Stronger Trade or Stronger Embargo: What the Future Holds for United States-Cuba Trade Relations

Michael D Margulies, New York University

Available at: https://works.bepress.com/michael_margulies/1/
Stronger Trade or Stronger Embargo:  
What the Future Holds for 
United States-Cuba Trade Relations  
By: Michael Margulies

Introduction

The United States’ trade restrictions against Cuba have been a well-known fact of life for Cubans and Americans alike for over 45 years. Whether known as “the embargo” or “el bloqueo,” the prohibition has had an impact upon various factions in both populations. Though lesser known, there have been hundreds of millions of dollars of trade between the two countries for over five years, as a result of the Trade Sanctions Reform and Export Enhancement Act (TSRA), which authorizes the export of U.S. agricultural products to Cuba, under strict restrictions.

This paper provides an analysis of the history and politics of TSRA, a description of trade relations under this Act, and the Cuban and U.S. perspective of the authorized agricultural trade. Beginning with the political climate and events that have led to the current state of trade relations between the two countries, the article proceeds to identify the possibility for enhanced trade. The subject of the TSRA is important in its own right and may serve as an indicator of what potential exists for future U.S.-Cuban relations. Though such a relationship may prove to be economically beneficial for both the U.S. and Cuba, there is much more at stake from a historical, political and ideological perspective, which may impede the development of normalized trade and travel relations between the neighboring countries. The article concludes with the realization that while the economic experience may support a policy shift in both the U.S. and Cuba, the political difficulties may be too great to overcome.
I. The Opening of Agricultural Exports to Cuba

In February, 1962, President Kennedy issued Presidential Proclamation 3447, initiating the existing U.S. embargo against Cuba, banning nearly all trade between the neighboring countries.² Thirty years later, in 1992, with the prohibitions still intact, President Clinton transformed the Presidential Decree into Congressional Act by signing two pieces of legislation – the Cuban Democracy Act² and the Cuban Liberty and Democratic Solidarity (Libertad) Act³. These Acts codified previous laws restricting commercial trade between the U.S. and Cuba, setting forth specific conditions to be met by the Cuban Government prior to any waiver of the embargo by the U.S. Government.⁴

The intent of the embargo, and subsequent codification of the trade restrictions, was to pressure Cuba to facilitate a multi-party, democratic election process, and force Fidel Castro to alter his position regarding “internationally accepted standards of human rights.”⁵

Since its inception, the embargo has served as the source of great controversy in the U.S., Cuba and the global community.⁶ It has been widely criticized for its failure to

---

¹ The proclamation, which came on the heels of the Cuban Government confiscation of property in Cuba owned by U.S. citizens and corporations, prohibited the importation of all goods of Cuban origin, all goods imported from or through Cuba and all exports from the United States to Cuba. *See* Embargo on All Trade with Cuba, 27 Fed. Reg. 1085 (1962).
⁴ For the embargo to be waived, the Cuban Government must show signs that they have, “held free and fair elections…; permitted opposition parties ample time to organize and campaign for such elections…; [shown] respect for the basic civil liberties and human rights of the citizens of Cuba; [moved] toward establishing a free market economic system; and committed itself to constitutional change that would ensure regular free and fair elections….” 22 U.S.C. §6007(a)(1)-(5).
⁵ *See* 22 U.S.C. § 6001 (highlighting Congressional findings and naming Castro specifically throughout).
⁶ The embargo has been criticized for at least three of the following reasons: (1) the U.S. Government’s inappropriate use of food and medical supplies as a tool to achieve foreign policy goals; (2) lost opportunities for various sectors of the U.S. and global economies; and (3) providing a platform upon which the Castro Regime has maintained political authority in Cuba.
function as an impetus for regime change in Cuba and even noted as a potential factor in Fidel Castro’s ability to retain power for nearly half a century.\footnote{See Josep M. Colomer, Who Could End the Embargo? A Game-Theoretical Perspective, 14 Transnat’l L. & Contemp. Probs. 163, 171 (2004). The embargo has been used as a tool to assist the Cuban leadership base, serving as an excuse when criticized for the policy failures of their communist experiment. The economic sanctions can even be viewed as an impediment to the furtherance of Cuba’s political liberalization. Id.} It can be argued that the embargo has had the exact opposite effect on the Cuban Government and the Castro Regime than what the U.S government had intended when initiating the trade restrictions.\footnote{The Cuban government has benefited from the embargo, in using it as an “alibi for its own failures and as a platform for moral condemnation of the United States.” Id., at 163} More recently, the trade sanctions have been harshly criticized for their impact upon various U.S. economic sectors, specifically the loss of significant earning potential that could result from open trade relations between the US and Cuba.\footnote{For example, Rep. Jerry Moran from Kansas has criticized the lost economic opportunities for the constituents from his state. Rep. Jerry Moran, Time for a Change in Cuba Trade Sanctions, WICHITA EAGLE, December 24, 2006, at A3.} In 1999, the House Committee on Agriculture held a hearing to address the detrimental effects that unilateral U.S. sanctions on trade with Cuba imposed on U.S. agriculture.\footnote{Economic Sanctions and the Effect on U.S. Agriculture: Hearing Before the H. Comm. On Agriculture, 106th Cong. 1-76 (1999) [hereinafter 106th Hearings].} Two themes ran through the testimony of Representatives and witnesses from agricultural entities and governmental agencies. First, a disservice was being done to the larger Cuban population.\footnote{See Id.} Concerns had arisen that food and medical supplies were being utilized as a tool to achieve foreign policy goals. The restrictions were seemingly intended to limit any contributions to the success of the Cuban government and stimulate social upheaval by the Cuban populace against the Castro regime.\footnote{Id., at 1 (statement of Rep. Larry Combest, Chairman, H. Comm. on Agriculture) (“[F]ood should not be used as a tool of foreign policy….Food should not, under most circumstances be used as a weapon.”). See also Philip Peters, U.S. Sanctions Against Cuba: A Just War Perspective, Presented to the XVI Annual Conference of the Association for the Study of the Cuban Economy (Aug. 5, 2006) (“[W]ile U.S. sanctions affect the finances of the Cuban government, they also affect the welfare of Cuban citizens who}
tactic met both strong popular and political opposition, for its inhumane nature and failure to meet its objectives.\(^\text{13}\) One representative concluded that the sanctions had a "debilitating effect, not on the leadership, but on the citizens."\(^\text{14}\) The sanction were ineffective in initiating a change in the polity of the Cuban state.

Second, domestically, the more significant concern was the impacts felt upon American farmers and ranchers.\(^\text{15}\) An estimated $500 million of agricultural sales were lost annually as a result of embargos of Iran, Syria, Sudan and Cuba.\(^\text{16}\) The trade sanctions aimed at Cuba, specifically, were noted as creating a loss of market share to competing agricultural suppliers (e.g. Canada, the European Union, and Argentina), driving up the prices at which those countries sell their products as a result of thin competition, and undermining the U.S. reputation as a reliable supplier to its regular customers.\(^\text{17}\)

U.S. farmers and ranchers organized a concerted lobbying effort. It was led by U.S. Rice Producers, American Soybean Association, National Corn Growers Association, etc., with the support of legislators from states dependent upon the success of their agricultural sector (including Nebraska, Michigan, Texas, North Dakota and

\(^{13}\) See also Id. “[H]istorian Luis Aguilar, [a] former professor at Georgetown University and a university classmate of Fidel Castro, wrote in El Nuevo Herald in 1999…:

…it is possible to defend the bombing of a town, if this hard punishment succeeds in weakening or defeating an enemy. But if it is demonstrated that the bombardment, or any such action, is hurting the people but is far from weakening the military power of the enemy, it would be necessary to stop the attack and resort to other methods.”

