

CLIENTTOPICS

January 2007

The U.S. Embargo of Cuba

Economic Sanctions Developments

Anticipating US-Cuban Economic Relations, Post-Castro

Reports of Fidel Castro's ailing health are a reminder of the inevitable end of his domination of Cuban politics and society.

Obviously, the U.S. Government is eagerly anticipating a regime change in Havana and the broad concepts of assisting a transition to democracy in Cuba have been in place for several years. The most recent example of the U.S. Government's outlook is reflected in the July 2006 Report to the President by the U.S. Commission for Assistance to a Free Cuba <http://www.cafc.gov/cafc/rpt/2006/68097.htm>, which contains analysis and recommendations for the post-Castro era. Yet, these are essentially political in nature and deal in generalities. Nevertheless, if the past can serve as a guide, there are some steps that the United States may take after Fidel Castro's exit from power to hasten the transition to democracy and freedom in Cuba.

The embargo is one of Washington's most important foreign policy tools to influence Cuban politics. It is not likely to be abandoned at the first sign of change in the power structure in Havana. Indeed, the U.S. Congress has prescribed the necessary legal steps to suspend the embargo with the enactment of the Libertad Act of 1996, which codified the embargo as in effect on March 1, 1996. Termination of the embargo will, accordingly, require the submission of a determination by the President to the appropriate congressional committee that either a transitional government or a democratically elected government in Cuba is in power. Only following such a determination may the President proceed with the actual implementation of lifting or relaxation of the embargo. In actual practice, however, a phased relaxation and lifting, calibrated in accordance with the actual or perceived developments in Cuba, is most likely.

If the post-Fidel Castro regime takes some concrete steps so as to qualify as a "transition government," by demonstrating a credible willingness to move in a direction that Washington approves of, or reveals a seriously weakened control on the government, the U.S. Government could reward or exploit such developments by several changes in the embargo, such as, relaxation of the travel restrictions, possible relaxation of restrictions on personal remittances, expanded cultural exchanges and humanitarian assistance, simplification and streamlining of export procedures for food, medicine, and a more liberally defined category for humanitarian goods. The rest of the embargo would likely remain in place at this early stage.

In the event of an actual regime change followed by the complete fall of the Communists from power, or the coming to power of a coalition government in which there is a broad and genuine participation by all elements, the embargo against Cuba is likely to be further, but not completely lifted. At such a stage, the blocking of Cuban Government assets is likely to be maintained to preserve them as a source of compensation for confiscated property, to pay commercial claims of third parties against Cuba, and if

anything is left, later to release the balance to the new Cuban government. It is also likely, at this stage, that private Cuban nationals and their properties will be unblocked, but that the property of former Communist government and party officials will remain blocked. These individuals will be specifically named and placed on the list of other blocked persons against whom OFAC continues to maintain sanctions and transactions with them will remain prohibited. Exports will likely to be freed from sanctions restrictions at this later stage. As conditions warrant, import restrictions involving Cuba will be lifted and Cuba will likely be granted GSP status (General System of Preferences, granted to developing countries) as well as eligibility under other categories for the duty free status of most of its products.

The greatest prize of the lifting of the embargo will be the opening up of Cuba for direct U.S. investment. Real estate and infrastructure development, hotels, tourism, rum, tobacco, minerals such as oil and nickel will be among the opportunities, and pre-Castro U.S. investors in Cuba will likely want to return to their confiscated properties. However, before this final and happy stage is reached, political change in Cuba is required. The U.S. embargo of Cuba will be relaxed and ultimately lifted as warranted by political developments in Cuba.

For U.S. companies interested in Cuba, Mr. Castro's apparent declining health dictates keeping a close and informed watch over unfolding events and corresponding changes in the embargo.

For more information specifically with respect to the US embargo against Cuba, or with respect to economic sanctions more generally, including preparation for post-sanctions situations, please contact:

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