(a)(1)] (TSRA).

§ 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.

If the lobbying group was informed by the Obama Administration that what Secretary Pritzker could do was based upon a policy decision, then the Obama Administration has an extraordinary credibility issue. Because a group supports Obama Administration policy does not equate with having a "*free pass*" from accuracy and accountability.

A lobbying group should not embrace, without analysis, a narrative because it is beneficial to the organization's maintaining and obtaining political and financial support. This acceptance is not without consequence- to credibility. Choosing to ignore the consequences of adhering to political mantra when a group knows, or should know, that the political mantra may have, by cynical design, a goal to artificially induce the United States business community to believe the United States government is unable to be supportive, is unethical.

NOTE: Freedom of Information Act (FOIA) requests were submitted to the United States Department of Agriculture, United States Department of Commerce, and United States Department of Justice to obtain documents relating to the development of the legal opinions relating to the TSREEA. Responses have yet to be received.

The United States Secretary of Commerce is the Chief Marketing Officer (CMO) of the United States. Given Secretary Pritzker's statements before, during and after her October 2015 visit to the Republic of Cuba, and citing the subsequently-released October 2015 rationale from the United States Department of Commerce, there is reasonableness to conclude that her visit to the Republic of Cuba should not have been permitted. The visit by representatives from Bureau of Industry and Security (BIS) of the United States Department of Commerce and Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury who accompanied Secretary Pritzker should not have been permitted. The use of a United States government aircraft should not have been permitted. The expenditures for the visit 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 the Republic of 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,…*"

So… which was(is) it? Law or Policy? Did(does) United States law prevent the Secretaries of Agriculture and Commerce from assisting United States companies or did(does) United States policy prevent the Secretaries of Agriculture and Commerce from assisting United States companies?

In January 2016, the United States Department of State determined, by action not by statement, that the 2015 legal interpretation of a provision of the TSREEA was no longer valid. There have been no actions or statements by the United States Department of Agriculture or United States Department of Commerce in concurrence with the action(s) by the United States Department of State.

From 20 January 2016 to 22 January 2016, The Honorable Daniel Sepulveda, Deputy Assistant Secretary of State and U.S. Coordinator for International Communications and Information Policy led an official fourteen-member delegation to the Republic of Cuba which included The Honorable Thomas Wheeler, Chairman of the Federal Communications Commission (FCC) and FCC staff, representatives from the OFAC, and according to Deputy Assistant Secretary Sepulveda, representatives of "*academia, and the private sector*." The names of the non-United States government participants have not been disclosed by the United States Department of State. The Washington, DC-based Information Technology Industry Council confirmed that its president, Mr. Dean Garfield, participated in the delegation "*led by the U.S. Ambassador and Deputy Assistant Secretary of State for International Communications and Information Policy Daniel Sepulveda*." Other private sector participants included representatives of California-based Cisco Systems, Pennsylvania-based Comcast, Sweden-based Ericsson (North American Headquarters in Plano, Texas).

From one private sector participant on 28 January 2016: "***The trip was an official U.S. delegation visit by the State Department, and* [redacted] *was invited to join as part of the delegation. I can find a point of contact to pass along at the State Department who can answer your questions since they organized the trip***."

From Chairman Wheeler on 27 January 2016: "*Ambassador Daniel Sepulveda from the State Department led our delegation which also included representatives from the Department of the Treasury as well as representatives of the technology community. The inclusion of the private sector in the talks advanced the dialog with real life examples of what was possible*."

NOTE: On 1 February 2016, Republic of Cuba government-operated Empresa Nacional de Telecomunicaciones de Cuba S.A. (ETEC S.A.) reported that it would install broadband services within the area of Old Havana using equipment sourced from Shenzhen, People's Republic of China-based Huawei Technologies Co Ltd. (2015 revenues exceeded US$28 billion). On 6 November 2015, Huawei Technologies Co Ltd. Reported an agreement to market mobile devices, parts, accessories and to train repair personnel. The government of the People's Republic of China has extended substantial financial credits to the government of the Republic of Cuba.

A challenge for United States-based communications/telecommunications companies and the United States government is how to answer the following inquiry from the Ministry of Communications of the Republic 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?*"

NOTE: The United States Department of Agriculture, Commerce, State and Treasury have required that FOIA requests be submitted to obtain the names of all employees who have traveled to the Republic of Cuba on official business- including those accompanying the Secretaries. The United States Department of Agriculture has complied with FOIA requests; the United States Department of Commerce, Justice, State and Treasury have yet to provide documents based upon requests submitted in 2015 in in 2016. Some names have been provided within the context of media releases and non-FOIA-based requests. United States Department of Transportation did not require a use of a FOIA request to obtain the list of employees who have visited the Republic of Cuba. The United States Department of Commerce has continued to resist providing the names of employees who accompanied Secretary Pritzker during her October 2015 visit to the Republic of Cuba.

