Cuba: Broadening Normalization

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Key Judgments: Drivers to Normalization

The normalization of relations between the United States and Cuba is a process that was initiated by President Barack Obama and President Raul Castro on December 17, 2014. The government-to-government relationship has already begun to normalize; now is the perfect opportunity for businesses to broaden the scope of normalization.

The push for normalization between the United States and Cuba is directly affected by the following factors:

Policy irritants remain an obstacle in the normalization process as they challenge Cuban sovereignty. The Cuban government demands respect for its nation's sovereignty and wants to be viewed as an equal partner in the normalization process. Eliminating policy irritants, including U.S. presence at Guantanamo Naval Base, the 1996 Cuban Adjustment Act, the Cuban Medical Professional Parole Program, dissemination of U.S. ideology through Radio and TV Marti, funding of democracy promotion programs that target Cuba under the Helms-Burton Act, and others will hasten the pace of normalization and show respect for Cuba's national sovereignty.

Current U.S. legislation hinders economic growth and development in Cuba by prohibiting trade, investment, and cooperation with the U.S. and other international markets. Cuba views the U.S. embargo as the most significant impediment to its economic development as well as the greatest obstacle in Cuba's integration into the world economy. Current U.S.-imposed regulations on Cuba limit the creation and implementation of collaborative agreements and the development of long-lasting business relations with the United States. The embargo hinders Cuba's ability to sustain economic growth with U.S. and international markets, and to form sustainable relationships in areas such as business, pharmaceutical research and development; resolve property rights with the U.S.; enforce intellectual property rights; and more.

The inability of the socialist structure to adapt and modernize has caused Cuba to reevaluate its economic model. Pressured by monetary and fiscal crises, low labor productivity, changes in the education level of the workforce, lack of economic opportunities, and a drain of high skill labor, Cuba has introduced a variety of efforts to address these challenges. Efforts include the creation of the Special Economic Development Zone of Mariel, expansion of the private sector, and enhancement of export capabilities. Further, in order to gain access to new technology, skills, and employment opportunities Cuba has made strides to attract foreign investment.

Ideological differences contribute to a lack of understanding between Cuba and the United States. Nationalism, pride, and ideological differences have contributed to the historic mistrust between both countries and shape how each nation approaches the normalization process. The lack of understanding combined with current policy irritants impede the development of formalized collaboration in areas such as: fighting narco-trafficking in both countries, ending the spread of the Zika virus, providing humanitarian aid after natural disasters, changing immigration policies, closing Guantanamo Bay Naval Base, enforcing intellectual property rights, and creating opportunities to build reciprocal market access.

Despite obstacles, the U.S. and Cuban governments recognize that common interests exist, providing the motivation to find areas of collaboration, which will further normalize relations. Cuban and American entities are eager to engage in collaborative work that contributes to shared knowledge, while promoting and protecting the interests of both countries. Scientific, medical, and pharmaceutical research, as well as issues of national security, such as cybersecurity, counterterrorism, and drug and human trafficking, are rapidly becoming key areas for cooperation. As ties between Cuba and the United States deepen, additional opportunities will present themselves for increased collaboration and partnership.

Products and Deliverables

Legislation and Regulation Products

Altering and Lifting the Embargo on Cuba

Challenges: Under current legislation, the Obama administration, the Treasury Department and the Office of Foreign Assets Control (OFAC) have been able to improve relations and increase trade between the U.S. and Cuba but relations still remain limited by the Helms-Burton Act. To lift the embargo, Congress requires that Cuba: hold free, fair, and democratic elections; address its human right violations; and implement economic changes to foster economic growth and development. Cuba views the U.S. embargo as the biggest impediment to change in the island and the most significant obstacle to the integration of Cuba into the international world economy.

Key Judgments: Internal social and economic pressures driving change in Cuba; embargo is an impediment to change, normalization, and Cuban international world market integration; and U.S. commitment to normalization.

Recommendations: Within current legislation, the Executive Branch can use executive orders and/or Legislative approval to further alter the embargo on Cuba and:

- Allow unlimited travel between the U.S. and Cuba
- Remove all business licensee requirements which hinders business to business interaction
- Allow for free and unlimited access to both economic markets
- Encourage and support Cuba's participation and membership in multinational banks
- Remove penalties and sanctions that limit/hinder international (both for U.S. and international) trade with Cuba

It is important to note that Helms-Burton Act does not prohibit the use of executive orders to alter the relations between the U.S. and Cuba. Helms-Burton requires the U.S. President to formally notify Congress when Cuba is undergoing political and economic changes, as required by the Act in order to lift the embargo. *Since formal congressional notification is to the discretion of the U.S. president, it is recommended that President Obama finesse current changes and trends in Cuba to bring official notification to Congress that there is change occurring on the island, thus beginning the process of lifting the Helms-Burton Act.*

Comments:
Cuban officials and its general population recognize the need for change as a result of economic challenges and shortages. Social and economic pressures in Cuba are forcing the leadership to address the need for: altering and devolve political power from the Communist Party to provinces, address the need for economic changes, allow a small private sector, and address shortages and basic demands of its population.

