

SIN EMBARGO:¹ THE CUBAN AGRICULTURAL REVOLUTION AND WHAT IT MEANS FOR THE UNITED STATES

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After decades of isolation, most citizens in the United States rarely associate the nearby nation of Cuba with real business and economic opportunities. This Note is intended to change that, and illustrate that Cuba has remarkable potential to act as a trading partner for the United States. For the moment, however, trade with Cuba is no simple task and remains fraught with regulatory and political hurdles. This Note will demonstrate that Cuba presents very real business opportunities for American industry and agriculture, and suggest ways that interested entities can begin preparing for the day when open trade between the two nations becomes a reality. Not only are there possibilities for one-day increasing trade with Cuba itself, but Cuba has pioneered a unique system of agriculture that could be applied beyond its shores.

The first part of this Note will provide some basic demographic and economic data on the Republic of Cuba as it exists today. In section II, the history

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1. In Spanish, "sin embargo" normally translates to "however" or "nonetheless," but a literal translation means "without embargo."

of the U.S. embargo against Cuba will be explored in detail, as well as the international response to the embargo during and shortly after its enactment in the 1960s. Section III discusses modern trade between Cuba and various international partners, along with the recent economic reforms in both Cuba and the United States that may make open trade a possibility in the future. Cuba's potential as a trading partner for U.S. industry and agriculture will be explored in section IV, along with a discussion of the current logistical and political requirements for doing business with Cuba. Finally, this Note will discuss recent reforms in Cuba and the new opportunities they may present U.S. business interests, mainly agriculture.

I. CUBA'S ECONOMY AND POLITICAL STRUCTURE

Much of the Cuban economic model is laid out within the nation's Constitution.² Article 16 clarifies that the Cuban economy is a centrally planned one, and that all economic activity is for the purpose of "strengthening the socialist system, of increasingly satisfying the material and cultural needs of society and of citizens, of promoting the flourishing of human beings and their integrity, and of serving the progress and security of the country."³ Foreign trade in particular is governed by Article 18, which puts the Cuban government in charge of creating all legal and commercial enterprises that in turn are responsible for regulating all interaction and transactions with foreign entities.⁴

As of the most recent Cuban population census conducted in 2010, the Republic of Cuba was home to 11,241,161 people, a number forecasted to decline slightly by 2020 to approximately 11,190,082.⁵ Government statistics claim a remarkably low unemployment rate of 2.5% of the total active working-age population.⁶ Eighty-three percent of those workers are employed in some capaci-

2. Antonio R. Zamora, *Cuba's Business Enterprises: How Business Is Conducted on the Island*, 15 FLA. J. INT'L L. 345, 349 (2003).

3. Constitution of the Republic of Cuba [Constitution] Feb. 24, 1976, ch. 1, art. 16.

4. *Id.* art. 18.

5. OFICINA NACIONAL DE ESTADÍSTICAS, REPÚBLICA DE CUBA [NATIONAL STATISTICAL OFFICE, REPUBLIC OF CUBA], ANUARIO ESTADÍSTICO DE CUBA 2010 [CUBA STATISTICAL YEARBOOK 2010], POBLACIÓN RESIDENTE POR SEXO, TASA ANUAL DE CRECIMIENTO Y RELACIÓN DE MASCULINIDAD [TOTAL POPULATION BY SEX, ANNUAL GROWTH RATE, AND SEX RATIO] (2011), available at http://www.one.cu/aec2010/esp/20080618_tabla_cuadro.htm (open folder "3"; then select "3.1").

6. OFICINA NACIONAL DE ESTADÍSTICAS, REPÚBLICA DE CUBA, ANUARIO ESTADÍSTICO DE CUBA 2010, POBLACIÓN ECONÓMICAMENTE ACTIVA [ECONOMICALLY ACTIVE POPULATION] (2011), available at http://www.one.cu/aec2010/esp/20080618_tabla_cuadro.htm (open folder "7"; then select "7.1").

ty by the Cuban government,⁷ though as it will be explained later, that figure is expected to drop dramatically in the future.

Cuba's economy is unusual in that it is actually two distinct economies operating side by side.⁸ The first is a socialist economy that operates via the peso and provides domestic services such as education, health care, near-universal employment, and basic necessities such as food and shelter at almost no cost to those who receive them.⁹ The other economy is a free-market system based on the dollar and supports Cuba's international trade and tourism, and provides a valuable source of foreign currency that helps maintain the nation's separate, socialist economic model.¹⁰ Even this system was historically subject to a large amount of government intervention, as the Cuban government served as a source of funds and investment for a variety of state-owned enterprises and quasi-independent commercial companies.¹¹ While commercial entities are theoretically able to operate independent of government intervention and make their own decisions on investment and expansion, in reality they remain subject to ongoing centralized economic planning and decision-making by the Cuban government.¹² Across the various types of state and independently owned enterprises, the average salary for a Cuban worker was 448 pesos per month in 2010.¹³

II. THE U.S. EMBARGO AGAINST CUBA

While it is common to think of the embargo against Cuba as a single policy act undertaken as a reaction to the fallout from the Bay of Pigs invasion or the Cuban Missile Crisis, it was actually implemented in stages through a variety of

7. *Background Note: Cuba*, U.S. DEP'T OF STATE (Nov. 7, 2011) [hereinafter *Background Note: Cuba*], <http://www.state.gov/outofdate/bgn/cuba/191090.htm>.

8. Zamora, *supra* note 2, at 348.

9. Andrew Zimbalist, *Whither the Cuban Economy?*, in CUBA: THE CONTOURS OF CHANGE 13, 18 (Susan Kaufman Purcell & David Rothkopf eds., 2000); *see also* Zamora, *supra* note 2, at 348–49.

10. Zimbalist, *supra* note 9, at 18–19; *see also* Zamora, *supra* note 2, at 349.

11. PHILIP PETERS, THE LEXINGTON INSTITUTE, STATE ENTERPRISE REFORM IN CUBA: AN EARLY SNAPSHOT 2 (2001) (providing an overview of the recent decline in government subsidies to state enterprises to the point to where they are now expected to “sink or swim” on their own, but also noting agriculture receives the bulk of the remaining subsidies); Zamora, *supra* note 2, at 350–54.

12. Zamora, *supra* note 2, at 354.

13. OFICINA NACIONAL DE ESTADÍSTICAS, REPÚBLICA DE CUBA, ANUARIO ESTADÍSTICO DE CUBA 2010, SALARIO MEDIO MENSUAL EN LAS ENTIDADES ESTATALES Y MIXTAS POR CLASE DE ACTIVIDAD ECONÓMICA [AVERAGE MONTHLY SALARY IN STATE-OWNED AND MIXED ENTITIES FOR EACH TYPE OF ECONOMIC ACTIVITY] (2011) [hereinafter AVERAGE MONTHLY SALARY], *available at* http://www.one.cu/aec2010/esp/20080618_tabla_cuadro.htm (open folder “7”; then select “7.4”).

executive and legislative means.¹⁴ These increasingly strict trade regulations tended to follow in response to events that eroded relations between the United States and Cuba, ultimately to a point where U.S. officials no longer saw any diplomatic or economic relations as tenable.¹⁵ The United States was particularly concerned that a communist Cuba would seek an alliance with the Soviet Union and would in turn receive substantial trade and other economic assistance, fears that were confirmed with the enactment of a trade agreement between the two nations in 1961.¹⁶

A. *The Embargo's Beginnings*

Fidel Castro was the leader of a decade-long effort to unseat the existing Cuban regime, and promised to hold democratic elections after assuming power.¹⁷ Instead, he took several steps to solidify his own power and move the country towards a “one-party Marxist-Leninist System.”¹⁸ This was followed shortly thereafter by a series of amendments to the Cuban Constitution of 1940, followed by its total repeal and replacement with the Ley Fundamental de Republica (Fundamental Law), which provided a sweeping array of powers to the new government.¹⁹ One act by the emerging Cuban government that solidified U.S. policy toward Cuba was the expropriation of various U.S. business and manufacturing interests in Cuba under government control, meaning that private property was seized by the state for redistribution to the people and managed as part of a state-run economy.²⁰ The United States subsequently established the Cuban Claims Program (CCP) in 1964 to provide a means for domestic businesses and individuals to submit claims for expropriated property.²¹ The CCP certified a total of

14. See Christy M. DeMelfi, Note, *Nothing but the Facts: An In-Depth Analysis of the Effects of Economic Sanctions Against Cuba*, 5 J. INT'L BUS. & L. 137, 145–49 (2006).