Id., at 391.


\(^{15}\) Id., at 4 (statement of Rep. Bill Barrett, Member, H. Comm. On Agriculture) (Trade sanctions are ineffective and only hurt American farmers and ranchers.”).


\(^{17}\) See Id.
others). In 2000, Congressman George Nethercutt (R-Wa) and Senator John Ashcroft (R-Mo) proposed legislation to create agricultural trade exceptions to countries against which the U.S. had imposed unilateral trade sanctions. Trade agreements would be permitted between U.S. agricultural entities and Cuba, allowing for the export of commodities abroad, but continuing the prohibition against the importation of any commodities from Cuba into the U.S. Bipartisan support for the measure was eventually achieved by appealing to humanitarian, religious, farm and commodity organizations. In 2000, Congress authorized the sale of agricultural commodities to Cuba with the adoption of the Trade Sanctions Reform and Export Enhancement Act (TSRA). While TSRA created trade exceptions for exported medical and agricultural commodities, it did not affect any other aspects of the existing embargo. Additionally, the exports were subject to strict restrictions and prohibitions.

When the TSRA provisions took effect on February 25, 2001, Cuba did not immediately jump at the opportunity to purchase agricultural commodities from the U.S. It took nearly one year and dire circumstances for the Castro regime to accept the U.S. offer. Following the disastrous effects of Hurricane Michelle, in November, 2001, and the subsequent food supply shortages experienced by the Cuban population, the Cuban government not only continued to reject the opportunity to import U.S. food

---

18 See Id., at 39-75 (detailing commentary in support of agricultural trade exceptions from agricultural associations and governmental representatives and officials).
21 Id.
22 Id.
23 Id., at § 7207-08 (prohibiting non-agricultural or medical exports to Cuba, as well as imports from Cuba).
24 See infra Part II.
26 Id. at 770.
products, but more significantly it also turned down the U.S. offer of disaster assistance.\textsuperscript{27} It was not until later, by the end of 2001, when their food reserves had become fully depleted, that Cuba finally seized the opportunity to purchase bulk agricultural commodities from the U.S.\textsuperscript{28} The Cuban government had felt slighted by the fact that the entire embargo had not been repealed; rather the U.S. government had only opened up a specific sector with significant restrictions.\textsuperscript{29}

TSRA-authorized trade was a significant initial step, easing the trade restrictions and moving towards opening trade, social and political relations. However, it was also a sign of the difficulties that will surely be encountered in any enhanced relationship between the U.S. and Cuba. Cuba’s reluctance to immediately enter into such a relationship with the U.S., once TSRA had been passed, is a strong indication that there are not only economic factors at play in the limited trade relations between the two nations, but a multitude of other factors. Any normalization of a U.S.-Cuban trade relationship will be played out against an imposing political, historical and ideological backdrop.

II. TSRA Obstacles to Trade

While the passage of TSRA allowed the export of U.S. agricultural products to Cuba, such sales are subject to extensive conditions, restrictions and prohibitions,\textsuperscript{30} making any commercial relationship difficult to navigate and flourish. The Department

\textsuperscript{27} Id. at 770. This maneuver by the Cuban government was a strong sign of the complex political factors constantly at play between Cuba and the U.S. Even offers of humanitarian aide in times of natural disaster have been refused.
\textsuperscript{28} Id. at 770-771
\textsuperscript{29} Id. at 770-771.
\textsuperscript{30} See supra, note 20, at §§ 7207-7209.
of Treasury’s Office of Financial Asset Control (OFAC) requires any U.S. corporation exporting exempted agricultural products to Cuba to obtain a license, specifically depending upon the product to be sold.\textsuperscript{31} The language in the TSRA provisions detailing the licensing of agricultural exports has been described as “unclear and contradictory,” generating conflicts over its application.\textsuperscript{32}

In addition to the confusion over the complex licensing mechanism, TSRA details payment and financing terms to ensure that Cuba does not receive any financial benefit from approved transactions.\textsuperscript{33} Consistent with the existing economic sanctions, U.S. banks, private entities, and local, state, and federal governments are expressly prohibited from providing trade financing or credit to facilitate the purchase of agricultural products by Cuba or any person in Cuba.\textsuperscript{34} Under the TSRA, payment for agricultural sales to Cuba must be made by “cash in advance”\textsuperscript{35} or financed through a third country bank.\textsuperscript{36} For a country that does not have much capital,\textsuperscript{37} and a very poor credit ranking with foreign countries,\textsuperscript{38} the TSRA payment options greatly restrict the ability for Cuba to purchase an optimal amount of agricultural commodities from the U.S.

\textsuperscript{31} OFAC issues both general licenses, avoiding the need to detail each individual transaction, and specific licenses, issued on a case-by-case basis for an individual transaction. Though the OFAC licensing process is quite complex, TSRA aimed to streamline the application process, shifting away from requiring multiple licenses for an individual sale. See, Remy Jurenas, Exempting Food and Agriculture Products from U.S. Economic Sanctions: Status and Implementation, in CRS REPORT FOR CONGRESS, 6-7 (2006).

\textsuperscript{32} \textit{Id.}, at 7-8.

\textsuperscript{33} \textit{Id.}, at 8. \textit{See also}, 22 U.S.C. § 7207(b)

\textsuperscript{34} \textit{See Jurenas, supra} note 28 at 8-10. \textit{See also}, 22 U.S.C. § 7207(b)

\textsuperscript{35} 22 U.S.C. § 7207(b)(1)(A) (2000). This language has been very controversial and its meaning subject to various interpretations. \textit{See infra} text accompanying note 39-40.


\textsuperscript{37} The Cuban economy is still recovering from a decline in gross domestic product of at least 35% between 1989 and 1993 [the Special Period following the collapse of the Soviet Empire]. U.S. DEPT. OF STATE, BUREAU OF WESTERN HEMISPHERE AFFAIRS, BACKGROUND NOTE: CUBA (2006).

