

POLICY ESSAY

FREE TRADE WITH CUBA NOW

REPRESENTATIVE CHARLES RANGEL*

I. INTRODUCTION

I was in Havana as part of a congressional delegation on December 17, 2014, when President Barack H. Obama announced that Alan Gross, a longtime American detainee in Cuba, would be released. President Obama also announced his intention to take steps toward a historic renewal of our two countries' relations.¹ I saw firsthand the jubilation in the streets of Havana when Cuban President Raúl Castro made a concurrent announcement to the Cuban people.² As a longtime advocate of normalizing relations and ending our embargo, I am confident that we are finally on the road to mending ties, and that this path will lead to new opportunities for the United States throughout the Western Hemisphere.

But continuing in this new direction will require more than executive action—Congress must pass legislation that will lift the embargo, allow free travel and tourism, and promote cultural exchanges. Legislation I have repeatedly reintroduced over the years, including in the current 114th Congress, will accomplish these necessary tasks.

As a longtime representative from New York, I have always cared about our country's relationship with Cuba. New York's metropolitan area is home to the nation's second-largest Cuban community. Normalization could see New York emerge as the largest U.S. trade hub with Havana. But more importantly, the Cuban-American community I represent wants to be secure in their right to visit and support family and friends in Cuba.

In seeking to change America's approach to Cuba, I have met with many different people over the years—from my own constituents of Cuban heritage to both Fidel and Raúl Castro. I have learned a great deal from my conversations with them. Through it all, I am convinced that the Cuban-American community's ties to our island neighbors clearly endure in spite of

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¹ Paige Lavender & Sam Stein, *Obama Speaks On Relations With Cuba, Release of Alan Gross*, HUFFINGTON POST (Dec. 17, 2014, 10:59 PM), http://www.huffingtonpost.com/2014/12/17/obama-cuba_n_6340550.html, archived at <http://perma.cc/2A3X-MW66>.

² *Cuba's Raul Castro announces Alan Gross's release*, USA TODAY (Dec. 17, 2014), <http://www.usatoday.com/videos/news/2014/12/17/20544709>, archived at <http://perma.cc/PJM5-BNK7>.

more than a half century of enforced economic separation and political isolation.

I have also understood that our embargo long ago outlived its usefulness. As such, I have been trying to lift the embargo since 1993, when I first introduced the *Free Trade with Cuba Act*.³ I have repeatedly reintroduced this legislation in subsequent Congresses.⁴ The latest version of the *Free Trade with Cuba Act* reflects the historic new direction set by President Obama.⁵ It recognizes, as we must, that since the fall of the Soviet Union, Cuba is no longer a threat to our hemisphere. The Act is simple: it lifts the embargo, allowing U.S. businesses to engage in trade with Cuba without jumping through bureaucratic hoops designed to defeat or hinder commercial progress.

I have also recently reintroduced two companion bills that take smaller, incremental steps to normalize relations with Cuba. These bills highlight the importance of allowing travel and permitting agricultural and medical exports. The *Export Freedom to Cuba Act of 2015* builds on bipartisan support to lift the decades-old travel restrictions between our two countries.⁶ The U.S. travel ban to Cuba, much like the embargo, simply has not resulted in the changes intended. The *Promoting American Agricultural and Medical Exports to Cuba Act* removes impediments to agricultural and medical trade with Cuba.⁷ Policymakers must realize that there is a growing sense of futility regarding restrictions on trade with Cuba in these sectors. They must recognize the positive impact trade can have on country-to-country and regional relationships, not excluding their congressional districts.

Ultimately, opening up trade with Cuba is good for American businesses. For the last few decades, U.S. businesses have been locked outside of Cuba's \$70 billion economy,⁸ despite the fact that only ninety miles separate the United States and Cuba.⁹ The only threat Cuba poses to our hemisphere is its failure to meet the rightful economic expectations of its citizens and the economic needs of the region. The Cuban gross domestic product is about \$121 billion, which in terms of size is equivalent to New Hampshire's economy. Lifting the embargo will create immediate opportunities for U.S. businesses. Perhaps most importantly, opening trade with Cuba can also increase Cubans' desire for political and social freedom. Combining progress on trade

³ H.R. 2229, 103rd Cong. (1993).

⁴ See, e.g., H.R. 883, 104th Cong. (1995); H.R. 3173, 105th Cong. (1998); H.R. 229, 106th Cong. (2000); H.R. 798, 107th Cong. (2001); H.R. 624, 110th Cong. (2007); H.R. 1530, 111th Cong. (2009); H.R. 1887, 112th Cong. (2011); H.R. 872, 113th Cong. (2013); H.R. 403, 114th Cong. (2015).

⁵ H.R. 403, 114th Cong. (2015).

⁶ H.R. 634, 114th Cong. (2015).

⁷ H.R. 635, 114th Cong. (2015).

⁸ U.S. CENT. INTELLIGENCE AGENCY, THE WORLD FACTBOOK (2014), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/cu.html>, archived at <https://perma.cc/ZG5Q-B2C5>.