15. Bridget E. Morrissy, *The United States v. Cuba (and the Rest of the World)*, 2 J. INT'L L. & PRAC. 163, 164 (1993).

16. DeMelfi, *supra* note 14, at 145–46.

17. *Background Note: Cuba*, *supra* note 7.

18. *Id.*

19. See *Ley Fundamental de la Republica de Cuba*, GACETA OFICIAL, Feb. 7, 1959; Ignacio E. Sánchez, *Constitutional Protection of Cuban Property Rights*, 6 ASS'N FOR STUDY CUBAN ECON., 398, 398 (1996), available at <http://www.ascecuba.org/publications/proceedings/volume6/pdfs/50Sanchez.fm.pdf>.

20. MICHAEL W. GORDON, *THE CUBAN NATIONALIZATIONS: THE DEMISE OF FOREIGN PRIVATE PROPERTY* 69–108 (1976).

21. 22 U.S.C. §§ 1643–1643m (2006).

5911 total claims valued at \$1.8 billion, which by 1995 were valued at \$5.6 billion, assuming an interest rate of 6%.²²

The embargo itself followed in stages, being first inspired by the expropriation of U.S. oil refineries to process Soviet oil.²³ This was followed shortly thereafter by restrictions on the importation of sugar, one of Cuba's primary exports.²⁴ The United States ceased all diplomatic contact with Cuba in early 1961,²⁵ at which time an almost total economic embargo was imposed.²⁶ All economic, financial, and diplomatic ties were severed in 1964, when the United States also banned the export of food and medicine to Cuba.²⁷

Trade between Cuba and other countries persisted in spite of the U.S. embargo, though subsequent actions taken by the United States served to disrupt some of these trade relationships. Immediately following the implementation of the U.S. embargo, the U.S. Department of State lobbied heavily for other countries to follow with similar trade restrictions.²⁸ Following the discovery of a shipment of arms from Cuba to a beach in Venezuela in May of 1964, the Organization of American States (OAS), a coalition of South-American countries and a regulatory body, met under heavy U.S. influence to discuss the possibility of sanctions.²⁹ At that time the OAS voted on cutting off all diplomatic relations with Cuba as well as restricting all trade apart from food, medicine, and other humanitarian supplies, along with restrictions on travel by sea.³⁰ By the mid-to-

22. *Key Events – U.S. Property Claims*, CERTIFIED CUBAN CLAIMS, http://www.certifiedcubanclaims.org/key_events.htm (last visited Dec. 21, 2012) (summarizing claim certification numbers); see also Foreign Claims Settlement Commission, *Cuban Claims Program Certified Claimant List*, DEP'T OF JUSTICE (2009), http://www.justice.gov/fcsc/reading_room/ccp-listofclaims.pdf (listing all claims); David Mowry, *Lifting the Embargo Against Cuba Using Vietnam as a Model: A Policy Paper for Modernity*, 25 BROOK. J. INT'L L. 229, 236 (1999).

23. Anna P. Schreiber, *Economic Coercion as an Instrument of Foreign Policy: U.S. Economic Measures Against Cuba and the Dominican Republic*, 25 WORLD POL. 387, 391–92 (1973).

24. *Id.* at 393.

25. Office of the Historian, *A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, Since 1776: Cuba*, DEP'T OF STATE, <http://history.state.gov/countries/cuba> (last visited Dec. 21, 2012).

26. *Denial of Food and Medicine: The Impact of the U.S. Embargo on Health and Nutrition in Cuba*, AM. ASS'N FOR WORLD HEALTH, <http://archives.usaengage.org/archives/studies/cuba.html> (last visited Dec. 21, 2012).

27. *Id.*

28. *OAS Approves Rio Treaty Measures Against Castro Regime*, 51 DEP'T OF STATE BULLETIN 174, 174–79 (Aug. 1964) [hereinafter *OAS Approves Treaty Measures*], available at http://www.bpl.org/online/govdocs/department_of_state_bulletin.htm.

29. *Id.*; see also Alberto R. Coll, *Harming Human Rights in the Name of Promoting Them: The Case of the Cuban Embargo*, 12 UCLA J. INT'L L. & FOREIGN AFF. 199, 206 (2007).

30. See *OAS Approves Treat Measures*, *supra* note 28, at 174–79.

late 1960s, trade from Latin-American states to Cuba had dropped from a value of \$84 million reached in 1958, to about \$1 million each for both imports and exports.³¹ During this period, Cuba grew to rely almost exclusively on economic and development aid from the Soviet Union.³² As much as \$1 million in aid per day flowed into Cuba from the Soviet Union in order to sustain the island during the peak of the international embargo.³³

The United States also enacted various restrictions on domestic companies and their foreign subsidiaries, which had the effect of curtailing trade between Cuba and other countries. In 1963 the United States took steps to influence trade beyond its own borders with the Cuban Assets Control Regulations (CACR).³⁴ These regulations not only prohibited all trade between U.S. businesses and Cuban nationals, but also trade involving any property that Cuban nationals may have had even a remote, indirect interest in.³⁵ In effect, this prevented any foreign subsidiaries of U.S. companies from doing business with Cuba.³⁶ These policies remain in effect to this day, though over time their enforcement and strictness have been subject to modification.

B. *The Embargo and U.S. Politics*

Since the embargo began, U.S. policy towards Cuba has often depended upon the whims of whoever controlled the White House at the time.³⁷ President Ford in 1975 took some of the first steps in restoring trade by permitting products manufactured by U.S. subsidiaries in Latin American countries to reach Cuban shores, so long as less than twenty percent of their materials were produced in the United States.³⁸ President Carter continued this trend toward normalizing relations by establishing an American interest section in the Swiss embassy in Havana, as well as lifting some travel restrictions.³⁹ President Reagan reversed some of these steps taken towards restoring relations by reinstating restrictions

31. DeMelfi, *supra* note 14, at 146.

32. Schreiber, *supra* note 23, at 393–94.

33. ERIC N. BAKLANOFF, EXPROPRIATION OF U.S. INVESTMENTS IN CUBA, MEXICO, AND CHILE 120 (1975) (citing U.S. DEP'T OF STATE, BACKGROUND NOTE: REPUBLIC OF CUBA, at 6 (Nov. 1971)).

34. Cuban Assets Control Regulations, 31 C.F.R. pt. 515 (2011).

35. *Id.* § 515.505.

36. *See id.*; *see also* Coll, *supra* note 29, at 205.

37. Tom Gjelten, *10 Presidents, One Dictator: U.S.-Cuba Policy*, NPR.ORG (Aug. 4, 2006), <http://www.npr.org/templates/story/story.php?storyId=5615898>.