The embargo serves as an impediment to change; its very existence disrupts normalization, limits mutual economic growth and development, and restricts foreign relations and cooperation between the two states. Lifting the embargo would be in the national interest of the U.S. because it would further normalization and allow Cuba to meet the regulatory demands of the Helms-Burton Act.

The recent 7th Party Congress of the Communist Party did not provide much hope for lifting the embargo. The meeting culminated in the publication of four documents that recognized the need for economic restructuring yet alluded to the creation of market socialist economy grounded on ideological firmness. President Raul Castro committed to developing an economy under a new economic model that followed a conceptualization of the Cuban economic and social model of socialist development. The result of the Party Congress illustrates that Cuban leadership, including Fidel Castro, will not devolve power to younger generations or alter its political ideology to support economic models conducive to economic growth and investment. The Party Congress illustrates a social dichotomy in Cuba as evident by a want for change amongst the Cuban population in contrast to a want to remain true to Cuban ideology with a stark opposition towards capitalism and free market even in the face of economic challenges and massive shortages.

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Resolving Certified and Non-certified Property Claims and Cuban Counterclaims

Challenge: The U.S. has over $1.9 billion in Foreign Claims Settlement Commission (FCSC) corporate and individual certified property claims and billions in non-certified claims. The Cuban government has put forth counterclaims consisting of economic losses related to the U.S. embargo in addition to injuries and damages for U.S. hostilities against Cuba. The Cuban Government claims that the FCSC valuation process lacked the involvement of the sovereign territory in which the U.S. property claims are located and that the claims are overvalued.

Key Judgments: Boosting international reputation and state legitimacy in the face of internal crises; creating an environment conducive to investment; and nationalism and sovereignty.

Recommendations:

- Create a neutral international commission to assist the Cuban Government and U.S. Department of State in the revaluation of the already established FCSC certified claims.
    - Construct a single formula for the revaluation of claims (i.e. based on declared value for tax purposes, previously declared values by U.S. Department of Commerce, or current market value) and reconfigure interest rate payments to an agreed upon rate established by precedent of such payments to other foreign claimants. This international commission should simultaneously revalue Cuban counterclaims.
- Once claims are revalued and litigated, organize payments through two-tier solution that allows U.S. corporations or larger claimants to negotiate a "creative bargain" with the Cuban Government (compensation, right to operate, management contracts, debt-equity swaps, "preferred acquisitions" rights, sovereign bonds, or final project authorization in the Special Economic Zone of Mariel), while the Cuban Government repays individual claims in lump-sum to the U.S. Treasury to be distributed to claimants via U.S. government, with claims capped at one million dollars.
- In order to resolve non-certified claims, the Cuban Government could allow individuals to privately settle property claims on a case-by-case basis, negotiating a fair price with the current occupant. This would not interfere with the Cuban Government's core interests nor force them to pay compensation for non-certified claims.

Comments:

The resolution of property claims is not obligatory for lifting of the Helms-Burton Act. Based on the language used in Section 207D of the Helms-Burton Act, it can be interpreted as simply a suggestion that the resolution of property claims be resolved prior to the repeal of the act.

During the initial FCSC valuation process, some corporations opted out of U.S. representation in the formal litigation process of certified claims. Corporations that do not require U.S. representation should begin the settlement process directly with the Cuban Government through "creative bargains" (pending OFAC licenses) or act through third-party countries in order to create precedent for future potential resolutions of certified corporate claims.

The U.S. Department of State must acknowledge the challenges present for the Cuban Government to repay individual and/or corporate property claims. The U.S. Department of State and the Cuban Government must jointly explore potential sources for the creation of a compensation fund in order for the Cuban Government to pay property claims. This fund could be created by Cuban export revenues; revenues accrued due to normalization-related activities such as U.S. tourism, or U.S. Congressional approval of the release of frozen Cuban financial assets in the U.S.

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Foreign Policy Products

Enhancing Government-to-Government Cooperation

Challenges: Bilateral agreements between the U.S. and several other countries have proven to create trust and goodwill; however, historic hostility between the U.S. and Cuban governments has prevented them from formally working together on several issues of common interest such as national security, transnational crime, and health.

Key Judgments: Ideological differences contribute to a lack of understanding between Cuba and the U.S. Common interest in areas of mutual collaboration provides both countries with motivation for further normalization. Informal U.S.-Cuba cooperation on narco-trafficking and migration issues has taken place for many years and has been successful.

Recommendations: Continue and increase government-to-government collaboration in priority areas. Expand existing cooperation in order to formalize bilateral agreements, and diversify collaboration initiatives into new areas based on mutual interests.