⁹ MARK SULLIVAN, CONG. RESEARCH SERV., R43024, CUBA: U.S. POLICY AND ISSUES FOR THE 113TH CONGRESS 2 (2014).

with public diplomacy will facilitate a prosperous relationship between the United States and Cuba.

II. HISTORICAL OVERVIEW

The United States and Cuba have not always had contentious relations. In fact, the United States developed a close economic relationship with Cuba centered on tourism and trade in the period following the Spanish-American War.¹⁰ This relationship ended when Fidel Castro seized control of the country from the brutal dictator General Fulgencio Batista in January 1959.¹¹ After taking power, Castro began to reorient the Cuban government towards socialism.¹² In doing so, he sought out and developed a relationship with the Soviet Union, which then was engaged in a global contest with the United States.¹³ Relations between the United States and Cuba deteriorated rapidly as the Castro government expropriated American properties and moved towards adoption of a one-party communist system.¹⁴

In February 1960, the Soviet Union and the Cuban government engaged in bilateral talks regarding military and economic ties.¹⁵ During these talks, the Soviet Union agreed to buy five million tons of sugar over a five-year period.¹⁶ The Soviet Union also agreed to support Cuba with oil, grain, and credit.¹⁷ Consequently, President Dwight Eisenhower approved a plan that placed substantial embargoes on sugar, oil, and arms trade with Cuba.¹⁸

In June 1960, when American oil companies in Cuba—acting under orders from the Eisenhower Administration—refused to refine oil delivered by the Soviet Union,¹⁹ Castro responded by nationalizing the oil refineries. President Eisenhower in turn reduced the U.S. import quota of Cuban sugar.²⁰ Castro's continued efforts to nationalize American businesses and commercial properties forced the Eisenhower Administration to retaliate with a partial economic embargo on all exports to Cuba in October 1960.²¹ Only food and medicine were excluded from the embargo.²² President Eisen-

¹⁰ Richard R. Fagen, *Cuba and the Soviet Union*, 2 WILSON Q. 69, 69–70 (1978).

¹¹ *Id.* at 70.

¹² Sullivan, *supra* note 9, at 4–5.

¹³ *Id.*

¹⁴ *Id.* at 23; see also *U.S. Relations With Cuba*, U.S. DEP'T OF STATE (Aug. 30, 2013), <http://www.state.gov/r/pa/ei/bgn/2886.htm>, archived at <http://perma.cc/247G-6YKB>.

¹⁵ Sullivan, *supra* note 9, at 72.

¹⁶ *Timeline: Post-Revolution Cuba*, PUB. BROAD. SERV. (Dec. 21, 2004), <http://www.pbs.org/wgbh/amex/castro/timeline/index.html>, archived at <http://perma.cc/5NXV-2LQS>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Fagen, *supra* note 10, at 70.

²⁰ *Timeline: Post-Revolution Cuba*, *supra* note 16.

²¹ Tom Gjelten, *10 Presidents, One Dictator: U.S.-Cuba Policy*, NAT'L PUB. RADIO (Aug. 4, 2006, 7:32 PM), <http://www.npr.org/templates/story/story.php?storyId=5615898>, archived at <http://perma.cc/65QM-8C6L>.

²² Andrew Zimbalist, *The Prospects for U.S.-Cuba Trade*, 20 ECON. AFF. 51, 51 (1978).

hower ultimately severed diplomatic relations with Cuba before he left office in January 1961.²³

Relations between the United States and Cuba did not improve during the Kennedy Administration. Congress passed the *Foreign Assistance Act of 1961*,²⁴ which prohibited U.S. aid to communist countries, including Cuba, and authorized the President to establish a full embargo.²⁵ Acting under this new authority, the Kennedy Administration restricted all trade with Cuba, except for the non-subsidized sale of food and medicine.²⁶ One year later, President John F. Kennedy prohibited U.S. citizens from traveling to Cuba and made it illegal for U.S. citizens to engage in financial and commercial transactions with Cuba.²⁷ The ongoing strife between the United States and Cuba subsequently hit its nadir in April 1961 with the infamous Bay of Pigs invasion and in October 1962 the Cuban Missile Crisis.²⁸ Cuba had indeed become the hemispheric face of the enemy.

From 1959 to 1962, entire generations of Cubans fled to the United States to escape the revolution. Their economic and cultural contributions to the United States have been extraordinary and long-lasting.²⁹ However, as a result of travel restrictions, many have not seen their family or friends for decades.³⁰ These families remain an important voice in the debate over the U.S.-Cuba relationship.

III. DISCUSSION

In the years I have been engaged in this issue, it has become evident that improving relations with Cuba is not only desirable but ultimately inevitable. The world has changed since 1959. The Cold War, which dominated our relationship with Cuba, is over. Free trade with countries all over the world has been a policy priority of successive Republican and Democratic Administrations.³¹ The opportunities outweigh any rationale for perpetuating

²³ Gjelten, *supra* note 21.

²⁴ Foreign Assistance Act of 1961, Pub. L. No. 87-195, 75 Stat. 424.

²⁵ AMNESTY INT'L, THE U.S. EMBARGO AGAINST CUBA: ITS IMPACT ON ECONOMIC AND SOCIAL RIGHTS 7-8 (2009), available at <http://www.amnestyusa.org/pdfs/amr250072009eng.pdf>, archived at <http://perma.cc/AH4W-VKUG>.