38. DeMelfi, *supra* note 14, at 147.

39. *Id.*

on travel and more strictly enforcing restrictions placed on U.S. subsidiaries in Latin American countries.⁴⁰

Despite historical attempts by the United States to isolate Cuba from economic and diplomatic contact from as many countries in the western hemisphere as possible, some nations remained staunch Cuban allies during this period.⁴¹ Mexico in particular was an important partner with Cuba during this period and voted against Cuba's isolation as part of its involvement in the OAS.⁴² Canada also refused to break diplomatic and economic ties to Cuba and has criticized the U.S. embargo since its beginning.⁴³ Though relations with Cuba were not of any particular importance to most European countries, many European states chose to maintain cordial relations in the face of U.S. pressures.⁴⁴ These relationships rarely extended beyond maintaining relatively small trade agreements.⁴⁵ The situation with today's European Union is largely unchanged, though the European Union has indicated that any significant shift in trade or diplomatic relations with Cuba is contingent upon Cuba committing to democratic and human rights reforms.⁴⁶

C. *Recent Changes in U.S. Policy*

The last several decades witnessed a number of substantial shifts in U.S. policy towards Cuba.⁴⁷ President George H.W. Bush continued the precedent set by President Reagan in tightening restrictions on Cuban trade, culminating in 1992 with the passage of the Cuban Democracy Act.⁴⁸ Passed in the wake of the Soviet Union's collapse, the Act's primary purpose was to encourage democratic and social reforms in Cuba.⁴⁹ The bill's findings contain strong language criticizing the nation's human rights record, accusing it of directly participating in narcotics trafficking, and speaks highly of an oppressed Cuban people "yearning for freedom."⁵⁰ The bill was intended to provide support and incentives for the Cu-

40. *Id.*

41. Peter McKenna, *Comparative Foreign Policies Toward Cuba*, 59 INT'L J. 281, 283, 287, 293 (2004).

42. *Id.* at 287.

43. *Id.* at 293.

44. *Id.* at 290.

45. *Id.*

46. *Id.* at 291.

47. For an excellent overview of current U.S. policy and legislation regarding Cuba, see MARK P. SULLIVAN, CONG. RESEARCH SERV., R41617, CUBA: ISSUES FOR THE 112TH CONGRESS (2011).

48. Cuban Democracy Act, 22 U.S.C. §§ 6001–6010 (2006).

49. *Id.* § 6002.

50. *Id.* § 6001(1)–(3).

ban people while simultaneously attempting to punish and destabilize the Cuban government.⁵¹ The act represented one of the most substantial regressive shifts in Cuban policy in decades, in spite of the fact that the Cold War had ended. Not only did the act completely reverse the steps taken by President Ford by banning all trade by Latin American U.S. subsidiaries,⁵² it also granted the President the power to withhold assistance from countries that provided any aid to Cuba.⁵³ The President also in effect surrendered the executive branch's authority to manage foreign affairs by allowing the inclusion of various provisions expressly prohibiting the normalization of trade and diplomatic relations until Cuba met a series of conditions, including holding free elections, making progress toward switching to a market-based economy, and amending their constitution.⁵⁴ A related bill passed Congress only one day after the Cuban Democracy Act and conditioned any U.S. aid to newly independent former Soviet states on their termination of military and other support to Cuba.⁵⁵

President Clinton, with strong support from the exiled Cuban-American community and facing political pressures in the aftermath of an incident in which Cuban Air Force jets shot down two unarmed civilian planes belonging to an anti-Castro organization, passed the Helms-Burton Act in March of 1996, with its formal title set as the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996.⁵⁶ Even more so than the Cuban Democracy Act of only a few years prior, LIBERTAD codified the embargo against Cuba and severely limited the President's ability to soften trade or travel restrictions by executive order, as possible in the past.⁵⁷ LIBERTAD codified as U.S. law what had previously been the foreign policy position of several successive executive branches, namely a transition to "free and fair democratic elections" and elimination of human rights violations.⁵⁸ The international community almost unanimously spoke out against LIBERTAD, and the United Nations responded by passing a non-binding resolution calling for the end of U.S. sanctions against Cuba.⁵⁹ Traditional trade part-

51. See *id.* § 6002.

52. 31 C.F.R. § 515.559 (2011).

53. 22 U.S.C. § 6003(b)(1).

54. See *id.* § 6007(a).

55. *Id.* § 2295(a)(11).

56. The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 22 U.S.C. §§ 6021–6091 (2006); Sonya Ross, *Clinton Approves Sanctions Against Cuba*, ASSOCIATED PRESS, Mar. 12, 1996, <http://www.apnewsarchive.com/1996/Clinton-Approves-Sanctions-Against-Cuba/id-574af353ffce7ea2381747f7af6a20de>.

57. 22 U.S.C. § 2370(a) (providing the president discretion in what assistance and relations were allowed with Cuba prior to LIBERTAD).

58. *Id.* §§ 6022 (1)–(3), 6061.

59. *U.N. Renews Call for End to Cuba Ban*, N.Y. TIMES, Nov. 13, 1996, <http://www.nytimes.com/1996/11/13/world/un-renews-call-for-end-to-cuba-ban.html>.

ners of the United States were highly critical of the Act, with the European Union going so far as to file a complaint with the World Trade Organization seeking an investigation into the Act's validity in the face of existing international law.⁶⁰ Mexico and Canada both passed similar pieces of legislation ordering their domestic corporations, including U.S. subsidiaries, to conduct business with Cuba in accordance with respective Mexican and Canadian laws, essentially ordering that trade with Cuba continue.⁶¹

President George W. Bush did not officially make many substantive changes to Cuban foreign policy, but did commission several reports that recommended a strikingly different position. Rather than continue to rely on a relatively passive, isolationist policy, the Commission for Assistance to a Free Cuba (CAFC) recommended strong intervention to hasten a democratic transition.⁶² These included recommendations such as stationing a modified C-130 military communications aircraft near Cuban airspace to strengthen international broadcasts,⁶³ indirect support of various opposition groups,⁶⁴ and similar tactics meant to destabilize the Castro regime and encourage rapid change.⁶⁵ Though few of the commission's recommendations were ever publically considered or commented on, a "Transition Coordinator" tasked with overseeing regime change in Cuba received \$59 million in funding by 2007 to oversee work on a democratic transition.⁶⁶ Little information is available on current activities by the U.S. government to hasten a democratic transition in Cuba that may have stemmed from this commission. USAID funds may have been used in financing some of the goals outlined in the commission's report,⁶⁷ and a U.S. government contractor was sentenced in 2011 for attempting to distribute satellite communications equipment to various groups within Cuba.⁶⁸ As formal diplomatic relations with

60. Steven Lee Myers, *Europe's Call for Rights in Cuba Lets U.S. Off Hook*, N.Y. TIMES, Dec. 4, 1996, <http://www.nytimes.com/1996/12/04/world/europe-s-call-for-rights-in-cuba-lets-us-off-hook.html>; see also Andrew José Rosell, *The Future of U.S.-Cuba Relations: A Policy Shift from the Helms-Burton Act*, 7 L. & BUS. REV. AM. 235, 240–41 (2001).

61. Myers, *supra* note 60.

62. COLIN L. POWELL, COMMISSION FOR ASSISTANCE TO A FREE CUBA, REPORT TO THE PRESIDENT (2004), http://pdf.usaid.gov/pdf_docs/PCAAB192.pdf (making recommendations on how the United States could help the Cuban government transition to a post-Castro democracy).

63. *Id.* at 27.

64. *Id.* at 22.

65. See, e.g., *id.* at 28–33.

66. *Id.* at 52; see also SULLIVAN, *supra* note 47, at 11–12.

67. See *Our Work*, U.S. AGENCY FOR INT'L DEV. (Oct. 23, 2012), <http://www.usaid.gov/where-we-work/latin-american-and-caribbean/cuba/our-work>.

68. Press Release, Senate Foreign Relations Committee Press Office, Chairman Kerry on the Sentencing of Alan Gross (Mar. 13, 2011), available at <http://www.foreign.senate.gov/press/chair/release/chairman-kerry-on-the-sentencing-of-alan-gross>.

Cuba have yet to be reestablished, and the extent of U.S. involvement in Cuban governmental affairs is for the most part confidential, it is difficult to anticipate what impact these acts may have on doing business in Cuba.

