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**Cuba- Last Week's Mistakes By Members Of Congress/Advocates Could Hurt U.S. Companies  
Cuba Advocacy & Lobbying Can Be Effective.... Usually Ensuring More Next Year  
Failure Now Creates Revenue Opportunities For Advocates & Lobbyists  
192 Days Remaining....**

12 July 2016

"*There is real momentum,*" said The Honorable Mark Sanford (R- South Carolina), a member of the United States House of Representatives, last week. He then had no mention of the events of last week on his [www.house.gov](http://www.house.gov) page as of 9 July 2016.

"*...a proper path forward and we agreed to find a solution that does a number of things,*" said The Honorable Rick Crawford (R- Arkansas), a member of the United States House of Representatives, last week. He also shared "*a long-term solution,*" "*thorough examination,*" and "*deliberative process across each relevant committee of jurisdiction.*" Representative Crawford then had no mention of the events of last week on his [www.house.gov](http://www.house.gov) page as of 9 July 2016.

"*... a historic compromise*" and "*major step forward,*" said Washington, DC-based EngageCuba, adding "*reached an agreement to find a long-term solution to provide credit for the export of agricultural commodities to Cuba.*"

And, the organization's president, Mr. James Williams, offered this to those who have opposed his efforts, "*their position is no longer tenable.*" Is this a winning-votes strategy by a grass-roots organizer or a self-professed effective advocate/consultant/lobbyist?

"*...redouble its efforts with this Congress,*" said Ms. Devry Vorwerk of the Washington, DC-based U.S. Agriculture Coalition for Cuba. Would this be the 114<sup>th</sup> Congress about to recess for the upcoming elections, with few remaining legislative days before formally adjourning in December 2016?

The government of the Republic of Cuba could not have been enthusiastic when their advocates engineered not one, but two, legislative failures within twenty-four (24) hours.

The result all but assures no legislation in the 114<sup>th</sup> Congress and simultaneously harms the foundations for advocacy in the 115<sup>th</sup> Congress- during which issues relating to the Republic of Cuba will again not be a priority for the leadership in either the United States House of Representatives or the United States Senate; or probably the next president.

Why are advocates focusing upon legislation when regulation and policy change are more efficient mechanisms by which to expand the commercial, economic and political relationship between the United States the Republic of Cuba during the remaining 192 days of the Obama Administration?

One reason, jobs- their own that is. Did the Members of Congress coordinate their efforts with the self-appointed Republic of Cuba policy advocates? If so, how should responsibility for the failures be apportioned?

There was also no mention of the events of last week posted as of 9 July 2016 to the

www.house.gov pages of The Honorable Mario Diaz-Balart (R- Florida), The Honorable Ileana Ros-Lehtinen (R- Florida), or The Honorable Carlos Curbelo (R-Florida).

These three (3) Members of Congress, each of Cuban descent, believed the events not significant enough to warrant publicizing their direct or indirect involvement- as they did not believe much energy will be required to retain the status quo; the “*real momentum*” remains with them. The Honorable Paul Ryan (R- Wisconsin), Speaker of the United States House of Representatives, will be among those supporting the trio whose position is “*no longer tenable.*” There have been no legislative changes relating to the Republic of Cuba in sixteen years.

This quartet will be joined by a trio in the United States Senate: The Honorable Robert Menendez (D- New Jersey), The Honorable Marco Rubio (R- Florida) and The Honorable Ted Cruz (R- Texas), each of Cuban descent.

A true target date for any comprehensive Republic of Cuba-related legislation is 24 February 2018, the date (592 days from today) upon which H.E. General Raul Castro, President of the Republic of Cuba, will retire.

(One question remains, however, and that is whether he will remain First Secretary of the Communist Party of the Republic of Cuba, a position which is superior to the presidency, and would thus complicate compliance with a provision of the Libertad Act of 1996 which restricts components of the United States-Republic of Cuba bilateral relationship as long as President Castro or his now retired brother (and former president) Fidel Castro have a role in government. If so, legislative action in the United States may be further delayed.)

*1992, 1996 and 2000 were the last years in which there were changes to United States law relating to the Republic of Cuba.*

Might there be a reason(s) that sixteen years have passed with no further changes? Despite consistent advocacy and lobbying by individuals and organizations, accompanied by a sometimes inconsistent number of companies, the only “*progress*” that exists is repeatedly regurgitated statements of “*progress*” followed by pleas for additional funding because “*we’re so close....*”

Self-appointed pro-engagement advocates continue to repeat a tactical error of seeking everything rather than foraging for incremental changes to United States law- there have demonstrably been numerous opportunities during the last sixteen years for the latter. However, these advocates consistently believe that the Republic of Cuba is a national agenda issue, a macro issue. It is not. The Republic of Cuba is a micro issue- but a significant enough of a micro issue to prevent a majority (assume one is ever achieved) from prevailing in the United States Congress.