- Develop an anti-narcotics cooperative agreement between the U.S. Drug Enforcement Administration, SOUTHCOM, and other U.S. agencies along with its Cuban military and counter narcotics counterparts. Cuba has such agreements with 36 other countries. The anti-narcotics cooperative agreement will enable more frequent information gathering and technology sharing to better enforce drug laws and thwart drug traffickers.
- Formalize cooperation on narco-trafficking and migration issues to create a clear framework in which both governments can operate, enhancing transparency, and the ability for each country to fulfill its mission in the areas of government-to-government cooperation.
- Invite Cuba to join FIRST (Improving Security Together), an international organization comprised of governments, organizations, and corporations in order to help combat cyber terrorism.
- Establish a joint initiative between the U.S. Centers for Disease Control and Prevention (CDC) and the Cuban Ministry of Public Health for future health studies, including studies to eradicate the Zika virus and other mosquito-borne diseases. Through the joint initiative, form a medical team representative of both governments to work with Central American countries where the Zika virus poses a public health threat.
- Work with the CDC and the Pan American Health Organization (PAHO) to introduce Cuba to the Pre-exposure prophylaxis (PrEP) as an effective HIV prevention tool.
- Develop a bilateral agreement on oil spill mitigation.

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Rethinking U.S. Democracy-Promotion Programs to Improve Relations and Increase Economic Opportunity

Challenges: The U.S. has a series of policies and programs that promote nonviolent democratic change in Cuba. Democracy promotion programs have created an atmosphere of suspicion in Cuba, serving as an obstacle to the normalization process.

Key Judgments: Policy irritants remain an obstacle to the normalization process as they challenge Cuban sovereignty.

Recommendations:

- Remove media programing, a policy irritant which the Cuban government cites as evidence of U.S. hostility and a threat to their sovereignty, specifically:
  - Integrate the Office of Cuba Broadcasting (OCB) into the Voice of America (VOA) to ensure that programing meets VOA standards.
  - Move the OCB from Miami, Florida to Washington, D.C to avoid political influence by Cuban exiles and Cuban Americans in Miami.
  - Change the name of Radio and TV Marti as the name offends Cubans.
  - Expand VOA broadcasting to the entire Latin America and Caribbean region, which would eventually eliminate the need for Radio/TV Marti.

- Reshape current democracy promotion programs with more effective alternatives that promote the normalization process.

Comments:

- Due to the limitations of government funding (Helms-Burton Act Section 109(a) requires federal agencies to comply with its democracy-building criteria to obtain federal funding), it is the Chamber's responsibility to spearhead programs, without federal funds, to further enhance the normalization process and to build relationships with communities on the island.

- Invest in programs that foster individual financial independence, and enhance people-to-people exchanges; expand programs to include state owned enterprises; collaborate with the Black Chamber of Commerce and the LGBT Chamber of Commerce to engage disenfranchised communities in these programs. Ideas include:
  - Design entrepreneurial programs based on models such as Florida International University's (FIU) InCubando@FIU;
  - Create internship opportunities for Cuban youth regardless of political affiliation; and
  - Partner with organizations that provide micro-entrepreneurship programs (training, micro-loans, financial products and services, etc.) in Latin America and the Caribbean, to help increase economic opportunities and financial autonomy for Cubans from all racial and social backgrounds.

- InCubando@FIU is a six-week program in Miami, FL, which helps Cuban entrepreneurs learn practical skills in the following areas: English language instruction, finance, accounting, business plan writing, marketing, and sales. The program is open to cuentapropistas under the age of 40 who are licensed under the Cuban government and have been operating on the island for at least a year.

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Defusing the Tension Surrounding the U.S. Naval Base in Guantanamo

Challenges: The unwelcome presence of the U.S. Naval Base in Guantanamo slows the normalization of U.S.-Cuba relations as it creates distrust between the two countries. Currently, the U.S. government is not willing to begin dialogue with the Cuban government on returning the U.S. Naval Base in Guantanamo to Cuba, and Congress has put explicit obstacles to closing the detention center on the base.

Key Judgments: Improved U.S.-Latin America relations; historic mistrust; strategic location; Violation of Cuba's sovereignty; nationalism; eliminating policy irritants.

Recommendations:

- Create a coalition to discuss operational issues regarding the naval base area by building off of the current defense line procedures, which include: the Department of Defense (DOD), the Department of State (DOS), and the Ministry of Armed Forces (MINFAR);
- Examine the long-term benefits of the base as well as mitigation strategies. Such strategies have been led by the Departments of Defense and State, and they could develop contingency planning should negotiations occur.
- Alternatively, the Chamber of Commerce can advocate for the U.S. President to begin negotiating the terms for returning the naval base area to Cuba. This second approach will help to create a more positive investment climate for U.S. businesses in Cuba by addressing some of the factors causing political tension.

