



Center for National Policy

Cuba

Legislative Update 2002
108th Congress 2nd Session

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Background

A shift in congressional attitudes towards economic sanctions in general and the Cuban embargo in particular began to take shape in 1998 as a result of increased coordination in advocacy efforts by traditional supporters, bi-partisan coalitions, farm groups and western Republicans representing agricultural states. There were increasing calls for a change in the US policy towards sanctioned countries with an emphasis on humanitarian trade. The common goal was to remove restrictions on the sale of food and medicine to Cuba and other sanctioned countries including North Korea and Iran.

In the summer of 1999 Capitol Hill witnessed tremendous support for Senator Ashcroft's amendment to the Agriculture Appropriations Bill to remove food and medical restrictions from all US imposed unilateral sanctions. The Agriculture Appropriations Committee conference was poised to include this amendment in the final report but at the last minute the House Republican leadership scuttled it. In a new effort, building on support from the previous year, Senate and House advocates were successful in legislating the free sale of food and medicine in the *Trade Sanctions Reform Act of 2000 (TSRA)*.

TSRA and private financing

The Trade Sanctions Reform Act (TSRA), which President Clinton signed into law October of 2000, for the first time allowed US companies to sell (under a streamlined license process) a wide list of agricultural, medical and processed food products directly to Cuban government entities responsible for procuring such goods.

Although, widely considered the most significant legislation since Helms-Burton, TSRA did not remove restrictions on financing for sales. Without US public or private financing and in the absence of direct currency transactions between the US and Cuba,(a necessity in practically all trade transactions), US agricultural groups and the Cuban government claimed the conditions were not realistic.

But, in the wake of Hurricane Michelle, Cuba's worst storm in half a century, the Bush Administration publicly offered to send aid to Cuba. Rather than accept US aid, Cuba asked to buy the products it needed from US sources as an expedited, one time, cash sale. Archer Daniels Midland made the first sale; Cargill, ConAgra and others followed. Cuba spread contracts out between many suppliers and ports nationwide. By March 2002 \$73 million in sales had taken place. These sales have rejuvenated support for legislative action on Cuba from agricultural groups across the country.

TSRA and Travel

Just as the 1996 Helms Burton law codified the embargo, which had previously been an executive order, the TSRA codified the Cuban travel restrictions. Since then, the House of Representatives has voted twice by a significant majority, in 2000 and in 2001, to lift the enforcement of the travel embargo on Cuba, but without accompanying Senate language, the restrictions have not yet been removed.

Political Dynamic

The most significant change from previous years is the formation of the bipartisan “Cuba Working Group” in the House of Representatives. This group is significant in two ways, 1) It is the first bipartisan congressional group – it’s 34 members are equally divided between Democrats and Republicans – to state support for a change in US policy and a roll back of the embargo. 2) The House of Representatives has traditionally ceded Cuba policy to the pro-embargo Cuban-Americans in Congress. The Working Group is alerting pro-embargo enthusiasts that Cuba is no longer an issue to be dominated by one voice. The two primary legislative goals of the Working Group are to remove the ban on travel to Cuba and to increase U.S. agricultural exports to Cuba. *See attached list of Working Group Members*

Spearheading the Working Group are the offices of William Delahunt (D-MA) and Jeff Flake (R-AZ) with strong support from George Nethercutt (R-WA)

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Representative William Delahunt (D-MA)

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The Senate has not formed a formal Working Group and has no plans to do so. However, an informal coalition of members has worked on similar issues for a number of years and has overall support in the Senate. The Democratic leader Tom Daschle (D-ND) is in favor of easing the embargo, and the retirement of pro-embargo advocate Jesse Helms (R-NC) later this year has left an anti-Castro void in the Senate. Robert Torricelli (D-NJ) has tried to fill these shoes on the Senate floor, but so far has been unable to win a majority of support.