The LIBERTAD act remains in effect, meaning that any substantial amount of business with Cuba would require formal repeal or, at a minimum, the enactment of new regulations that create sufficient exceptions to the Act that would make regular trade with Cuba a practical option. Already though, some elements of the Act have been relaxed. President Clinton signed the Trade Sanctions Reform and Export Enhancement Act of 2000 into law only shortly before his term of office expired.⁶⁹ The Act provided a handful of exceptions to the general trade embargo by permitting the shipment of agricultural and medical products to Cuba.⁷⁰ The Act does not allow goods to be sold on credit provided by a domestic bank, meaning that all transactions must be conducted in cash upfront or financing must be arranged via a bank operated out of a third country.⁷¹ These terms have not proven too difficult for domestic farms and businesses to work with, and in 2004 Cuba imported approximately \$380 million in U.S. agricultural products, making them the twenty-first largest market for U.S. agricultural exports.⁷² The United States has become a critical trade partner for Cuba in the wake of the Soviet Union's collapse, and Cuba now relies upon exports from the United States for one-fourth of its total food and agricultural imports.⁷³

President Obama took small steps in reassessing U.S. relations with Cuba. In early 2009, many restrictions on the ability of Cuban-Americans to visit relatives in Cuba and to send remittances were lifted.⁷⁴ This was followed in January 2011 by several additional policy shifts, including relaxed restrictions on travel to Cuba by educational and religious groups,⁷⁵ remittances by any citizen of the United States in amounts not to exceed \$500 for three consecutive months,⁷⁶ and allowing any airport in the United States to apply for a license to host charter flights.⁷⁷

The diplomatic and economic foreign policies of the United States towards Cuba have shifted back and forth tremendously ever since the Cuban revo-

69. 22 U.S.C. §§ 7201–7211 (2006).

70. *Id.* § 7204.

71. *Id.* § 7207(b).

72. *Trade with Cuba: Frequently Asked Questions*, FOREIGN AGRIC. SERV., USDA (June 5, 2007), <http://www.fas.usda.gov/itp/cuba/cuba-faq.html>.

73. OFFICE OF GLOBAL ANALYSIS, USDA, CUBA'S FOOD & AGRICULTURE SITUATION REPORT, 31–32, 35 (2008), available at <http://www.fas.usda.gov/itp/cuba/cubasituation0308.pdf>.

74. 31 C.F.R. §§ 515.561, 570 (2011).

75. *Id.* §§ 515.565, 566.

76. *Id.* § 515.570(b)(1).

77. 19 C.F.R. § 122.153(b)(1) (2011).

lution nearly sixty years ago. Whether or not the embargo has had any success at all in influencing Cuban policies or weakening the current regime is debatable, but the economic cost of the embargo on the United States is not. Maintaining the embargo and the subsequent loss of economic opportunity costs the United States at least \$1.2 billion per year according to the U.S. Chamber of Commerce, and more than \$3 billion according to the Cuban Policy Foundation.⁷⁸ As the preceding section has indicated, the embargo itself is in fact a complex mix of statutory law, executive orders and general policy positions, and various guidance and assistance provided by numerous government agencies in carrying out the law. While it is beyond the scope of this Note to recommend precisely the legislative actions needed to lift the embargo entirely, enough exceptions are written into the current law that a fairly substantial amount of business is possible even without a complete repeal.

III. HISTORY OF TRADE PRIOR TO THE EMBARGO THROUGH TODAY

In the decade prior to Fidel Castro assuming power, the United States was Cuba's largest trading partner, with annual transactions from 1949 to 1958 averaging more than \$865 million.⁷⁹ Trade with the United States accounted for more than 75% of Cuba's imports and 62% of their exports.⁸⁰ The largest shares of Cuba's imports from the United States were for foodstuffs and raw materials, accounting for 28.6% and 26.6%, respectively in 1954.⁸¹

As the embargo began to shape the Cuban economy, the Soviet Union quickly became one of the island's most important trading partners. By 1966, the Soviet Union was the recipient of 81.4% of Cuba's exports, and in turn supplied 79.8% of all goods imported by the Cuban government.⁸² A side effect of Cuba's close relationship with the Soviet Union and the complicated credit and grant programs used to finance Cuban trade, along with the rapid decline in exports to countries outside the Soviet Bloc, was a substantial decrease in the nation's hard currency reserves.⁸³ By 1966, Cuba's annual revenues from exports fell to \$110

78. *Improved U.S.-Cuba Relations Benefits U.S. Economy*, CUBA POLICY FOUND. (May 9, 2002), <http://www.cubafoundation.org/news-2.html>; *Oppose Unilateral Economic Sanctions*, U.S. CHAMBER OF COMMERCE, <http://www.uschamber.com/international/agenda/oppose-unilateral-economic-sanctions> (last visited Dec. 21, 2012).

79. Donald L. Losman, *The Embargo of Cuba: An Economic Appraisal*, 14 CARIBBEAN STUDIES 95, 98 (1974) (citing CUBAN ECONOMIC RESEARCH PROJECT, STAGES AND PROBLEMS OF INDUSTRIAL DEVELOPMENT IN CUBA 188 (1965)).

80. *Id.*

81. *Id.* at 99.

82. *Id.* at 100.

83. *Id.* at 101.

million, down from \$625 million in 1959.⁸⁴ Coupled with the failure of agricultural diversification programs, this relationship with the Soviet Union led to the return of a sugar monoculture in Cuba, much as it had been in the period prior to the revolution.⁸⁵ The Soviet Union and other Communist nations entered into long-term agreements with Cuba to purchase sugar at prices substantially higher than what was available on the world market, providing Cuba with a guaranteed source of income.⁸⁶

The ultimate collapse of the Soviet Union had a devastating effect on the Cuban economy. With inflated prices no longer available to compensate for inefficient and overly subsidized economic practices, the country's economy fell into disarray.⁸⁷ Gone was the country's primary source of foreign assistance and influence, as well as 73% of their total trade.⁸⁸ During the mid-1990s, the so-called "Special Period" led to a rapid modernization and reform effort across broad areas of the Cuban economy, including the demise of the large state-run farms that had previously been the backbone of the Cuban sugar monoculture.⁸⁹ By 1996, agricultural production of crops other than sugar had increased by 17.3%, and continuing shortages of fertilizers and fuel for tractors led to a decentralized, largely organic means of food production that continues to this day.⁹⁰

IV. CUBA'S POTENTIAL AS A TRADING PARTNER

Cuba today is experiencing the most rapid shifts towards privatization and reform since the revolution more than sixty years ago. Though truly open trade with Cuba will remain out of reach until the embargo is relaxed or a new trade agreement is reached, it is worth the time of agricultural and business entities in the United States to consider how they may approach doing business in Cuba. Given the extent of pre-embargo trade between the United States and Cuba it is no stretch to imagine the enormous possibilities once that partnership is reestablished. Though reforms over the past decade have made significant progress towards this end, they only scratch the surface on what Cuba has to offer.

The two economic areas where Cuba shows perhaps the most promise and have the greatest potential for international trade and investment are tourism

84. *Id.*

85. Andrew Zimbalist & Susan Eckstein, *Patterns of Cuban Development: The First Twenty-Five Years*, in 15 *WORLD DEVELOPMENT* 5, 7 (1987).

86. *Id.*

87. See CARMELO MESA-LAGO, *MARKET, SOCIALIST, AND MIXED ECONOMIES* 575 n.2 (2000).

88. OFFICE OF GLOBAL ANALYSIS, *supra* note 73, at 5.

89. *Id.* at 7.

90. *Id.*

and agriculture. Tourism shows great promise simply for the fact that for more than half a century the country has been entirely cut off from open trade and travel by U.S. citizens, citizens who will likely flock to the country once access is restored. Agriculture in Cuba also presents numerous unique opportunities, and since the collapse of the Soviet Union the country has developed novel agricultural production techniques that could help serve a growing demand for natural, organic foods in the United States. While tourism may increase economic opportunity for existing businesses and industries, Cuba's agricultural model, on the other hand, presents unique opportunities to both existing and entirely new business opportunities in the United States.