\textsuperscript{38} As a result of Cuba’s increasing debt and chronic delinquencies, Moody’s lowered Cuba credit rating to Caa1 – “speculative grade, very poor”. \textit{Id.} “Cuba is considered an extremely high credit risk in global financial markets, with Euromoney Magazine ranking Cuba 181\textsuperscript{st} out of 184 countries in their 2003 analysis
In 2004, U.S. financial institutions became so confused by the TSRA language, and the OFAC licensing procedures, that they ceased payments and sought guidance from the Department of the Treasury.\textsuperscript{39} It was unclear whether the “payment of cash in advance” requirement intended for funds to be received by the U.S. financial institutions prior to the seller’s shipment of the goods, or prior to the transfer of the goods from the seller to Alimport, the sole body authorized by the Cuban government to import food products into the country.\textsuperscript{40} In response, OFAC clarified the phrase “payment of cash in advance” to mean that “payment is received by the seller or the seller’s agent prior to shipment of the goods from the port at which they are loaded.”\textsuperscript{41} OFAC Director Robert Werner claimed that the clarification “conforms to the common understanding of the term in international trade.”\textsuperscript{42} However, this clarification has further constrained trade relations between U.S. agricultural entities and Cuba, drawing criticism from both.

The 2004 Treasury Department’s tightening of an already difficult trade structure was seen by legislators who drafted TSRA, as well as leading figures in the U.S. agricultural industry, as the Bush Administration’s attempt to further restrict trade with Cuba.\textsuperscript{43} This measure has been considered a “deliberate misinterpretation of the Trade Sanctions Reform Act,” that could destroy all of the progress that had been achieved over

\textsuperscript{40} Id.
\textsuperscript{41} Id.
\textsuperscript{43} Forrest Laws, Farm Groups Blast Ruling on Cuban Payments, SOUTHWEST FARM PRESS, March 10, 2005, at 8.
the nearly five years since the Act was passed. Comments by legislators who drafted and supported TSRA are an indication that the OFAC clarifications do not reflect the Congressional intent when TSRA was passed, rather it is a sign of the Bush Administration flying in the face of deliberate Congressional action to ease trade restrictions between the U.S. and Cuba. Senator Byron Dorgan (D-ND), commented that he “wrote the law that they are now misinterpreting, [which] does not require the wrong headed action they are taking today.” Senator Max Baucus (D-MT) referred to the “administration’s attempt to keep [states] from selling agricultural products to Cuba [as] an outrage.” Further adding that he had “worked hard with Congressional colleagues to open up trade with Cuba…[and is] not going to let Treasury Department bureaucrats shut the door on Cuba trade that Congress purposefully opened.”

Shortly after the OFAC “clarification” was made, Representative Moran (R-KS) and Senator Craig (R-ID) introduced H.R. 719 and S. 328, respectively. The purpose of the proposed legislation was to clarify and codify the Congressional intent of TSRA, “that a seller of a product authorized under [TSRA] receive payment only before a Cuban purchaser takes physical possession of that product.” Additionally, proposed Acts would allow “for travel to, from, or within Cuba in connection with activities undertaken in connection with sales and marketing,” which would more easily facilitate TSRA

---

45 Id.
46 Id.
47 Id.
50 Id. § 2.
51 Id. §3.
approved trade. However, the House and Senate bills were not reported out of their respective committees.

Aside from legislative concerns, the practical effect of the OFAC clarification of “payment of cash in advance” has created greater difficulties for the U.S. role in the Cuban economy, while allowing other competing nations to advance their own position. The longer an importer has to wait for goods to arrive, for which it has already paid, the more likely they are to look elsewhere for goods.52 The OFAC clarification is merely another obstacle to successful trade relations, constraining the opportunity for the U.S. agricultural firms to achieve long-term market potential in Cuba, while other foreign competitors advance their own potential.53

The most burdensome restriction to successful trade relationships between U.S. agriculture corporations and Cuba may be the stringent prohibitions on U.S. citizens’ travel to Cuba. In order for a representative of a U.S. firm to travel to Cuba, to negotiate the commercial export sale of agricultural commodities, he or she must obtain an additional license through OFAC, which adds another burdensome element to the process.54 Effective June, 2004, President Bush further tightened the restrictions regulating U.S. citizen travel to Cuba.55 The new regulations not only affect those entering into trade agreements with Cuba, but also Cuban-Americans visiting family,

52 See supra, Nadkarni note 44.
students participating in educational activities and any others visiting non-Cuban nationals.\textsuperscript{56}

One way for U.S. agriculture entities to avoid this hurdle is by granting power of attorney to a third party who can more easily travel to Cuba. But this creates a whole other set of potential legal complications.\textsuperscript{57} The inability for U.S. agriculture companies to meet face to face with Alimport,\textsuperscript{58} the Cuban state run food purchasing agency, makes it difficult for the parties to strike deals, restricting the prospects of taking advantage of the intentions of TSRA.\textsuperscript{59} It has been estimated that lifting the travel restrictions would produce an additional US$126 million to $252 million in annual U.S. agricultural exports, and create an additional 3,490 to 6,980 jobs for Americans.\textsuperscript{60}

The TSRA and OFAC restrictions make it more difficult for Cuba to enter into an agricultural trade agreement with U.S. firms compared to other countries who do not present similar hurdles. Though agricultural trade agreements may be mutually beneficial to both the Cuban population and the U.S. agricultural industry, the complex regulations, referred to by Alimport as a “maze of restrictions...[has] pushed the Cuban market away from [U.S.] competitive and professional supply and in favor of [U.S.]

\textsuperscript{56} Sarmiento, \textit{supra} note 55, at 300-305.

\textsuperscript{57} Nuris Pinero Sierra, Director, Bufete Servicios Especializados, Address to the New York University School of Law, Cuban Law and Society Class, Havana, Cuba (March 13, 2007) [hereinafter Sierra Address].

\textsuperscript{58} As Cuba’s state run food purchasing agency, under the umbrella of the Cuban Ministry of Foreign Trade, Empresa Cubana Importada Alimentos (i.e. Alimport) is the only body authorized by the Cuban government to import food products into the country. The Cuban agency is responsible for all contracts, payments, trade regulations and the organization and facilitation of all agricultural imports. Interview with Jose Roman Mendez, President, Cuban Chamber of Commerce, in Havana, Cuba (Mar. 15, 2007) [hereinafter Mendez Interview].

\textsuperscript{59} See Sierra Address, \textit{supra} note 57.

competitors elsewhere who are aggressively keen to deal with [Cuba].”61 There may be economic incentives for Cuba to trade with the U.S., but the extent of prohibitions and restrictions often seem to outweigh the benefits.

III. TSRA and U.S.-Cuban Trade in Practice

The U.S. and Cuban governments report significantly different figures on the amount of U.S. agricultural commodities purchased by Cuba. U.S. generated figures claim that $1.5 billion62 in agricultural products (i.e. those qualifying under TSRA) have been purchased by Cuba since trade relations were reestablished in November 2001.63 Alternatively, Alimport has issued a report claiming that Cuba has made $2.1 billion in actual cash payments for U.S. food and agricultural products for the same period.64 However, common trends can be identified in both sets of figures.