²⁶ *Timeline: Post-Revolution Cuba*, *supra* note 16.

²⁷ Proclamation No. 3447, 27 Fed. Reg. 1065 (Feb. 3, 1962).

²⁸ *Timeline: Post-Revolution Cuba*, *supra* note 16.

²⁹ *Cuban Exiles in America*, PUB. BROAD. SERV. (Dec. 21, 2004), http://www.pbs.org/wgbh/amex/castro/peoplevents/e_exiles.html, archived at <http://perma.cc/J9Z6-UQGE>.

³⁰ See generally HUMAN RIGHTS WATCH, FAMILIES TORN APART: THE HIGH COST OF U.S. AND CUBA TRAVEL RESTRICTIONS (2005), available at <http://www.hrw.org/sites/default/files/reports/cuba1005.pdf>, archived at <http://perma.cc/8742-5968>.

³¹ See *President Obama to Sign Korea, Panama, Colombia Free Trade Agreements and Trade Adjustment Assistance*, OFFICE OF THE PRESS SEC'Y, THE WHITE HOUSE (Oct. 18, 2011), available at <http://www.whitehouse.gov/the-press-office/2011/10/18/president-obama-sign-korea-panama-colombia-free-trade-agreements-and-tra>, archived at <http://perma.cc/Q5ZW-V8HG>; THE WHITE HOUSE, PRESIDENT BUSH EXPANDED AND ENFORCED TRADE AGREEMENTS TO OPEN NEW MARKETS FOR AMERICAN PRODUCTS, available at <http://georgewbush-white>

Cuba's economic and social isolation. The natural inclination of people to be free and to engage with others demands that we move forward.

However, transcending decades of history, attitudes, and assumptions is never easy. While a broad majority (60%) of Americans support ending the embargo, a recent Associated Press-GfK poll found that on the question of normalizing diplomatic relations, 45% support and 15% oppose, with others having no view at all.³² Many people need to recognize how much our countries have evolved over the last five decades, and see the potential opportunities that exist.

Viewed through the lens of party affiliation, Republicans appear to be evenly split on the embargo. According to the Associated Press-GfK poll, 49% of Republicans want the embargo lifted, with 50% signaling that it should remain in place. On mending diplomatic relations, 34% are in favor and 30% are opposed, with the rest undecided. Democrats participating in the poll strongly favored eliminating the embargo as well as restoring full diplomatic relations.³³

These poll results echo much of the debate heard in Congress since President Obama's December 2014 announcement. Those who are in favor of keeping the embargo in place believe that it pressures the Cuban government to provide human rights and democracy.³⁴ They point out that the Cuban people have not had a free and fair election in the last fifteen years.³⁵ Yet this does not justify the embargo in place. On the contrary, the lack of progress only demonstrates that U.S. policy towards Cuba has not worked. The embargo has not pressured the Cuban government to provide fair elections. More fundamentally, U.S. policy for the last fifty years has failed to secure the level of human rights America hopes to see in Cuba.³⁶ In short, the embargo has not successfully pressured Cuba to change.

Human rights and democracy are worthy of support in every society. But neither survives very well in societies burdened by extended poverty. Cubans naturally desire access to a better life and opportunities that for too long have not existed in their country. Lifting the embargo and opening our doors can help provide these opportunities through tourism and various ex-

house.archives.gov/infocus/bushrecord/factsheets/tradeagreements.html (last visited Apr. 6, 2015), archived at <http://perma.cc/232L-96RP>.

³² Bradley Klapper & Emily Swanson, *AP-GfK Poll: US will back dissidents in Cuba; poll shows support for thaw*, ASSOCIATED PRESS (Feb. 4, 2015), <http://ap-gfkipoll.com/featured/findings-from-our-latest-poll-12>, archived at <http://perma.cc/8B3S-5LA2>.

³³ *Id.*

³⁴ Victoria Burnett & William Neuman, *Sudden U.S. Thaw Worries Cuban Dissidents*, N.Y. TIMES, Dec. 26, 2014, <http://www.nytimes.com/2014/12/27/world/americas/sudden-us-thaw-worries-cuban-dissidents.html>, archived at <http://perma.cc/PT6V-S5YU>.

³⁵ Suzanne Gamboa, *Sen. Marco Rubio Pushes Against Obama's Cuba Changes in Hearing*, NBC NEWS (Feb. 3, 2015), <http://www.nbcnews.com/news/latino/sen-marco-rubio-pushes-against-obamas-cuba-changes-hearing-n299431>, archived at <http://perma.cc/2FX4-XKP9>.

³⁶ U.S. DEP'T OF STATE, CUBA 2013 HUMAN RIGHTS REPORT (2013), available at <http://www.state.gov/documents/organization/220646.pdf>, archived at <http://perma.cc/R5L4-2CTX>.

changes. Further, as Cubans become more familiar with freedom, they may demand more of it from their government.