In preparation for the TSREEA-licensed ***2002 U.S. Food & Agribusiness Exhibition***, the United States Department of Commerce, United States Department of State, and United States Department of the Treasury actively engaged with the organizers to facilitate the planning and the execution of the event, which included 923 exhibitor representatives from thirty-five states (and Commonwealth of Puerto Rico); 291 exhibitors; 218 exhibition booths; 154,000 pounds of cargo and 225 licenses issued by the BIS. The diplomatic staff at the then-United States Interests Section in Havana were engaged in supporting the event. There was never an issue with any provision of the TSREEA relating to support for the event by the United States government. The U.S. Food & Agribusiness Exhibition was approved by the Clinton Administration and licensed by the Bush Administration.

In 2014, the Obama Administration created an expansive Republic of Cuba-focused commercial narrative and enhanced that commercial narrative throughout 2015 and thus far in 2016; 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 in 2015 and thus far in 2016 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 Cuban Democracy Act of 1992 and Libertad Act of 1996 and TSREEA of 2000), 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 the Republic 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 legislative changes are unlikely before 2018, the retirement of H.E. Raul Castro, President of the Republic 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 the Republic 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 the Republic of Cuba and has an interest toward the Republic of Cuba and is engaged with the Republic of 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- who have sold more than US$5.3 billion since December 2001, healthcare product manufacturers and distributors- who have sold more than US$11.1 million since 2003, 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.

The U.S.-Cuba Trade and Economic Council requested perspectives from 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. 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."

The following are excerpts of reporting citing President Obama, Secretary Pritzker, Officials from the United States Departments of Agriculture, Homeland Security, State; FCC; and texts of emails. Sources of confusion or evolution?

Time Magazine
5 November 2015

"I'm sure I will take actions that some in Congress will not like." But Obama said he's focused identifying common ground. "I'm eager to work with the new Congress to make the next two years as productive as possible," added said. "The most important thing I can do is just to get stuff done, and to help Congress get some stuff done."

The Washington Post
11 January 2015

The top State Department official focused on Latin America, Roberta S. Jacobson, is scheduled to arrive Jan. 21 to begin laying the groundwork for the reopening of a U.S. Embassy on the island. She will be followed by Commerce Secretary Penny Pritzker and a U.S. business delegation on a "commercial diplomacy mission." In an interview, Commerce Secretary Pritzker highlighted travel, agriculture and telecommunications as areas of opportunity for U.S. firms.

Though many are skeptical that Cuba will allow the U.S. government to fiddle with its Internet or cellphone services, given Communist officials' concerns about spying, Pritzker said there were still opportunities created by the president's opening. With relatively few Cubans owning cellphones, and even fewer with Internet access, she said, "there's enormous telecommunications infrastructure that needs to be put in."

"We have to respect the fact that by statute the embargo is still in place," Pritzker said, but that "commercial engagement can change the diplomatic relations between our two countries." And, she added, "the president is encouraging us to go."

Miami Herald
30 March 2015

U.S. Secretary of Commerce Penny Pritzker said Monday that she is planning a trip to Cuba as soon as diplomatic ties are renewed and that trading with the island can involve the U.S. business community in "positive change" in Cuba.

"Our economy is showing a remarkable comeback," she said. "Our businesses are exporting more than ever before. But our work is not complete." Even though U.S. exports reached a record $2.34 trillion in 2014, supporting 11.7 million American jobs, the United States needs to expand exports even more — including exports to Cuba, she said.

In the process, she said, U.S. business can empower the Cuban people and help forge a better economic future. President Barack Obama's new Cuba policy, she said, "will allow the business community to be the face for positive change in Cuba."

There's a big role for Commerce in the new policy too, she said in an interview with the Miami Herald. "Our role is to facilitate trade," she said. "Our belief is the economic side of the relationship can be a leader."

Pritzker said she plans to lead a delegation to Cuba soon after diplomatic relations between the two countries have been renewed. There have been three rounds of U.S.-Cuba normalization talks.

Despite the excitement by some U.S. companies that have already begun exploring business opportunities in Cuba, Pritzker cautioned against unrealistic expectations. "This is a long process," she said. "It's not an overnight sensation."

However, Matthew Borman, Commerce's deputy assistant secretary of the Bureau of Industry and Security, said, "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."

He said under the new regulations, Alimport and other Cuban government importing agencies may still facilitate imports from U.S. companies and such products may go into government stores as long as the American exporter does due diligence to see the products will be offered for sale to the general public in Cuba. The exporter must follow normal record-keeping requirements for any export, he said.

If a U.S. exporter, for example, sends an auto repair kit to the island, it will be necessary to show that ultimately it winds up in the hands of a private individual, said Borman, one of the chief authors of the new regulations. However, as long as the auto repairman is self-employed, he may also use those imported tools to work on government vehicles or to fulfill a contract with the government, he said. "We're not looking to split hairs," said Borman. But if U.S. exports are intended solely for "Cuban government use, the answer is no."