Sales increased steadily for the first few years after TSRA was codified, as a larger number of U.S. agricultural firms became involved in trading with Alimport.65 According to one set of figures, sales rose from $7 million in 2001, to $146 million in 2002, to $259 million in 2003, to $404 million in 2004.66 However, after travel restrictions were tightened by the Bush administration in 2004, and the Treasury

---

62 All dollar figures throughout this study will be assumed as U.S. dollars.
63 Mark P. Sullivan, Cuba: Issues for the 110th Congress, in CRS REPORT FOR CONGRESS, 17 (2007) (reporting only through the first 11 months of 2006).
64 Alimport, Experiences and Prospects on Purchases from the U.S., Havana, Cuba (Mar. 2007). While it is possible that the difference can be explained by the different fiscal year calendars (Cuba’s fiscal calendar is pinned to the calendar year, unlike the U.S.), the cumulative figures should match up.
66 See Sullivan, supra note 63, at 17.
Department clarified the “payment of cash in advance” language of TSRA, sales dropped as relationships became more difficult to function under the new regulations. In 2005, as a result of the tightened restrictions, agricultural exports to Cuba fell by nearly 25%.\textsuperscript{67} For the first time since the initiation of agricultural trade under TSRA, the amount of trade between the two countries decreased; in 2005 Cuba purchased only $369 million in agricultural commodities.\textsuperscript{68} Though sales slightly rebounded in 2006,\textsuperscript{69} it is not clear that the level of growth will reach the levels attained prior to the enactment of the additional restrictions in 2005. The additional restrictions have had a significant effect on the fragile trade relations. Alimport stated that the “OFAC rule and its consequent uncertainties about US supply, compelled us to resort to alternative sellers in other foreign countries for $300 million in food and agricultural purchases that had originally been planned from the US.”\textsuperscript{70} There is no guarantee that U.S. agricultural entities will be able to regain the share of the Cuban market that has been lost.

IV. Trade from the Cuban Perspective

Since the beginning of the Special Period – the period of economic crisis in Cuba, at its worst from 1990-1993, following the termination of its special trade relationship with the former Soviet Union – Cuba has had to alter priorities within its economic infrastructure and identify a variety of new international trade partners to meet its needs.\textsuperscript{71} Such opportunities have been created by the new geopolitical reality in Latin

\textsuperscript{67} Id.
\textsuperscript{68} Id.
\textsuperscript{69} Id.
\textsuperscript{70} Borrego National Summit Remarks, supra note 61.
American nations, such as Venezuela and Bolivia, which share Cuba’s opposition to “neo-liberal globalization” and capitalist imperialism.\footnote{Id. at 141.} In 2006, the three countries entered into the “Agreement for the Application of the Bolivarian Alternative for the Peoples of Our America and People’s Trade Agreement,” which calls for cooperation in health, trade, education and other joint ventures to mutually benefit one another.\footnote{See Evo Morales, Fidel Castro, & Hugo Chavez, Agreement for the Application of the Bolivarian Alternative for the Peoples of Our America and the Peoples’ Trade, Aug. 4, 2006, available at http://www.venezuelanalysis.com/articles.php?artno=1789 (last visited Apr. 5, 2007).}

The burgeoning relationship between Castro and Venezuelan President Hugo Chavez, in particular, has been fruitful for both countries. A recent agreement between the two has resulted in the transfer of low-cost Venezuelan oil exports for the export of Cuban medical services.\footnote{See Ritter, supra note 71, at 141.} The U.S. government estimates that Venezuelan oil “subsidies” reached more than $2 billion in 2006, while also providing upwards of $500 million in credit for various projects, including housing and electricity.\footnote{Sullivan, supra note 63, at 6-7.} As further indication of how this relationship has flourished, in 2004 and 2005, Cuba has imported more than double the amount of commodities from Venezuela than any other nation.\footnote{Carlos M. Menendez, New Trends, Cuba Foreign Trade, Mar., 2006, at 77.} In this new political climate, Cuba’s continued investment in medical services and education, even throughout the Special Period, is paying off in large returns, as there is an increasing demand for such services by Latin American and Caribbean countries.\footnote{See Ritter, supra note 71, at 144.}

China is another example of a country that has improved its standing with Cuba and increased trade relations with Cuba since the dissolution of the Soviet Union.\footnote{Id. at 142.} Through the deferral of loan payments, which Cuba incurred during the Special Period,
and grants of credit, China has steadily increasing their role in the Cuban trade market in recent years as a result of the countries’ similar political regimes.\textsuperscript{79}

While TSRA has allowed the U.S. to play a role in the Cuban economy, it has not flourished quite like Venezuela and China. Though the U.S. entered the Cuban market in 2001, and steadily increased their share for nearly four years, 2005 presented a stumbling block in that growth.\textsuperscript{80} Following the Bush administration’s tightening of trade and travel restrictions, the U.S. share of the Cuban import market decreased from 8% to 6%, while Venezuela increased their share from 20% to nearly 25%, and China’s share increased from 10.5% to 11.8%, surpassing Spain.\textsuperscript{81} Today, the U.S. Department of State, claims it is the fourth largest supplier of goods to the Cuban economy, behind only Venezuela, China and Spain.\textsuperscript{82} Despite the fact that it is solely providing agricultural commodities to Cuba and the existence of the increased restrictions, the U.S. has clearly made its presence felt amongst other nations competing for a position in the Cuban market.

Cuba has continually claimed that its government is open to any and all trade with the U.S., explicitly placing the burden on the U.S. to normalize and enhance trade relations between the two countries. Alimport has issued statements reflecting the desire to normalize the regulatory business environment and continue to increase the amount of U.S. imports.\textsuperscript{83} They have reached out to U.S. states with strong agricultural interests, as well as to U.S. agricultural firms.\textsuperscript{84}

\textsuperscript{79} Id., at 142. See also, Jorge F. Perez-Lopez, The Cuban Economy in 2005-2006: The End of the Special Period?, in CUBA IN TRANSITION 8 (2005). China has granted $6.1 million in credit for the purchase of hospital supplies and medical equipment, credit to purchase 1 million Chinese televisions, and deferred the repayment of pre-existing loans for 10 years among other various joint venture development projects. Id.
\textsuperscript{80} See Sullivan, supra note 63, at 17.
\textsuperscript{81} Menendez, supra note 76, at 77.
\textsuperscript{82} U.S. DEPARTMENT OF STATE, supra note 37.
\textsuperscript{83} See e.g., Borrego National Summit Remarks, supra note 61.
\textsuperscript{84} See infra note 97 and accompanying text.
The most significant advantage Cuba has in trading with the U.S. is the savings that can be achieved on transportation costs, as compared with those costs when trading with European, Asian or even South American countries.\textsuperscript{85} Cuba imports approximately $1 billion of agricultural goods annually from countries other than the U.S., of which transportation costs constitute nearly thirty-five percent of production costs.\textsuperscript{86} It has been estimated that Cuba can save up to $100 million annually on transportation costs alone, should it import primarily U.S. agricultural products.\textsuperscript{87} With those figures in mind, one would imagine that the savings realized would be enough to motivate Cuba to meet restrictions and regulations required by TSRA and OFAC. Consistent with this premise, the Cuban Chamber of Commerce has indicated that if the U.S. wishes to open a dialogue with Cuba, opening trade lines between the two countries, then Cuba would be interested.\textsuperscript{88} The cheaper transportation costs, as a result of the geographical proximity would be a very strong factor influencing Cuban trade relations with the U.S. over other international trade partners.\textsuperscript{89}

However, the situation is not so clean cut when viewed outside of the sheer economic lens through which the Cuban Chamber of Commerce may be approaching the situation. The situation is more complex than a mere economic analysis would indicate. This is evidenced by statements made by Raul Castro, Acting President of Cuba, shortly

\textsuperscript{85} Carrasco, \emph{supra} note 60, at 2.  
\textsuperscript{86} \textit{Id.}  
\textsuperscript{87} Mendez Interview, \emph{supra} note 58.  
\textsuperscript{88} \textit{Id.}  
\textsuperscript{89} \textit{Id.}
after assuming office. In a December 2006 speech commemorating the 50th anniversary of the Cuban Revolution, Raul stated:

We take this opportunity to once again state that we are willing to resolve at the negotiating table the longstanding dispute between the United States and Cuba, of course provided they accept, as we have previously said, our condition as a country that will not tolerate any blemishes on its independence, and as long as said resolution is based on the principles of equality, reciprocity, non-interference and mutual respect. In the meantime, after almost half a century, we are willing to wait patiently until the moment when common sense prevails in the Washington power circles.