Comments:

- Representatives from DOD, DOS, and MINFAR can form a coalition to discuss operational issues. Issues could include: the future of the Cuban special-category residents who live on the base as well as improving the way in which pensions are received by retired Cuban base-laborers. This coalition could be used as a trust-building measure to begin dialogue on returning the U.S. Naval Base in Guantanamo to Cuba.
- As an alternative strategy, the U.S. President could begin the negotiation process by recognizing Cuba's sovereignty and acknowledging Cuba as an equal counterpart. Terms and conditions could include a potential end date for returning the naval base area to Cuba. After the terms are negotiated, both governments can begin the process to modify the *1934 Treaty Between the United States of America and Cuba*.

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Improving U.S. Immigration Policy toward Cuba

Challenges: The current U.S. immigration policy incentivizes unsafe immigration practices for Cubans to come to the U.S. In addition, it results in a drain of Cuban skilled labor. Undue burden is placed upon Central American countries and Mexico as Cuban immigrants pass through en route to the U.S., putting strain on U.S.-Latin American relations.

Key Judgments: The inability of the socialist structure to adapt and modernize has caused Cuba to reevaluate its economic model. Policy irritants remain an obstacle in the normalization process as they challenge Cuban sovereignty. Ideological differences contribute to a lack of understanding between Cuba and the U.S.

Recommendations:

- To put Cubans on equal footing with immigrants from other countries, advocate for:
    - The elimination of the wet-foot-dry-foot (WFDF) policy, as permitted in the Cuban Adjustment Act, and the automatic refugee status given to Cubans immigrating to the U.S.
    - The elimination of the Cuban Medical Professional Parole Program, which grants U.S. officials discretionary authority to allow Cuban medical professionals into the U.S. (once on U.S. soil, WFDF applies).

Instead of encouraging illegal immigration practices, the U.S. should advocate for a doubling of the number of Cubans allowed to immigrate legally to the U.S. The current max is 20,000 per year as dictated by the 1994/95 U.S.-Cuba Migration Accords. This would take place after the elimination of WFDF.

To bypass federal immigration reform gridlock, work with state and local chambers of commerce to lobby for state-based visa work programs that assist in the hiring of temporary high- and low-skilled workers from Cuba and elsewhere. These programs allow participating U.S. states to regulate the quantity of temporary migrants who want to live and work within their borders. The programs would bypass the need for H-1B nonimmigrant work visas, currently capped by Congress at 65,000 per year nationally for all countries combined.

Comments: Changes to current Cuban immigration policy will eliminate incentives to undertake unsafe immigration practices. Moreover, removing WFDF benefits will increase opportunities for people-to-people exchanges for Cubans to travel to the U.S. The elimination of the Cuban Medical Professional Parole Program will reduce the drain of skilled labor in Cuba. In addition, the changes will improve relations with countries in the region that are currently receiving the bulk of Cuban immigrants en route to the U.S. State-based visa work programs would assist both states and the business community in hiring temporary high-skilled, low-skilled, or agricultural workers as needed.

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<u>Trade and Investment Products</u>

Expanding Opportunities for Bilateral Trade

<u>Challenge:</u> The Obama Administration's recent changes to the U.S. embargo have dismantled barriers that narrowly fit U.S. foreign policy objectives, rather than creating substantial opportunities for both U.S. businesses and Cuban entities. Consequently, the efforts to expand bilateral trade and foster reciprocal engagement from Cuba have fallen short.

<u>Key Judgments:</u> Cuban interest in boosting economic productivity through the enhancement of its trade capacity and U.S. interest in tapping into the Cuban market.

<u>Recommendations:</u>
Advocate for the U.S. Administration to:

- Broaden the list of authorized exports, to include capital goods (i.e. equipment, machinery and associated technologies), in order to support the improvement of infrastructure and production efficiencies in Cuba. There is significant need in Cuba for capital goods that can help boost efficiencies in industrial sub-sectors, such as product packaging and construction.
- Further loosen restrictions on imports from Cuba, as well as imports from other countries that incorporate Cuban raw materials (e.g., nickel), in order to address Cuba's interest in accessing the U.S. market and driving competitiveness in export-oriented industries. Given U.S. consumer interest in particular products produced in Cuba, imports could include: tobacco, rum, and honey.