When it comes to exporting paint, cement and other building materials to Cuba under the new rules, he said, such products may only go to a private individual working on a private building. Even if a private construction cooperative were contracted to work on a government building, Borman said, the answer would be no.

Miami Herald
28 April 2015

U.S. Secretary of Commerce Penny Pritzker is laser-focused on expanding U.S. exports and American competitiveness, but these days she's also spending time on a market that purchased only $291.3 million worth of U.S. exports and ranked 49th among American trading partners last year.

That's Cuba, where the White House is in the process of reestablishing diplomatic ties after more than a half century of isolation. The normalization process also includes a limited commercial opening toward the island that has been largely off limits to American businesses because of the U.S. trade embargo.

Pritzker was the keynote speaker in Tampa in late March at a forum organized by the Greater Tampa Chamber of Commerce and Tampa International Airport to discuss how Tampa Bay businesses might benefit from new opportunities in Cuba.

"What we've seen is enormous eagerness by the Cuban people as well as by the American people and American businesses to see more. But this is going to take time. This is not something we can get done overnight," she said.

The opening includes expanded American travel to Cuba, and new regulations that would allow U.S. companies to participate in upgrading Cuba telecom infrastructure and sell Internet services and consumer communications devices. Commercial sales of construction materials and farm equipment are also permitted as long as they go to private hands and the sale of medicine and medical supplies was previously authorized. Exports to support private business ventures on the island and limited imports of goods produced by Cuban private entrepreneurs also are allowed.

Since the White House announced its Cuba opening in December, it's become clear that it takes two to tango and many of the new commercial initiatives will depend on the willingness and the capacity of the Cuban government to accept them. "We're hoping to see the responsiveness of the Cuban government be like its people," Pritzker said.

She said she foresees the earliest opportunities in the sales of medicine and medical supplies, agricultural equipment and in the telecom and Internet sector.

"I think we have to remember that 5 percent of the Cuban population has access to the Internet and 2 million of 11.5 million Cubans have mobile phones," she said. "So what's the goal of the president's change in policy? The goal has been the emergence of a democratic, prosperous and stable Cuba that empowers the Cuban people and helps promote bringing universal human rights and freedoms to the Cuban people. Along with that comes economic opportunity."

Aside from gearing up for potential trade with Cuba, Pritzker has been crossing the country- and the globe- trying to drum up sales of U.S. exports, spreading the gospel of innovation and R&D, and promoting workforce education and training and investment in clean energy. "These are not short-term fixes, but long-term investments to help us build an economic foundation that will keep our nation competitive in a rapidly changing world," she told her Tampa audience.

After her speech, she sat down with the Miami Herald to discuss Cuba, her agenda and efforts to gain support for trade promotion authority, which would allow the administration to negotiate trade deals such as the Trans Pacific Partnership (TPP) and the TransAtlantic Trade and Investment Partnership (T-TIP) and then submit them to Congress for a yes or no vote without reopening negotiations.

Q. How is the Commerce Department going to support the White House opening toward more trade with Cuba? It's a little tricky in terms of private entrepreneurs importing goods because this is something that has been handled by the Cuban government.

A. I think first of all we've had a change of regulations that allows telecommunications equipment and services and agricultural products and medicines and medical equipment to be sold in Cuba. We've also seen the allowance for remittances go up and there's to be correspondent banking.

But there are going to be more impediments to overcome to get distribution and things like that. It's a process and that's where the Commerce Department can play a very big role.

Our job is to facilitate trade. Our U.S. Export Assistance Centers will work with companies that are appropriate, that are allowed under the existing embargo and existing regulations. We will help them navigate.

I will go as soon as we have normalized relations and have opened a U.S. embassy. I will lead a delegation there. In fact, I already have employees from the Commerce Department who have gone from some of our bureaus in order to work with the government to move toward more normalized relations.

Now, companies are already going. Google led a delegation. You're seeing people going to visit. That's because, as I said, there's enormous excitement — excitement from the entrepreneurial community in Cuba and excitement here in the United States about that. I think they deserve our support.

Q. Do you have any insight in terms of the interest of U.S. companies in the telecom opening?

A. I've talked to a number of the major U.S. telecom providers and they are monitoring the situation to see what the opportunity is. Companies like Cisco and others were quite enthusiastic to move in. But I think everyone is trying to figure out, how does this work? You have to remember the announcement only came just before Christmas. And we're only a couple of months into the new year, but we're seeing a lot of interest.

Q. In terms of a role for U.S. exporters to tap into these new Cuban opportunities, how do you suggest they go about this?

A. At this conference today [March 30], we have Matt Borman [deputy assistant secretary for export administration] with us. He is really the person at Commerce who led the rewrite of the regulations. He is here talking with businesses and illuminating them about the specifics of the regulatory changes.