Finally, it has hurt the image of the United States around the world to have maintained an incoherent economic policy towards Cuba, particularly as we engage in trade with other communist countries. The purpose of the embargo was to cripple a communist regime.³⁷ However, the Castro family remains in power, and Cuba now engages with the rest of the world. Most of the world's regions, including Asia, Africa and Latin America, actively trade with Cuba, or plan to. China is now Cuba's biggest trading partner,³⁸ followed by the European Union ("EU"),³⁹ which also accounts for approximately one third of all tourists visiting Cuba every year.⁴⁰ Clearly, other countries are doing business with Cuba and we are not. It would serve our country's best interests to lift the embargo and move forward with normalization.

A. *The President's Executive Action*

In his December announcement, President Obama set forth the key components necessary to start normalizing our relationship with Cuba.⁴¹ He announced changes in diplomatic relations, including the establishment of a full embassy in Havana to replace an Interest Section, and the initiation of high-level exchanges as part of the normalization process.⁴² With enhanced diplomatic ties the United States will continue to emphasize improving human rights conditions and democratic reforms. The United States will focus on key issues of mutual concern, including migration, counter-narcotics efforts, anti-trafficking efforts, and environmental protections.⁴³ The President also will direct the Treasury and Commerce Department to make necessary changes to regulations.⁴⁴ And the President will direct the Secretary of State to launch a review, due in mid-2015, of Cuba's 1982 designation as a

³⁷ Michael J. Totten, *Letter from Cuba: To Embargo or Not*, WORLD AFFAIRS (Mar./Apr. 2014), <http://www.worldaffairsjournal.org/article/letter-cuba-embargo-or-not>, archived at <http://perma.cc/8VN3-BENS>.

³⁸ Patricia Ray Mallén, *China And Cuba: Skip the Ideology, Let's Talk About Money*, INT'L BUS. TIMES (Apr. 24, 2014, 3:28 PM), <http://www.ibtimes.com/china-cuba-skip-ideology-lets-talk-about-money-1575560>, archived at <http://perma.cc/8N76-HL57>.

³⁹ *EU Relations with Cuba*, EUROPEAN UNION EXTERNAL ACTION, http://eeas.europa.eu/cuba/index_en.htm, archived at <http://perma.cc/KQ5K-UJ7X> (last visited Apr. 6, 2015).

⁴⁰ *Id.*

⁴¹ *Statement by the President on Cuba Policy Changes*, OFFICE OF THE PRESS SEC'Y, THE WHITE HOUSE (Dec. 17, 2014, 12:01 PM), available at <http://www.whitehouse.gov/the-press-office/2014/12/17/statement-president-cuba-policy-changes>, archived at <http://perma.cc/3895-H598>.

⁴² *FACT SHEET: Charting a New Course on Cuba*, OFFICE OF THE PRESS SEC'Y, THE WHITE HOUSE (Dec. 17, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/12/17/fact-sheet-charting-new-course-cuba>, archived at <http://perma.cc/B8JG-VH85>.

⁴³ *Id.*

⁴⁴ *Id.*

state sponsor of international terrorism—a designation that brings with it extensive restrictions on trade and financial transactions.⁴⁵

President Obama also announced expansion of approved travel by U.S. citizens to Cuba to include official government business, journalism, professional research, education, religious activities, public performances (including athletic events), and humanitarian efforts.⁴⁶ He announced expanded approvals of private foundation or research or educational institution activities, the transmission of information or information materials, and some export transactions that may be considered for authorization under existing regulations and guidelines.⁴⁷ Additionally, President Obama announced new policies to allow U.S. citizens to send more in financial remittances to their families in Cuba and to engage in other currently prohibited transactions. These include:

- Eliminating the license requirement and increasing the amount that U.S. citizens can give to Cubans related to humanitarian projects, support for the Cuban people, and support for the development of private business projects;
- Eliminating the requirement that remittance forwarders hold a specific license permitting the creation of correspondent accounts at Cuban financial institutions to facilitate authorized transactions;
- Revising regulations to permit more efficient financing of authorized trade; and
- Permitting U.S. citizens traveling to Cuba to use U.S. credit and debit cards.⁴⁸

President Obama also set forth new policies that will help expand commercial sales and exports of products from the United States to Cuba. Specific exports encouraged by the Administration include building materials for private residential construction, goods for use by Cuban entrepreneurs; and agricultural equipment for small farmers.⁴⁹ President Obama will also increase the value of Cuban goods travelers can bring into the United States to \$400 (but not more than \$100 in alcohol and tobacco products).⁵⁰ The announcement also included actions easing exports of communications products from the United States to Cuba. These products include devices, software, applications, hardware, services, and items for the establishment and update of systems.⁵¹ The President will permit telecommunications prov-

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

iders to establish infrastructure in Cuba for the commercial provision of telecom and internet services.⁵²

Finally, President Obama announced plans to relax the financial impact of the embargo. He intends to do so by allowing U.S.-owned or controlled entities to provide services to and engage in banking transactions with Cubans residing in third countries; permitting the unblocking of U.S. bank accounts of Cuban nationals who have relocated outside of Cuba; permitting U.S. persons to participate in third-country professional meetings and conferences related to Cuba; and allowing foreign vessels to enter U.S. ports after engaging in humanitarian trade with Cuba.⁵³ Overall, the President's Executive Action on Cuba will allow the United States and its citizens to enjoy every aspect of an open relationship with the Island, which means U.S. citizens can engage with Cubans without constraints. It would ultimately renew the ties between our two nations and improve the quality of life for Cubans.