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Senate Foreign Relations

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Anti-embargo support beyond congress includes non-governmental organizations, church and labor, retired politicians and military officers, corporations and farm groups.

The farm groups have been, without a doubt, critical to anti-sanction efforts. With a decline in exports, the agricultural industry is looking for new markets by curving the use of sanctions as a policy tool. The on-going fight to lift trade restrictions on Iran, North Korea and Cuba took an unexpected twist when President Bush identified two potential markets as pillars in the “axis of evil”

With the prospect of big grain sales to Iran and North Korea unlikely, farmers were galvanized by the emergency sales to Cuba and view the island nation as an important and necessary trading partner.

Although support for a change in the current policy is wide and diverse, pro-embargo efforts are still vigorous. The Cuban American National Foundation (CANF), a strong pro-embargo group, remains very influential in Washington DC. Since the Democrats gained control of the Senate, CANF has successfully focused its energies on the administration. With strong support in the White House and placement of “hard-line” Cuba policy experts in high and influential positions in the administration, anti-sanction supporters may find efforts difficult and complicated. One critical appointment was that of Cuban American Otto Reich as **Assistant Secretary of State for the Western Hemisphere** (Phone:202-647-5779 Fax:202-647-0791). A strong advocate of the embargo and vocal critic of Fidel Castro’s government, he will play a prominent role in shaping and directing policy as it relates to Cuba. Other appointees, **National Security Council Director for Western Hemisphere Affairs** Emilio Gonzalez (Phone:202-456-9131 Fax:202-456-9130); **Agency for International Development, Latin America Administrator** Adolfo Franco (Phone:202-712-4800 Fax:202-216-3012) and, **State Department Principal Deputy Assistant Secretary for the Western Hemisphere** Lino Gutierrez (Phone:202-647-5779 Fax:202-647-0791), could delay licensing and restrict contact with the island. In addition, financial assistance for CANF-supported “democracy building” efforts will most likely increase and could result in a crack down on the island which consequently could cause political problems for those who would like to see an opening in the relationship.

Recent events have also embolden anti-Castro voices. September 11 drew attention to Cuba's presence on the State Department's list of "States Sponsoring Terrorism". The March 2002 guilty plea of a Cuban spy in the Department of Defense undermined Cuba's public image, and the new national emphasis on security and anti-terrorism efforts created a context un-conducive to U.S.-Cuba diplomacy.

The Administration is now conducting a Cuba policy review led by the National Security Council and Mr. Reich at the State Department with plans for a release in late April. Observers say it is clear the initiative will result in tougher enforcement of travel restrictions and other rules by the administration. It also will probably include a thorough review and examination of recent food sales, a move that could discourage business entities from trading with Cuba.

2002 Legislation in Play

During the second session of the 108th Congress, advocates will focus primarily on two issues - private financing for agricultural sales and the removal of restrictions on travel to Cuba. A larger bill that encompasses both these initiatives, and has been used as a rallying tool for anti-sanction supporters, is "Bridges to the Cuban People Act". Although other freestanding bills have been introduced, they have not had much support. Other serious efforts are building behind "provisions" and/or "amendments" attached to legislative vehicles. All are addressed below.

Bridges to the Cuban People Act of 2001 (S. 1017) (HR 2138)

Sponsored in the Senate by Senators Chris Dodd (D-CT) and Lincoln Chaffee (R-RI), with a companion bill in the House of Representatives initiated by Congressmen Jose Serrano (D-NY) and Jim Leach (R-IA), the bill enjoys broad bipartisan support among its 26 Senate and 111 House co-sponsors.

Summary of key components

- Authorizes the unrestricted sales of food, farm equipment, agricultural commodities and medicines to Cuba;
- Removes restrictions on vessels carrying such legal exports to Cuba that otherwise could not re-enter US waters;
- Removes travel restrictions on US citizens;
- Lifts restrictions on annual remittances by Americans to Cuba;
- Allows Cuban medicines not made in the US but found to be beneficial to Americans to be imported under appropriate FDA requirements (e.g.. meningitis B vaccine);
- Allows US products substantially intended for use by children to be exported to Cuba without restrictions; and,
- Repeals the codification of the embargo included in Helms/Burton in order to enhance Presidential flexibility.