Our belief is the business side of the relationship can be a leader, an area that helps bring about greater prosperity for the Cuban people. It's exciting to see the interest by U.S. citizens and companies in figuring out how to engage with Cuba and what's even more exciting is the interest by Cuban entrepreneurs in working with us. That's where we can really bring something to the table in terms of supporting entrepreneurship in Cuba.

United States Department of Agriculture
9 September 2015

Statement by Phil Karsting
U.S. Department of Agriculture
Before the House Committee on Foreign Affairs Subcommittee on Terrorism, Non-Proliferation, and Trade
Hearing: Agricultural Trade with Cuba

As this subcommittee knows, the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) 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.

Los Angeles Times
18 September 2015

The new regulations "will ease travel restrictions, enhance the safety of Americans visiting the country, and promote more business opportunities between U.S. and Cuban companies," Commerce Secretary Penny Pritzker, who is expected to visit Cuba this fall, said in a statement.

Los Angeles Times
30 September 2015

Penny Pritzker, the U.S. secretary of commerce, is headed to Cuba next week for economic talks. The goal of the meetings is to "facilitate more effective implementation of new U.S. policies toward Cuba," according to the Department of Commerce.

Engage Cuba Internet Site
6 October 2015

While we applaud this trip, it is absurd that U.S. policy prohibits our own Secretary of Commerce from promoting American exports during her trip to Cuba. Congress should do its job and lift the embargo to better empower businesses in both countries."

National Public Radio (NPR)
8 October 2015

HORSLEY: I spoke to Pritzker in an office in the newly rechristened U.S. embassy in Havana. She conceded her hands are still partially tied by the U.S. embargo against Cuba. For example, she was not allowed to bring any American executives along to strike business deals on this trip.

PRITZKER: I can't have a trade mission. I can't do a lot of the things that we typically do in other countries. But I can fact find, and that's what we're trying to do.

The New York Times
8 October 2015

"The U.S. embargo, which only our Congress can overturn, limits what the president can do in changing our approach," Ms. Pritzker conceded. In the meantime, she said brightly, it was time to "seize this historic opportunity."

Ms. Pritzker, who is worth $2.4 billion and is an active philanthropist, has also reached out to Silicon Valley. When Airbnb, the online short-term home-rental company, announced it was expanding to Cuba, Ms. Pritzker picked up the phone and called Brian Chesky, the chief executive, to congratulate him and followed up with an email offering support.

For the trip to Cuba, Ms. Pritzker traded in the Gulfstream that she uses as her traveling office for a standard blue-and-white government plane emblazoned with "United States of America," all to make space for a larger-than-usual entourage of aides and to comply with security requirements.

On this trip, with the embargo still in place, she was in many ways promoting more promise than policy, a kind of ambassador of aspirations for the power of market forces to help bring change to Cuba.

"I hope what I could stand for in their eyes is a businessperson who has enormous sensitivity to the issues of society," Ms. Pritzker said as her plane prepared to land in Havana this week. "This is more than just, 'Let's do commerce.' There's a personal aspect of this too."

The Washington Post
8 October 2015

A visit to Havana this week by U.S. Commerce Secretary Penny Pritzker only seemed to underscore how far the governments have to go. With no new agreements or business deals to announce, the commerce secretary — the first to make an official visit to Cuba in 65 years — seemed like one more in the parade of U.S. lawmakers and corporate leaders who have returned from Havana with little more than rum and cigars to show for it.

"There is much we in the United States do not fully understand about the Cuban economic system," Pritzker told reporters Wednesday evening at the end of a 36-hour visit. "I'm here because we need to develop relationships with each other and start to learn from one another."

El Nuevo Herald
9 October 2015

"La secretaria Pritzker tenía prohibido por ley promover las exportaciones americanas, así que nadie la esperaba de vuelta con ningún tipo de progreso sobre comercio", comentó al Nuevo Herald, James Williams, quien dirige la coalición de cabildeo en el Congreso, Engage Cuba.

Google Translation: "Secretary Pritzker was forbidden by law to promote American exports, so no one was waiting back with any progress on trade," said James Williams, to Nuevo Herald, who heads the coalition lobbying in Congress, Engage Cuba.

Fortune Magazine
13 October 2015

Having just returned from Cuba, Pritzker said she was proud to become the second cabinet member to visit the nation—though she counseled anyone seeking business opportunities there to remember that an embargo is still in place. For those looking for advice about how to navigate the ins and outs of operating in Cuba, she suggested contacting the Commerce Department.

Email to United States Department of Commerce
14 October 2015

For the publication, Economic Eye On Cuba, and for use by the U.S.-Cuba Trade and Economic Council as the organization interacts with United States companies and media, I seeking the citations (statutory and/or regulatory) that have been referenced by Secretary Penny Pritzker in an interview with NPR on 8 October 2015; excerpts follow.