These statements reflect not only the state of economic and trade relations, but also to the social and political relations between the U.S. and Cuba; yet another indication that much more is at play when speaking of normalizing trade relations between the two nations than mere economics. Political, ideological and historical forces lie at the root of the 50 year standoff between the U.S. and Cuba, and trade relations cannot be expected to exist independently of these other forces. While Alimport and the Cuban Chamber of Commerce may be making significant strides in developing relationships with U.S. states and agricultural entities, the Castro government has made it clear that U.S. recognition of their regime is necessary before trade relations can flourish.

V. Trade from the U.S. Perspective

Since the latter part of the 1990s, beginning with the lobby for the passage of TSRA, various states and industries have placed increasing pressure upon the U.S. government to ease trade and travel restrictions, and end the embargo. TSRA is seen as

---


91 Id.
the necessary first step in the longer journey towards the total breakdown of the embargo and a changed political stance towards Cuba and the Castro regime. However, while a segment of the U.S. public is in favor of lifting the embargo and associated restrictions, there are also those who believe “the embargo is finally working and to lift it now would only add strength to the Castro regime and betray the faith of those Cubans who have supported U.S. policy since the revolution.” The pro-embargo contingency is in favor of retaining the hard-line U.S. policy towards Cuba, and believes TSRA is the unfortunate catering of the U.S. government to special interests who directly benefit from the expanding trade. Those same interests would see an end to the embargo, while the Castro regime remains in power, as the worst possible outcome. They believe catering to foreign and domestic powers opposing the embargo would equate to a complete failure of the policy pursued over the last 45 years.

The push to limit trade and travel restrictions imposed against Cuba has been spearheaded by a number of economically depressed states in the U.S. whose agricultural sectors are constantly in search of export opportunities. Since agricultural trade with Cuba has been permitted under TSRA, numerous commercial agreements have been signed between Alimport and primarily Southern and Midwestern states. Those states who see economic potential under the new policies have advocated greater easing of the

---

93 Id.
94 Id.
95 See, Colomer, *supra* note 7, at 177. This paper will not further address the implications of policy failure should the embargo be lifted while the Castro regime and a one party system is still governing Cuba.
97 See, Alimport, *supra* note 64. The states that have themselves entered into commercial agreements with Alimport, or are home to cities who have entered into such agreements, include: Alabama, Indiana, Iowa, Montana, Texas, Minnesota, Florida, Idaho, South Carolina, Pennsylvania, California, Vermont, Kansas, Louisiana, North Dakota, Nebraska, Michigan and Virginia.
trade and travel restrictions. Southern and Midwestern states have also been the most active in encouraging enhanced trade relations as they stand to benefit the most.\textsuperscript{98} One study estimates that 60,000 new jobs in Southern states would be realized if uninhibited trade with Cuba resumed.\textsuperscript{99} In Alabama alone, the Alabama Department of Agriculture and Industries reported that since TSRA was passed, sales to Cuba have had a total impact of $300 million on the state economy.\textsuperscript{100} Even in the state of Florida, which has traditionally been home to the strongest opposition to opening up trade relations with Cuba and the Castro regime,\textsuperscript{101} there has been a move to take advantage of the economic opportunities that would result from agricultural trade relations with Cuba.\textsuperscript{102}

In addition to cities and states, a variety of other entities have entered into agreements with Alimport as trade continues to flourish. Ports, primarily along the Gulf of Mexico, have struck commercial deals with Alimport for the shipping of agricultural commodities to Cuba, including: Mobile, Alabama; Corpus Christi, Texas; Manatee Florida; Houston, Texas; Philadelphia, Pennsylvania; Lake Charles, Louisiana; and New Orleans, Louisiana.\textsuperscript{103}

Highlighting the diversity of entities seeking to take advantage of this newly emerging market, by entering into trade agreements with Alimport, in 2006 the Navajo Nation in New Mexico, through the Navajo Agricultural Products Industry, signed a letter

\textsuperscript{98} Economists: South would gain most from trade with Cuba, Birmingham Business Journal, June 10, 2005, available at \url{http://birmingham.bizjournals.com/birmingham/stories/2005/06/06/daily36.html}.
\textsuperscript{99} Id.
\textsuperscript{100} Id.
\textsuperscript{101} Florida’s strong opposition to entering into relations with Cuba stems from the large population of Cuban exiles living in Florida, who fled the Revolution and are opposed to any political dealings with the Castro regime.
\textsuperscript{103} See Alimport, supra note 64.
of intent to sell agricultural commodities to Cuba. The Navajo President was not only enticed by the deal’s recognition of the Navajo as a sovereign nation within a nation, but also the capacity to generate millions of dollars for its population. The delegation that traveled to Havana, to negotiate the deal with Alimport in 2006, was the highest level U.S. delegation to visit Cuba since presidential power was transferred from Fidel to Raul Castro.

Additionally, agricultural trade associations, such as the U.S. Rice Federation, U.S. Rice Producers Association, U.S. Wheat Associates, U.S. Grain Council, and U.S. Soybean Association have entered into commercial trade agreements to export commodities to Cuba. The U.S. rice industry has been outspoken regarding trade relations with Cuba, testifying at Congressional hearings and lobbying for relaxing the restrictions. Prior to President Kennedy’s declaration, initiating the embargo, Cuba was the U.S. rice industry’s top export market. From the beginning of the embargo through the adoption of TSRA, Southeast Asian countries such as China, Vietnam and Thailand had cornered Cuba’s rice import market. However, since late 2001, the U.S. rice industry has begun to regain a share of that market, exporting $64 million of rice to Cuba in 2004. Other U.S. agricultural industries have followed a similar path, lobbying for less restrictive trade regulations, specifically the 2004 OFAC clarification, in order to increase their market share in the Cuban economy. Alimport has even taken an official

---

105 Id.
106 Id.
107 See Alimport, supra note 64.
108 See 109th Hearings, supra note 53.
109 Id.
110 Id.
stance, encouraging states and other entities with which they have entered commercial agreements, to lobby Washington to put an end to the embargo.\textsuperscript{111}