Given the recent tactics (using the word loosely) employed by Members of Congress and advocates, the most likely result will be nothing or additional restrictions on transactions with the Republic of Cuba- similar to the outcome that resulted from the “*negotiations*” in 2000 between then-Representative Lincoln Diaz-Balart (R- Florida; who is the brother of current Representative Mario Diaz-Balart), and then-Representative George Nethercutt (R- Washington) and Representative Jo Ann Emerson (R- Missouri).

Their late-night “*negotiations*” resulted in the Trade Sanctions Reform and Export Enhancement Act (TSREEA) of 2000 including language that defined authorized categories of travelers to the Republic of Cuba in such a way as to *statutorily* prohibit United States citizens from traveling as tourists to the Republic of Cuba.

What transpired last week, when two Members of Congress who are from the same political party as the Speaker of the House of Representatives directly challenge statements by the leader of the

chamber- the result is preordained... and the judgement of those Members of Congress is questioned.

**What Representatives Crawford and Sanford may seek during their dialogue with their colleagues; they will not obtain a repeal of the CDA or the TSREEA:**

**I) The removal of the following provision of the Cuban Democracy Act (CDA) of 1992:**

(b) Prohibitions on vessels.

A vessel which enters a port or place in Cuba to engage in the trade of goods or services may not, within 180 days after departure from such port or place in Cuba, load or unload any freight at any place in the United States, except pursuant to a license issued by the Secretary of the Treasury.

(2) Vessels carrying goods or passengers to or from Cuba. Except as specifically authorized by the Secretary of the Treasury, a vessel carrying goods or passengers to or from Cuba or carrying goods in which Cuba or a Cuban national has any interest may not enter a United States port.

(3) Inapplicability of ship stores general license. No commodities which may be exported under a general license described in section 771.9 of title 15, Code of Federal Regulations, as in effect on May 1, 1992, may be exported under a general license to any vessel carrying goods or passengers to or from Cuba or carrying goods in which Cuba or a Cuban national has an interest.

**II) The removal of the following provision of the TSREEA:**

(b) Prohibition on financing of agricultural sales to Cuba

(1) In general No United States person may provide payment or financing terms for sales of agricultural commodities or products to Cuba or any person in Cuba, except in accordance with the following terms (notwithstanding part 515 of title 31, Code of Federal Regulations, or any other provision of law): (A) Payment of cash in advance. (B) Financing by third country financial institutions (excluding United States persons or Government of Cuba entities), except that such financing may be confirmed or advised by a United States financial institution. Nothing in this paragraph authorizes payment terms or trade financing involving a debit or credit to an account of a person located in Cuba or of the Government of Cuba maintained on the books of a United States depository institution.

**III) Removal of the following provision of TSREEA:**

(b) Prohibition on travel relating to tourist activities

(1) In general

Notwithstanding any other provision of law or regulation, the Secretary of the Treasury, or any other Federal official, may not authorize the travel-related transactions listed in subsection (c) of section 515.560 of title 31, Code of Federal Regulations, either by a general license or on a case-by-case basis by a specific license for travel to, from, or within Cuba for tourist activities. (2) Definition In this subsection, the term “tourist activities” means any activity with respect to travel to, from, or within Cuba that is not expressly authorized in subsection (a) of this section, in any of paragraphs (1) through (12) of section 515.560 of title 31, Code of Federal Regulations, or in any section referred to in any of such paragraphs (1) through (12) (as such sections were in effect on June 1, 2000).

**IV) Removal of the following provision of TSREEA:**

(a) Prohibition on United States assistance

(1) In general

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

**What Representatives Crawford and Sanford may receive, either through direct negotiations (remember 2000) or resulting from a second-degree amendment(s) in committee or on the floor, could include:**

1) No transactions with the Revolutionary Armed Forces of the Republic of Cuba (FAR) or GAESA (Enterprise Administration Group)

2) No transactions with entities affiliated, controlled or owned by the FAR or GAESA, including Gaviota

3) No payment terms, directly or indirectly, to the FAR or GAESA and any entities, controlled, or owned by the FAR or GAESA.