I am also attempting to locate the statute referenced by Mr. James Williams of Engage Cuba as quoted in El Nuevo Herald on 9 October 2015. Mr. Williams will not disclose the statute. …A representative of his office referred me to the United States Department of Commerce for the answer.

Sun-Sentinel
15 October 2015

That is what U.S. Secretary of Commerce Penny Pritzker found out during her recent two-day trip to the island. When she returned, she said it would be difficult for American companies to do business in Cuba because the government retains the right to hire all of its employees through state-run agencies.

"We don't understand how is it that you hire people, how does it work?" she said. "Imagine if you are a business owner. You want to hire who you want to hire."

NOTE: The OFAC and BIS previously issued regulations that specifically authorized United States companies to establish a presence in the Republic of Cuba and to hire Republic of Cuba nationals; the OFAC and BIS did not require that the hiring process be outside of existing regulations in force within the Republic of Cuba.

Engage Cuba Internet Site
15 October 2015

"Secretary Pritzker's visit to Cuba is a positive development that will strengthen the unprecedented momentum in U.S.-Cuba relations. It is a historic trip and sends a strong signal that the U.S. is committed to the economic development of the Cuban people.

We expect that Secretary Pritzker will have substantial conversations about the opportunities and challenges surrounding travel and trade between our countries. We also hope she will meet with the burgeoning community of private entrepreneurs on the Island, which some estimate is as high as 40 percent of the workforce.

Despite the impressive advances these Cuban entrepreneurs have made, they continue to face significant obstacles due to the U.S. embargo and travel ban, as well as restrictions from their own government.

While we applaud this trip, it is absurd that U.S. policy prohibits our own Secretary of Commerce from promoting American exports during her trip to Cuba. Congress should do its job and lift the embargo to better empower businesses in both countries."

The Washington Post
18 October 215

U.S. Commerce Secretary Penny Pritzker said it was not one of the topics she brought up with Cuban authorities during her visit to the island last week, but she said it was on the agenda for future talks. At a news conference after her departure, Cuban officials said the U.S. sanctions remain so restrictive that discussions of copyright protections are premature.

"There are so many (trade) issues to resolve, and until we establish some basic things, it's going to be very difficult to talk about copyrights and trademarks," said Ana Teresa Igarza, the director of Cuba's Mariel free trade zone project, which is courting foreign investment. "Even if Cuba has the money to make the payments, we don't have any way to transfer the funds," said Igarza, referring to U.S. restrictions on the use of the dollar by Cuban banks.

Email from United States Department of Commerce
20 October 2015

The statute is the Trade Sanctions Reform and Export Enhancement Act of 2000, title IX, Public Law 106-387 [22 U.S.C. 7207(a)(1)] (TSRA).

Department of Homeland Security
26 October 2015

Statement by Press Secretary Marsha Catron on Deputy Secretary Mayorkas' Upcoming Trip to Cuba: On Oct. 27-30, Deputy Secretary of Homeland Security Alejandro Mayorkas will travel to Havana, Cuba to meet with senior Cuban government officials and continue discussions on trade and travel between the United States and Cuba.

DHS is responsible for securing flows of people and ensuring the security of trade between the U.S. and other countries. Commissioner R. Gil Kerlikowske, who oversees the U.S. Customs and Border Protection, which facilitates lawful travel and trade, will accompany Deputy Secretary Mayorkas to meet with their Cuban counterparts.

Deputy Secretary Mayorkas, the highest ranking Cuban-American in the Administration, was born in Havana, Cuba. His family immigrated to the United States in 1960 and resided in Miami, Florida before moving to California. Deputy Secretary Mayorkas was naturalized as a United States citizen in 1973.

ABC News
27 October 2015

Mayorkas, the highest-ranking Cuban American in the Obama administration and second in command at DHS, will be traveling to the island tonight and staying through Friday to meet with his Cuban counterparts.

He is the third administration official to visit Cuba since President Obama announced the restoration of diplomatic ties last December. He will be accompanied by Customs and Border Protection Commissioner Gil Kerlikowske.

The visit represents the tightening of ties between two countries once so far apart. On the agenda: paving the way for more trade and the resumption of flights between the U.S. and Cuba.

United States Department of State
30 October 2015

Senior Advisor to the Secretary of State David Thorne will travel to Havana on November 1-3 to meet with government officials and business leaders, with the goal of supporting Cuba's emerging private sector as part of the Department's Shared Prosperity Agenda. José Raúl Perales [formerly employed by the U.S. Chamber of Commerce], Assistant Secretary for the Private Sector at the U.S. Department of Homeland Security, will accompany Ambassador Thorne.

The delegation will meet with government officials and have discussions with entrepreneurs, visit the Mariel Port, and attend the inauguration of the U.S.-Cuba Business Council and the opening ceremony of the 33rd annual Havana International Fair (FIHAV); Havana's largest annual multi-sector trade fair.

