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House Committee on Foreign Affairs
March 15, 2016
“Trade With Cuba: Growth and Opportunities”

Thank you, Mr. Chairman, Ranking Member and Members of the Committee.

It's truly a privilege to join you here today to discuss important and consequential issues surrounding U.S. trade policy towards Cuba. I particularly appreciate being given the opportunity to be the sole dissenting voice in this panel, as free expression is a right enjoyed by 34-of-35 nations in this Western Hemisphere, with only one exception – Cuba.

My name is Mauricio Claver-Carone and I'm the Executive Director of Cuba Democracy Advocates, a non-profit, non-partisan organization dedicated to the promotion of human rights, democracy and the rule of law in Cuba.

Obama's Policy Changes Have Proven Counter-Productive

As you are aware, pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000 ('TSREEA'), the sale of agricultural commodities, medicine and medical devices to the *Castro regime* in Cuba was authorized by Congress, with one important caveat – these sales must be for cash-in-advance. Prior to that, the export of food, medicine and medical devices to the *Cuban people* had been authorized under the Cuban Democracy Act of 1992 ('CDA'). I, for one, have no problem with taking cash *away* from the Castro regime. That is not a point of contention in this hearing. It's the consequences of expanding cash-in-advance sales to bilateral trade, financing and investment – in other words, *flushing* the Castro regime with cash – that should concern us all.

For years we've heard how an improvement in U.S.-Cuba relations, an easing of sanctions and an increase in travel to the island, would benefit U.S. farmers. Well, since December 17th, 2014, the Obama Administration has engaged the Castro regime and has provided a litany of unilateral policy concessions.

As part of these concessions, the Obama Administration eased payment terms for agricultural sales; American travel to Cuba increased by over 50%; Cuba's GDP grew by over 4%; diplomatic relations were established; and endless U.S. business and trade delegations have visited Havana.

Thus, surely U.S. agricultural sales to Cuba would have grown exponentially, right?
Wrong.

U.S. agricultural exports to Cuba *plummeted* by nearly 40% in 2015. In August alone, the value of U.S. agricultural exports dropped 84% to \$2.25 million from \$14.30 million in 2014. That's one of the lowest numbers since the United States authorized agricultural exports to the Castro regime in 2000.

And that's not the only counter-productive result of President Obama's policy of unilateral easing sanctions in December 2014. Additionally:

- **Political arrests have intensified.** Throughout 2015, there were more than 8,616 documented political arrests in Cuba. In November alone there were more than 1,447 documented political arrests, the highest monthly tally in decades. Those numbers compare to 2,074 arrests in 2010 and 4,123 in 2011.
- **A new Cuban migration crisis is unfolding.** The United States is faced with the largest migration of Cuban immigrants since the rafters of 1994. The number of Cubans entering the United States in 2015 was nearly *twice* that of 2014. Some 51,000 Cubans last year entered the United States; tens of thousands more are desperately trying to make the journey, via Ecuador and other South and Central American countries. When President Obama took office, the numbers were less than 7,000 annually.
- **The number of "self-employed" workers in Cuba has decreased.** The Cuban government today is licensing 10,000 fewer "self-employed" workers than it did in 2014. In contrast, Castro's military monopolies are expanding at record pace. The Cuban military-owned tourism company, Gaviota S.A., announced 12% growth in 2015 and expects to double its hotel business this year. Even the limited spaces in which "self-employed" workers previously operated are being squeezed as the Cuban military expands its control of the island's travel, retail and financial sectors of the economy.
- **Internet "connectivity ranking" has dropped.** The International Telecommunication Union's (ITU) Measuring the Information Society Report for 2015, the world's most reliable source of data and analysis on global access to information and communication. ITU has dropped Cuba's ranking to 129 from 119. The island fares much worse than some of the world's most infamous suppressors of the Internet suppressors, including Zimbabwe (127), Syria (117), Iran (91), China (82) and Venezuela (72).
- **Religious freedom violations have increased tenfold.** According to the London-based NGO, Christian Solidarity Worldwide ('CSW'), last year 2,000 churches were declared illegal and 100 were designated for demolition by the Castro regime. Altogether, CSW documented 2,300 separate violations of religious freedom in 2015 compared to 220 in 2014.
- **Castro reneged on the release of political prisoners and visits by international monitors.** Most of the 53 political prisoners released in the months prior and after Obama's December 2014 announcement have since been re-arrested on multiple occasions. Five have been handed new long-term prison sentences. Meanwhile, Human Rights Watch noted in its new 2016 report, "*Cuba has yet to allow visits to the island by the International Committee of the Red Cross or by U.N. human rights monitors, as stipulated in the December 2014 agreement with the United States.*"

You may ask – what do these facts and figures on political, civil and economic rights have to do with trade with Cuba? The answer is: *Everything* -- because the Castro regime is the only client/business partner for foreign companies in Cuba.