<u>Comments</u>:
Feasibility of permitting the export of U.S. capital goods and more imports from Cuba:

- The Bureau of Industry and Security has the authority to enforce restrictions on U.S. exports. However, it can also make exceptions to the restrictions, particularly if they align with U.S. policy interests, such as "supporting the Cuban people." While Section 746.1(a)(1) of the Export Administration Regulations establishes a general policy of denial for the export of items that require a license, exceptions for Cuba have been implemented through amendments in 746.2(b). The amendments include a case-by-case review policy for exports to Cuban state-owned entities involved in the production of goods and services used by the Cuban people. Therefore, new amendments could be made to allow for exports to state-owned entities that are in need of updated resources to enhance their productivity, and thus, their contribution to economic growth.
- Through the Cuban Assets Control Regulations (CACR), the Office of Foreign Assets Control (OFAC) has the authority to make changes to restrictions pertaining to imports from Cuba. Although Section 515.204 of the CACR prohibits the importation of certain merchandise from Cuba, OFAC added Section 515.582 to authorize certain imports from independent Cuban entrepreneurs. New sections could be added to allow for imports from export-oriented firms that contribute to job creation and economic growth, and thus, support the economic needs of the Cuban people.

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Developing Governmental Cooperation on Commercial Matters

Challenge: As the normalization process continues, commercial activity between the U.S. and Cuba will increase; however, the existence of differing business cultures, mechanisms for arbitration, labor practices, and monetary regimes will likely lead to a rise in commercial disputes.

Key Judgments: The impact of underlying ideological differences on commercial practices and regulations and the need for collaboration in order to enhance reciprocal market access.

Recommendation:
Advocate for the U.S. and Cuban governments to form a joint commission on trade and investment.

- The joint commission would enable government officials from both countries to meet and establish mutual understanding on issues that impact cross-border trade and investments flows. Subsequently, the joint commission would consider coordinating work programs to address pertinent issues such as improving labor practices; promoting policies that enhance investment opportunities in manufacturing, agriculture and telecommunications; navigating and improving mechanisms for commercial arbitration; and ensuring adherence to World Trade Organization obligations.

Comments:
Both governments have partnered with other foreign counterparts to boost trade and investment flows:

- Cuba has negotiated over 60 Bilateral Investment Treaties (BITs), of which 40 are in force. Its major BIT partners are the United Kingdom, France, Germany, Spain, Portugal, Switzerland, and China.
- While the BITs negotiated by the U.S. are known for being especially stringent, the U.S. has established joint commissions on economic, trade and investment issues with other countries. Joint commissions have been formed with China, Brazil, Uruguay, and Paraguay.

If the establishment of a joint commission between the U.S. and Cuba is successful, it would lay the foundation for greater collaboration. For example, it could lead to the establishment of a Trade and Investment Framework Agreement, where more substantial talks are held between high-level government officials in order to pave the way for future accords.

Given the current presence of the U.S. embargo against Cuba, the formation of a joint commission is a favorable starting point for government cooperation because it does not require the approval of Congress.

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Supporting Financial Reform in Cuba

Challenge: The lack of currency unification, overvalued exchange rates, and private sector development in Cuba present significant obstacles to international trade and business. These obstacles are exacerbated by Cuba's inability to join international financial institutions (IFIs). Consequently, the country's progress in public and private sectors remains modest. Cuba could benefit from the assistance of IFIs to meet both its technical and structural needs.

Key Judgment: Monetary and fiscal crises have hindered the development of Cuba's financial infrastructure and its entry into the global economic system.

Recommendations: Facilitating Cuba's relationship with an IFI is the most significant and irreversible move that the U.S. can take under the current administration. The International Monetary Fund (IMF) and Inter-American Development Bank (IDB) are two IFIs that have the greatest potential to have a robust impact in terms of helping Cuba develop its financial system, and in turn, its private sector. However, the current U.S. embargo does not allow the U.S. government to support Cuban membership in these IFIs.

By offering strategic assistance to the Cuban government and nongovernmental organizations (NGOs), U.S. organizations can help create a pathway for future Cuban membership in an IFI, should the Cuban government elect to join in the future. The following recommendations are actions that can be taken by U.S. organizations seeking to develop a relationship with Cuba and that want to help set Cuba on the path to IFI membership.

- Offer technical assistance to Cuban government and nongovernment officials in the areas of data collection and analytics. IMF members are "required to share information on financial, fiscal, economic, and exchange policies that have international ramifications." Therefore, offering technical assistance would promote sound transparency and accountability, two major factors considered for IMF membership. This research and data collection initiative can prepare Cuba for a long-term transition to the IMF, even if Cuba is not ready to join in the near future.
- Publicly express support for Cuba to join the Organization for American States and subsequently the IDB. While the U.S. does not have veto power in IFI membership, other member countries may not be willing to support Cuban membership in order to avoid conflicting with the U.S. Therefore, encouragement from a U.S. organization may be useful for garnering the international support and votes needed for Cuban membership in the IDB.

Comments: Political and economic changes in Cuba so far have been subtle and gradual. The U.S. can work in parallel with this process to bring Cuba the structural and financial assistance it needs.

