

The Future of American Business in Cuba: Realities, Risks, and Rewards

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I. INTRODUCTION

In December 2001, several leading U.S. agricultural companies sent a shipment of corn and frozen chicken to Cuba. This consummated the first direct sale between the two countries since President John F. Kennedy initiated a trade and investment embargo against the government of Fidel Castro in the early 1960s. Few people could have guessed that Cuba's near-total commercial estrangement from the United States, which had survived more than forty years and the administrations of ten American Presidents, would owe its first small step to a fluke of the weather. Although the U.S. Congress had passed the Trade Sanctions Reform and Export Enhancement Act in the summer of 2000, thereby allowing all-cash food and medical sales to Cuba, the measure was rebuffed by the Cuban government, which had

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vowed not to buy a single grain of rice under the new legislation. This standoff was cut short in November 2001, when powerful Hurricane Michelle ripped through Cuba's agricultural sector and created an unexpected political opening. When the United States offered food aid, Cuba seized the opportunity to reverse its position and began to purchase U.S. farm goods under the new rules. The resulting boom in agricultural trade—estimated to reach an annual total of \$500 million in 2004—has sparked renewed interest in the wider American business community about whether and when Cuba will represent a trading and investment opportunity for U.S. companies.¹

Indeed, in many ways, Cuba represents a natural market and trading partner for the United States. As the largest and most populous nation in the Caribbean, Cuba is roughly equivalent in size and population to Portugal or Hungary (although with a far smaller gross domestic product). Only ninety miles from Florida at its closest point, Cuba is a near neighbor to the United States, and Havana boasts one of the largest deep-water ports in Latin America. Moreover, since the early 1990s, the United States has been pursuing a regional strategy of economic integration, represented initially by the North American Free Trade Agreement (NAFTA), which binds together the United States, Canada, and Mexico. Since 2001, the administration of George W. Bush has negotiated bilateral trade agreements with Chile and the Central American countries and is pursuing a broader Free Trade Agreement of the Americas (FTAA) that would include all thirty-four democratic countries of the Western Hemisphere. In this context, closer trade relations with Cuba would fit strategically within the regional integration efforts witnessed in Latin America. Trade with Cuba would also be compatible with the commercial relations established with the communist countries of East Asia.

Of course, this future has not yet arrived. The tense relationship between the United States and Cuba has its roots in Cold War politics in Latin America, the repressive and undemocratic rule of Fidel Castro, and a diminishing but still influential Cuban-American lobby in South Florida that opposes any steps towards normalization. This political dimension plays a crucial role in maintaining the U.S. embargo, and the key groups that oppose lifting the sanctions may seek to impose new impediments on trade with Cuba even if the U.S. Congress voted to repeal the embargo. The Bush Administration has taken a strong stance against fostering economic relations in Cuba while Fidel Castro remains in power, a position supported by an influential minority of U.S. legislators. Even so, a slim majority in both houses of Congress favors lifting the travel ban, and significant changes in U.S. policy are being proposed.²

¹ USDA-FAS ONLINE TRADE DATA, BICO REPORTS, at http://www.fas.usda.gov/scripts/w/bico/bico_frm.asp (last visited Nov. 29, 2004).

² See Daniel P. Erikson, *The New Cuba Divide*, 67 NAT'L INT. 65 (Spring 2002) (discussing the growing congressional coalition which favors the lifting of trade sanctions on Cuba).

But does Cuba really represent a desirable opportunity for American business? Market analysts are deeply divided as to whether Cuba is a land of risks or rewards. On the one hand, Cuba remains a rigid communist state with a centrally controlled economic structure, a workforce with uncertain habits, low per capita income, and high levels of external debt. Canadian and European investors in Cuba cite numerous difficulties related to red tape, arbitrary treatment by Cuban regulators, interference in hiring decisions, and questionable labor practices. There is ample evidence that Cuba is not an easy place for foreign companies to invest, a fact that is no doubt exacerbated by the controversial 1996 Helms-Burton Act, which allows U.S. citizens to sue foreign nationals for business dealings with expropriated properties in Cuba. As a result, it seems that much of Cuba's appeal for U.S. companies stems from its status as the "forbidden fruit" of Latin America and the Caribbean. If the U.S. embargo were lifted, the reality would be unlikely to measure up to inflated expectations.

Nevertheless, an influential school of thought sees Cuba as a diamond in the rough, with the capacity to emerge as a "Latin tiger" of substantial interest to U.S. companies. Cuba's population of 11 million represents a market equivalent in size to Ohio, the seventh largest U.S. state. The island's virgin beaches and rich cultural heritage could quickly catapult it into a prime tourist destination for American travelers, resulting in massive opportunities for hotel and infrastructure development. Notwithstanding several areas of direct competition, American and Cuban exports are largely complementary, with Cuba importing U.S. grain, livestock, and consumer goods while exporting sugar, tobacco, grapefruit, and nickel. Cuba has built a biotechnology sector that is unique among developing countries. Perhaps most importantly, Cuba's social services in education and health have resulted in a highly trained and healthy workforce that could potentially flourish in an entrepreneurial environment. If Cuba opens to the world, it may thrive.

A more polarizing question concerns the impact that normal U.S. trade and investment would have on Cuba's political system, especially in the event that the embargo is repealed while Cuba remains a communist state. Some analysts hold up China and Vietnam as models of how regular commercial relations with the United States can facilitate a gradual process of internal change. Others point out that sustained economic growth has contributed to the continuing strength of the Communist Party in these countries. If post-Castro Cuba moves quickly towards democracy, then American companies can play an important role in helping the island to regain economic health. Cuban communism is unlikely to be brushed aside so easily, however, and U.S. policy towards Cuba will remain highly politicized while Fidel Castro is in power—and perhaps even beyond his rule. As a result, commercial relations with Cuba may become a new flash point in the sensitive debate on how U.S. companies should deal with authoritarian regimes. In the case of Cuba, would U.S. business subsidize tyranny, promote American values, or both?

Moreover, there is significant political uncertainty regarding the future direction of U.S. policy and the nature of the eventual post-Castro regime. Cuba is almost certain to suffer a number of political shocks over the next decade, including the lifting of the U.S. travel ban, possible removal of U.S. trade and investment restrictions, growing tension between the socialist government and independent civil society forces on the island, and the heightened possibility that Fidel Castro's rule will come to its natural end. Regardless of whether Cuba embraces market socialism or free-market democracy, either type of post-Castro government would face significant (though distinct) challenges that could hamper the perceived economic potential of the island. Yet Cuba has been forced to move beyond the days when it was a Soviet satellite state run according to Marxist orthodoxy—and its leaders are learning to grapple with free market forces.

II. CUBA'S EMERGING CAPITALISM

Cuba still has not fully recovered from the collapse of the Soviet Union in 1991 and the subsequent loss of subsidies, but the island's government did take steps during the 1990s to open the economy to foreign direct investment and to introduce new market measures. In particular, Cuba has sought greater diversification in terms of sources of economic growth and international trading partners. The Cuban government has also tried to develop an economic strategy that is less vulnerable to foreign shocks and less dependent on a single cash crop, namely sugar. These efforts have been only partially successful, and Cuba has maintained a strong commitment to extensive central economic planning throughout its adjustment process. Between 1989 and 1993, Cuba's economy shrank by a third, and the profound economic crisis resulted in the first significant economic reform in nearly a generation. In 1993, the Cuban government legalized the U.S. dollar and allowed it to circulate alongside the Cuban peso at an official rate of one-to-one parity, although the real exchange rate was closer to twenty-to-one (and rose to twenty-six-to-one in 2001). This policy persisted until November 2004, when Cuba took steps to ease the dollar out of circulation. The government also allowed small-scale entrepreneurial activity such as sole-proprietor barbershops, restaurants, and guesthouses, and permitted farmer's markets and agricultural cooperatives to replace state-owned agriculture, providing incentives for increased production. Remittances from abroad were encouraged, and Cuba opened up the economy to cooperative associations and joint ventures with foreign capital.³ Despite these significant changes, Cuba has maintained a centrally planned economy with an estimated gross domestic product of \$28.7 billion in 2002.⁴

³ For a full discussion on the Cuban economy, see *THE CUBAN ECONOMY AT THE START OF THE TWENTY-FIRST CENTURY 200-04* (Jorge I. Domínguez et al. eds., 2004).

⁴ *ECONOMIST INTELLIGENCE UNIT, COUNTRY DATA, CUBA*, at <http://www.eiu.com> (last visited Nov. 29, 2004) [hereinafter *ECONOMIST INTELLIGENCE UNIT*].