The Reality of Doing Business in Cuba

In order to have an honest debate about trade and tourism sanctions on Cuba, it's important to understand how that totalitarian regime conducts business.

First and foremost, from an economic perspective, the very concept of trade and investment in Cuba is grounded in a misconception about how "business" takes place on the island. In most of the world, trade and investment means dealing with privately-owned or operated corporations. That's not the case in Cuba. In Cuba, foreign trade and investment is the exclusive domain of the state, i.e. Fidel and Raul Castro. There are no "exceptions."

Here's a notable fact: In the last five decades, *every* single "foreign trade" transaction with Cuba has been with a state entity, or individual acting on behalf of the state. The state's exclusivity regarding trade and investment was enshrined in Article 18 of Castro's 1976 Constitution.

The state's exclusivity extends also to what the rest of the world considers to be "humanitarian" transactions. Since the passage of TSREEA in 2000, nearly \$5 billion in U.S. agricultural and medical products have been sold to Cuba. It is an unpleasant fact, however, that all those sales by more than 250 privately-owned U.S. companies were made to *only one* Cuban buyer, the Castro government.

As the U.S. Department of Agriculture's own report on Cuba notes, "*The key difference in exporting to Cuba, compared to other countries in the region, is that all U.S. agricultural exports must be channeled through one Cuban government agency, ALIMPORT.*"

Therefore, it should be no surprise then that these U.S. products end up with huge price mark-ups, on the shelves of the stores set up by the Castro regime that only accept "hard currencies," such as the U.S. dollar or Euro. These are stores where mostly tourists shop. Little of the food or medicine is made available to Cuba's general population.

This being the case with the sale of U.S. food and medicine, try imagining the disproportionate benefit the Cuban regime has derived from three decades of unfettered trade with the Soviet bloc, or the billions in European and Canadian trade and investment in the Cuban state since the collapse of the Soviet Union in 1991. There is not a shred of evidence to suggest any of the benefits got beyond the Castro regime.

Hence we already know what lifting sanctions towards Cuba would look like. TSREEA sales from the U.S. and business ventures with other nations exhibit the

model: A mercantilist system whereby commerce is simply a tool to benefit and strengthen Cuba's totalitarian regime.

The dominant force in Cuba's economy is the armed forces' holding company, called GAESA. Founded by Raul Castro in the 1990s, GAESA controls a wide array of companies, ranging from the very profitable Gaviota S.A., which runs the island's tourist hotels, restaurants, car rentals and nightclubs, to TRD Caribe S.A., which runs all retail operations. In plain words: GAESA controls virtually every economic transaction in Cuba, making it -- by far -- the most powerful company in Cuba's totalitarian-command economy. It is run by Raul's son-in-law, General Luis Alberto Rodríguez Lopez- Callejas.

GAESA is the largest hotel company in Latin America. It controls more hotel rooms than the Walt Disney Company. Thus, every tourist that stays at Cuba's famed Hotel Nacional, drinks a mojito at El Floridita and catches a show at The Tropicana, has one thing in common -- contributing to the Cuban military and security services bottom line.

These are the same Cuban armed forces that held a stolen U.S. Hellfire missile for nearly two years; that have recently been caught twice internationally-smuggling heavy weaponry, including the worst sanctions violations ever to North Korea; that oversee the most egregious abuses of human rights in the Western Hemisphere; that are subverting democracy in Venezuela and exporting surveillance systems and technology to other countries in the region; that welcome Russian military intelligence ships to dock in their ports; that share intelligence with the world's most dangerous anti-American regimes; and of which three senior Cuban military officers remain indicted in the United States for the murder of four Americans.

Surely you will hear from my fellow panelists today about Cuba's so-called "self-employment" sector, which some will refer to as the "private sector." First of all, the "self-employment" sector represents a very small part of the island's economy and it is important to understand its nature and limits. During economic crises, the Castro regime typically authorizes a host of services that Cubans can be licensed to provide, keeping at least a portion of what they may be paid. "Private enterprise" implies "private ownership." Yet Cuba's "self-employed" licensees have no ownership rights whatsoever - be it to their artistic or "intellectual" outputs, commodity they produce, or personal service they offer. Licensees have no legal entity (hence business) to transfer, sell or leverage. They don't even own the equipment essential to their self-employment. More to the point, licensees have no right to engage in foreign trade, seek or receive foreign investments. Effectually licensees continue to work for the state -- and when the state decides such jobs are no longer needed, licensees are shut down without recourse.