VI. Additional U.S. Legislation and Policy Initiatives

Since the passage of TSRA, United States legislators have come under significant and increased pressures to end the trade embargo and all related trade restrictions. The lessons learned from trade between the U.S. and Cuba under TSRA has highlighted the lost economic opportunities resulting from the embargo and the trading potential that exists between the two countries. One study estimates, should the embargo be repealed, and the U.S. pursues investments in Cuba, agricultural exports could approach nearly $517 million of value added annually to the U.S. economy.\textsuperscript{112} The same study calls for an additional 10,656 jobs created in the agricultural sector.\textsuperscript{113} States that would stand to benefit the most from value added and employment are Arkansas, Iowa, California, Texas and Nebraska.\textsuperscript{114}

The potential for such significant economic advancement, in the agricultural sector and beyond, have created a political climate ripe for governmental action to ease the trade restrictions and move closer towards ceasing the embargo. Policy specialists have identified a multitude of other reasons, aside from economic achievements,

\textsuperscript{111} See, Mendez Interview, \textit{supra} note 58.
\textsuperscript{112} See Rosson & Adcock, \textit{supra} note 92, at 11-40. The $517 million of value added represents the study’s moderate export growth forecasts. The high forecast calls for $1.5 billion of value added annually, while the low forecast calls for $47 million of value added annually to the U.S. economy. \textit{Id.}
\textsuperscript{113} \textit{Id.} 10,656 represents the moderate export growth forecasts, while the high forecast calls for 31,262 additional jobs and the low forecast predicts 995 additional jobs. \textit{Id.}
\textsuperscript{114} \textit{Id.} Though there is some fluctuation in the rankings, of states that stand to benefit, between value added and employment, for the most part they remain the same.
supporting such changes in U.S. policy towards Cuba. Over recent years, a number of new coalitions formed to lobby for a change in policy, important governmental officials increasingly supporting change and legislation has been proposed in Congress. Politicians have utilized the success of TSRA as a springboard to advance even more progressive trade measures and policy goals.

In 2002, President Carter became the first U.S. President to travel to Cuba since 1928, as he ventured upon a mission to mend relations between the neighboring countries. The former President expressed the goals he hoped to achieve:

[A] Cuba fully integrated into a democratic hemisphere, participating in a Free Trade Area of the Americas and with our citizens traveling without restriction to visit each other. I want a massive student exchange between our universities. I want the people of the United States and Cuba to share more than a love of baseball and wonderful music. I want us to be friends, and to respect each other.

While this ambitious vision extends far beyond the mere opening of trade relations, President Carter recognized the first step involves an act of Congress to lift the embargo, creating an open trade relationship, and permit unrestricted travel. These words were not only a good will gesture towards the Cuban government and people, but were a plea to U.S. legislators to take action regarding existing policy towards Cuba.

---

115 USA Engage, a coalition of businesses, agricultural groups and trade associations working to promote the benefits of U.S. engagement abroad, has developed a list of the top ten reasons for changing U.S. policy toward Cuba. Some of the non-economic reasons include: 1. The policy has produced nothing in decades; 4. The policy is an assault on family values; 5. The policy infringes on the rights and liberties of all U.S. citizens; 6. The policy hurts America’s image abroad; 7. The Castro government uses our policy to advance its own ends; 8. The policy puts political interests above the national interests. IN OUR NATIONAL INTEREST: THE TOP TEN REASONS FOR CHANGING U.S. POLICY TOWARD CUBA (USA*Engage, The Center for Democracy in the Americas, ed., 2007).

116 See infra notes 122-126.


118 Id., at 393.

119 Id.
More recently, in December, 2006, a delegation representing the House of Representatives’ Cuba Working Group traveled to Havana as the largest U.S. delegation to visit Cuba since the Revolution.120 The 10 person delegation, a bi-partisan group led by Representative Delahunt (D-MA) and Representative Flake (R-AZ), met with foreign minister, Felipe Perez Roque and Yadira Garcia, an economic minister, to discuss various U.S.-Cuba policy issues and improved relations.121 This visit was another factor that has led to the recent proliferation in proposed legislation regarding enhanced relations between the two countries.

Within the first three months of 2007, four bills were proposed in the House and one in the Senate, with the express goal of breaking down travel and trade restrictions between the U.S. and Cuba. These include, the Cuba Reconciliation Act,122 the Export Freedom to Cuba Act of 2007,123 the Agricultural Export Facilitation Act of 2007,124 Free Trade with Cuba Act125 and the Freedom to Travel to Cuba Act of 2007126. Though the bills have varying degree of support in their respective houses, the sheer volume of these proposals is a strong indication that there is sentiment in Congress favoring the improvement of trade and travel relations with Cuba.

121 Id.
122 Cuba Reconciliation Act of 2007, H.R. 217, 110th Cong. (2007) (intending to remove any provisions restricting trade and other relations with Cuba, including the repeal of the Cuban Democracy Act and the Cuban Liberty and Democratic Solidarity Act).
123 Export Freedom to Cuba Act of 2007, H.R. 654, 110th Cong. (2007) (intending to restrict the president from prohibiting or regulating travel to or from Cuba by U.S. citizens).
125 Free Trade with Cuba Act, H.R. 624, 110th Cong. (2007) (intending to restrict the President from prohibiting to impose export controls with respect to Cuba, prohibiting the regulation and banning of travel to Cuba, repealing the Cuban Democracy Act and the Cuban Liberty and Democratic Solidarity Act, and urging the President to take all necessary steps to conduct negotiations with the government of Cuba).
126 Freedom to Travel to Cuba Act of 2007, S. 721, 110th Cong. (2007) (intending to prohibit the President from regulating or prohibiting travel to Cuba).
President Bush has made it clear that he would veto any attempt by Congress to relax trade and travel restrictions with Cuba. Since the beginning of his Presidency, Bush has affirmed, that “[t]he United States…will oppose any attempts to weaken sanctions against the Castro regime until it respects the basic human rights of its citizens, frees political prisoners, holds democratic free elections, and allows free speech.” Any change in congressional policy towards Cuba, encouraging the easing of trade and travel restrictions, would confront a veto.

One of the most significant reasons that President Bush, and his executive predecessors, have taken little, if any, action to improve relations with Cuba is the political influence of the Cuban-American population residing in south Florida. Should the sentiment of this support base begin to shift away from its strong anti-Castro views, towards a more cooperative stance, there is reason to believe the executive would be more responsive to the legislatures proposals. There is reason to believe this shift is already underway.