Yet there have been important shifts in economic policy. Perhaps most importantly, Cuba identified tourism as a strategic economic priority and began to move away from its historic reliance on sugar. Over the past decade, the island has worked to increase its tourist infrastructure and to market its attractions overseas, leading to a nearly \$2 billion tourist industry that represents the country's largest source of foreign exchange. In 2002, Cuba made a definitive break with its past as an economy dependent on sugar exports, closing half of its sugar mills and seeking alternative sources of employment for tens of thousands of workers formerly employed in the industry.⁵ During the 1990s, Cuba's sugar production had entered a slump that would require massive capital and infrastructure investments to reverse. Between 1989 and 2002, Cuba's sugar production dropped by two-thirds, from 81 million metric tons to 32 million metric tons, and its rank as a world sugar producer dropped from third to tenth.⁶ In 2002, the government closed seventy mills, leaving seventy-one engaged in sugar production and another fourteen producing honey.⁷ The estimated two million ton sugar harvest in 2003 marked the worst production record since 1933.⁸ By removing sugar from the center of the Cuban economy, the Cuban government has made room for investments in other sectors made more attractive by state enterprise reform. In 2003, the Cuban economy grew at a rate of 2.6%, surpassing earlier expectations of lower growth and posting a stronger recovery than the Latin American region as a whole.⁹

Cuba's framework for foreign direct investment remains a work in progress. The legal cornerstone is the Foreign Investment Law, known as Law 77, which was ratified by the National Assembly in 1995. This provision allows for the formation of joint ventures between foreign investors and their Cuban counterparts, economic associations consisting of management or production contracts that do not involve foreign capital, and even companies that are fully owned by foreigners.¹⁰ Cuba's Ministry of Foreign Investment and Economic Cooperation manages all foreign investment applications, and the country had about 400 enterprises with foreign participation in 2002, mainly in basic industry, tourism, and construction. Foreign companies are allowed to import personnel to fill management and technical positions, but Cuban workers must be hired through a state contracting agency. Cuba then

⁵ Patrick Rucker, *Cuba's Sugar Revolution Leaves Casualties*, FIN. TIMES (London), Sept. 20, 2002, at 4.

⁶ PHILIP PETERS, LEXINGTON INSTITUTE, CUTTING LOSSES: CUBA DOWNSIZES ITS SUGAR INDUSTRY 6 (2003).

⁷ *Id.* at 4.

⁸ CUBA TRANSITION PROJECT, INSTITUTE FOR CUBAN AND CUBAN-AMERICAN STUDIES, FOCUS ON CUBA: CUBA'S ECONOMY IN THE DOLDRUMS (2003) [hereinafter CUBA'S ECONOMY IN THE DOLDRUMS].

⁹ ECONOMIST INTELLIGENCE UNIT, *supra* note 4.

¹⁰ Matias Travieso Diaz & Charles P. Trumbull, *Foreign Investment in Cuba: Prospects and Perils*, 12 CUBA IN TRANSITION 179 (2002).

charges premium prices for the employee's monthly wages, while paying the actual workers a salary in line with typical Cuban wages. For example, Cuba may charge \$500 per month for a sales representative, then pay the actual sales representative 300 Cuban pesos per month—equivalent to about \$12.¹¹ The resulting wage discrepancy often prompts international companies to pay for their workers twice, first by paying the contracting agency, then by providing staff with extra compensation under the table. Although Cuba's approach to foreign direct investment continues to be bureaucratic and restrictive, a range of companies from other countries, including Spain, Canada, Italy, and Mexico, have invested through these mechanisms.

Cuban authorities are acutely aware of the vulnerabilities they have suffered in the past for failing to expand economic relations beyond a single, large economic partner. Prior to 1959, the United States was the dominant benefactor, while during much of the Cold War the former Soviet Union played the role of economic patron. Since 1991, the Cuban government has attempted to diversify its economic relations among Canada, the European Union, Latin America, key countries in Asia, and a range of smaller actors in the developing world. As a result, Cuba has fashioned an international business strategy that allows it to endure major conflicts with close partners with minimal economic fallout. Foreign trade in Cuba grew by 48% between 1995 and 2000, and after a brief dip following the post-September 11 global slowdown, it appears to be rising once again.¹² In 2001, Cuba had 166 trading partners, with Europe accounting for 44% of total exchange, followed by the Americas with 39%, Asia with 15%, and Africa and Oceania at 1%.¹³ This trend has continued despite renewed political difficulties. In 2002, and again in 2004, diplomatic spats between Fidel Castro and Mexican President Vicente Fox resulted in the lowest points in the Cuba-Mexico relationship in nearly a century. In 2003, Cuba's crackdown on dissidents deeply alienated the European Union, the country's most important trade and investment partner. Nonetheless, the Cuban economy managed to sustain growth in 2003 despite these arguments with key economic allies.

Future U.S. commercial relations with Cuba should take into account Cuba's pursuit of closer ties with Latin America, steady economic (if not political) relations with Europe, and strategic engagement with Asia, as these will pose the major sources of competition moving forward. Canada's trade and investment in Cuba is also significant, although the legal jeopardy posed by Helms-Burton has had a chilling effect. In Latin America, Mexico, Venezuela, and Brazil remain factors. In November 2003, Brazilian President Luiz Inácio Lula da Silva co-presided with Castro over the signing of \$200 million in new business deals by Brazilian firms, including \$140 million to

¹¹ *Id.* at 190.

¹² INSTITUTE FOR CUBAN AND CUBAN-AMERICAN STUDIES, CUBA ON-LINE: FOREIGN TRADE (2003), at <http://ctp.iccas.miami.edu/docs/c03081.pdf> (last visited Oct. 11, 2004).

¹³ *Id.*

build four beach hotels, and other investments in the sugar and transportation sectors.¹⁴ Ties with Argentina have also improved following the 2003 election of Nestor Kirchner, and there is discussion of developing a “four plus one” arrangement to integrate Cuba into MERCOSUR, the South American customs market consisting of Brazil, Argentina, Paraguay, and Uruguay.¹⁵ Important obstacles remain, however, and Cuba is the only country in Latin America and the Caribbean that has not attained full membership in the main regional economic associations and is barred from participating in the FTAA.

Cuba has also sought to strengthen relations with China through agreements in the areas of hotel construction, technological trade, tourism, mining, and industry.¹⁶ In 2001, Chinese premier Jiang Zemin made an official visit to Havana and opened a \$400 million credit line to Cuba; shortly thereafter China leapfrogged Spain to become the leading provider of consumer goods to Cuba, with over \$600 million in bilateral trade.¹⁷ China’s newfound interest in Cuba cuts across the spectrum of the island’s major industries. The island is the first Latin American country to be designated an “official tourist destination” by China, with 20,000 Chinese tourists expected in 2004. As a major consumer of nickel, China has agreed to increase imports of nickel and cobalt.¹⁸ This is part of a political effort to mend relations that were strained during Cuba’s long alliance with the Soviet Union, but it also reflects China’s renewed interest in Latin America and its ideological sympathies with Cuba. Although a much smaller presence than China, Vietnam is also a trusted economic partner and supplies the island with more than half of its rice imports.¹⁹

In 2003, the European Union exported about \$1.2 billion in goods and services to Cuba, while importing \$622 million in goods and services.²⁰ This trade and investment relationship has been maintained despite the dissident crackdown in 2003 that precipitated a sharp decline in EU-Cuba relations. But the European Union has also encountered financial headaches in Cuba, and in 2002, the EU filed a letter of complaint that the Cuban government was issuing decrees in an arbitrary manner, assessing high bank and

¹⁴ Anita Snow, *Brazil, Cuba Sign \$200M in Business Deals*, ASSOC. PRESS, Sept. 27, 2003, available at http://www.thestate.com/mid/thestate/news/world/G875800.htm?template=contentModules/print_story/asp (last visited Oct. 11, 2004).

¹⁵ *Cuba to Formally Apply for Mercosur Membership*, LATIN AM. NEWS DIG., Feb. 27, 2004.

¹⁶ Marc Frank, *Havana Cooks up Schemes to Boost Beijing Relations*, FIN. TIMES (London), Nov. 12, 2003, at World News 3.

¹⁷ CUBA TRANSITION PROJECT, INSTITUTE FOR CUBAN AND CUBAN-AMERICAN STUDIES, FOCUS ON CUBA: CUBA’S TRADE POLICY (2003), available at http://ctp.iccas.miami.edu/focus_web/issue44.htm (last visited Oct. 11, 2004) [hereinafter CUBA’S TRADE POLICY].

¹⁸ Frank, *supra* note 16.

¹⁹ CUBA’S TRADE POLICY, *supra* note 17.

²⁰ EUROSTAT, EXTERNAL AND INTRA-EUROPEAN TRADE: MONTHLY STATISTICS (2004).

customs charges, and generally creating unnecessary obstacles for European investors.²¹ The complaint cited excessive overhead, lack of flexibility, favoritism towards the Cuban partner in joint venture projects, and interference in hiring and firing practices. By way of example, the letter noted that Cuban regulators require a minimum number of Cuban employees "even when the structure of the firm does not require them" and impose certain candidates who are "frequently not suitable professionally."²² Unless Cuban policymakers dramatically overhaul the island's investment regime, these types of problems are likely to remain prevalent even if the U.S. government lifts restrictions on trade and investment with Cuba.