Official Biography: Among other duties, Secretary Kerry has asked Thorne to lead a Department-wide effort to position economic and commercial issues more prominently within the U.S. foreign policy landscape. Ambassador Thorne is also working to elevate the importance of entrepreneurship, technology, and innovation in the State Department's promotion of global prosperity.

Official Biography: In this role, A/S Perales advises the Secretary on the impact of the Department's policies, regulations, and processes on private sector companies, universities, and not-for-profit institutions and enhances strategic communications in order to help the public and private sectors jointly meet their shared responsibility for homeland security.

YNN
31 October 2015

"This has been a very productive trip - building relationships of mutual respect with our Cuban counterparts, with an initial focus on trade and travel security. As a Cuban-American, it is a great honor to further President Obama's policy and build stronger relationships with the Cuban people," said Deputy Secretary Mayorkas. "I believe that engagement with Cuba is in our interest, and will improve the lives of the Cuban people," said Mayorkas.

The New York Times
1 November 2015

Mr. Obama has acknowledged growing more comfortable with acting on his own to "get things done."

Cuba Government Media
23 January 2016

Between 20 and 22 January 2016, he visited Cuba a delegation from the United States, chaired by Ambassador Daniel Sepulveda, Deputy Assistant Secretary of State and Coordinator for International Communications and Policy Information; and Thomas Wheeler, president of the Federal Communications Commission (FCC). They were accompanied by officials from the Departments of State, Commerce and Treasury, and the FCC. They were part of the delegation, also a representation of US companies in the telecommunications sector.

The visitors were received by the Deputy Minister of Communications, Jorge Luis Perdomo Di-Lella, along with officials of the agency and the Ministries of Foreign Affairs and Foreign Trade and Foreign Investment, and representatives from business and academia Cuban linked to this area.

At this meeting, which continued the made in March 2015 and took place in a positive climate, views on the use of the Internet for economic and social development and the regulatory framework for the use of the Net were exchanged. The effects of the blockade is also addressed in the field of telecommunications, including the challenges faced by Cuba for US access to Internet sites that are key to the scientific-technical and economic development of Cuba, and the scope and limitations of the new regulations adopted by the US government for this sector.

The delegation of the United States was also received by the Ministries of Foreign Affairs and Foreign Trade and Foreign Investment, and visited facilities of the Youth Clubs of Computing and Electronics, Instituto Superior Politecnico Jose Antonio Echevarria and the University of Computer Science, where he could share with students and teachers.

United States Department of State
22 January 2016

Remarks
Ambassador Daniel A. Sepulveda
Deputy Assistant Secretary and U.S. Coordinator for International Communications and Information Policy, Bureau of Economic and Business Affairs
University of Information Science
Havana, Cuba

Challenges, and Opportunities
Cuba and the Internet: Choices, Challenges, and Opportunities

I am honored to be back in Cuba, this time with my friend Tom Wheeler, the Chairman of the Federal Communications Commission in the United States, as well as other high level representatives from the U.S. Government, academia, and the private sector.

President Obama has taken significant and historic steps to cut loose the anchor of the past and to chart a new course in U.S. relations with Cuba that will engage and empower the Cuban people. That is nowhere truer than when it comes to telecommunications and technology and our technical community and industry have responded enthusiastically. We have with us on the trip some real leaders in technology and communications. We strongly urge the Cuban leadership to respond to this initiative because it will benefit both our peoples.

We are here on this trip to advance President Obama's goal of deepening our relationship and the lines of communications between our two peoples. We want to share our perspectives and experience as you work to expand Internet and communications connectivity. We believe that greater connectivity could deliver tremendous economic benefits and improve the delivery of services to the Cuban people, and we think that you and your leaders agree.

The question I most often hear at home is whether or not Cubans will be able to develop the Cuban economy using information and communication technologies? I say yes. Given the talent, creativity, and capabilities of its, young engineers, programmers, and innovators, I have no doubt Cuba is on the way to becoming an active participant in shaping the global Internet realm. And the world will welcome your engagement. So what have we and many other countries learned from engaging with the Internet over the past 20 years that might help you in considering next steps?

In short, we have learned that in order for any country to benefit from and acquire modern information and communications technologies (ICTs), there are various measures that governments around the world take in order to attract investment, operate networks, and deliver services. We hope that Cuba will consider these initiatives, including transparent procurement for telecommunications, encouraging competition in the industry, broader provision of Internet and mobile wireless services, new initiatives for connecting schools, health facilities, and rural communities; broadband deployment plans, and the opening of the telecommunications sector to private companies for "last mile services."

While not every country has adopted each and every one of the policies, many have, even given varying levels of economic development, as well as varying philosophies of the role of the state in markets. We are here to respectfully share our ideas on how the adoption of telecommunications and Internet technologies and changes in policy can help Cuba's economy achieve great benefits. I also want to note that the Cuban government has taken some positive steps in this area over the last year and so we offer some ideas for building on those initiatives.