Legislative Action:

Dodd's position on the Senate Foreign Relations Committee and as the Chairman of the Western Hemisphere Subcommittee allows him to schedule hearings on Bridges. Hearings are tentatively scheduled for mid-June. He will then look to "mark" the bill in committee with the intention of sending it to the Senate floor. Whether or not this bill will move beyond a floor debate is unclear but look for provisions of this bill as potential amendments that can be attached to other legislative vehicles moving through the Senate.

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Farm Security Act (HR 2646)

Also known as the Farm Bill, HR 2646 was introduced in the Senate by Senator Harkin (D-IA) and in the House by Representative Combest (R-TX). This bill provides for the continuation of agricultural programs through fiscal year 2011. In Title III, **Section 335**, of the Senate adopted Farm Bill there contains language that would impact US-Cuba policy, the House version does not contain similar language, and is expected to be controversial during committee conference.

Title III Section 335: Agricultural Trade with Cuba

Sec. 335 allows private financing for the agricultural sales to Cuba. The provision builds upon the 2000 Trade Sanctions Reform Act (TSRA) by allowing sales of agricultural goods to Cuba *without* financing restrictions. Due to the controversy and overall implications of trade to Cuba in general, the debate over Sec. 335 is widely considered an indicator for future efforts to relax the US embargo on Cuba.

Legislative Action

Bolstered by \$73 million in sales to the island, members of congress, grassroots, corporate and agriculture communities are all committed to moving TSRA a step further by actively supporting the private financing language of Sec. 335.

During debate of the Farm Bill on the Senate floor, Sen. Torricelli (D-NJ) and Sen. Smith (R-NH) offered an amendment to strike Sec. 335, the financing language, but it failed in a 61-33 vote confirming overall Senate support for the provision. In the House of Representatives, support is divided. Agriculture Committee members are generally in favor of the Senate language and members of the Cuba Working Group urged conferees from both sides of the aisle to support the language in a "dear colleague" letter signed by 64 members. It stated that "private financing could mean more than \$130 million worth of new U.S. exports to Cuba and more than 3,600 new jobs

in the districts of the conferees.” *Letter attached.*

Conversely, the White House has been clear that they oppose the language. This has given House Majority Whip Tom DeLay (R-TX), and House Speaker J. Dennis Hastert (R-IL) the go ahead to pressure House Republican conferees to vote against Sec. 335 in conference. Seeing the strong support for Sec. 335 among Senate and House conferees, the Republican leadership appointed 6 additional conferees, members traditionally in favor of the tighter restrictions on Cuba. The 6 will sit in conference during discussions of Title III. The members come from the International Relations Committee and the Banking and Financial Services Committee. The additional conferees are Representatives Oxley, Baucus and LaFalce, Hyde, Smith (NJ), and Lantos.

The pressure from Florida is undoubtedly great. Pro-embargo groups and the White House would like the House to strip Sec. 335 from HR 2646 before it reaches the President’s desk. The President reportedly has made calls to Republican conferees asking for their support. President Bush has also deployed his Special Assistant on Agriculture, Trade and Food Assistance, Chuck Conner, to lobby on his behalf. The pro-sanction supporters are counting on this influence to carry their cause, as hill efforts by the CANF seem to be non-existent.

The debate over the finance provision, HR 2646, Title III, Sec. 335, will be a test of the pro-sanction strength on Capitol Hill. If finance language is struck from the Farm Bill the chances for travel language are lessened. It will be a reminder of how influential the pro-sanction lobby can be in the final hour. The White House is fully engaged and Florida is a key state for both George Bush, and his brother Jeb who faces reelection, for the Florida governor post, in November 2002. Consequently, there is no doubt the pro-sanction political machine will be in full force for this and coming battles.