III. TRADING WITH THE ENEMY?

U.S. economic interests in Cuba have deep roots in the pre-Castro era, when the two countries maintained a close trading relationship. In 1958, the year before Fidel Castro assumed power, the United States accounted for 67% of Cuba's exports and 70% of Cuba's imports. At that time, Cuba represented a small but important market, ranking as the seventh largest trading partner and accounting for about 3% to 4% of U.S. imports and exports worldwide.²³ In 1959, the last full year before sanctions were instituted, U.S. exports to Cuba totaled \$439 million, with imports at \$475 million.²⁴ This modest amount is 100 times larger than U.S.-Cuba trade in the late 1990s, when U.S. exports averaged less than \$5 million annually and consisted mainly of donated medical and pharmaceutical products, relief and charity articles, and clothing. Similarly, before 1959, U.S. citizens accounted for 85% of foreign tourists in Cuba.²⁵ In 2003, that figure was below 10%, and consisted mainly of family visits by Cuban-Americans and licensed travel by educational and professional groups. Additional restrictions imposed in the 1990s further limited economic opportunities. The value of trade with Cuba by U.S.-owned foreign subsidiaries was estimated at \$4.6 billion between 1980 and 1992,²⁶ before the passage of the 1992 Cuba Democracy Act by the U.S. Congress outlawed all such trade.

Surprisingly, U.S. regulations do permit ownership of foreign companies active in Cuba. For example, AICan, a Canadian aluminum company

²¹ *The Disaster is Now 'Irrevocable'*, ECONOMIST, July 6, 2002.

²² THE LEXINGTON INSTITUTE, THE LEGAL AND ADMINISTRATIVE FRAMEWORK FOR FOREIGN TRADE AND INVESTMENT BY EUROPEAN COMPANIES IN CUBA, at <http://www.lexingtoninstitute.org/cuba/EU0702REFO.asp> (last visited Oct. 11, 2004).

²³ U.S. INTERNATIONAL TRADE COMMISSION, THE ECONOMIC IMPACT OF SANCTIONS WITH RESPECT TO CUBA §§ 1-7 (2001), available at <ftp://ftp.usitc.gov/pub/reports/studies/pub3398.pdf> (last visited Oct. 11, 2004).

²⁴ *Id.* §§ 2-13.

²⁵ U.S.-CUBA TRADE AND ECONOMIC COUNCIL, INC., REALITIES OF MARKET CUBA (2001), at <http://www.cubatrade.org/market.html> (last visited Oct. 11, 2004).

²⁶ Karen DeYoung, *U.S. Businesses Eye Trade With Cuba*, WASH. POST, July 28, 1999, at A1.

operating in Cuba, has a shareholder base that is 10% American. The same is true for Switzerland's Nestlé, which has initiated a bottled water venture in Cuba, and Leisure Canada, which is 30% owned by U.S. investors and is developing several resort projects in Cuba.²⁷ American investors are free to invest in foreign companies operating in Cuba, as long as the investor owns a non-controlling share and the operations in Cuba account for less than half of the company's total revenues.²⁸ Remittances represent another important element of the U.S.-Cuba economic relationship. The Inter-American Development Bank estimates that these flows amount to nearly \$1.2 billion annually.²⁹ U.S. transfer companies, such as Western Union, have sought to capitalize on these transfers.

But it is the agricultural sales that began in the fall of 2001 that have piqued the most interest among U.S. companies looking for new opportunities in Latin America. As early as 1999, the American Farm Bureau had estimated that U.S. agricultural sales to Cuba could exceed \$500 million annually if the embargo were removed, with a long-term potential of \$2 billion in annual sales.³⁰ Once viewed as wildly optimistic, the first part of this prediction seems to edge closer to reality with every passing month. In September 2002, a total of 288 U.S. companies traveled to Cuba for an agricultural trade exhibition intended to advance the new commercial trade that began the previous year. These "one-way" food sales approached an estimated \$250 million during 2003, nearly doubling since 2002. In 2003, deals signed at an international fair in Cuba included \$18.6 million in soybean products and corn from Archer Daniels Midland, \$2.7 million in chicken products from Tyson Foods, and another \$1.35 million from AJC International of Atlanta.³¹ In December 2003, an American business delegation representing 147 agricultural companies, port authorities, and supermarkets signed \$110 million in new food sales to the island and pressed for the end to sanctions. At that time, Pedro Alvarez, the head of Cuba's state-owned import company, announced that Cuba had signed contracts to buy over \$500 million of American farm goods.³²

Between 2001 and 2003, the U.S. share of Cuba's food imports rose from zero to 25%, and the removal of the U.S. trade embargo could dramatically increase the current level of agricultural exports to an estimated 60% of the

²⁷ Alison Beard, *Cuba Could be Next Emerging Markets Hotspot*, FIN. TIMES (LONDON), Nov. 7, 2001, at Global Investing 27.

²⁸ *Id.*

²⁹ INTER-AMERICAN DEVELOPMENT BANK, *SENDING MONEY HOME: AN INTERNATIONAL COMPARISON OF REMITTANCE MARKETS*, CONFERENCE REPORT (Feb. 2003).

³⁰ DeYoung, *supra* note 26.

³¹ Steve Miller, *U.S. Businesses Increasing Presence in Cuban Economy*, WASH. TIMES, Nov. 29, 2003, at A3.

³² *U.S. Farm Leaders, Visiting Cuba, Seek End to Trade Curbs*, N.Y. TIMES, Dec. 18, 2003, at A35.

island's \$1 billion in annual food imports.³³ In fact, there has been a range of academic, corporate, and governmental studies of potential U.S. agricultural exports to Cuba in the absence of sanctions, with estimates ranging from less than \$0.5 billion to \$1.2 billion or beyond.³⁴ The range in measurements reflects different assumptions about Cuba's economic growth and, more importantly, the potential for increased food demand resulting from the tourist industry. Nevertheless, a consensus has emerged that Cuba has significant potential as a market for wheat, wheat flour, rice, corn, poultry and dairy products, and would in turn supply sugar, citrus, and tobacco products to the U.S. market.³⁵

Expanded agricultural trade is not a win-win for all sectors of the American agricultural community. The U.S. sugar industry, which is highly protected by quotas and subsidies, has resisted efforts to lift the embargo. While world sugar prices hover at seven cents per pound, U.S. businesses buy sugar at twenty-one cents per pound. Only about 15% of U.S. sugar is currently imported.³⁶ The U.S. citrus industry has been identified as another vulnerable sector, especially in Florida. While Cuba is a relatively small producer of oranges and tangerines, accounting for about 1% of total global production, the island is the third largest producer of grapefruit. Fresh grapefruit and processed grapefruit respectively represent 5% and 12% of total world exports. To place Cuba's citrus industry in the context of the United States, the island's production from 1998 to 1999 was larger than the combined production of Texas and Arizona, which together represent more than a third of California's output, or 8% of world production.³⁷ As it currently stands, the burgeoning trade relationship between the United States and Cuba represents a perfect deal for American suppliers, who are paid in cash for their goods without facing competition from Cuban producers. However, the time will eventually come when trade between the United States and Cuba expands beyond fruits, grains, and livestock to include tourist services and technology.

IV. FUTURE GROWTH OPPORTUNITIES: BEACHES, BIOTECH, AND TELECOM

The rest of the Caribbean lives in fear of the day when U.S. tourists are allowed to flock to Cuban beaches. Like its island neighbors, Cuba views

³³ Larry Luxner, *Despite Obstacles, U.S. Food Exports to Cuba Keep Rising*, CUBA NEWS, Nov. 2003, available at http://havanajournal.com/business_comments/A1006_0_4_0_M1 (last visited Oct. 9, 2004).

³⁴ JEREMY MATTSON & WON W. KOO, CENTER FOR AGRICULTURE POLICY AND TRADE STUDIES, AN OVERVIEW OF CUBAN AGRICULTURE AND PROSPECTS FOR FUTURE TRADE WITH THE UNITED STATES, AGRIBUSINESS & APPLIED ECONOMICS 9, REPORT No. 519 (Aug. 2003).

³⁵ *Id.*

³⁶ *America's Sugar Daddies*, N.Y. TIMES, Nov. 29, 2003, at A32.