A central tenet of capitalism is recognition of property rights and it's precisely such rights that the Castro regime avoids through its distorted, licensing model. It's also why, despite these "self-employment" licenses, Cuba remains ranked 177 out of 178 nations in the world in the Index of Economic Freedom, a yearly joint compilation of The Wall Street Journal and The Heritage Foundation. Only North Korea is considered less economically

free. It is not by coincidence that the Magna Carta preceded Adam Smith's Wealth of Nations – *not* vice-versa.

In sum, Cuba is a totalitarian dictatorship, where all business decisions are based on the political and control-based calculations of the Castro regime -- *not* on market forces. If the Cuban people enjoyed property rights to establish their businesses and were allowed to freely partake in foreign trade and investment – my testimony today would be very different.

Protect American Victims of Stolen Property

According to the Inter-American Law Review, the Castro regime's confiscation of U.S. assets was the "*largest uncompensated taking of American property by a foreign government in history.*" Unfortunately, President Obama's policy of expanding business transactions with the Castro regime is already encouraging American companies to traffic and exploit properties stolen from other fellow Americans. Any expansion of such transactions by the U.S. Congress allowing bilateral trade, financing and investments with the Castro regime would further expose American victims. The Castro regime would be all-too-happy to "lease back" property stolen from one group of Americans to another group of Americans. But that would be a miscarriage of justice.

Meanwhile, Obama is denying any recourse, through his waiver of Title III of the 1996 Cuban Liberty and Democratic Solidarity Act ('Libertad'), to Americans who are seeing their property rights trampled upon. If the Obama Administration is unwilling to protect the rights of grieved Americans, then a private right of action should allow for the victims to do so directly through the rule of law.

As such, I would urge the U.S. Congress to pass legislation to end the President's waiver authority over Title III of the Libertad Act and grant Americans the legal standing to pursue justice. Moreover, any effort in the U.S. Congress tied to expanding business transactions with Castro regime -- beyond those currently authorized by statute – should have a mandatory Title III right of action attached to it.

Uphold U.S. Law and International Labor Norms

Lifting U.S. sanctions toward Cuba would also imply foreign investment. All foreign investment in Cuba must be done through minority joint ventures with Castro's military monopolies. Moreover, all workers in Cuba must be hired through the Castro regime's state-employment agency (Grupo Palco, S.A.), which in turn, pockets upwards of 92% of those workers' salaries. Recently, the Obama Administration issued a specific license to an Alabama tractor company (that has never built a tractor), Cleber LLC, to set up operations in the Cuban military's Mariel economic zone. This week, it also reportedly plans to allow Starwood Hotels to partner with the Cuban military to manage previously confiscated hotel properties. These deals are in *direct contravention* of the letter, spirit and intent of current U.S. law, as codified by statute. Regardless of your view of U.S. policy towards Cuba, the Congress should challenge such outright distortions of current

U.S. law by the Obama Administration. Moreover, these deals violate a myriad of international labor covenants, including:

- **Freedom of Association and Protection to Organize Convention** (No. 87) - Article 1(g) of Cuba's Labor Code grants workers “the right to associate themselves voluntarily and establish Unions.” In practice, it is not allowed.
- **Protection of Wages Convention** (No. 05) - Cuba violates this Convention that prohibits deductions from wages with a view to insuring a direct or indirect payment for obtaining or retaining employment made to a state intermediary agency.
- **Right to Organize and Collective Bargaining Convention** (No. 98) - Collective bargaining is non-existent in Cuba.
- **Discrimination (Employment and Occupation) Convention** (No. 111) - By the Castro regime selecting the workers to supply to foreign investors, Cuba does not follow the mandate of equality of opportunity or treatment in employment and occupation.
- **Employment Policy Convention** (No. 122) - Cuba’s policy of selecting who works where, regardless of skills or endowments, and transfers are not the result of the will of the worker.
- **The Universal Declaration of Human Rights** (Article 23) - Nonexistent in Cuba are: the right to work; free choice of employment; just and favorable working conditions; protection against unemployment; the right to equal pay for equal work; just and favorable remuneration; and the right to form and join trade unions.

Conclusion

There are many theories and estimates about how much more money one sector or another can make from conducting business with the Castro regime, if U.S. sanctions towards Cuba were further eased or lifted. Today, you’ll surely hear many of those theories and estimates. However, as we’ve learned from the drastic drop in agricultural sales figures over the last year -- despite the Obama Administration easing sanctions and establishing diplomatic relations with the Castro regime -- that is hardly guaranteed. Moreover, any such theories must be weighed by serious factual considerations regarding the troubling structure of Cuba’s business entities (military-run monopolies), its beneficiaries (the Castro family and regime cronies), the rights of its victims (both Cubans and Americans), and whether such practices are in the U.S.’s national interests.