A. *Cuba as a Tourist Destination*

Prior to the embargo, Cuba was a travel destination for as many as 300,000 American tourists per year.⁹¹ Tourists from various Soviet Bloc nations never came close to making up this loss in travel, reaching no more than 30,000 tourists per year.⁹² Since the demise of the Soviet Union, however, tourism to the island has continued to increase dramatically. As of July 2012, Cuba is the second most popular tourist destination in the Caribbean region, trailing only the Dominican Republic.⁹³ Slightly more than two million tourists per year now visit the island as of 2011, representing growth of 7.3% over the last year alone.⁹⁴ As of 2005, Cuba's service sector accounted for 67.8% of the nation's annual gross domestic product, eclipsing traditional Cuban exports such as nickel and sugar.⁹⁵ Tourist infrastructure in Cuba, however, has strained to accommodate the rapid surge in visitors, with hotels, resorts, restaurants, and other accommodations showing their age after decades of relatively little improvement or investment.⁹⁶ Depending on the precise means through which the travel and economic embargos are lifted, estimates of the number of U.S. visitors expected to visit Cuba within the first year range from six hundred thousand to more than one million,

91. DeMelfi, *supra* note 14, at 159.

92. *Id.*

93. Caribbean Tourism Organization, *Latest Statistics 2011: Tourist (Stop-Over) Arrivals in 2011*, ONE CARIBBEAN, tbl.1 (July 2, 2012), <http://www.onecaribbean.org/statistics/2011statistics/default.aspx>.

94. *Id.*

95. Sheryl Marie Elliott & Lisa Delpy Neirotti, *Challenges of Tourism in a Dynamic Island Destination: The Case of Cuba*, 10 TOURISM GEOGRAPHIES 375, 383–84 (2008).

96. For example, the Ambos Mundos Hotel in Havana, the home of Earnest Hemmingway for much of the 1930s, suffered serious rain leaks in both the second floor lounge and a number of private rooms during a visit in January 2012, in spite of recent renovations. See HOTEL AMBOS MUNDOS, <http://www.hotelambosmundos.info/> (last visited Dec. 21, 2012).

with up to five million visitors per year by the fifth year of open travel.⁹⁷ There is the potential for modest yet not insignificant job growth in response to new travel opportunities, with potentially over twelve thousand new service sector and travel jobs in the United States within five years.⁹⁸

B. *Agricultural Trade with Cuba*

It is the agricultural sector, however, that provides some of the most substantial and intriguing opportunities for both trade with Cuba and the creation of entirely new businesses in the United States. In fact, agricultural products were the very first items traded between the United States and Cuba since the embargo in December of 2001, when two ships loaded with chicken and corn arrived in Havana.⁹⁹ The potential for the U.S. agricultural sector is abundantly clear when the sheer volume of Cuba's agricultural imports are taken into account. In 2008, Cuba imported approximately \$1.8 billion in agricultural goods.¹⁰⁰ Only approximately 40% of imported agricultural goods were from the United States, leaving over \$1 billion of trade going to other countries.¹⁰¹

Cuba itself is very much in favor of increased agricultural trade with the United States simply for the logistical simplicity and cost-savings it would provide.¹⁰² Import costs account for as much as 35% of the goods Cuba currently imports from its trading partners.¹⁰³ Because Cuba is less than one hundred miles from the coast of the United States, the country is naturally eager to enter into trade relationships that lead to lower transportation costs.¹⁰⁴ Cuban officials¹⁰⁵

97. ED SANDERS & PATRICK LONG, CUBA POLICY FOUND., ECONOMIC BENEFITS TO THE UNITED STATES FROM LIFTING THE BAN ON TRAVEL TO CUBA § 2.3 (2002), <http://torc.linkbc.ca/torc/downloads1/Cubaban.pdf>.

98. *Id.* at § 7.2 tbl.9.

99. Fred Gaboury, *U.S. Grain Arrives in Cuba*, PEOPLE'S WORLD, Dec. 21, 2001, <http://www.peoplesworld.org/u-s-grain-arrives-in-cuba/>.

100. Megan J. Provost, Am. Farm Bureau Fed., *United States – Cuba Trade Information*, IL FARM BUREAU 8 (June 2009), http://www.ilfb.org/media/253630/2009_afbf_cuba.pdf.

101. *Id.* at 8; see also *U.S. Agricultural Sales to Cuba: Certain Economic Effects of U.S. Restrictions*, USITC Pub. No. 3932, U.S. INT'L TRADE COMM'N, (2007), available at <http://www.usitc.gov/publications/332/pub3932.pdf> (providing various estimates of U.S. agricultural exports with and without certain trade restrictions).

102. Enrique R. Carrasco, *Cuba's Development and Trade with U.S. Midwestern States: Opening Observations*, 14 TRANSN'L L. & CONTEMP. PROBS. 1, 2 (2005) (citing JOHN SKORGBURG, AM. FARM BUREAU FED'N, CUBAN UPDATE ON PURCHASE OF CUBAN AGRICULTURAL COMMODITIES: SEVEN MONTH SALES = \$80.7 MILLION U.S. MORE TO COME! (2004)).

103. *Id.*

104. See Dan Wallach, *Cuban Talks Trade in Beaumont*, THE BEAUMONT ENTER., Sept. 12, 2000, at 11A (noting the economic incentives associated with shorter transportation distances for rice). At the time, it cost Cuba \$45 per ton for rice imported from Asia with a six week

cite rice as just one example of an agricultural product that they would be interested in obtaining from the United States.¹⁰⁶ Rice is a staple food for Cuban citizens, and they enjoy it with almost every meal.¹⁰⁷ Presently, the bulk of their rice must be imported from Eastern Asia, meaning a long voyage by sea and the expenses that go along with shipping tons of goods across the Pacific Ocean.¹⁰⁸ Rice exports alone present an enormous opportunity for U.S. producers.

The United States is a major exporter of both processed and unprocessed rice, accounting for 10% of all international trade in rice each year.¹⁰⁹ Half of annual U.S. rice sales come from the export market, and the United States is considered a reliable supplier of a quality product on the international market.¹¹⁰ The USDA estimates that if the current restrictions on trade were removed, Cuba could potentially exceed Mexico and Japan as the biggest importer of rice grown in the United States.¹¹¹ As of September 2005, Cuba estimated that they could purchase more than one million metric tons of rice annually, but restrictions make it unlikely that import from the United States will go much beyond current levels of 712,000 metric tons.¹¹² A key obstacle, according to Cuba, is the requirement that all shipments of agricultural products from the United States be paid for in cash before they leave port.¹¹³ This resulted in a reduction in rice exports to Cuba by nearly 50% from 2004 to 2005, according to the USA Rice Federation.¹¹⁴

transport time while it would only be a three day trip from the United States and cost between \$12 and \$15 per ton. *Id.*

105. In January 2012, the author of this Note traveled to Cuba along with a group of Drake University Law School students, professors, and alumni. This conversation, and others cited below, was part of a series of panel discussions with local officials and farmers.

106. Roy Ramón Philippón, President of the Cuban Society of Agrarian Law, National Union of Cuban Lawyers, Speaker during a panel discussion in Havana, Cuba (Jan. 10, 2012).

107. See *Cuba Could Become Largest U.S. Rice Market Overnight?*, WESTERN FARM PRESS, Oct. 28, 2011, <http://westernfarmpress.com/government/cuba-could-become-largest-us-rice-market-overnight> (“Cubans consume nearly 1 million metric tons of rice annually. . . . Sixty percent . . . is imported.”).

108. Philippón, *supra* note 106; see also Rosell, *supra* note 60, at 250.

109. *Rice: Trade*, ECON. RESEARCH SERV., USDA (Aug. 16, 2012), <http://www.ers.usda.gov/Briefing/Rice/trade.htm>.

110. *Id.*

111. Michelle Moore, *International Trade Report: Cuban Market, Good for U.S. Grain*, FOREIGN AGRIC. SERV., USDA (July 5, 2005), available at <http://www.fas.usda.gov/grain/highlights/2005/07-05/CubaRiceITR05.pdf>.

112. Forrest Laws, *U.S. Rice Growers May Not Share in Increased Cuban Imports*, SW. FARM PRESS (Sept. 15, 2005), <http://www.southwestfarmpress.com/us-rice-growers-may-not-share-increased-cuban-imports>.

113. *Id.*; see also 22 U.S.C. § 7207(b) (2006) (requiring payment before shipment).