³⁷ FLORIDA DEPARTMENT OF CITRUS, POTENTIAL IMPACTS OF CUBAN CITRUS ON FLORIDA'S CITRUS INDUSTRY, WORKING PAPER SERIES 2000-2, at 2 (Sept. 20, 2000).

tourism as the central pillar in its economic strategy, and it is encouraging foreign direct investment and actively marketing the island as a prime tourist destination. The number of foreign visitors to Cuba has grown steadily over the past decade—barring the brief dip after September 11—and expanding the country's tourist infrastructure is central to Cuba's plans for further economic development. Today, tourism in Cuba represents a \$2 billion-a-year industry and a major source of hard currency: tourism represents about 41% of the island's hard currency reserves.³⁸ Cuba now has eleven international airports and received 1.9 million visitors in 2003, an estimated 12.7% jump over the prior year.³⁹ While figures for American tourism in Cuba vary, in 1999 the U.S.-Cuba Trade and Economic Council estimated that about 130,000 Americans, mainly of Cuban descent, travel to Cuba legally each year, with another 25,000 traveling without licenses through third countries.⁴⁰ Sensing the economic potential, U.S. travel agents have begun to lobby more intensively for easing the travel ban. In October 2003, a group of forty U.S. tour operators traveled to Cuba to seek out opportunities for collaboration, including the National Tour Association, the Association of Travel Related Industry Professionals, and other groups.⁴¹ Total U.S. travel to Cuba may reach as high as 200,000 visitors annually, although new regulations issued by the Bush Administration in June 2004 may considerably reduce legal tourist traffic.⁴²

The recent development of Cuba's tourist industry has not been without controversy. Some foreign companies have balked at Cuba's two-tier wage system, which requires international investors to pay the Cuban government in dollars for staff who then receive payment in Cuban pesos of far lesser value. International resorts frequently ban Cuban citizens from using the rooms or services, even if they have sufficient U.S. dollars to pay for the accommodations. Critics have denounced this practice as a form of "tourist apartheid."⁴³ Finally, Cuba's state-owned tourist sector has come under internal scrutiny for possible corruption, stemming in part from its importance as a source of hard currency revenues. Most recently, in December 2003, a potential scandal in Cuba's largest state-run tourism company came to light, when Cubanacan President Juan Jose Vega was

³⁸ Tim Padgett, *Preparing for a Mass Exodus - into Cuba: Despite Bush's Roadblock, the Island is Bracing for an Invasion of U.S. Tourists*, TIME, Dec. 22, 2003.

³⁹ Domingo Amuchastegui, *Cuban Economy Grew By 2.6% in 2003; Tourism, Nickel, Oil are All Bright Spots*, CUBA NEWS, Jan. 2004.

⁴⁰ DeYoung, *supra* note 26.

⁴¹ Anita Snow, *Castro Talks with U.S. Tour Operators*, ASSOC. PRESS, Oct. 19, 2003.

⁴² *U.S. Tour Executives Travel to Cuba*, CNN ONLINE, Oct. 19, 2003, at <http://www.cnn.com/2003/WORLD/americas/10/19/cuba.us.tourism.ap> (last visited Nov. 30, 2004).

⁴³ Sharon Behn & Tom Carter, *Proposal May Send 'Flood' of Tourists; Punish Castro, Lawmakers Say*, WASH. TIMES, May 15, 2003, at A11.

removed from office amid an investigation into the company's finances.⁴⁴ Although the Cuban government later denied that allegations of corruption were involved, the removal indicates the political sensitivity of this sector of the Cuban economy.

Nevertheless, tourism clearly represents a high-value sector for potential economic relations between Cuba and the United States. Cuba represents half the land area in the Caribbean, yet is host to only to 7% of the region's tourists, as compared to the 18% to 21% hosted during the 1950s.⁴⁵ In a future "best case" scenario, Cuba could regain its historic market share of Caribbean travel and receive between 3.7 and 4.3 million visitors annually.⁴⁶ If the United States lifted the travel ban, then potential U.S. tourist visits could well exceed 1 million. However, the island's existing infrastructure could not support this level of tourism. At present, Cuba boasts 41,600 hotel rooms, 68% of which are in four- and five-star venues. Varadero, the island's top beach resort, has 14,100 rooms alone and played host to 735,000 visitors in 2003.⁴⁷ This represents significant growth but is still far below what would be needed to accommodate a massive surge in visitation. Further, lifting the travel ban while maintaining the trade embargo would ensure that U.S. businesses are deprived of most of the economic benefits of increased tourism, as U.S. hotel operators and other travel companies would not be able to invest in Cuba or enter into economic partnerships with Cuban counterparts. Despite these odds, Cuba has set optimistic targets for 2010, aiming to receive 10 million tourists annually with \$5 billion in gross receipts, a projection optimistically based on the removal of the U.S. travel ban and an influx of foreign direct investment.⁴⁸

But Cuba offers more than just beaches, as it has also worked to cultivate a set of knowledge-intensive industries unique for a developing country. Over the past decade, investments totaling \$1 billion have helped to develop a biotechnology infrastructure unrivaled in the Caribbean. The government regards biotechnology and pharmaceutical capabilities as a key component of the public health system, and the island's citizens receive immunizations for thirteen major diseases commonly found in the tropics.⁴⁹ Cuba has developed

⁴⁴ Anita Snow, *Cuban Tourism Firm Head Leaves Post*, CUBANET NEWS, Dec. 4, 2003, at <http://www.cubanet.org> (last visited Oct. 9, 2004).

⁴⁵ ED SANDERS & PATRICK LONG, CUBA POLICY FOUNDATION, ECONOMIC BENEFITS TO THE UNITED STATES FROM LIFTING THE BAN ON TRAVEL TO CUBA § 2.1 (June 2002), available at http://leeds.cdorado.edu/uploadedFiles/Faculty_and_Research/Research_Centers/Center_for_Sustainable_Tourism/Resources/USEcon_Benefits.pdf (last visited Oct. 11, 2004).

⁴⁶ *Id.*

⁴⁷ Amuchastegui, *supra* note 39.

⁴⁸ Mark Falcoff, U.S.-Cuba Economic Relations, Testimony at Senate Finance Committee (Sept. 4, 2003), available at http://www.aei.org/news/fitter.,newsID.19125/news_detail.asp (last visited Oct. 11, 2004).

⁴⁹ Glenn Baker, *Introduction to CENTER FOR DEFENSE INFORMATION, CUBAN BIOTECHNOLOGY: A FIRST HAND REPORT 13* (Glenn Baker ed., 2003).

the world's only vaccine against meningitis B, as well as an alternative vaccine against *Haemophilus influenzae* type B (known as Hib), another major cause of meningitis and other dangerous infections in children.⁵⁰ Although uncommon in the developed world, UNICEF estimates that Hib causes "almost half of the infections in children under five in the world," killing 500,000 children annually.⁵¹

Cuban medical products are exported to more than forty countries, and the industry employs approximately 10,000 Cuban scientists. About 1245 people are headquartered at the Center for Genetic Engineering and Biotechnology outside Havana, the largest and most advanced of the fifty-three biotechnical facilities in Cuba. Cuban officials estimate that of 800 essential medicines, about 80% are developed domestically, while the remaining 20%, consisting mainly of cancer and diabetes drugs, are imported.⁵² Research projects have included recombinant DNA technique and molecular approaches to vaccines as well as HIV testing kits. The United States granted a license to a single Cuban product, when pharmaceutical giant GlaxoSmithKline persuaded the U.S. government to exempt the meningitis-B vaccine from U.S. prohibitions on medical trade. Another Cuban cancer drug has sparked the interest of California-based CancerVax Corp., which is interested in conducting joint research on cancer vaccines in Havana, and has signed letters of intent with Cuba's Center for Molecular Biology.⁵³ Recently, a German company acquired the licensing rights for innovative new products for neck and breast cancer, and a drug called TheraCIM h-R3 is being developed for the European market. If this drug receives regulatory approval and becomes a standard cancer treatment in Europe, potential sales could reach \$3 billion annually.⁵⁴

Cuba's biotech sector constitutes a small but significant segment for foreign investment, with the biotechnology, health, and science sectors accounting for 16 of the 400 associations permitting foreign capital.⁵⁵ Health tourism also remains a niche industry, with foreign visitors traveling to Cuba for treatment in specialist hospitals and medical facilities accounting for about \$40 million in annual revenue. While the majority of these patients

⁵⁰ Tracey Eaton, *A Shot in the Arm? Cuba's Biotech Industry Raises Hope, Suspicion*, SEATTLE TIMES, Nov. 28, 2003, at A3.

⁵¹ Anthony Boadle, *Cuba Produces Key Synthetic Vaccine for Children*, HAVANA JOURNAL, Nov. 23, 2003, at http://www.havanajournal.com/culture_comments/A1054_0_3_0_m/ (last visited Oct. 11, 2004).

⁵² Lorena Barberia, *Individual Report, in CUBAN BIOTECHNOLOGY: A FIRST HAND REPORT*, CENTER FOR DEFENSE INFORMATION 34, 35 (Glenn Baker ed., 2003).

⁵³ Eaton, *supra* note 50.

⁵⁴ Tom Fawthrop, *Cuba Sells Its Medical Expertise*, BBC NEWS ONLINE, Nov. 21, 2003, at <http://news.bbc.co.uk/2/hi/business/3284995stm>, (last visited Oct. 11, 2004) [hereinafter *Cuba Sells its Medical Expertise*].