Even one week into the conference discussions the vote on Sec. 335 looked close and staff members were wary of stating whether they would win or lose. The debate between House and Senate conferees continues the week of April 22 and marks the first significant “cuba policy” battle in 2002.

Conference Committee Conferees

Senate conferees:

Tom Harkin (D-IA), Patrick Leahy (D-VT), Kent Conrad (D-ND) and Tom Daschle (D-SD), Dick Lugar (R-IN.), Jesse Helms (R-NC.) and Thad Cochran (R-MS).

Primary contacts:

Senator Tom Harkin (D-IA)

Committee Staff member Stephanie Mercier

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House conferees:

Larry Combest (R-TX), John Boehner (R-OH), Bob Goddlatte (R-VA), Richard Pombo (R-CA), Terry Everett (R-AL), Frank Lucas (R-Okla.), Saxby Chambliss (R-Ga.), and Jerry Moran (R-Kan.), Charlie Stenholm (D-Texas), Gary Condit (D-Calif.), Collin Peterson (D-Minn.), Cal Dooley (D-Calif.), Eva Clayton (D-N.C.), Jerry Moran (R-KS) and Tim Holden (D-Pa.).

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Representative Jerry Moran (R-KS)

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Right to Travel and Pending Legislative Action

The second largest initiative underway this year is the removal of travel restrictions to Cuba. Previous efforts by Representatives Sanford (retired) in 2000, Flake and Moran in 2001 to remove travel restrictions to Cuba have been successful in the House of Representatives. Through amendments on the Treasury, Postal Appropriations Bills, representatives were able to withhold funding for the enforcement of the travel ban, which indirectly removed travel restrictions. However, these amendments were ultimately stripped in conference.

The most recent movement was in the summer of 2001. The House passed language offered by Representative Flake (R-AZ) to the Treasury Postal Appropriations Bill (HR 2590 - PL 107-67). In the Senate, Senator Dorgan (D-ND) was poised to do the same but with the tragedy of September 11 and the inclusion of emergency anti-terrorism funding, a controversial debate in conference promised to stall action on the bill. In the end, Dorgan withdrew his amendment.

Relaxing travel restrictions continues to gain wide support. Members of the farm community see the logic and usefulness of free travel to Cuba to conduct business and have lent their voices to the efforts. Individual companies interested in negotiating food and medical sales and maintain business ties cannot operate normally if they are required to secure licenses every time they need to travel to Cuba.

The resolve of some members of congress has been strengthened by recent State Department decisions. Revoking visas already issued to Cuban officials in late March 2002, some of whom previously visited the United States and were coming to complete a potential sale of farm goods, irritated those members of congress already losing patience with the current policy.

Pro-sanction groups, members of congress and the Administration are all painfully aware of the pending legislative battle on travel and its importance. Test votes in the past have demonstrated solid support for removing restrictions on travel to Cuba. Efforts to stop legislative moves of this nature will be fierce. Most believe that if the restrictions on travel are removed, it will be the "beginning of the end" of the embargo. Opponents will make extremely energetic efforts to prevent this legislation from passing.

Amendments containing travel language will be introduced on the Treasury Postal Appropriations Bill. Senator Dorgan (D-ND) will take the lead in the Senate while Representative Flake (R-AZ) again will offer support in the House. Senator Dorgan will not only spearhead the amendment efforts but will introduce his own free standing travel bill in the coming months. The Dorgan travel bill will remove all restrictions on travel to Cuba and does not yet have a title. It is unclear if Representative Flake will introduce a companion bill in the House.

Action on these legislative vehicles and Senator Dorgan's freestanding bill will occur in late June

or July.