114. Laws, *supra* note 112.

For the foreseeable future, any effort by agricultural groups in the United States to take advantage of trade opportunities with Cuba will have to operate within the guidelines and policy directives of Cuba as well as the United States. One risk that any organization that wishes to trade with Cuba might encounter is that their proposals and business plans will run into red tape not only through regulations in the United States, but through conflict with the Communist Party of Cuba, which still holds tremendous sway over policy and business decisions on the island.

Cuban officials are, of course, aware of the tremendous opportunity that trade with the United States might bring to their country, and for the most part remain eager to pursue closer ties with whom they see as their closest, most natural trading partner.¹¹⁵ Roy Ramón Philippón, a leading official with the Cuban Society of Agrarian Law, indicated that the country recognizes that changes are necessary in order to properly compete with and participate in an open global market.¹¹⁶ Long gone are the days when Cuba could count on highly subsidized exports to the Soviet Bloc as a stable source of income.¹¹⁷ For the first forty years of Cuba's "socialist experiment" following their revolution, the first priority for the Cuban government was to provide the maximum amount of social services and benefit to the population regardless of the cost; something that they could achieve through trade with the Soviet Bloc prior to its collapse.¹¹⁸

The process of reform in Cuba is necessarily dependent upon the approval of the national Communist Party. All of the reforms that have been put in place must be considered by and ultimately recommended by the Communist Party operating under their internal guidelines.¹¹⁹ By its nature this is intended to be a slow, deliberative process, the intent of which is to allow all interested government officials, business representatives, and interested citizens to voice their opinions and for the Party's guidelines to take each group's concerns into account.¹²⁰

Cuba has continued to introduce new programs to assist local producers in becoming more productive while also promoting ecological restoration and preservation.¹²¹ In a shift away from the large state-run farms that characterized Cuban agriculture for much of the twentieth century, Cuba is now focused on

115. Philippón, *supra* note 106.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

diversifying agricultural production through a variety of both privately run and some state-controlled enterprises.¹²²

Cuban officials responsible for investigating and recommending additional improvements to the Cuban agricultural system echo this call for reform and increased efficiency and productivity.¹²³ Cuban officials point to the two primary goals that Cuba is pursuing in its efforts to improve its agricultural output and modernize their agricultural system; eco-restoration and preservation and urban and suburban agriculture.¹²⁴ In addition, while the country is desirous of increasing its agricultural exports as a source of income, enough of the goods produced must be funneled into an official state-controlled market that can control prices and ensure that food is affordable even to those with low incomes.¹²⁵ The first priority before any additional exports can be considered is to increase production for local consumption to the point where the country could conceivably become self-sustaining for the majority of its food production needs.¹²⁶ Once they are producing enough food for local consumption, then priorities may shift towards producing additional crops for export; coffee in particular is one locally produced crop that Cuba is particularly interested in increasing production for both local consumption and export.¹²⁷

Government officials recognize that the Cuban economy is in a relatively underdeveloped state, and future policies will need to be responsive to the state's economic needs as well as their agricultural ones.¹²⁸ If, for example, the price of corn were to skyrocket on the world market, Cuban officials indicate that if it made economic sense, they "would cover this island with corn."¹²⁹ Similar to the practices of the former Soviet Bloc, the Cuban economy is still very much organized and planned by the state, and the current agricultural plan in Cuba is designed to cover the next five years of anticipated growth.¹³⁰

As for direct investment by foreign investors and producers, current policies in Cuba will make that somewhat difficult for the foreseeable future, as all direct business relationships with foreign entities are currently organized and

122. *Id.*

123. *Id.*

124. José Gareá Alonso, Legal Advisor, Ministry of Agriculture, Panel Discussion at the Casa de la Amistad, Havana, Cuba (Jan. 13, 2012).

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

controlled by a number of governmental bodies.¹³¹ Cuban officials indicate that future reforms could conceivably open the door to direct investment and transactions between Cuban agricultural producers and foreign buyers.¹³² Understanding this future opportunity first requires a digression into the organizational structure employed in Cuba to manage and direct the agricultural system in Cuba.

V. NEW REFORMS

The current agricultural system has gone through a period of significant readjustment since the collapse of the Soviet Union. Beginning in 1993, Cuba started to move away from enormous state-run facilities and fully embraced a model of cooperative ownership that it had first introduced in the 1970s with the *cooperativa de producción agropecuaria*, or CPA.¹³³ The new model, the basic unit of cooperative production, or UBPC, was introduced in September of 1993, and by 1995 there were 2855 UBPCs in operation.¹³⁴ The UBPC differs from the CPA in that a UBPC operates on land that continues to be owned by the state but is provided to farmers in the form of a usufruct agreement, while a CPA is made up of lands that groups of farmers already had in their possession.¹³⁵ By the end of 2007, the UBPC had far exceeded the CPA in the amount of land being farmed, with more than 2.8 million hectares of land organized under the UBPC system, compared to just under 700,000 hectares in CPAs.¹³⁶ The majority of farmland in Cuba remained under state control as of the end of 2007, with more than 6 million hectares of farmland overseen by the state.¹³⁷

Both the UBPCs and the CPAs operate under an arrangement whereby the state provides assistance in the form of access to credit and a market for the goods produced, and in exchange the production cooperatives provide a certain

131. See, e.g., Zimbalist, *supra* note 9, at 25 (describing barriers to foreign investment arising from government involvement).

132. Alonso, *supra* note 124.

133. Frederick Royce, *Agricultural Production Cooperatives: The Future of Cuban Agriculture?*, 14 *TRANSNAT'L L. & CONTEMP. PROBS.* 19, 23–25 (2004).

134. *Id.* at 24–25.

135. CARMEN DIANA DEERE, *THE NEW AGRARIAN REFORMS*, 29 *NACLA REPORT ON THE AMERICAS* 13, 14 (1995).

136. OFICINA NACIONAL DE ESTADÍSTICAS, REPÚBLICA DE CUBA, *ANUARIO ESTADÍSTICO DE CUBA 2010, DISTRIBUCIÓN DE LA TIERRA DEL PAÍS Y SU UTILIZACIÓN SEGÚN FORMAS DE TENENCIA Y TIPOS DE EMPRESAS O ENTIDADES ECONÓMICAS EN 31 DE DICIEMBRE DE 2007*, [LAND DISTRIBUTION AND ITS USE, ACCORDING TO TENURE FORMS AND TYPES OF ECONOMIC ENTERPRISES OR ENTITIES ON DECEMBER 31, 2007] (2011), http://www.one.cu/aec2010/esp/20080618_tabla_cuadro.htm (open folder “9”; then select “9.1”).

137. *Id.*

quota of goods for sale and distribution by the state.¹³⁸ One of the key objectives in the legislation itself is that the farms shall “be owners of the means of production and of the crop,” while still retaining ownership of the land in state hands.¹³⁹ Goals of this new organization were to improve efficiency and encourage more productive use of land. The goals of the Cuban Revolution continue to be embodied in the legislation that created these entities.¹⁴⁰

In 2008, Cuba passed what is perhaps the most substantial piece of agricultural legislation in decades. Named simply “Law 259,” it provides a means for almost any Cuban citizen, existing farm, or authorized agency to acquire unused state lands and put them to better use as farmland.¹⁴¹ This is a substantial departure from the earlier CPA and UBCP systems that for the most part only transferred existing agricultural land controlled by the state into quasi-private cooperatives.¹⁴² Law 259 continues the usufruct method of land distribution pioneered by the UBPC system and allows for any interested, qualified party to apply for an initial tract of a maximum of 13.42 hectares (33.16 acres), with their ownership potentially increasing to up to 40.26 hectares (99.48 acres) in the future.¹⁴³ Continued operation of farmland granted under this program is contingent upon the land being used in a productive, sustainable manner with appropriate environmental conservation measures.¹⁴⁴

Even with the new reforms, the land is still technically tied to the state, and individuals who take possession of land under this program are not permitted to sell or rent the land to others, though the state will compensate landowners for the improvements they have made to the land during their term of tenancy.¹⁴⁵ The CPA, UBPC, and now Law 259 reforms Cuba put in place, along with re-

138. Royce, *supra* note 133, at 23, 27 (discussing implications of Law 36); see Ministerio de Justicia [Ministry of Justice], *Decreto Ley Numero 36* [Law Decree No. 36], 6 GACETA OFICIAL DE LA REPUBLICA DE CUBA, EDICIÓN ESPECIAL, [OFFICIAL GAZETTE OF THE REPUBLIC OF CUBA, SPECIAL EDITION], 22 de Julio de 1982 [July 22, 1982] [hereinafter *Law Decree No. 36*].