⁵⁵ Patrick Michael Rucker, *Cuba Seeks to Capitalize on Its Biotech Expertise*, FIN. TIMES (London), Dec. 4, 2002, at 3.

come from Latin America, some unique Cuban treatments, such as that for night blindness, also attract clientele from developed countries in Europe and North America.⁵⁶ The medical sector ranks sixth in terms of exports and services, with biotechnology accounting for \$150 million out of total medical revenues of \$250 million in 2002.⁵⁷ However, Cuba has a deep interest in producing pharmaceuticals for export in developed-world markets. Currently, Cuba's biotech industry has about "thirty-seven Technology Transfer Projects with fourteen countries, including Algeria, Brazil, China, India, Iran, Malaysia, Mexico, Tunisia, and the United Kingdom."⁵⁸ In recent years, Cuban scientists have repeatedly expressed interest in increasing the level of technical and scientific exchange with the United States, despite the formidable political constraints.

Yet other aspects of Cuba's technological capacity remain backwards, and this is especially true in the field of telecommunications. Although Cuba has made significant strides in modernizing its telecommunications network over the last decade, it still lags far behind most of Latin America. In 1994, the Cuban government formed ETECSA, a joint venture telephone monopoly with a 49% stake available to foreign companies. The first major foreign investor, Grupo Damos, headquartered in Monterrey, Mexico, initially committed \$700 million but later withdrew when the company failed to meet its payment schedule.⁵⁹ In 1997, Telecom Italia stepped in as the major foreign investor, and in 2001, ETECSA's minority ownership was split among Telecom Italia at 29%, with 12% owned by a Panamanian consortium and Cuba's Central Bank holding the 8% balance.⁶⁰ Through ETECSA, Cuba has begun to modernize the phone system, switching from analog systems to modern digital technology, increasing the level of telephone access, and improving residential and business services.

ETECSA is scheduled to maintain a monopoly over basic services until 2006, but cellular and paging services will open to competition. The cell phone coverage offered by Cubacel reaches about 40% of the island's population, and in February 1998, Sherritt International bought a 37.5% stake in the company for \$38.25 million.⁶¹ Between 1995 and 2000, foreign direct investment in Cuba's telecommunication sector totaled \$473 million. Although Cuba's rates for basic residential service remain extremely low—the monthly rate costs several pesos—the monopoly over international phone services has proven extremely lucrative. In 1992, the Cuba Democracy Act allowed American companies to pay Cuba directly for telephone services, and

⁵⁶ *Cuba Sells Its Medical Expertise*, *supra* note 54.

⁵⁷ *Id.*

⁵⁸ Terence Taylor, *Individual Report*, in *CUBAN BIOTECHNOLOGY: A FIRST HAND REPORT*, CENTER FOR DEFENSE INFORMATION 24, 25 (Glenn Baker ed., 2003).

⁵⁹ PHILIP PETERS, LEXINGTON INSTITUTE, *CUBA GOES DIGITAL* 4 (Nov. 2001).

⁶⁰ *Id.*

⁶¹ *Id.* at 6.

by 2000 U.S. companies were paying Cuba \$84 million to handle international phone traffic.⁶² The vast majority of phone calls between the two countries are initiated in the United States; some analysts estimate that there are forty-nine minutes of phone traffic coming from the U.S. for every minute that originates in Cuba.⁶³ As long as the imbalance in call ratios persists, international phone traffic will continue to be an important source of revenue and help to subsidize local residential service.

The Internet represents another potential growth sector in Cuba, considering that only half of the nation's phone lines have the digital switches necessary to handle Internet traffic. The country is in the process of installing a nationwide fiber optic ring. The Cuban government does use the Internet for external public relations purposes and internal communication, and there are an increasing number of cyber-cafes. ETECSA owns online hotel booking technology (www.cubasi.com) that offers up-to-date booking information and electronic confirmation for more than 100 hotels across Cuba. As of 2004, rooms at historic national landmarks such as Hotel Nacional de Cuba can be booked on-line.⁶⁴

For the most part, however, the Cuban government maintains tight control over the Internet internally, while harnessing the technology as a public relations tool to counter attacks in the U.S. press and shape opinion overseas. After Cuba used *Granma Internacional* to respond to events following the shooting down of planes piloted by anti-Castro exiles in 1996, the government passed Decree Law 209 to govern future Internet usage, codifying selective access "in a regulated manner . . . giving priorities to the entities and institutions most relevant to the country's life and development."⁶⁵ As of March 2001, only 60,000 Cubans have access to email accounts, and only 1% to 2% of Cuba's 110,000 computers had access to the World Wide Web.⁶⁶ Cuba maintains tight control over access, and the few Internet cafes that exist are priced beyond what ordinary Cubans can afford; it costs, for example, several dollars an hour in a country where wages average less than twenty dollars a month. In January 2003, the Cuban government instituted new measures to prohibit Web access over local phone services without prior permission in order to "protect against the taking of passwords, malicious acts, and the fraudulent and unauthorized use of this

⁶² *Id.* at 7.

⁶³ Paolo Spadoni, *Castro's Moves Neutralize U.S. Measures*, ORLANDO SENTINEL, July 12, 2004, available at <http://www.orlandosentinel.com> (last visited Nov. 30, 2004).

⁶⁴ ETECSA, *Cuba's National Telecom Company, Chooses Cuba Travel Network to Provide Internet Bookings*, PR NEWSWIRE, Feb. 24, 2003, at <http://www.prweb.com> (last visited Oct. 9, 2004).

⁶⁵ SHANTI KALTHIL & TAYLOR C. BOAS, CARNEGIE ENDOWMENT FOR INT'L PEACE, THE INTERNET AND STATE CONTROL IN AUTHORITARIAN REGIMES: CHINA, CUBA, AND THE COUNTERREVOLUTION (quoting Decree Law 209, Working Paper no. 21, July 2001).

⁶⁶ *Id.*

service.”⁶⁷ Efforts by the United States to use the Internet as a tool for organizing political opposition groups have no doubt contributed to the government’s tight grip on communications technology. Despite the potential of networking Cuba’s highly educated workforce, the island’s politics continue to prevent any kind of Internet boom.

V. BASEBALL AND MUSIC: PLAYING FOR KEEPS?

Cuba has become renowned throughout the world for its prowess at baseball and its unique musical tradition. In Cuba today, an American who attends a baseball game is likely to be asked, “Are you an agent?” Although it is hard to quantify the degree to which sports and music can contribute to the island’s economic recovery, there is little question that Cuba has the capacity to make a significant contribution in these areas. The Castro government banned professional sports soon after the 1959 Revolution, and top Cuban athletes earn about twenty dollars a month in addition to perks such as luxury housing and transportation.⁶⁸ Cuba has long been considered a source of considerable athletic talent, especially in the realm of baseball. In 1999, the United States and Cuba initiated the first stage of “baseball diplomacy” with an exhibition game between Cuba’s national team and the Baltimore Orioles, which took place at Camden Yards in Baltimore.⁶⁹ In 2000, the United States delivered a stunning defeat to Cuba, winning the Olympic championship four to zero.⁷⁰ The country remains competitive in a number of international competitions, including boxing, track, and gymnastics. Cuban high jumper Javier Sotomayor is a two-time Olympic champion and world record holder, although his reputation was diminished by a positive drug test at the 1999 Pan Am games, which Cuba disputed.

However, the problem of Cuban athletes defecting while traveling to compete abroad has been a significant problem for the government, and Castro has denounced the recruitment of baseball stars as “robbery.” Of the estimated sixty Cuban baseball players that defected between 1991 and 2002, only fourteen have entered the Major Leagues in the United States, while the remainder entered leagues in Central America or Asia or dropped out of the sport entirely.⁷¹ During the same period, dozens of Olympic athletes have defected and later struggled to find success outside of Cuba. In December 1997, Cuban baseball star Orlando “El Duque” Hernandez escaped to the

⁶⁷ *New Cuban Law Limits Access to the Internet*, MIAMI HERALD ONLINE, Jan. 10, 2004, at <http://www.miami.com/mld/miamiherald> (last visited Oct. 9, 2004) (quoting Decree Law 209).

⁶⁸ Anita Snow, *Forget Medals, Cuba Just Wants Athletes Back*, ASSOC. PRESS, Aug. 22, 2000.

⁶⁹ *U.S. and Cuba Begin Baseball Diplomacy*, CNN ONLINE, Jan. 16, 1999, at <http://www.cnn.com/world> (last visited Jan. 3, 2005).

⁷⁰ *U.S. Stun Cuba for Baseball Gold*, BBC NEWS ONLINE, Sept. 27, 2000, at <http://news.bbc.co.uk> (last visited Jan. 3, 2005).

⁷¹ Kevin Baxter, *For Cuban Athletes Who Defect, Success in Sports Is Elusive*, MIAMI HERALD, June 2, 2002, available at <http://www.miami.com/mld/miamiherald> (last visited Nov. 30, 2004).