B. Legislation Needed

While some of the President's initiatives can be accomplished through the Executive Branch, most of them will require congressional action. My bills are consistent with the key components of the announcement made by the White House in January 2015,⁵⁴ and make the necessary changes to laws to achieve our shared goals. These bills will move our country towards full economic and diplomatic relations with Cuba.

1. Free Trade with Cuba Act

The *Free Trade with Cuba Act* starts with a congressional finding that Cuba is no longer a threat to the United States or the Western Hemisphere and that the continuation of the embargo is "counterproductive." Further, Congress finds that the United States is currently using economic, cultural, academic, and scientific engagement to promote democracy and human rights from China to Vietnam and to countries in the former Eastern Bloc.⁵⁵ These elements cannot be a barrier to engaging with Cuba.

The *Free Trade with Cuba Act* makes necessary changes to existing laws in order to lift the embargo, and to relieve sanctions on Cuba or on those trading with Cuba. Specifically, these changes include:

- Removing the authority conferred on the President by Section 5(b) of the *Trading with the Enemy Act* as it applies to Cuba (and any regula-

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *FACT SHEET: Treasury and Commerce Announce Regulatory Amendments to the Cuba Sanctions*, U.S. DEPT OF THE TREASURY (Jan. 1, 2015), <http://www.treasury.gov/press-center/press-releases/Pages/jl9740.aspx>, archived at <http://perma.cc/7B64-W9N6>.

⁵⁵ H.R. 403, 114th Cong. § 2 (2015).

tions issued pursuant to that statute) and the prohibitions on exports to Cuba under the *Export Administration Act of 1979*;⁵⁶

- Repealing the *Cuban Democracy Act of 1992*, which threatens countries that provide assistance to Cuba with the loss of U.S. foreign assistance or the benefit of sales under the *Arms Export Control Act*, and the *Cuban Liberty and Democratic Solidarity (“LIBERTAD”) Act of 1996*, otherwise known as the Helms-Burton Act, which codified the embargo on Cuba and imposed sanctions against citizens of foreign countries caught “trafficking” in U.S.-claimed property confiscated by Cuba;⁵⁷ and
- Repealing the prohibition on transactions or payments to and from Cuba regarding certain intellectual property, the denial of the Foreign Tax credit to U.S. citizens earning income in Cuba, and the prohibition on sugar imports from Cuba found in the *Food Security Act of 1985*.⁵⁸

The *Free Trade with Cuba Act* also accomplishes several important goals by repealing laws that prohibit trade, commerce and travel between our two countries. In their place, the *Free Trade with Cuba Act* promotes trade, commerce, travel, and communications, as well as cultural, academic, and scientific exchanges between the United States and Cuba. The Act permits U.S. telecommunications providers to install, maintain and repair telecommunications equipment and facilities in Cuba, and otherwise provide telecommunications services between the United States and Cuba.⁵⁹ The Act also authorizes the U.S. Postal Service to take such actions as necessary to provide direct mail service to and from Cuba.⁶⁰ And the Act makes traveling to and from Cuba the equivalent of travel in the United States.⁶¹ Finally, the *Free Trade with Cuba Act* urges the President to “take all necessary steps” to conduct negotiations with the Cuban government to settle claims of U.S. nationals regarding property previously taken, and to secure the protection of internationally recognized human rights.⁶²

While the passage of the *Free Trade with Cuba Act* would drastically lift barriers between Cuba and the United States, I have supported two other specific measures to stress the significance of people-to-people interaction and the importance of medical and agricultural exchange. These measures are discussed below.

⁵⁶ H.R. 403, 114th Cong. § 3 (2015). The bill also provides the President with the authority to impose new restrictions and export controls if a declaration of a national emergency is made on account of an unusual and extraordinary threat to our national security related to Cuba.

⁵⁷ *Id.* Both the *Cuban Democracy Act of 1992* and *LIBERTAD Act of 1996* greatly offend our allies around the world who view these laws as counter to the spirit of international law and sovereignty.

⁵⁸ *Id.*

⁵⁹ H.R. 403, 114th Cong. § 4 (2015).

⁶⁰ H.R. 403, 114th Cong. § 6 (2015).

⁶¹ H.R. 403, 114th Cong. § 5 (2015).

⁶² H.R. 403, 114th Cong. § 7 (2015).

2. *The Export Freedom to Cuba Act of 2015*

American presidents since the Kennedy Administration have recognized the value of cultural exchange programs, largely because these programs are one of the most effective foreign policy tools the United States has at its disposal.⁶³ The U.S. Department of State's International Visitors Leadership Program is a prime example of the significant contributions our people-to-people exchanges have made to the international community.⁶⁴ The program allows short-term visits to the United States for current and emerging foreign leaders in a variety of fields, and participants have the opportunity to experience the United States firsthand and cultivate lasting friendships with their American counterparts. Since the program's inception in 1940, nearly 335 alumni of this program have later become heads of foreign governments, including former British Prime Ministers Margaret Thatcher, Tony Blair, and Gordon Brown, former Indian Prime Minister Indira Gandhi, former Ghanaian President John Kufuor, and former Mexican President Felipe Calderon.⁶⁵ The program was instrumental in introducing these leaders to American culture and building future relations between the United States and their respective nations. We must encourage these types of exchanges in order to promote awareness of American values and foster important and future relationships with Cuba.