139. Royce, *supra* note 133, at 28 (discussing Law 142); see Ministerio de Justicia [Ministry of Justice], *Decreto Ley Numero 142: Sobre las Unidades Basicas de Production Cooperativa* [Law Decree No. 142: On the Basic Units of Cooperative Production], 6 GACETA OFICIAL DE LA REPUBLICA DE CUBA, EXTRAORDINARIA [OFFICIAL GAZETTE OF THE REPUBLIC OF CUBA, EXTRAORDINARY] 15, 21 de Septiembre de 1993 [Sept. 21, 1993] [hereinafter *Law Decree No. 142*].

140. See *Law Decree No. 142, supra* note 139; *Law Decree No. 36, supra* note 139.

141. Ministerio de Justicia [Ministry of Justice], *Decreto Ley Numero 259* [Law Decree No. 259], 24 GACETA OFICIAL DE LA REPUBLICA DE CUBA, EXTRAORDINARY [OFFICIAL GAZETTE OF THE REPUBLIC OF CUBA, EXTRAORDINARY] 94, art. 1, 11 de Julio de 2008 [July 11, 2008] [hereinafter *Law Decree No. 259*] (Emiliano Lerda, trans.) (on file with author).

142. Royce, *supra* note 133, at 24–25.

143. *Law Decree No. 259, supra* note 141.

144. *Id.* at 95, art. 13, 14.

145. *Id.* art. 4, 15.

forms the Cuban government is discussing for the future, mean that opportunities for further U.S. involvement in Cuban agriculture are numerous.

Presently, foreign companies that wish to enter into business relationships with Cuban counterparts must do so almost entirely via official government channels.¹⁴⁶ Government agencies such as the Ministry of Sugar or the Ministry of Agriculture are responsible for managing trade for their respective industries.¹⁴⁷ All imports of food and other agricultural products must first enter the country via Alimport, a state-run agency that handles the entire sales process from securing contracts and arranging for payment to managing the distribution process.¹⁴⁸ For the time being, the sole agency that U.S. companies wishing to engage in agricultural trade in Cuba can work with is Alimport.¹⁴⁹ Rarely will there be any contact directly between U.S. companies and end-users in Cuba.¹⁵⁰

The process in the United States can be similarly convoluted. The U.S. Department of Commerce's Bureau of Industry and Security oversees all business negotiations with Cuban companies, and notifications of sales must be submitted through them before a license will be granted.¹⁵¹ Since U.S. policy still prohibits the extension of credit to any Cuban banks, all payments either have to be paid for in cash prior to shipment or a confirmed letter-of-credit can be completed with a bank located in a third country.¹⁵² In an unusual and unfortunate overlap in U.S. policy directives, goods that are paid for in cash prior to shipment are legally Cuban property though still in the United States, and potentially subject to seizure on behalf of Cuban exiles within the United States who have outstanding legal and monetary claims against the Cuban government.¹⁵³ Ships with goods meant for Cuba, however, may leave port as soon as payment is either received in cash or confirmed deposited in a foreign bank, a clarification made by the Department of Treasury Office of Foreign Asset Control in July 2005 in an attempt to reduce anxiety over this possibility.¹⁵⁴

José Garea Alonso, an official with the Cuban Ministry of Agriculture, indicated that recent legislation such as Law 259 is the start of what may eventually lead to more direct commercial ties between Cuban organizations and for-

146. Alonso, *supra* note 124.

147. *Id.*

148. OFFICE OF GLOBAL ANALYSIS, *supra* note 73, at 22.

149. *Id.*

150. *Id.*

151. *Id.* at 23.

152. *Id.*

153. *Id.* at 24.

154. Christopher S. Rugaber, *Treasury Clarifies Cuba Farm Export Rule, and Baucus Relents on Nominees*, 22 INT'L TRADE REP. 1292 (Aug. 4, 2005).

eign buyers or investors.¹⁵⁵ At the moment, Cuba's agricultural cooperatives are relatively small and continue to rely on the state for the bulk of their marketing opportunities.¹⁵⁶ In the future, these cooperatives may be allowed to join together to form larger groups of linked agricultural cooperatives working together to manage their own affairs, and may include the ability to directly negotiate with foreign buyers rather than requiring an intervening hand from Alimport or another appropriate ministry.¹⁵⁷

Foreign investment in Cuban businesses has only been possible in a limited form since the early 1980s, when the Cuban government introduced legislation allowing for foreign entities to create a joint venture with the Cuban government for investment purposes.¹⁵⁸ Ultimately, the goal of this legislation was to provide an easier means for Cuba to acquire additional foreign currency to inject into its economy.¹⁵⁹ Even with the new law, regulations prohibited any foreign participant in a joint enterprise from controlling more than 49%, though such a restriction was not in place for a partnership.¹⁶⁰

VI. NEW OPPORTUNITIES

While investment in Cuban businesses and sales or purchases of Cuban products must still move through official channels under the joint venture law or other Cuban programs, the time is ripe for organizations in the United States to begin laying groundwork for closer ties with Cuban agricultural entities. Recent regulatory changes implemented by the U.S. government provide a means for individuals and businesses to begin forming the relationships with their Cuban counterparts that will lead to future trade opportunities.¹⁶¹

As previously mentioned, recent changes in U.S. policy now allow for any individual in the United States, not simply relatives, to donate money to Cuban citizens, though not to exceed \$500 for any three month consecutive period, with the only restriction being that the recipient is not an official in the Cuban

155. Alonso, *supra* note 124.

156. *Id.*

157. *Id.*

158. Council of State, Republic of Cuba, *Legislative Decree Number 50 on Economic Association Between Cuban and Foreign Entities* (Sept. 15, 1982), re-printed in 21 INT'L LEGAL MATERIALS 1106, 1107 (1982) (Chamber of Commerce of the Republic of Cuba, trans.).

159. Jean G. Zorn & Harold A. Mayerson, *Cuba's Joint Venture Law: New Rules for Foreign Investment*, 21 COLUM. J. TRANSNAT'L L. 273, 287 (1983).

160. Council of State, Republic of Cuba, *Legislative Decree Number 50 on Economic Association Between Cuban and Foreign Entities* (Sept. 15, 1982), ch. 2, art. 15, re-printed in 21 INT'L LEGAL MATERIALS 1106, 1108 (1982) (Chamber of Commerce of the Republic of Cuba, trans.).

161. See, e.g., 31 C.F.R. § 515.570 (2012).

government or the Communist Party.¹⁶² Specifically written into these new regulations is the idea that these remittances may be spent “to support the development of private businesses.”¹⁶³ A five hundred dollar infusion of capital to support a fledging business or farm can be enormously beneficial when the average monthly salary is only 448 pesos, or approximately twenty dollars.¹⁶⁴

Additional capital will enable small Cuban farms to expand operations by hiring additional help or perhaps purchasing additional farm animals. While purchasing a tractor may seem like an obvious choice for a growing farm, Medardo Naranjo Valdes of the Organoponico Vivero Alamar, a UBPC just outside of Havana, indicated that farm animals such as oxen would remain the preferred choice for the foreseeable future on the small and midsized farms that make up the majority of the newer agricultural cooperatives.¹⁶⁵ Not only do farm animals not require gasoline or incur maintenance costs beyond perhaps an occasional veterinarian charge, their waste can be used as fertilizer.