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The Special Economic Development Zone of Mariel: An Opportunity to Influence Market Development and Demand

Challenge: While the Cuban government and international investors, specifically Brazil, have invested heavily in the Special Economic Development Zone of Mariel (ZED Mariel) and a modern container terminal, some U.S. companies are hesitant to establish a presence in the Zone because of issues presented by the U.S. and Cuban regulatory framework. Sing the embargo remains in place, doing business with Cuba continues to be sanctioned and can lead companies to a lengthy U.S. licensing approval process. With regards to the Cuban government, U.S. businesses are noting a lack of transparency and additional lengthy procedures due to the requirements of Mariel, such as a detailed feasibility study.

Key Judgment: Cuba's need to attract foreign investment instigated the creation of ZED Mariel to attract foreign investment, generate exports and employment, promote the replacement of imports, exchange new technology, and acquire business management skills.

Recommendations:

- With a growing private sector and client market, a rapidly growing tourist industry and a strong desire to enhance employment opportunities and economic freedoms, there is demand and prospects in this distinctive developing market. Despite media warnings to wait for further amendments, U.S. government agencies have already issued licenses for U.S. companies to establish offices both inside and out of Mariel; the Miami-based International Port Corporation being the first established outside Mariel, and the tractor manufacturer, Cleber, is already licensed to be the first inside. With the path already cleared, U.S. businesses are encouraged to follow suit.
- Apart from U.S. businesses looking to be among the first to propagate their brand in Cuba, international entrepreneurs from China, Spain, Canada, France, Belgium and the Netherlands have all begun establishing themselves ahead of U.S. companies. This push is mainly a result of President Obama's 2014 announcement to normalize relations. Thus, not only is market competition growing, but the rare opportunity to be able to influence market development and demand should motivate U.S. enterprise to take action.
- The Zone's container terminal, TC Mariel, and ZED Mariel's operations company, *Servicios Logísticos Mariel*, are both under contract with experienced international companies; PSA International out of Singapore and the French container ship operator CMA CGM, respectively. This logistics experience, the competitive tax and tariff incentives in Mariel, and the highly skilled labor force available should reassure and compel U.S. companies interested in venturing into Cuba.
- TC Mariel has been dredged to accommodate Neo-Panamax containerships, the maximum size capable of traversing the 2016 Panama Canal expansion. Because they are too big to call at U.S. ports, Mariel can be used as a cost-savings transshipment hub.

Comments: Refer to the **ZED Mariel Guide** handout for significant information regarding tax laws, costs, recent amendments and a regional port comparison.

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Education and Labor: Foreign Jobs in Demand for Underemployed Workforce

Challenge: Budget cuts and a limit on university enrollments, along with the prospect of earning more in non-professional fields of the private sector, are augmenting drop-out rates and affecting the skill level of the Cuban labor force. Another factor affecting this new segment of the labor market being open to private and foreign companies is that the hiring of employees must be done through government run hiring agencies. Along with an inflated exchange rate for the payment of salaries, commissions for these agencies make up the bulk of Cuban labor costs. A final factor affecting the socioeconomic stratification in Cuba is that higher income opportunities are incentivizing workers to seek employment with foreign companies – paradoxically a relief for the Cuban government's need to create jobs and a beneficial resource for foreign investors.

Key Judgment: Transformative changes in the education system and labor market have been spurred by Cuba's need to reevaluate and evolve its economic model.

Recommendations:

- Being that the most valuable resource for a company is its human capital, Cuba's enthusiastic and exceptionally talented labor force is an asset that U.S. investors should take advantage of.
- Earning "hard currency," whether in the form of tips or bonuses, is one reason Cuban talent seeks foreign employment. This lends to the ability to incentivize and maintain a loyal and motivated workforce in a cost effective manner, and should motivate interested companies to establish an entity within Cuba or contract Cuban labor.
- With Professional Technical Education degrees being adapted to regional needs, new companies should work with Cuba's Ministry of Education to assist in developing a trained staff.

Comments: Refer to the **Cuban Labor Guide** handout for significant information regarding the hiring of employees, wages, and the cost of labor and the overall climate of human capital in Cuba.

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Increasing Opportunities for Collaboration and Partnership Related to Pharmaceuticals

Challenge: Due to a regulatory environment that does not fully support or consistently approve the necessary research, clinical trials or commercialization of Cuban pharmaceuticals, much needed drugs and vaccines produced in Cuba continue to be unavailable for American consumers. In addition, failures of past attempts to bring Cuban drugs to the U.S. have created uncertainty about the ability to obtain licenses and approvals.

Key Judgments: Lack of fundamental changes to the regulatory environment; interest in accessing pharmaceuticals.

Recommendations:
Take advantage of significant opportunities for research and collaboration between U.S. and Cuban researchers and scientists, such as:

- The Roswell Park Cancer Institute (RPCI) in Buffalo, NY, reached an agreement with the Cuban Center for Molecular Immunology (CIM) to bring the CimaVax lung cancer vaccine to America for research and clinical trials. If RCPI is successful in gaining all of the necessary U.S. Food and Drug Administration (FDA) and Office of Foreign Assets Control (OFAC) approvals to bring CimaVax to the U.S. , it will establish a precedent that will benefit pharmaceutical companies, research institutes, and the medical community.