Bahamas, and eventually signed a \$6.6 million contract with the New York Yankees—and went on to win his first World Series in 1998.⁷² Other high-profile defections have included Cuba's top pitcher, Maels Rodriguez, and stolen-base champion Yobal Duenas, who defected in October 2003, and earlier examples include baseball players who later joined and pitched for the San Francisco Giants and Boston Red Sox.

Cuba's music industry demonstrates a similar dynamic, where popular and acclaimed artists can earn only a fraction of what their potential income could be in the U.S. market. While Cuban music has always had a small but loyal following in the United States, the release of the Buena Vista Social Club album in 1998 (followed by the film documentary in 1999) boosted awareness of traditional Cuban music and sold millions of copies. Cuban music has benefited from the increased interest in the world music genre as a whole. According to the Cuban government, thirty-two Cuban artists or groups completed 497 performances in the United States between May 2002 and April 2003, which would have earned \$13 million in revenues.⁷³ Over the past several years, the controversy surrounding the recognition of Cuban performers at the Latin Grammys (leading once to the cancellation of the event in Miami) highlights both the popularity of Cuban music and the political impediments limiting its commercial potential in the United States. Cuban artists are similarly prohibited from participating in the U.S. art market, although licensed U.S. travelers to Cuba are allowed to purchase artwork and bring it back home. Domestically, Cuba's state-owned entertainment company, Turarte, has emerged as a modest moneymaker, with 2003 profits estimated at \$3 million for organizing dance and musical performances throughout the island.⁷⁴

It is too soon to tell how the athletic and artistic talent of the Cuban people may play a role in future economic relations with the United States. Several Caribbean countries, most notably Jamaica, have had some success in developing a cultural industry that produces music for the world market. But if Cubans experience increased mobility in the future, then many of its brightest stars may simply move overseas to seek fame and fortune in the United States or Europe. Much depends on whether Cuba can provide attractive opportunities to its athletes and musical talents, or whether the lure of the American market ultimately trumps the nostalgic appeal of their homeland.

⁷² *Castro Slams 'Robbery' of Cuban Baseball Stars*, REUTERS, July 24, 1998, available at <http://www.cubanet.org/Cnews/y98/jul98/24e3.htm> (last visited Oct. 9, 2004).

⁷³ CUBAN FOREIGN MINISTRY, CUBA'S REPORT TO THE U.N. SECRETARY GENERAL ON GENERAL ASSEMBLY RESOLUTION 57/11 (2003).

⁷⁴ *Cuba Cashes in on Its Talent for Music, Dance, and Show Biz*, CUBA NEWS, June 2003.

VI. CASTRO'S UNDERGROUND STRATEGY: NICKEL AND OIL

The Cuban government's plans for harnessing the island's mineral wealth mix the tried-and-true practice of nickel mining with the expensive gamble of offshore oil exploration. While relatively high nickel prices have given the Cuban economy a needed shot in the arm, it is too soon to tell whether Fidel Castro's quest for oil will produce any return on investment. In terms of mining, Cuba's complex geological structure has yielded reserves of copper, zinc, nickel, cobalt, iron, gold, bauxite, quartz, zeolite, kaolin, and phosphates.⁷⁵ However, nickel ranks far and away as Cuba's most important mineral for export. Cuba is the world's sixth largest nickel producer with 30% of the world's reserves.⁷⁶ Some estimates put the figure as high as 37%.⁷⁷

Over the past several years, the revitalization of nickel and cobalt production has emerged as a key economic priority of the Cuban government, but this has led to mixed results. In 1994, Cuba enacted a new mining law to stimulate foreign investment, and the Nickel Union of Cuba entered into its first joint venture with Canada's Sherritt International, creating Moa Nickel, S.A. with access to 60 million tons of nickel ore. This initiative has resulted in technological improvements, lower production costs, and a resulting boom in output that reached 72,000 tons in 2000. The island of Cuba is estimated to have approximately 800 million tons of nickel deposits that furnish 19 million tons of pure nickel annually.⁷⁸ Today, Cuba exports nickel to more than thirty countries.⁷⁹

Cuba's mining industry is managed by the Ministry of Basic Industries, with the company Geo Minera, S.A. in charge of working with foreign partners. Another key mining plant is Ernesto Ché Guevara. In 2003, China's state-owned mining company announced its intention to increase imports of unrefined nickel and cobalt from Cuba.⁸⁰ Despite the large U.S. demand for nickel, 75% of Cuba's sales go to Europe.⁸¹ International investment in nickel continues to be led by Sherritt International, which has been joined by European banks to invest a total of \$400 million in a joint venture nickel-concentrate plant and two state-owned plants.⁸² While output has increased, some investors have resisted the high cost of building expensive new facilities. The chief executive of Sherritt, meanwhile, has faced the additional

⁷⁵ Gerardo Gonzalez Nuñez, *The Growth of Cuba's Mining Industry*, CUBA TODAY, Mar. 1, 2002, at 1.

⁷⁶ *Nickel, But No Dimes*, ECONOMIST, Sept. 18, 2003.

⁷⁷ Gonzalez Nuñez, *supra* note 75.

⁷⁸ Matha Beatriz Roque, *Foreign Investment and the Mining Industry in Cuba*, CUBA TODAY, Mar. 2002, at 3.

⁷⁹ Gonzalez Nuñez, *supra* note 75, at 2.

⁸⁰ Frank, *supra* note 16.

⁸¹ *Nickel, But No Dimes*, *supra* note 76.

⁸² *Id.*

inconvenience of being barred from the United States as the result of the company's Cuban investments.⁸³

The progress made in nickel mining has resulted in a spillover effect in other mineral extraction endeavors, with greater foreign investment in copper, gold, silver, and other minerals. As of 2002, Cuba had signed fifty-five associations in the mining sector with foreign capital and mining representing the third-largest sector for foreign direct investment.⁸⁴ The Cuban government aims to increase output from 75,200 tons in 2002 to 100,000 tons in 2007, with the goal of reaching 150,000 tons within the next fifteen years.⁸⁵ However, in order to achieve this plan, Cuba will need to secure capital investments of \$1.2 billion. In the wake of deteriorating international relations following the crackdown on dissidents, potential investors have been increasingly skittish about signing deals with Cuba, although Cubaniquel did sign an agreement with China's state-owned nickel company for \$34 million in investments with nickel projects.⁸⁶

The United States has long been a substantial importer of nickel, and Cuba's first nickel processing plant was established in 1943 to help satisfy the strong U.S. demand for steel during World War II.⁸⁷ During the 1970s and 1980s, the combination of high, fixed nickel prices among the socialist bloc countries, and the expansion of Cuba's nickel processing infrastructure to include three plants, resulted in an eventual high in nickel production of 46,000 tons in 1989. However, the industry was hit hard by the collapse of the Soviet Union, and production had nearly halved by the mid-1990s to only 26,000 tons.⁸⁸ The United States stopped producing nickel in 1999. Its imports are channeled to the steel-producing industrial states of the Midwest, mainly for use in transportation and heavy industry. The United States imports about \$1 billion annually in nickel, with 40% of coming from Canada, another 35% from Norway, Russia, and Australia, and the remaining 25% from diverse sources.⁸⁹ World nickel prices have surged in recent months, although a slumping demand in stainless steel headed off a more serious nickel shortage. Nonetheless, considering that the United States is entirely dependent on overseas nickel, Cuba has the potential to emerge as a major supplier in the future.

But it is Cuba's search for oil that has provoked the most anticipation among U.S. companies. The Cuban government has increasingly prioritized energy exploration, both for domestic consumption and international export.

⁸³ Beard, *supra* note 27.

⁸⁴ Gonzalez Nuñez, *supra* note 75, at 2.

⁸⁵ *Nickel, But No Dimes*, *supra* note 76.

⁸⁶ *Id.*

⁸⁷ Gonzalez Nuñez, *supra* note 75, at 2.

⁸⁸ *Id.*

⁸⁹ U.S. GEOLOGICAL SURVEY: MINERAL AND COMMODITY SUMMARIES, NICKEL (Jan. 2003).

Cuba's approach has been pragmatic, but it is clearly accompanied by the hope that big reserves will be discovered—although none have been to date. Cuba's domestic sources of energy include proven crude oil reserves of 283.5 million barrels and proven natural gas reserves of 636 billion cubic feet.⁹⁰ Petroleum products account for roughly 95.7% of Cuba's energy consumption, with natural gas accounting for 4% and coal 0.3%, and the island also has potential offshore reserves of natural gas that could represent a significant economic opportunity for U.S. firms.⁹¹ In 2001, one study estimated that the Cuban energy sector could provide between \$2 and \$3 billion in annual trade in oil and gas.⁹² The island currently remains dependent on oil imports to meet two-thirds of its domestic needs of approximately 190,000 barrels per day, with subsidized oil shipments from Venezuela playing a key role in energy supply. In order to increase domestic energy production, Cuba's state-owned oil firm has plans to increase output from 52,000 barrels per day in 2001 to 120,000 barrels per day in 2005.⁹³ Cuba has begun to make inroads in improving its refining capacity. However, the island has not yet discovered high quality oil reserves, and 90% of the island's crude consists of heavy oil with a high sulfur content, mainly suitable for plants producing cement and nickel.