The *Export Freedom to Cuba Act of 2015* would foster such exchanges by providing for the right to travel.⁶⁶ The United States has for too long used restrictions on travel to isolate Cuba and to curtail valuable people-to-people programs. These types of programs enhance cross-cultural relations between countries and are regarded as forms of smart cultural diplomacy. Specifically, people-to-people exchanges are useful in promoting a mutual understanding and deeper connection between Americans and Cubans. It is apparent that across the globe, nations that invest in cultural diplomacy are better positioned to reap the rewards of the information age.⁶⁷ With rapid advances in the disciplines of science, technology, engineering, and mathematics, closer dialogues and partnerships between our countries on telecommunications and the Internet will be critical in strengthening both of our economies.

⁶³ *History and Mission of ECA*, BUREAU OF EDUC. AND CULTURAL AFFAIRS, U.S. DEP'T OF STATE, <http://eca.state.gov/about-bureau/history-and-mission-eca>, archived at <http://perma.cc/KC6K-ZBGP> (last visited Apr. 6, 2015).

⁶⁴ *About IVLP*, BUREAU OF EDUC. AND CULTURAL AFFAIRS, U.S. DEP'T OF STATE, <http://eca.state.gov/ivlp/about-ivlp>, archived at <http://perma.cc/BS5P-Q28G> (last visited Apr. 6, 2015).

⁶⁵ Jon Kelly, *How do you spot a future world leader?*, BBC NEWS (Mar. 29, 2011, 11:29 AM), <http://www.bbc.co.uk/news/magazine-12880901>, archived at <http://perma.cc/PTJ6-WWU8>.

⁶⁶ H.R. 634, 114th Cong. (2015).

⁶⁷ Joshua W. Walker & Daniel Gaynor, *Smarter Diplomacy: Doubling Down on People-to-People*, THE DIPLOMAT (Mar. 14, 2014), <http://thediplomat.com/2014/03/smarter-diplomacy-doubling-down-on-people-to-people/>, archived at <http://perma.cc/H7Z7-BL7U>.

Encouraging U.S. volunteers to engage with Cuba, which the Act would do, will also reap economic rewards. According to a study conducted a decade ago by the Center for Social Development at Washington University in St. Louis, the global value of U.S. volunteers was in the range of \$3 billion.⁶⁸ This figure—calculated using data provided in the Current Population Survey volunteer supplement of the U.S. Bureau of the Census—demonstrates the economic benefits to countries and communities receiving international volunteers from the United States.⁶⁹ Approximately one million volunteers from the United States devote their time to international service projects annually, but this energy has been denied to Cuba over the years.

The Act would promote people-to-people interactions for students in secondary and postsecondary student exchanges. Student exchanges allow young adults and collegiate students to travel to other countries, engage in new cultures, and learn about the governance of other nations. They also generate revenues for the host country. While the economic value of these exchanges is more challenging to measure, such exchanges undeniably benefit domestic economies including ours. According to the 2014 Open Doors Report on International Educational Exchange, international students' spending in all 50 states contributed more than \$27 billion to the U.S. economy in 2013, according to the U.S. Department of Commerce.⁷⁰

Our policy regarding travel to Cuba has been inconsistent over the last half century. Open travel by U.S. citizens to Cuba effectively ended when the Kennedy Administration imposed the embargo in 1962.⁷¹ During the five-year period from 1977 to 1982, the Carter Administration removed all restrictions on travel.⁷² The Reagan Administration reversed this policy, reverting back to the policy in place during the 1960s.⁷³ The Clinton Administration, by contrast, permitted Cuban families living in the United States to travel to Cuba (with some restrictions) and allowed other U.S. residents to travel to Cuba for various purposes.⁷⁴ The George W. Bush Administration imposed new restrictions in 2004 on family travel and prohibited private humanitarian assistance to Cuba in the form of remittances and gift parcels.⁷⁵

⁶⁸ Amanda Moore McBride, Benjamin J. Lough & Margaret Sherrard Sherraden, *Perceived Impacts of International Service on Volunteers: Interim Results from a Quasi-Experimental Study*, GLOBAL ECON. & DEV. AT BROOKINGS & WASHINGTON UNIV. IN ST. LOUIS CTR. FOR SOC. DEV. (2010), available at http://www.brookings.edu/~media/Research/Files/Opinions/2011/12/06%20youth%20volunteers%20colombia%20caprara/0621_volunteering_mcbride, archived at <http://perma.cc/4D3U-6NHN>.