1. First, we commend Cuba for increasing the availability of public Internet access spots. In 2015, the Cuban government established some 58 Wi-Fi hotspots. We consistently hear that demand for access at these locations has been tremendous. There are now more public Internet access points than ever before and we urge the Cuban Government to continue adding more hotspots around the island, expanding their successes.

2. We recognize Cuba has reduced the cost of public Internet access but it is still too expensive. The cost of Internet access remains high relative to income in Cuba but prices are dropping. When the Cuban government established the 35 Wi-Fi hotspots, it also reduced the hourly rate from $4.50 to $2.00 which is good. But this effectively means that it still costs the average Cuban about 10% of his/her monthly salary to get online. At the same time the hourly cost, however, for access to Cuba's closed Intranet system is only about 60 cents. Reducing the Wi-Fi hotspot cost for access to the global Internet further would go a long way in improving Cuba's internet access rate and the utility of that access.

3. Cuba is investing in DSL technology and we see a real opportunity to integrate more modern technology to advance its broadband strategy. Around the globe, we see the benefits of using fiber or high-speed mobile technology, as well as satellite service, and cloud-based solutions, as key components of any nation's Internet infrastructure. More and more, nations draw on foreign direct investment and joint ventures to make this possible and Cuba should consider changes to policy to attract that kind of investment and allow those kinds of joint ventures.

4. Cuban demand for mobile wireless technology is on the rise. Cuban mobile networks operate primarily on 2G technology (second generation), which was first introduced in 1992. Smart phones need at least 3G (third generation) to run effectively. Cuba has an opportunity to skip generations of technology and leap to 3G and even 4G networks. Often, nations spur investment by allowing foreign firms to build infrastructure and deploy services on some commercially viable basis.

5. We also believe Cuba could and will need to loosen regulations for consumer and residential Internet use if the Internet is to reach Cubans where they live. The Cuban government continues to regulate the sale and distribution of Internet-related equipment, and residential connections are not yet freely allowed for the majority of Cubans. Cuban import regimes also prohibit phones that utilize Global Positioning Systems and require special authorization for modems and satellite dishes.

6. Cuba can take greater advantage of U.S. regulations. U.S. regulations now permit a wide-range of activities that would support the Cuban ICT sector. By taking advantage of these changes, Cuba can enjoy state of the art communications and fast track its entry into the global Internet community.
7. Cuba has made progress in upgrading its infrastructure and would further benefit from a new submarine cable from Miami to Havana. Linking Cuba directly to the United States would increase capacity within Cuba and allow for more efficient routing of traffic. The additional international link would serve a vital purpose in needed network redundancy and emergency preparedness.

8. In order to reap the full economic benefit from vast sources of information and tools on the Internet, people need open access. We should have faith in people's ability to discern the value of information for themselves and avoid centrally censoring or blocking voices or services.

All or some of these policies have proven themselves useful in other countries and we hope you will consider them here. We do not want the Cuban people left behind. And we very much want to work with you to connect Cuba to the world.

Thank you very much.

The Miami Herald
25 January 2016

Cuba still wary of U.S. telecom and Internet offers
U.S. and Cuba concluded three days of telecom talks last week
Despite new U.S. rules, Cuba proceeding cautiously on deals with U.S. companies

By Mimi Whitefield

After a second round of meetings in Havana, Daniel Sepúlveda, the U.S. point man on telecom policy toward Cuba, says the United States feels an urgency to make progress and sign deals while President Barack Obama is still in office but Cuba appears to want to take its time.

Sepúlveda, the coordinator for international communications and Information policy in the State Department, led a 14-member delegation that held talks Wednesday through Friday with their Cuban counterparts to discuss U.S. regulations that allow American telecom and Internet companies to engage in a wide array of commercial activities on the island — if Havana wants to take them up on their offers.

Cuba has one of the lowest connectivity rates in the world, and only an estimated 5 to 25 percent of Cubans have any type of Internet service.

Both sides categorized the talks — the first since March — as positive, and Sepúlveda said U.S. companies continue to visit the island in hopes of striking deals that would improve telecom infrastructure and Internet connectivity for Cubans.

"We're doing as much as we possibly can on our side. At this point, the biggest thing that is missing is trust" -- on both sides, Sepúlveda said Monday in an interview with the Miami Herald and El Nuevo Herald.

New U.S. rules allow American companies to sell personal communications equipment in Cuba, work on joint ventures with Cuba's telecom monopoly ETECSA to improve the island's outdated Internet and telecom infrastructure and open offices in Cuba and hire Cubans to staff them. The new regulations also mean that a U.S. company could, for example, hire a private Cuban coder or other service provider.

In all its recent dealings with the United States, Cuba has emphasized its priority is an end to the embargo, and in a Foreign Ministry statement at the end of the telecom talks, Cuba mentioned "the limitations of the new regulations adopted for this sector by the U.S. government." Sepúlveda, however, emphasized that the new telecom regulations were more open that those for any sector that the United States permits to do business with Cuba.