Nevertheless, Cuba's energy development efforts have met with modest success to date. The island's domestic oil and natural gas production is growing at 10% annually, and Cuba now meets between 80% and 90% of its domestic electricity needs.⁹⁴ The persistence of blackouts results from a combination of poorly maintained transmission lines and continuing fuel shortages. The Cuban government has calculated that it can entice foreign investors to shoulder the cost for oil exploration in a geographical region that has yielded large reserves in Texas, Mexico, and Venezuela. Despite limited proven potential, Cuba's energy sector continues to generate substantial interest from abroad. Several foreign companies are engaged in oil exploration or production in Cuban waters, and corporations from Canada and Europe have purchased deepwater offshore blocks off Cuba's northwest coast in the Gulf of Mexico. This area is estimated to hold between 3 and 4 billion barrels of recoverable crude, but in hard to access areas several kilometers below the ocean's surface. In addition to developing oil for export and emerging as a consumer for imports, Cuba's energy role could also include oil storage and natural gas development and transshipment.

⁹⁰ AMY MYERS JAFFE & RONALD SOLIGO, CUBA POLICY FOUNDATION, *THE POTENTIAL FOR THE U.S. ENERGY SECTOR IN CUBA* 10 (2001).

⁹¹ *Id.* at 2.

⁹² *Id.* at 1.

⁹³ *Id.* at 10.

⁹⁴ Tom Fawthrop, *Cuba's New Oil Industry*, BBC NEWS ONLINE, Nov. 13, 2003, at <http://news.bbc.co.uk> (last visited Oct. 11, 2004).

In December 2003, Cuba's official news bulletin, *Granma*, published a statement encouraging U.S. oil firms to participate in off-shore exploration: "The government of Cuba wishes to say it has no objection whatsoever to the involvement of American oil companies in exploration and drilling in our exclusive economic zone on mutually beneficial terms."⁹⁵ In fact, major U.S. energy suppliers such as Halliburton have advocated for lifting trade sanctions that prevent exploration. Cuba continues to encourage exploration of lighter crude that is believed to be located further off-shore, but this activity remains speculative because only large deposits would be worth the estimated \$1 to \$3 billion costs of developing deep-water resources. Cuba's increasing reliance on discounted oil shipments from Venezuela has resulted in a rising debt with Petroleos de Venezuela (PDVSA), which registered at \$266 million in May 2003. Since the agreement was initiated in the fall of 2000, Venezuela has supplied an estimated 35% of Cuba's oil and emerged as the island's leading trade partner.⁹⁶ Most recently, in June 2004, the large Spanish oil and gas company Repsol YPF hired a Norwegian drilling platform to drill in Cuba's Gulf of Mexico waters at a daily cost of \$200 thousand, as part of a joint venture with the state-owned Cubapetróleo.⁹⁷ Although similar explorations have met with limited success, there is no doubt that a major oil find in Cuba would bolster the island's immediate prospects and potentially transform the debate on the embargo in the United States.

VII. RISKY BUSINESS: NAVIGATING THE SHOALS

Cuba's economic future will hinge on many different factors, but there are a range of trends at work that suggest that the Cuban economy is likely to open significantly over the next decade. This prediction can be based in part on the fact that Cuba's economic relations have become increasingly internationalized since the early 1990s, including a limited opening to foreign direct investment and the cultivation of a much wider array of trading partners. While some of the initial reforms were partially reversed during the mid-1990s (such as laws allowing small-scale entrepreneurial activity), the overall trend has been towards cautious incorporation of market mechanisms in some sectors, and greater outreach towards the American business sector. Thus, even if Fidel Castro remains at the helm and the political system remains closed, a significant shift in U.S. policy, such as removing the trade and investment embargo, could result in attractive, though limited opportunities for U.S. companies in several fields.

Cuba's economic policy decisions after Castro will have a significant impact on U.S. business relations with the island. If the future Cuban

⁹⁵ *Cuba Says U.S. Oil Firms Are Welcome to Explore*, WALL ST. J., Dec. 5, 2003, at A11, available at <http://online.wsj.com/public/us> (last visited Nov. 30, 2004).

⁹⁶ CUBA'S ECONOMY IN THE DOLDRUMS, *supra* note 8.

⁹⁷ Simon Romero, *Spanish Seek Oil Off Cuba; Potential Shift in Gulf Output*, N.Y. TIMES, July 6, 2004, at C1.

leadership decides to pursue more extensive market reform, then two potential models emerge: East Asia versus Eastern Europe. More precisely, the dominant economic strategy pursued by Cuba may more closely resemble the “market socialism” of China and Vietnam, or the “shock therapy” practiced with varying degrees of enthusiasm and success in the post-communist countries of Eastern Europe. Each path has important political implications as well as distinct economic advantages and drawbacks. The route chosen by Cuba’s leadership will have important implications for the future of U.S. business relations with Cuba. Furthermore, several factors have the potential to shape, and in most cases impede, the bilateral trade relationship. This section briefly outlines the key “wildcards” that could impact future U.S.-Cuba economic integration.

A. Messy Transition

At the beginning of 2005, the Cuban government remains politically strong and has proven itself capable of achieving modest economic growth in an adverse international environment. In addition, Fidel Castro has outlined a succession plan whereby power will pass to his brother Raúl Castro, the Commander-in-Chief of the armed forces, in the event the elder Castro dies or becomes incapacitated. Assuming this succession occurs without hindrance, the choice between maintaining the communist state, adopting some form of market socialism, or embracing greater economic reform will lie in the hands of Raúl Castro, the military, and Cuba’s civilian leadership. Nonetheless, the possibility of civil unrest or a dramatic deterioration in state institutions remains evident. This could emerge in the shape of serious divisions among the ruling elite, splits in the military, U.S. efforts to pressure for removal of the post-Castro communist regime, or the advent of popular leadership capable of mobilizing citizens against the government. The emergence of a highly volatile political environment, with a policy framework in flux, could severely hamper the development of productive U.S.-Cuba trade relations.

B. The Vicissitudes of U.S. Politics

It remains a widespread assumption that the U.S. trade and travel ban will be lifted shortly after Castro’s death, regardless of the form of the post-communist regime. Indeed, there is powerful evidence to support this view, including the apparent willingness of Congress to ease the sanctions while Castro remains in power and the softening of pro-embargo views in some sectors of the Cuban-American community in Miami. Nevertheless, although an extended embargo seems unlikely, the possibility cannot be dismissed entirely. As codified in U.S. legislation, the trade and investment embargo is required to stay in effect until Cuba becomes a democracy, and explicitly excludes normalization of relations while Fidel or Raul Castro remains in power.

Even if the U.S. sanctions are lifted in quick succession by a future U.S. administration, Cuba will remain a highly politicized battleground for American companies seeking to invest there. The country's poor labor practices and restrictive investment framework may provoke U.S. policymakers to engage in further regulation, or even assess penalties against American businesses that engage in certain practices. Large multinational companies may well decide that the Cuban market is not promising enough to brave a series of legal and political woes. On the other hand, however, certain companies engaged in tourism and other high-potential industries may view Cuba as a "can't miss" opportunity. However, after nearly fifty years of clumsy and shortsighted U.S. policy towards Cuba, even the formal end of the embargo will not be able to prevent American policymakers from meddling in the commercial relationship between the two countries.

C. Corruption

The level of corruption in Cuba remains worrisome. The Cuban government admits that corruption exists, and the government has become more active in rooting out wrongdoing in state-owned enterprises, including the formation of an agency to oversee auditing and control in 2001. In its 2003 survey, the corruption watchdog group Transparency International gave Cuba a score of 4.6 out of a possible 10, ranking forty-third out of 133 countries worldwide—in the middle of the pack for developing countries.⁹⁸ Other reports suggest that corruption in Cuba is far more widespread, and the country has had its share of scandals in recent years. Further, the economic transition in Russia and Eastern Europe in the early 1990s demonstrated how elites were able to take advantage of fluid institutional norms to drain state resources, divert foreign investment, and soak up development lending and international aid. For example, after channeling billions of dollars into the former Soviet Union between 1992 and 1998, the World Bank's own evaluations department rated the lending to be "unsatisfactory" due to immense government corruption during the privatization process. Similar, though less visible, woes continue to plague the socialist countries of East Asia, such as China and Vietnam. Worse still is the possibility that Cuba's regulatory environment for guiding trade and investment might become unhinged at the same moment that multinational companies, multilateral lenders, and bilateral development agencies like USAID are funneling massive amounts of resources into the country. If corrupt practices become prevalent in Cuba's future business environment, this will weigh heavily on the island's prospects.

⁹⁸ TRANSPARENCY INTERNATIONAL, CORRUPTION PERCEPTIONS INDEX 2003 (2003).