⁶⁹ *Id.*

⁷⁰ *Open Doors 2014: International Students in the United States and Study Abroad by American Students are at All-Time High*, INST. OF INT'L EDUC, (Nov. 17, 2014), available at <http://www.iie.org/en/Who-We-Are/News-and-Events/Press-Center/Press-Releases/2014/2014-11-17-Open-Doors-Data>, archived at <http://perma.cc/R7NP-UDBN>.

⁷¹ MARK SULLIVAN, CONG. RESEARCH SERV., RL31139, CUBA: U.S. RESTRICTIONS ON TRAVEL AND REMITTANCES 10 (2014).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 10–11.

⁷⁵ Sullivan, *supra* note 71 at 11–12.

President Bush also prohibited travel for licensed people-to-people educational exchanges, which had been previously allowed by the Clinton Administration.⁷⁶ In 2009, Congress reinstated the Clinton-era policy on family travel and later that year, President Obama lifted all restrictions on family travel.⁷⁷

Currently existing restrictions on travel to Cuba diminish potential benefits both to the United States and Cuba. Such restrictions are difficult to justify today, in the absence of Cold War foreign policy conditions. Limiting travel hinders the exchange of culture and information central to the development of mutual understanding. It helps perpetuate poor economic conditions by denying potential influx of visitor, volunteer, or exchange student expenditures. Travel restrictions are also anachronistic—U.S. citizens are permitted to freely travel to other nations with communist or authoritarian governments, but not to Cuba. These restrictions should be lifted, as I have proposed in the *Export Freedom to Cuba Act of 2015*.⁷⁸

I introduced the *Export Freedom to Cuba Act of 2015* as a stand-alone bill, rather than part of the *Free Trade with Cuba Act*, because travel would generate important economic benefits for the U.S. and Cuba, and our policy regarding Cuba is outdated.⁷⁹ Perhaps more importantly, travel is a fundamental right that should not be infringed upon without extraordinary cause. The volume of travel between the United States and Cuba is also a good barometer of the health of our relationship. However, not everyone in Congress shares my view. Some have even proposed legislation that would deny the Treasury Department funds to license people-to-people travel to Cuba, but I believe these programs provide benefits for both of our economies and these gains should not be ignored.⁸⁰

3. *The Promoting American Agricultural and Medical Exports to Cuba Act of 2015*

Another stand-alone bill I introduced, the *Promoting American Agricultural and Medical Exports to Cuba Act of 2015*,⁸¹ removes impediments to agricultural and medical products trade with Cuba and dovetails well with the expanded travel policy promoted by the *Export Freedom to Cuba Act*. Expanded travel to Cuba will increase demand for U.S. agricultural products in Cuba, especially for high-end food products favored by tourists.⁸²

⁷⁶ *Id.* at 12–13.

⁷⁷ *Id.* at 13–14.

⁷⁸ H.R. 634, 114th Cong. (2015).

⁷⁹ *Id.*

⁸⁰ Sullivan, *supra* note 71 at 9–10; *see also* H.R. 2786, 114th Cong. (2015).

⁸¹ H.R. 635, 114th Cong. (2015).

⁸² Mario A. Gonzalez-Corzo & Armando Nova Gonzalez, *U.S. Agricultural Exports to Cuba: Composition, Trends, and Prospects for the Future*, CHOICES, <http://www.choicesmagazine.org/choices-magazine/submitted-articles/us-agricultural-exports-to-cuba-composition-trends-and-prospects-for-the-future>, archived at <http://perma.cc/PS88-5RGK> (last visited Apr.

In spite of the embargo, the United States currently ranks fifth in the world as an exporter of agricultural products to Cuba (behind Venezuela, China, Spain and Brazil), with an annual total value of \$358 million.⁸³ As recently as 2008, agricultural exports to Cuba have been as high as \$710 million.⁸⁴ But our engagement can and should be increased. Recent statistics pale by comparison to the situation that existed prior to the 1961 embargo, when the United States imported 60% of Cuba's sugar production⁸⁵ and Cuba consumed a major portion of U.S. rice production.⁸⁶ With expanded trade opportunities, the U.S. agricultural community expects sales to increase to more than \$1 billion annually.

A significant barrier to the export of medicines and medical devices is removed by the Act through the elimination of onsite verifications of each export,⁸⁷ which is required by the *Cuban Democracy Act of 1992*.⁸⁸ This unnecessary regulatory requirement, which solely applies to exports of medicines and medical devices intended for Cuba, has succeeded in slowing such exports and making them more expensive. Given the direct or indirect effects of the embargo, even the most routine medical supplies are in short supply or entirely absent from some Cuban medical clinics. For these concerns and a variety of reasons, the *Cuban Democracy Act of 1992* should be repealed. The United States could emerge as a major exporter of medical devices to Cuba if the onsite verification regulations are withdrawn because Cuba is heavily reliant on medical device imports.⁸⁹ With the embargo in place, the Cuban medical device market, which is already the smallest in the Americas region, is forecast to have the third lowest growth rate in the region from 2013 to 2018.⁹⁰

The *Promoting American Agricultural and Medical Exports to Cuba Act of 2015* establishes an export promotion program with Cuba, supported by a \$1 increase in the federal airline ticket tax for travel to and from Cuba.⁹¹

1, 2015) (“[T]he expansion of international tourism, including American visitors in the not too distant future, will also contribute to increases in Cuba’s demand for food and agricultural imports.”).