The U.S. delegation also included Thomas Wheeler, chairman of the Federal Communications Commission; Dean Garfield, president of the Information Technology Industry Council, and representatives from Cisco Systems, Comcast, the North American division of Erisson, a Swedish communications company, and other government and industry officials. "The hunger on this side — from business — is big," said Sepúlveda.

He said there are at least a half-dozen proposals — both by U.S. and non-U.S. companies — to construct a North-South undersea fiber optic cable between the United States and Cuba. Currently, Cuba's only connections are through satellite and an undersea fiber-optic cable that links the island and Venezuela.

Sepúlveda said successful deployment of Internet networks anywhere in the world have included three elements: an attractive environment for direct foreign investment, investments in infrastructure and joint ventures — particularly for wireless.

The Cuban government has said that its goal is to offer Internet to 50 percent of households by 2020 and to have 60 percent mobile penetration by then.

The feedback the U.S. delegation got from the Cubans was they would take the cable and other joint venture overtures under consideration, but that the Internet/telecom industry wasn't currently one of their main economic priorities, said Sepúlveda. The message from the Cuban side, he said, was that while they are open to seeing the U.S. ideas, they "want to move very carefully" and "Cuba is going to move forward in its own way."

Sepúlveda said his response was: "Fine and good but we have a window of opportunity here." Obama, who announced the historic opening with Cuba on Dec. 17, 2014, is in the final year of his term and some Republican presidential hopefuls said they plan to reverse his overtures toward Cuba.

He said that even though his job is advocacy and creating a policy environment conducive to a communications opening, rather than helping with business deals, "We need to have some solid wins to give [U.S. business] confidence."

The U.S. delegation met with Jorge Luis Perdomo, Cuba's vice minister of communications and officials from Cuba's foreign relations and foreign trade and investment ministries as well as Cuban bloggers, university students and faculty. They also visited a Youth Club where teens were learning about the Cuban Intranet and the Internet.

In a speech at Havana's University of Information Science, Sepúlveda said, "We strongly urge the Cuban leadership to respond to this initiative because it will benefit both our peoples."

In the past year, he said there has been progress: Cuba has opened 58 public Wi-Fi hotspots with more scheduled for this year; the cost of Internet access has dropped by more than half to $2 an hour — although he said it was still too expensive; and Cuba is investing in DSL technology. In his interview with the Herald, he also cited Cuban roaming deals struck by Verizon and Sprint.

But he added that Cuba needs to "loosen regulations for consumer and residential Internet use" and also has the ability to skip generations of technology by upgrading from mobile networks that operate primarily on 2G technology to 3G or even 4G networks.

Federal Communications Commission
27 January 2016

Cuba's Telecommunications and Technology Opportunities

Tom Wheeler | FCC Chairman

Last week, I had the privilege of participating in bilateral talks with the Cuban government focused on how we can work with Cuba to increase connectivity between our two countries, as well as within Cuba. We discussed ideas for opening more direct communications links with Cuba, and we got a better sense of Cuba's Internet and communications connectivity needs. We also met with representatives of the small but growing entrepreneurial community that is hungry for network connectivity.

Ambassador Daniel Sepulveda from the State Department led our delegation which also included representatives from the Department of the Treasury as well as representatives of the technology community. The inclusion of the private sector in the talks advanced the dialog with real life examples of what was possible.

The Cubans we met were proud people who recognize the benefits new telecommunications networks can bring to education, health care and economic growth. Our message was simple: we want to help (already, for instance, two companies have roaming agreements with the state-owned telecom provider). We spoke about a new undersea cable connecting our countries, commercial relations for equipment and service providers, as well as an ongoing regulatory dialog.

We at the FCC have contributed to efforts to improve connectivity between the United States and Cuba, and within Cuba, by removing Cuba from the Commission's Exclusion List for International Section 214 Authorizations. By removing Cuba from this list, the Commission opened the door for U.S. telecom carriers to provide facilities-based voice and data service to Cuba without separate approval from the Commission. This should lead to increased competition on the U.S.-Cuba route. We are also working on removing certain non-discrimination requirements on the U.S.-Cuba route, which would give U.S. carriers more flexibility to negotiate rates with the state-owned telecommunications operator and to respond to market forces.

Cuba remains one of the least digitally connected countries in our hemisphere. They talk about upgrading to DSL and 3G wireless. We urged them to leapfrog such linear transitions and expand to state-of-the-art services. We pledged our support and the support of U.S. companies to achieve this. It is unclear, however, just how anxious the Cuban government is to open up expanded network capabilities.

I enjoyed my visit to Cuba and came away from it with a newfound understanding of both the opportunities and challenges facing Cuba in terms of communications technology and access. I am grateful to Ambassador Sepulveda for his unstinting leadership, to our Cuban hosts for their warm hospitality, and to our agency and private sector partners for helping to make the trip a success.