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2002 Legislation on the sideline

The Solidaridad Act of 2001 (S. 894)

Introduced in 2001 by Senators Helms (R-NC) and Lieberman (D-CT), Solidaridad has received little attention and lukewarm support. Solidaridad would authorize increased support to the democratic opposition, other oppressed people and independent groups in Cuba to help them regain their freedom and prepare themselves for a democratic future. The bill seeks to rebut accusations that the isolation approach has done nothing for the Cuban people. With a Democratic majority in the Senate, very little is being done to “work” the legislation. The bill has 13 Senate co-sponsors and there is no House companion bill.

Summary of key components

- Earmarks each fiscal year a specified amount of development assistance and economic support funds for individuals and independent non-governmental organizations (NGOs) to support democracy-building efforts for Cuba, including assistance to victims of political repression there.
- Establishes an information and resource center within the U.S. Interests Section in Havana, Cuba, for use by independent NGO representatives or other eligible persons.
- Authorizes the President to license on a case-by-case basis: (1) the importation of handicrafts or other hand-made goods produced by independent, self-employed Cubans; and (2) the remittance of up to \$1,000 each quarter by a U.S. person or group to any Cuban to support micro-enterprise activities of independent, self-employed Cubans, or independent NGO activities.
- Urges the President to take specified measures to support the transition to democracy in Cuba.
- Amends the Foreign Assistance Act of 1961 to require the President to withhold from an independent state of the former Soviet Union an amount or aid equal to the sum of assistance and credits, provided by such state to Cuba in support of intelligence facilities there. This includes the intelligence facility at Lourdes, Cuba.
- Urges the Secretary of State to authorize the travel and contacts of Cuban diplomatic personnel in the United States on a strictly reciprocal basis, taking into account Cuban restrictions on U.S. diplomatic personnel.

U.S.-Cuba Trade Act (S. 401) (HR 796)

Co-Sponsors

Senators Blanche Lincoln, Patty Murray, Pat Roberts

Representatives William J. Jefferson, Gerald D Kleczka, Richard E. Neal, Jim Ramstad, Nydia M. Velazquez

Free Trade With Cuba Act (S 400) (HR 798)

Co-Sponsors

Senators Bryon Dorgan, Senators Blanche Lincoln, Patty Murray, Pat Roberts

Representatives William J. Jefferson, Gerald D Kleczka, Richard E. Neal, Jim Ramstad, Nydia M. Velazquez,

Cuba Humanitarian Trade Act (S. 402) (HR 797)

Co-Sponsors

Senators Blanche Lincoln, Patty Murray, Pat Roberts

Representatives William J. Jefferson, Gerald D Kleczka, Richard E. Neal, Jim Ramstad, Nydia M. Velazquez,

Cuba Food and Medicine Access Act (S.239)

Co-Sponsors

Senators Max Baucus, Christopher Dodd, Byron Dorgan, Richard Lugar, Pat Roberts

Summary of key components

All contain language and goals that closely resemble Bridges to the Cuban People

Legislative Action

These bills have more or less the same language that is being pushed by the other initiatives already “in play”. These may become fallback legislation but at the moment no large effort is behind them.

Amendment to Strike Provision 211 in the 2000 Budget

When the 2000 Budget Bill was passed a provision was included to allow Barcardi Rum to use the Havana Club trademark. This has caused problems for many companies. To date, Cuba has honored the trademark agreements with US companies, but, if Barcardi is allowed to use the Havana Club trademark, then Cuba will begin to use the trademarks of other companies (US) in Cuba. The WTO has already ruled against the US on this issue. Below is an excerpt from an

Americans for Humanitarian Trade letter written explaining opposition to Section 211.