VII. Role of South Florida Cuban-Americans Influencing Trade Policy

Over the years, a key factor preventing the adoption of any legislation or policy initiatives that would open trade relations with Cuba has been the presence of a strong political contingency of Cuban-Americans residing in southern Florida. From the early days of the Cuban revolution through the present, nearly one million Cubans have left

129 See infra Part VII.
130 Id.
their homeland for the U.S., for economic, political and familial reasons. A large majority of these exiles currently reside in south Florida.\(^{131}\) For decades, these Cuban-Americans, both first-generation immigrants and their children, have carried strong political weight influencing the creation and enforcement of the federal government’s policies towards Cuba and the Castro regime, as well as numerous other domestic issues. The Cuban Democracy Act, which created additional trade restrictions and codified the embargo in 1992, was signed by President Bush at the behest of the Cuban-Americans residing in Miami.\(^{132}\) There was a strong belief amongst that population that a tightening of the embargo would trigger Castro’s fall from power.\(^{133}\)

As witnessed in the 2000 presidential election, appealing to Cuban-Americans in any Florida election is critical because of their sheer number and tremendous political influence.\(^{134}\) Over the last decade, particularly in Presidential elections because of the electoral college system, a small number of swing states have played a pivotal role in determining the winner of closely challenged races. As a result, states like Florida, Ohio, Michigan and Pennsylvania have obtained disproportionate influence, with strong voting bases like the Cuban-American population in south Florida becoming increasingly critical. While this population base has developed considerable influence in Florida, its significance has simultaneously transcended to the national level. Hence, it is no surprise


\(^{133}\) Id.

\(^{134}\) D’Anna Harrison, *Deportable Cubans in Limbo: An Issue of Immigration, Foreign Policy, or Both?*, 18 Geo. Immigr. L.J. 179, 196 (2003). 72 percent of Cuban-Americans residing in Miami-Dade and Broward County, who are registered to vote, are registered Republicans, while only 11% are registered Democrats. See NDN, *Survey of Cuban and Cuban American Resident Adults in Miami-Dade and Broward*, available at [http://www.ndn.org/hispanic/memos/Cuban-Exile-Poll.pdf](http://www.ndn.org/hispanic/memos/Cuban-Exile-Poll.pdf) (Sept., 2006) [hereinafter NDN Survey].
that legislators and other officials in Washington have catered to the majority Cuban-American sentiment in Miami when crafting Cuba related policy.

The majority of Cuban-Americans residing in south Florida, primarily those first generation immigrants who fled Cuba in the first wave after the Revolution, favor the U.S.-Cuban trade embargo, President George W. Bush’s handling of the situation in Cuba, and the additional trade and travel restrictions imposed by the Bush administration 2004. An overwhelming majority of immigrants that arrived during the 1970s and before, support a continuation of the embargo and the Bush administration’s tighter restrictions. However, the same cannot be said of those Cuban-Americans arriving in south Florida during the 1980s and after, or second and third generation Cubans. Though a very slight majority of those Cuban-Americans favor a continuation of the embargo, the majority oppose the Bush administration’s additional restrictions.

These figures are an indication that a transition is occurring in this influential population’s political leanings and policy aims. As the older generation of Cuban-Americans begins to pass, it is likely that the pendulum will swing. Should the trend continue, the majority sentiment in south Florida will soon be opposed to the embargo and tight travel and trade restrictions against Cuba. This fundamental change will be a very strong factor in the future of trade and travel relations between the U.S. and Cuba.

---

135 See NDN Survey, supra note 134.
136 Id.
137 Id.
138 Id.
VIII. Indicators for the Future

Though contemporary trade relations between the U.S. and Cuba have only existed since the adoption of TSRA in 2001, there are many lessons to be learned from these recent experiences should the U.S. government choose to make a concerted effort to expand its presence in the Cuban economy beyond severely restricted agricultural trade. In addition, the historical and political context that lead to the adoption of TSRA may well serve as an indicator for what potential exists for trade relations to normalize, and even flourish between the U.S. and Cuba. Some analysts have suggested that we are at a critical juncture in the relations between the two countries, as Fidel Castro has recently been reported as severely ill and the election of a new U.S. President is quickly approaching. However, this complex relationship is much larger than the individuals occupying the respective offices of the presidencies. There are a multitude of factors pertaining to the U.S. political environment, the Cuban socio-political atmosphere and international trade markets that will influence future U.S.-Cuban trade relationships.

The current political and economic climate in the U.S. would indicate that the time is ripe for a progressive change in favor of enhancing agricultural trade relations, or even expanding trade to other sectors, so that the U.S. could take advantage of this potential market. Prior to the adoption of TSRA, there was a concerted effort by congressional representatives advocating for the agricultural exception to the trade embargo. Economically depressed states recognized that Cuba, and other countries

139 See James C. McKinley Jr., Castro ‘Stable,’ But His Illness Presents Puzzle, N.Y. Times, Aug. 2, 2006, at A1 (suggesting that Castro’s illness presents a time of transition, the result of which is unknown).
140 This article will not conduct a further analysis into whether the newly elected presidents of both the U.S. and Cuba will tend to lean closer towards enhancing or restricting trade relations between the two countries, or lifting the embargo.
141 See supra text accompanying note 10.
against which the U.S. had imposed unilateral trade sanctions, presented an opportunity to stimulate their economy. 142 Similarly, today, a large number of representatives from states who stand to benefit from additional trade with Cuba have not only spoken out in favor of easing restrictions prohibiting trade and travel to Cuba, but have also proposed and co-sponsored relevant legislation in both congressional houses. 143

Simultaneously, the shift that appears to be occurring amongst the Cuban-American population in south Florida, 144 regarding attitudes towards relations with Cuba, may support a change in policy. While this voting block has traditionally opposed the easing of trade restrictions, the second and third generations of Cuban-Americans favor a step back from the hard-line isolationist position. 145 As the shift continues to evolve, this group becomes less likely to exhibit such strong opposition to any enhanced trade policy, and possibly even more likely to favor such policy. The relative success of TSRA is yet another indicator that it is possible for trade relations to exist between the U.S. and Cuba, despite the feelings that a large population of south Florida residents harbor towards Cuba, and the Castro regime in particular.

The final obstacle to such change is the power of the presidential veto. TSRA has been the only exception to the embargo not opposed by the executive, since President Kennedy initiated the trade restrictions by decree. However, even TSRA has been ratcheted up by President Bush, through the Treasury Department, to ensure that the force of the embargo will remain strong until the objectives of the Cuban Democracy Act and

---

142 See supra text accompanying note 96.
143 See supra notes 122-126.
144 See NDN Survey, supra note 134.
145 Id.
the Cuban Liberty and Democratic Solidarity (Libertad) Act have been met.\textsuperscript{146} Steps that TSRA authorized trade had taken towards easing restrictions were quickly constricted by the President’s actions. This political stalemate\textsuperscript{147} is one factor, within the U.S. sphere, that does not bode well for the prospects of enhanced trade relations. However, the next President may recognize the shift in public sentiment towards Cuba and the potential benefits to the economy to be gained through an easing of trade restrictions.

Should all the requisite factors fall into place on the U.S. side, in order to ease or lift the existing trade restrictions against the export of agricultural commodities, or even allow other forms of trade, there is no guarantee that Cuba will seize the opportunity to enter into such an enhanced relationship with the U.S. As evidenced by its initial rejection of the U.S. offer to export agricultural goods in 2001, immediately following the adoption of TSRA,\textsuperscript{148} Cuba may be less willing to accept such an offer than an economic analysis would indicate. For Cuba, U.S. commodities, whether agricultural or of another nature, may be significantly cheaper than those offered by other trade partners, as a result of the proximity between the two countries and the related transportation costs.\textsuperscript{149}

However, the Cuban government has very strong ideals and convictions when it comes to relations with the U.S., which may impede the expansion of any such trade.