U.S. pharmaceutical companies can find creative ways to strengthen ties with Cuba until the regulatory environment becomes less ambiguous:

- Take advantage of changes to Section 515.565 (educational activities) under the Cuban Assets Control Regulations (CACR), and sponsor or underwrite: 1) scholarships for Cubans to pursue graduate and doctoral studies in relevant scientific fields in the U.S., 2) scholarships for Americans to pursue graduate or medical studies in Cuba, and 3) fellowships for Cuban scholars to teach and conduct research at U.S. academic institutions. Existing programs, such as Pfizer's Medical & Academic Partnerships and grant funding, can be modified and expanded to include Cuban students, scholars, researchers, and institutions.
- Donate scientific equipment to Cuban researchers (provided it does not have potential military applications) as allowed per Section 740.21 of the Export Administration Regulations.

Comments:
The CimaVax partnership is a litmus test of the current regulatory environment, evaluating the willingness of the FDA to support and approve investigational new drug (IND) applications for Cuban pharmaceuticals and determining if the OFAC will issue licenses for clinical trials and, eventually, sales. Moreover, CimaVax is also a test of the flexibility and limitations of recent changes and amendments to the CACR and OFAC licensing. The new Commissioner of the FDA is Dr. Robert Califf, a cardiologist with substantial clinical trial experience and ties to the pharmaceutical industry. His influence could aid in making the regulatory process and approvals for Cuban pharmaceuticals both quicker and smoother. The FDA has thus far been supportive of RCPI in their IND application process.

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<u>Culture Products</u>

Overcoming Cultural Barriers in Business for Cubans and Americans

<u>Challenge</u>: Lack of cultural awareness and competency among Americans and Cubans affects their ability to establish effective business relationships, which limits bilateral economic opportunity and the potential for increased capital gains for businesses in both countries.

<u>Key Judgments</u>: Pride; ideological differences; isolation; mistrust.

<u>Recommendations</u>: U.S. and Cuban business professionals should strive to create long-term business relationships with each other through a deeper understanding of the differences between their cultures and by seeking shared values. Cultivating relationships based on trust and respect will help create a strong foundation for Cuban and U.S. businesses to enter each other's markets. Keeping in mind the dangers of generalizing behavior based on misperceptions of culture, the following considerations may assist in building positive relationships:

For U.S. businesspeople to keep in mind when interacting with Cuban markets:

- Any skepticism held against Americans, their products, services, and advertising is partially rooted in the history of mistrust between both countries and a lack of confidence in U.S. intentions behind normalization. Engaging with U.S. businesses has political meaning for Cubans.
- Partner with Cuban entrepreneurs, cooperatives, and state enterprises on equal footing to ensure all parties benefit mutually and are protected equally in both legal contexts.
- Recognize and adjust to the intermittent and limited internet access on the island within the context of business operations and sales.
- Invest, engage with, and take care of business relationships as if they were friendships.
- Cuban consumers and businesspeople believe they know which products and services they want and need.
- Cubans are most interested in the usefulness and durability of products, especially if more than one individual can benefit from its purchase.
- Reference past experience with other island-based markets and consumers. Cuban lifestyle and business culture are similar to other Caribbean cultures.
- Word of mouth is currently the most powerful asset in Cuban marketing.
- A simple, clean, professional, and tailored appearance will be appreciated.
- When doing business with Cubans, avoid points of political tension such as the U.S. naval base at Guantanamo, criticisms of the Cuban government, objectification of women, and identity issues based on race, sex or gender, sexual orientation, or class.
- The manner in which new products and services are advertised to Cubans will contribute to the perception of American values and interests.

For Cuban businesspeople to keep in mind when interacting with U.S. markets:

- While most Americans are genuinely interested in establishing business relationships that benefit all parties, any perceived hesitation on their behalf may be partially rooted in residual distrust stemming from Cuban social isolation.
- There is high demand for access to previously unattainable Cuban goods and services.

- When doing business with Americans, avoid points of tension such as politics, religion, personal finances, or failures of the American Dream.
- Initially, Cuban experiences and products may not viewed as unique or more than Cuban.
- U.S. businesses place great weight on written contracts for the protection of their interests. In order to protect interests, read and draw up contracts with close attention to legal processes of both countries and seek protection under intellectual property law.
- The manner in which products and services are advertised to Americans will be collectively interpreted as the face of Cuba.
- Americans may expect punctuality and a high level of expediency in operation, production, and response.
- Generally, appropriate business attire is a simple, clean, professional suit or a guayabera.