5) Prohibition by United States companies and companies subject to the jurisdiction of the United States (meaning vessels transporting cargo that is of United States origin) from using any port facility owned, controlled by, or managed by FAR or GAESA.

4) Continuation of no access to United States government direct or indirect payment or financing programs.

5) No change to the TSREEA-authorized categories of travelers, until there are a) free and fair elections in the Republic of Cuba b) until Republic of Cuba nationals who are working at the behest of the government of the Republic of Cuba under contract outside of the Republic of Cuba, for example in Venezuela, are permitted to retain 100% of their wages.

What is GAESA? An article by [Bloomberg News](#) included: “GAESA owns almost all of the retail chains in Cuba and 57 of the mainly foreign-run hotels from Havana to the country’s finest Caribbean beaches. GAESA has restaurant and gasoline station chains, rental car fleets, and companies that import everything from cooking oil to telephone equipment. Rodriguez is also in charge of Cuba’s most important base for global trade and foreign investment: a new container ship terminal and 465-square-kilometer (180-square-mile) foreign trade zone in Mariel.”

A prohibition on the use of the container ship facility at Mariel could impact all United States exports to the Republic of Cuba, particularly food products and agricultural commodities authorized by the TSREEA.

What might a focus upon the FAR, GAESA and Gaviota mean for at least one United States-based company? On 9 June 2016, Speaker Ryan, issued the following statement:

*“The Obama administration took office with the misguided goal of conducting closer engagement with America’s adversaries. They extended an open hand to governments in Cuba, Iran, North Korea, Russia, Syria, and Venezuela, and made damaging concessions often from a position of weakness. In the process, they have emboldened those regimes, alienated our allies, and left America in a more vulnerable strategic position. Now we must take immediate action*

*to repair alliances and partnerships around the globe and to be clear about how the United States treats friends and foes.”*

*“Finally, in our own backyard we will continue to work with our friends and stem the influence of foes. Our relations with Canada and Mexico are crucial, especially in managing trans-border trade and countering trans-border threats. But we cannot blindly follow the administration’s normalization plan with communist Cuba, a regime that is fundamentally opposed to U.S. policy and that represses an entire population only 90 miles from our coastline. Instead, we will work to restore U.S. leverage, hold the Castro regime accountable, and make sure any further accommodations are met first with real concessions from the Cuban government. **A first step should be to ban financial transactions with the Cuban military.**” [Bold added]*

*“Our leverage to promote democracy and human rights should never be squandered. The Obama administration sought to normalize relations with the Castro regime in exchange for the promise of democratic and human rights progress in Cuba. One year into the agreement, which included reopening the American embassy in Havana, the Castro regime is as repressive as ever. In the first two months of 2016 alone, the Cuban Commission for Human Rights registered 2,588 political arrests. Nevertheless, President Obama reneged on his vow to refuse to travel to Cuba until human rights had improved.”*

Stamford, Connecticut-based **Starwood Hotels & Resorts Worldwide** (2015 revenues exceeded US\$5.7 billion) has contracts to manage three (3) properties in the Republic of Cuba (Gran Caribe-owned Hotel Inglaterra; Habaguanex-owned Hotel Santa Isabel and Gaviota-owned Hotel Quinta Avenida, which was re-branded as Four Points By Sheraton Havana on 27 June 2016). Gaviota is controlled by the FAR.

## **Conclusion**

What should Messrs. Crawford and Sanford and advocates focus upon during the remaining 192 days before the next president of the United States takes office? **1)** Focus upon dialogue with the Obama Administration to continue with regulatory changes and policy changes. **2)** Focus upon dialogue with the government of the Republic of Cuba to authorize implementation of Obama Administration initiatives. **3)** Focus upon creating an operationally sustainable commercial, economic and political landscape with impactful results- Starwood Hotels & Resorts and Cleber LLC (tractor assembly) are examples; increasing the variety of products that may be imported from the Republic of Cuba to the United States and is another. **4)** Focus upon creating a consistent and pro-active policy position for the United States Department of Commerce, United States Department of Agriculture and United States Department of State with respect to assisting and promoting the interests in the Republic of Cuba of United States companies- the department policies to date have been disparate and contradictory; and advocates have misused the lack of uniformity. **5)** Supporting efforts by the Obama Administration and government of the Republic of Cuba to resolve the 5,913 claims certified with the United States Foreign Claims Commission (USFCSC) is perhaps most important.

Cuba-related advocacy and lobbying can be effective, but the results during the last sixteen (16) years have been only to ensure more advocacy and more lobbying during the following year. It’s time for a change.