It is well known that one of the central tenets of the Cuban Revolution and the Castro regime is a strong policy against, “neo-liberal globalization,” the U.S. and

\textsuperscript{146} See 70 Fed. Reg. 9225, \textit{supra} note 39.

\textsuperscript{147} Bush has mentioned throughout his presidency that he would not remove or weaken sanctions until the Cuban government “respects the basic human rights of its citizens, frees political prisoners, holds democratic free elections, and allows free speech.” Bush Speech, \textit{supra} note 121. Recently, the Cuban government has stated that they “will not tolerate any blemishes on its independence,” indicating their unwillingness to cater to U.S. preferences of Cuban governance. Raul Speech, \textit{supra} note 83. The conflicting stances have resulted in a stalemate with little chance for change of the U.S. President’s position.

\textsuperscript{148} See \textit{supra} text accompanying notes 25-26.

\textsuperscript{149} See \textit{supra} text accompanying notes 85-86.
capitalist imperialism.150 These convictions may lead Cuba to balk at the opportunity to take advantage of some forms of trade with the U.S. Such selectivity has been present even under TSRA-authorized trade with Alimport. Cuba has claimed that the reduction in purchases by Alimport in 2005 came not as a result of tightened restrictions by the Bush administration and subsequent difficulties working out contracts with U.S. agricultural entities, but rather as a result of “efforts by the government of the Republic of Cuba to increase the motivation of United States-based companies, organization; state and local governmental representatives; and Members of the United States Congress to be more visible in their lobbying efforts for changes in United States policy, law and regulations.”151

While the U.S. government believes it is in a position to alter Cuban policy through the implementation of trade sanctions and the embargo, the Cuban government believes it is in a similar position to alter U.S. policy by refusing to purchase U.S. commodities. The likely outcome of these conflicting views is a political impasse, resulting in the continuation of the status quo, unless one country chooses to take decisive action towards the situation’s resolution. The U.S. appears to be in the better position to take that first step toward resolving the standoff by further relaxing trade restrictions.152 As evidenced by the tenure of the Castro regime, the U.S. implemented trade restrictions have not been successful in attaining the goal of a democratic political structure in Cuba. Should the U.S. take the initiative and relax its existing trade policy towards Cuba, it is possible that the Cuban government would view such an act as a symbol of U.S.

150 Ritter, supra note 71, at 141.
151 Economic Eye, supra note 65, at 3.
152 President Carter, in a speech given at the University of Havana, noted that the U.S. is in a position to take the first step to resolve the U.S.-Cuban standoff because it is the more powerful nation. See Carter, supra note 117, at 393.
recognition of Cuban independence and governance. However, there is no guarantee the Castro regime would respond accordingly and tensions may continue.

Another relevant factor that may dictate the success of any future U.S.-Cuban trade relations is the state of Cuba’s existing partnerships with other foreign countries. Since the Special Period, Cuba has developed strong ties with a number of international trade partners, including Venezuela, China, Spain, Canada, Holland, Brazil, Germany, Italy and Mexico.\textsuperscript{153} Though the U.S. has also played a role in Cuban foreign trade since 2001, solely through TSRA-authorized exports, its share of this total market has hovered around 5%.\textsuperscript{154} This figure may be impressive given the associated prohibitions and restrictions, but other countries are taking advantage of the Cuban market where the U.S. would appear to have a leg up on the competition. Alimport itself, in statements made to private entities currently trading with Cuba, noted that “[t]he opportunities available in this neighboring and traditionally friendly country are being tapped by your competition elsewhere in the world.”\textsuperscript{155} The potential share of the U.S. role in Cuba’s total foreign trade, should trade be expanded and travel restrictions be eased or repealed, far exceeds its current state.

While Cuba has been outspoken about the mutual benefits of enhanced trade relations with the U.S.,\textsuperscript{156} it might not be willing to sacrifice the relationships developed with trade partners that have stepped up since the dissolution of the Soviet presence in

\textsuperscript{153} Menendez, \textit{supra} note 76, at 77 (listing the top ten countries in Cuban foreign trade).
\textsuperscript{154} \textit{Id.} In 2004, trade with the U.S. was 5.7% of Cuba’s total foreign trade. In 2005, after increased trade and travel restrictions, this figure dropped to 4.9%. \textit{Id.}
\textsuperscript{156} \textit{Id.} (“A normalized trade and travel relationship will generate additional employment in the U.S., improve the food and living conditions in Cuba, increase our mutual knowledge and understanding, and consequently, promote an atmosphere of peace and friendship between us.”)
Cuba. In particular, trade relations with Venezuela, Bolivia and China, because of their consistent political ideals, will likely flourish in years to come, making it increasingly difficult for the U.S. to occupy any share of the market those countries currently possess. Countries that are willing to enter into trade agreements with Cuba on the basis of credit, as well as those prepared to defer pre-existing loan payments, will have a greater opportunity to play an increased role in Cuban foreign trade. Though Cuba does not have any outstanding loans with the U.S., the “payment of cash in advance” requirement of TSRA, and the subsequent OFAC clarifications of this terminology, renders the U.S. a less attractive trade partner than ones offering transactions on the basis of credit. Even if the U.S. Congress can pass legislation easing these restrictions, Cuba’s poor credit rating might discourage U.S. corporations and banking institutions from entering into such agreements.

Finally, Cuba’s long-term development of human capital, through its investment in education and health care services, places the country in a position to give priority to partners willing to enter into trade agreements exchanging goods for services. Venezuela has eagerly taken advantage of such exchange, exporting oil and other commodities to Cuba in return for medical personnel. As a result, Venezuela occupies nearly a quarter of Cuba’s foreign trade market; this stronghold on the Cuban market will not likely be displaced by other trade competitors or the U.S., even if the embargo is lifted. The fact that the U.S. does not have as pressing a need for Cuban health care services or

---

157 See Ritter, supra note 71, at 140-142.
158 China is an example of a country that has rapidly increased their trade relations with Cuba because of their willingness to issue credit and defer loan payments. See Id.
160 See supra text accompanying notes 40-41.
161 See supra note 38.
162 See, Ritter supra note 71, at 144.
education, one of Cuba’s major new export prospects,\textsuperscript{163} as other potential Cuban trade partners, may restrict the ability for the U.S. share of Cuban foreign trade to dramatically increase.

Assessing these factors holistically, the U.S. and Cuban political environments and the existing state of Cuban trade relations with other foreign entities, make it appear quite difficult for the U.S. to improve its standing in the Cuban foreign trade market. There are not only economic factors, but strong political, ideological and historical factors that will dictate how any such relationship will develop. We have seen this dance played out through the evolution of agricultural exports to Cuba, authorized by TSRA. The experience over the last six years during which this trade has been operating, and the years leading up to the adoption of TSRA, serve as a strong indicator of the potential that exists for a U.S.-Cuban trade relationship to flourish. However, it has also provided a snapshot of the associated difficulties given the ideological differences between the two countries, the historical tension and the complex political climate under which any future relationship would exist.

\textsuperscript{163} Id.