D. Legal Challenges

Following the 1959 Cuban revolution and subsequent nationalization of property, the Castro government settled all of its property claims with the exception of those filed by U.S. companies and Cuban citizens who had fled overseas. Between 1959 and 1960, the Cuban government expropriated U.S. property worth an estimated \$1.8 billion at the time of seizure.⁹⁹ Fleeing Cuban exiles also suffered property losses in the billions.¹⁰⁰ This unsettled dispute over property is the foundation of the most controversial titles in the 1996 Helms-Burton Act, which allows U.S. citizens who were formerly Cuban nationals to sue foreign companies with investments in Cuba for "trafficking in expropriated property."¹⁰¹ The Clinton and Bush Administrations have consistently granted six-month waivers to prevent the law from coming into effect, but it remains on the books nonetheless. Further, in 1999, Ricardo Alarcón, President of Cuba's National Assembly, announced his government's intention to sue the U.S. government for \$100 billion in damages for the economic suffering resulting from forty years of sanctions.¹⁰² Earlier that year, the government filed a claim in Cuban courts asking for \$181 billion in damages for the deaths and physical harm of thousands of people through acts ranging from the 1961 Bay of Pigs invasion to the bombing of Havana hotels in 1997.¹⁰³ Many U.S. companies will want to invest in Cuba before full legal resolutions of these claims, but such efforts may be subject to liability that could cause significant financial and legal headaches down the road.

E. Debt Crisis

Cuba is one of the worst debtor countries in the world, and has been in default of much of its foreign debt for nearly a decade. In 2002, the Cuban Central Bank reported total hard currency debt of \$12.2 billion, with \$10.9 billion mainly owed to Paris Club creditors, and a balance due to Japan, Argentina, and a half dozen other countries. In addition to this recognized amount, Russia also claims that Cuba owes \$20 billion to the former Soviet Union, and Cuba additionally has commercial arrears of \$1 billion with foreign companies.¹⁰⁴ Cuba withdrew from the International Monetary Fund

⁹⁹ CERTIFIED CUBAN CLAIMS, CUBAN CLAIM FAQs, at <http://www.certifiedcubanclaims.org/cubanclaims/faqs.htm> (last visited Oct. 11, 2004).

¹⁰⁰ Tim Johnson & Nancy San Martin, *Bush Keeps Cuba Suit Ban*, MIAMI HERALD, July 17, 2001, available at <http://www.miami.com/mld/miamiherald> (last visited Nov. 30, 2004).

¹⁰¹ JORGE DOMINGUEZ, INTER-AMERICAN DIALOGUE POLICY BRIEF, THE HELMS AND BURTON BILLS ON CUBA: AN EARLY ASSESSMENT 4 (1995).

¹⁰² *Cuba Announces Start of Legal Campaign Against U.S. Embargo*, MIAMI HERALD, Nov. 10, 1999.

¹⁰³ Anita Snow, *Cuba Sues U.S. for \$181 Billion*, ASSOC. PRESS, July 6, 1999, available at <http://www.cubanet.org/CNews/y99/jul99/06e1.htm> (last visited Oct. 11, 2004).

¹⁰⁴ U.S. DEPARTMENT OF STATE, CUBA'S FOREIGN DEBT FACT SHEET 2003, available at <http://www.state.gov/p/wha/rls/fs/22743pf.htm> (last visited Oct. 11, 2004).

and World Bank in 1964 in good standing and has no arrears with those organizations, nor with the Inter-American Development Bank, which it never joined. Nonetheless, Cuba's outstanding foreign debt is significant, and resolving these claims may be costly and arduous. The resolution of Cuba's hidden debt crisis is a crucial economic issue facing the country.

F. Talent Flight

Cuba's superior human capital is regarded as one of the most promising elements of the island's economic future. Through sustained investments, free education, and sophisticated community health practices, Cuba's health and education indices are better than much of the developing world. Underemployment of highly educated professionals is one of the major challenges facing Cuba's labor market, where taxi drivers and bellhops can earn far more in U.S. dollar tips than surgeons or university professors can make with their peso salaries. The Cuban government tightly monitors the ability of Cubans to travel abroad, and this is especially true for talented individuals who present a high risk for flight. Numerous defections by athletes, dancers, artists, and to a lesser degree, doctors and scientists, have been a source of concern and embarrassment for the Cuban government. In some cases, the defections prevent Cuba's participation in international venues. However, if Cuba were to reduce significantly the barriers to exit, the possibility of heightened or even mass migration could significantly deplete the intellectual and human capital that represents the island's most promising asset.

The majority of Cuba's pre-1959 economic elite has resettled in Miami, and migration to the United States has been fairly steady throughout the decades, with the exception of two surges in 1980 and 1994.¹⁰⁵ While the opportunity to leave Cuba remains limited for most of the people of the island, other countries in the Caribbean Basin have witnessed an outflow of their most talented and highly skilled workers to the United States and Europe. An estimated 70% of college graduates from the Caribbean live in the United States, and Cuba may well mirror this pattern of exporting its best people and the source of its potential middle class. Of course, a smooth Cuban transition and national reconciliation may in fact result in the reverse pattern, where talented entrepreneurs from Miami help Cuba to rebuild its infrastructure and modernize its economy.

VIII. U.S.-CUBA PARTNERSHIP: A DELICATE BALANCING ACT

The future of American business in Cuba will unfold in the shadow of nearly fifty years of commercial estrangement and will be haunted by a dimly remembered past where the missteps of U.S. companies contributed to the

¹⁰⁵ U.S. DEPARTMENT OF STATE, FACT SHEET: U.S.-CUBA RELATIONS (2001), *available at* <http://www.state.gov/p/wha/rls/fs/2001/2558.htm> (last visited Nov. 30, 2004).

groundswell of support for the 1959 Cuban Revolution. Fidel Castro's socialist brand of Cuban nationalism benefited, in part, from a backlash against the disproportionate U.S. influence in the political and economic life of the island. It remains to be seen whether a generation that has come of age under Cuban communism will be anxious to reprise the close economic relationship that has historically existed between the United States and Cuba, and whether American companies are ready to play a more constructive and accepted role the second time around. Yet it is not too early to draw several preliminary conclusions.

The first is that U.S.-Cuba economic relations have no where to go but up; it is difficult to conceive of a scenario where the two countries, so close to each other and with significantly complementary interests, resources, and skills, would actually reduce their commercial ties due to either U.S. policy constraints or the vicissitudes of the post-Castro regime. Proof lies in the fact that a sudden trade relationship has sprung up since November 2001 despite continued Cuban communism, rising hostilities between the Bush Administration and the Castro government, and the post-September 11 global slowdown. While there may be considerable debate about the ultimate potential of a U.S.-Cuba partnership, it is almost certainly more than exists today.

Nevertheless, the U.S. regulatory environment will be an important factor in determining what American businesses can and cannot do in Cuba, and the lack of clear rules or legal certainty will likely continue to deter American investment at some levels. In sensitive sectors, Cuba's export potential will also be held hostage to the ongoing debate in the United States on free trade, including the ultimate fate of the negotiated Free Trade Area of the Americas. The U.S. embargo consists of some twenty-odd separate executive determinations, pieces of legislation, and regulatory measures. The embargo creates certain imbalances in the U.S.-Cuba relationship and distorts the opportunities available to certain industries. Conversely, the sudden and unexpected surge of U.S. agricultural sales to Cuba provides an example of how chipping away at the embargo has created unexpected pockets of opportunity.

Most importantly, Cuba's future economic performance is highly dependent on the nature of the Cuban regime. If continued communist leadership adopts a market socialist model, then the possibility of Cuba emerging as a "Latin tiger" with economic success approaching a smaller version of China or Vietnam is indeed possible. However, this would come at the cost of continuing to restrict emigration from the island and the known constraints on political and economic liberties. If, however, Cuba rapidly transitions towards greater political freedom and democracy—even if public enterprises remain the norm—then the island will likely see substantial talent flight and develop an economic profile similar to the rest of the Caribbean. Tourism, remittances, and some agricultural and mineral exports would drive the economy, while human capital-intensive sectors like

biotechnology, education, the health professions, and the arts would be severely weakened by international competition for these skills. Revival of export-oriented manufacturing is also likely as Cuba gains some of this market, which is currently dominated by Mexico and, increasingly, Central America.

Cuba will garner great interest at the moment that the U.S. embargo is removed, and American investors will likely have to contend with a policy environment in considerable flux. Cuban policymakers may opt for a gradual reform of the socialist system, or there may be a push for greater democratization and a swifter move towards a free market economy. Either model would be a great improvement on the present system, although both remain improbable while Fidel Castro is in power. His successors, however, will not have the luxury of maintaining an anachronistic economic system in an increasingly globalized world. Ultimately, the future of American business in Cuba will be determined by the speed and sequencing of policy reform in both countries, as well as the dexterity with which economic managers and entrepreneurs respond to sudden changes in the rules of the game.