Comment: While few on either side expect cultural tension to impede the development of positive business relationships, semantics and ignorance of cultural nuance have slowed existing negotiations and contributed to misunderstandings and tension.

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Developing Effective Bilateral Advertising

Challenge: U.S. and Cuban businesses lack a bilateral advertising culture, the existence of which is crucial to fostering brand awareness, creating consumer loyalty and increasing profits.

Key Judgments: Ideological differences; economic restructuring; interest in collaboration.

Recommendation: Cuban and U.S. businesses can enter each other's markets early by advertising within the tourism industry, as the infrastructure exists and even non-tourists are exposed to these advertisements. As relations normalize, Cuban and U.S. businesses can partner to create new e-commerce platforms, social media and mobile applications that can serve the dual purpose of innovating new ways to do business and developing cutting-edge advertising strategies and platforms that will succeed within each context. The following are recommended strategies and considerations to successful advertising:

For U.S. businesses advertising in Cuba:

- As most Cubans are already familiar with U.S. brands and a black market culture exists in Cuba, in-depth research about brand reputation is likely to yield important insights for successful advertising.
- Cubans are more likely to identify with advertisements using Cuban actors and locations.
- Cubans are likely to appreciate straightforward advertisements that show the collective value and usefulness of products more so than advertisements that target the individual.
- Avoiding or countering U.S. stereotypes of Cuba in advertisements is likely to be an effective strategy.
- Advertisements that are mindful of the Cuban generation gap, in which the younger generation is generally more open to change, are likely to succeed.
- As word of mouth is the most important asset in Cuban domestic advertising and Cubans claim to view U.S. television and film advertisements analytically, marketing through other creative avenues, such as partnering with entrepreneurs to exchange knowledge, sponsoring local sports teams or building parks, is likely to succeed in the Cuban market.

For Cuban businesses advertising in the U.S.:

- The U.S. market is flooded with goods produced both domestically and abroad, so promoting the uniqueness or "Cubanness" of a product will likely be an effective market-entry advertising strategy.
- U.S. advertising culture differs from European advertising culture, which means that, in order to enter and succeed in U.S. markets, Cubans will likely need to learn how to cater advertisements to U.S. consumers, specifically by learning how to advertise on television, the Internet and social media.
- The U.S. has a diverse population, which means that advertisements are usually most effective when they only cater to one U.S. demographic market.
- As Miami, Florida already has a significant Cuban presence, entry-level advertising in markets that may not have as many Cuban products is likely to be effective.

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Establishing Mutual Respect for Intellectual Property (IP) Rights

Challenge: Lack of access to U.S. goods has created a culture of pirating in Cuba. Despite international IP treaties signed by both countries, the U.S. has implemented contrary policies that prohibit the Cuban government from obtaining trademark rights for expropriated properties.

Key Judgments: Lack of bilateral IP enforcement; ideological differences; trademark disputes.

Recommendations:

For the U.S. and Cuba:

- Advocate that the U.S. and Cuban governments allow bilateral contracts between individuals for the sale, use, or transfer of IP (trademarks, copyright, patents, etc.), and suspend any requirement of government approval.
- Collaborate on efforts to prevent, detect, and address pirating, bootlegging, and counterfeiting of IP goods, such as counterfeit Cuban cigars sold in the U.S. and pirated U.S. movies distributed in Cuba, to strengthen mutual enforcement of IP rights.
- Use the World Intellectual Property Organization (WIPO) to arbitrate any outstanding IP disputes.

For the U.S.:

- Cuba is a "first-to-file" country in regard to trademarks. In anticipation of the lifting of the U.S. embargo, U.S. businesses can act quickly to register trademarks and reduce the risk of trademark squatting of a U.S. brand. Use the trademark commercially in Cuba within three years following registration to avoid expiration of the mark.
- Advocate for the repeal of Section 211 of the Omnibus Appropriations Act of 1998, which specifically discriminates against Cuba, prohibiting U.S. courts from considering or enforcing trademark claims regarding property confiscated by the Cuban government.

For Cuba:

- Enter the U.S. market as early as possible to protect trademarks. The U.S. is a "first-to-use" country in regard to trademarks. It, too, has a three-year commercial use requirement. However, exemption from this requirement is allowed under extenuating circumstances, such as the U.S. embargo.
- So that Cuban citizens can better disseminate and protect their creations and ideas in an international economy, raise awareness of IP institutions, processes, and rights.
- Until the U.S. fully lifts the embargo, temporarily suspend--for U.S. businesses--Cuba's three-year commercial use requirement for trademarks.
- To discourage the sale of pirated goods, include a clause in vendor licensing agreements that notes that this practice is prohibited.

Comments: To encourage the trade of intellectual property, the U.S. and Cuban governments need to commit to equal protection of IP rights. Rebuilding mutual respect for IP rights will decrease product confusion among consumers, encourage innovation through reward, and build a market for a variety of goods in and from each country.

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