Apart from additional labor, funds provided to agricultural cooperatives could be put to use in developing innovative pest control techniques that do not require the use of expensive pesticides or other chemicals. The Vivero Alamar is currently experimenting with a variety of natural pest control techniques such as introducing plants that serve as natural repellents to insects and the introduction of other insects that feed on harmful pests without harming the crops.¹⁶⁶

Investment in agricultural cooperatives done in this manner will likely fail to see much return on the investment for their foreseeable future, until policies in both the United States and Cuba are changed.¹⁶⁷ For a relatively small sum, American investors will get not only the benefit of a close relationship with a Cuban farm that will become a new source of both import and export business in the future, but potentially gain access to innovative agricultural techniques that could be used in the United States immediately.¹⁶⁸

Because the logistical structure needed to transport goods from large rural farms into city markets remains underdeveloped, urban and suburban agriculture makes up a growing portion of the food produced and consumed in Cuba.¹⁶⁹ As in other countries, the population trends in Cuba have continued to shift away from rural areas to more concentrated urban and suburban areas, with about

162. *Id.* § 515.570(b).

163. *Id.* § 515.570(b).

164. AVERAGE MONTHLY SALARY, *supra* note 13.

165. Medardo Naranjo Valdes, Technical Sub-Director, UBPC Vivero Alamar, Farm tour and discussion (Jan. 13, 2012).

166. *Id.*

167. *Id.*

168. *Id.*

169. OFFICE OF GLOBAL ANALYSIS, *supra* note 73, at 7.

three-fourths of Cubans living in cities.¹⁷⁰ With this shift in population has also come a shift in the country's agricultural system. As of 2007, about 15% of all agriculture in Cuba could be classified as urban agriculture.¹⁷¹ Not only have agricultural practices changed, but eating habits have as well. Without the Soviet Union to provide a ready source of income and the machinery needed to engage in large-scale livestock production, vegetable consumption has increased dramatically.¹⁷² Nearly every urban area has direct access to a wide variety of locally grown, organic produce.¹⁷³

Many of the urban farms in Cuba, including the Vivero Alamar, make use of organoponics, a system where crops are produced in raised beds of soil on land that would otherwise be incapable of supporting intensive agricultural production.¹⁷⁴ Many of these raised beds can be constructed in a concentrated area to support a wide variety of produce, with the typical organoponic garden covering anywhere from one half to several hectares in size.¹⁷⁵ The rise of the organoponic production method was a shift away from the earlier centralized production model employed by the state. It has been supported through intensive research and development by a variety of state agencies, such as the National Institute of Agricultural Science, and continued development has been guided through intensive training and educational programs.¹⁷⁶

The organoponic system is not limited in its application to Cuban urban farms, but maintains potential to be applied worldwide, including in the United States. Urban agriculture in Cuba revitalized and put to use previously abandoned and unused land. A similar approach could be applied to the United States as a means to restore blighted areas.¹⁷⁷ Applying Cuban-derived organoponics in U.S. cities could potentially open up an enormous amount of land that was previously unusable. From a business perspective, investing in an organoponic agricultural program in the United States is also a sound decision since the demand for local produce reached \$4.8 billion in 2008 and is only expected to grow further, potentially reaching \$7 billion in 2012.¹⁷⁸

170. *Id.* at 14.

171. Sinan Koont, *Urban Agriculture in Cuba: Of, by, and for the Barrio*, 20 NATURE, SOC'Y, & THOUGHT 311, 311 (2007).

172. *See id.* at 311–12.

173. *Id.* at 312.

174. *See id.* at 313.

175. *Id.* at 314.

176. *Id.* at 318–19.

177. John E. Mogk et al., *Promoting Urban Agriculture as an Alternative Land Use for Vacant Properties in the City of Detroit: Benefits, Problems and Proposals for a Regulatory Framework for Successful Land Use Integration*, 56 WAYNE L. REV. 1521, 1523–24 (2010).

178. *See* SARAH A. LOW & STEPHEN VOGEL, ECON. RESEARCH SERV., USDA, DIRECT AND INTERMEDIATED MARKETING OF LOCAL FOODS IN THE UNITED STATES, REPORT NO. 128, at 19

In an American city beset with high unemployment such as Detroit, Michigan, for example, investing in urban agriculture could potentially generate as many as five thousand new jobs.¹⁷⁹ By utilizing Cuba's system of organoponics, the need to use expensive and complex farm machinery could be significantly reduced. Already companies in the United States, such as Farmscape Gardens in southern California, recognize what Cuba's organoponic system could achieve and have integrated it into their business practices.¹⁸⁰ Rachel Bailin, a partner in the company, indicated that it was Cuba's organic farming practices that helped inspire them to start a company devoted to urban agriculture.¹⁸¹ They have already used Cuba's organoponic farming methods to produce more than 50,000 pounds of produce since the spring of 2009.¹⁸² The potential for future growth in this industry is huge, as Farmscape Gardens' current levels of production make it the largest urban agriculture company in the state of California.¹⁸³

Cuba not only offers attractive prospects for trading in the future, but methods of agriculture pioneered out of necessity have broad prospects if applied to agriculture in the United States. As the demand for locally grown produce continues to increase, a cost-effective and proven agricultural model like Cuba's organoponic system may be just what is needed to allow for urban agriculture to flourish.

VII. CONCLUSIONS

The United States and Cuba have a long, complicated history that years of animosity and finger pointing have certainly done little to improve. For more than fifty years now, the United States has shunned one of its closest neighbors, but recent actions by the Obama administration indicate change is certainly a

(2011), available at http://www.ers.usda.gov/media/138324/err128_2_.pdf; Debra Tropp, *Emerging Opportunities for Local Food in U.S. Consumer Markets*, AGRIC. MARKETING SERV., USDA (Aug. 2008), available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5072587>.

179. Mogk et al., *supra* note 177, at 1531 (citing John Gallagher, *Community Farming a Seed of Hope in City Soil: Comfort Food Grown in Detroit*, DETROIT FREE PRESS, July 5, 2009, at B1).

180. See generally FARMSCAPE GARDENS, <http://farmscapedgardens.com/> (last visited Dec. 21, 2012) (discussing the environmental and societal benefits of urban farming).

181. E-mail from Rachel Bailin, Chief Marketing Officer with Farmscape, LLC (Jan. 18, 2012) (on file with author).

182. *Id.*

183. Lauren Lloyd, *Could City Hall Soon be Surrounded by Citrus Tree Groves & Edible Gardens?*, LAIST (Feb. 9, 2012, 11:15 AM), http://laist.com/2012/02/09/edible_gardens_at_city_hall.php.

possibility. In conclusion, the future of trade relations with Cuba can be summed up as follows:

First, truly open trade with Cuba is not likely to occur for many years. The political and foreign policy practices that have supported the embargo will not disappear overnight. What is more likely, though, is a continued and gradual relaxation of certain trade policies that will ultimately benefit a number of U.S. industries, agriculture included. While trade in agricultural products is currently possible on a limited scale, agricultural entities in the United States interested in trading with Cuba on a larger scale should begin their preparations now by forging relationships with their Cuban counterparts. Opening the door to further trade will not happen without a concentrated and prolonged push by various interest groups in the United States.

Second, certain companies that wish to do business in Cuba today are able to do so and should begin familiarizing themselves with the Cuban governmental entities such as Alimport. Barring a complete reorganization of the Cuban government, agencies such as Alimport will likely continue to oversee foreign trade for the foreseeable future. Forming business relationships with Cuban companies in the short-term under existing regulations will help support broader trade opportunities in the future.

Finally, what Cuba has accomplished in the field of cooperative and urban agricultural products is remarkable, and should serve as an inspiration to farmers and businesses in the United States as well. The Cuban organoponic system of production has great potential for a variety of urban and suburban farming activities in the United States, particularly as demand for local and organic produce continues to rise.

As relations between Cuba and the United States continue to thaw in the coming years, organizations that began their preparations today will be best equipped to meet the challenges and opportunities posed by this new and growing market. Political animosities will eventually crumble in the face of the economic opportunities that closer trade relations could bring to both nations. One of the United States' closest neighbors has been its enemy for far too long. Cuba presents a unique opportunity American business and agricultural enterprises cannot afford to overlook.