⁸³ Jennifer M. Harris, *The Winners of Cuba’s ‘New’ Economy*, FORTUNE (Jan. 14, 2015, 4:37 PM), <http://fortune.com/2015/01/14/the-winners-of-cubas-new-economy/>, archived at <http://perma.cc/VZ2S-5DPW>.

⁸⁴ Robert Giblin, *U.S. and Cuba Will Benefit from Expanded Trade*, AM. FARM BUREAU FED’N (Jan. 28, 2015), <http://www.fb.org/index.php?action=newsroom.focus&id=188>, archived at <http://perma.cc/59LQ-PBWW>.

⁸⁵ *U.S. Sugar Subsidies and the Caribbean’s Sugar Economies*, COUNCIL ON HEMISPHERIC AFFAIRS (July 31, 2013), www.coha.org/u-s-sugar-subsidies-and-the-caribbeans-sugar-economies/, archived at <http://perma.cc/65SV-GEFG>.

⁸⁶ Jorge Salazar-Carrillo & David R. Ebro, *The Cuban Economy as Seen Through its Trading Partners*, FLA INT’L UNIV. 15 (Dec. 4, 2004), <http://economics.fiu.edu/research/occasional-papers-1/2004/04-12/04op-01.pdf>, archived at <http://perma.cc/CUD9-UYJM>.

⁸⁷ See H.R. 635, 114th Cong. § 8 (2015).

⁸⁸ 22 U.S.C. § 6004 (2012).

⁸⁹ *The Medical Device Market*, ESPICOM (Dec. 19, 2014), <http://www.espicom.com/cuba-medical-device-market.html>, archived at <http://perma.cc/42MM-FBRC>.

⁹⁰ *Id.*

⁹¹ See H.R. 635, 114th Cong. § 9 (2015).

The program provides information and technical assistance to U.S. producers, cooperatives, or state agencies regarding the sale of agricultural commodities to Cuba. As part of this, the U.S. Secretary of Agriculture is directed to maintain a website containing information assisting U.S. exporters.⁹²

To facilitate U.S. exports to Cuba, the Act permits U.S. Consular Officers assigned to Cuba to issue non-immigrant visas to Cuban nationals for travel to the United States related to the purchase of U.S. agricultural commodities, such as for phytosanitary (plant health) inspections. Throughout the world, governments permit the agents of foreign commodities purchasers to travel to source countries for inspection purposes, and there is no reason the U.S. should be exempt.

The *Promoting American Agricultural and Medical Exports to Cuba Act of 2015* repeals provisions of law that prohibit transactions or payments involving certain kinds of intellectual property,⁹³ and the Act amends Cuban Assets Control regulations to authorize the transfer or receipt of trademarks or trade names subject to U.S. law in which a designated U.S. national has an interest.⁹⁴ Overall, this legislation would increase the export of U.S. agricultural products to Cuba and remove all impediments to exporting medical devices and medicines to the Island.

Finally, the *Promoting American Agricultural and Medical Exports to Cuba Act of 2015* also prohibits the President from restricting direct transfers from a Cuban depository institution (bank) to a U.S. depository institution executed in payment for a product authorized for sale under the *Trade Sanctions Reform and Export Enhancement Act of 2000*.⁹⁵ This authority has been used in the past to thwart otherwise permissible sales and to undermine the reliability of U.S. markets for Cuban purchasers. The bill clarifies that advance payments for goods acquired or sold under the authority of *Trade Sanctions Reform and Export Enhancement Act of 2000* are made prior to the transfer of title and the release of control of these products to the purchaser.⁹⁶ Removing the threat of restrictions will instill new confidence in transactions between Cuban and U.S. businesses.

IV. CONCLUSION

Thanks to the leadership of President Obama and collective efforts over the years of those who have co-sponsored my legislation, the United States and Cuba are now engaged in a serious dialogue that will lead to normalized relations in the near future. The constellation of U.S. laws and regulations

⁹² See H.R. 635, 114th Cong. § 4 (2015).

⁹³ See H.R. 635, 114th Cong. § 6 (2015).

⁹⁴ Cuban Assets Control Regulations, 31 C.F.R. § 515.311 (1996).

⁹⁵ Pub. L. No. 106-387, 114 Stat. 1549A-71 (codified as amended at 22 U.S.C. § 7207 (2012)).

⁹⁶ 22 U.S.C. § 7207(b)(4) (2012).

implemented during earlier periods and for outmoded objectives is now desperately in need of replacement or modification. We need to enact legislation that will achieve this goal. Reorienting strongly held congressional views of the new bilateral relationship to achieve it will not be easy. However, it will be done.

Much work needs to be done in Congress and between our two governments to make meaningful progress with Cuba. A new era is here for the United States and Cuba, and it will ultimately include fully restored relations. A thawing of relations will open the door to exchanges of our rich cultures. My hope is that through art, music, educational programs, trade and travel, we will better understand and appreciate each other as good neighbors. The first steps are underway, which will mutually benefit economic growth and development in the United States and Cuba. Lifting the embargo will ensure that we make the most of this opportunity.