“The sale of U.S. value-added food products to Cuba is jeopardized by Section 211, because U.S. branded goods can only be sold in Cuba if that country continues to honor U.S. trademarks. Cuba's willingness to protect U.S.-origin marks has been put in serious question by Section 211's flagrant breaches of several trademark treaties to which Cuba and the United States are parties. (Among these international agreements is the 1931 Inter-American Convention on Trademarks). If, as it is entitled to do under international law, Cuba suspends or cancels U.S. trademarks in Cuba because of Section 211, food items such as milk-based products (including infant formulas), cereals, frozen vegetables, cooking oils, bread and baby foods (among a myriad of other products) would no longer be saleable in Cuba under TSRA.”

Opponents of Sec 211 are working with the chairman of the Senate Finance Committee, Senator Baucus, on this issue.

Legislative Action

No timetable has been discussed.

Legislative vehicles and opportunities in the coming months:

Since the opening of the 108th congress, over 50 bills are pending that could impact US policy towards Cuba. The following bills are potential vehicles for amendments in committee or during floor debate. The amendments likely will focus on private financing for agricultural sales and the removal of travel restrictions.

Treasury, Postal: principals Senator Dorgan, Representative Flake

Foreign Operations: principal Senator Leahy

Commerce Justice State: principals Senator Leahy, Representative Serrano

Agriculture Appropriations: principals Senators Harkin, Dorgan, Representative Moran

For a list of all legislation containing Cuba please visit website: thomas.loc.gov

Attachments

Members of the Cuba Working Group

Republicans:

*John Boozman
Kevin Brady
Jo Ann Emerson
Jeff Flake
Wally Herger
Ray LaHood
Jim Leach
Jerry Moran
George Nethercutt
Tom Osborne
Butch Otter
Ron Paul
Jim Ramstad
Dennis Rehberg
Chris Shays
Nick Smith
John Thune*

Democrats:

*Neil Abercrombie
Howard Berman
Marion Berry
William Lacy Clay
Peter DeFazio
William Delahunt
Sam Farr
Nick Lampson
Stephen Lynch
Jim McGovern
Collin Peterson
Charlie Rangel
Tim Rowmer
Vic Snyder
Hilda Solis
Charlie Stenholm
Mike Thompson*

Letter to Farm Bill Conferees from Cuba Working Group

March 6, 2002

Dear Conferees:

In the forthcoming conference on H.R. 2646, the Farm Security Act of 2001, we strongly urge the House to recede to the Senate on the issue of private financing of agricultural sales to Cuba.

Section 335 of the Senate bill amends the Trade Sanction Reform and Export Enhancement Act (TSRA), lifting limitations on the financing of private sales to Cuba. Under current law, no provision of credit from a U.S. entity is allowed. U.S. agricultural exporters must either arrange for credit through an overseas bank, or must insist on cash in advance from the Cuban importer.

Even with these cumbersome restrictions, U.S. farmers have been able to realize more than \$35 million in sales to Cuba within the last 3 months. Cuba has purchased a wide range of American products, including rice, chicken, soybeans, wheat, corn and vegetable oil. The volume of this initial trade has been significant, suggesting the potential for our producers as we increase our presence in the Cuban market.

The Cuba Policy Foundation recently released a study showing how great these gains could be: the 11 states represented by the 14 House conferees would gain \$135.5 million in new exports (total U.S. exports would total \$411 million) to Cuba, under a scenario representing moderate improvements in the bilateral relationship. The study estimates that these 11 states would gain 3687 new jobs.

The next logical step to increase access to the Cuban market is to lift the restrictions on private credit. Our farmers and agricultural exporters should be allowed to independently evaluate the risk posed by financing sales to Cuba. The federal government should not be in the position of evaluating credit risk for private entities and restraining the competitive pressures of the marketplace. Adoption of Section 335 leaves intact the prohibition on U.S. government financing for Cuban sales and simply frees American agricultural exporters to compete in the Cuban marketplace.

A question of private sales of agricultural commodities is clearly a matter that should be resolved by members of the Agriculture Committee in conference with the Senate. We strongly urge all House conferees to recede to the Senate on Section 335.

Sincerely,