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THE EXPORT OF MEDICAL SUPPLIES AND  
AGRICULTURE PRODUCTS IN CUBA -- D.  
Cuban Economic Relations

Berta E. Hernández-Truyol

University of Florida Levin College of Law, [hernandez@law.ufl.edu](mailto:hernandez@law.ufl.edu)

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## D. Cuban Economic Relations

*Berta Hernández-Truyol\**

First, looking at the history since the ascent of Castro to power over forty years ago, people from all walks of life and from every corner of the world, depending on their political leanings, have described Cuba as paradise or perdition. Either a magnificently successful or a wholly failed experiment. Economists, lawyers, human rights activists, politicians, and sociologists alike, often using the same data, take sides to sing the praises or condemn the Cuban system. *Castristas* present evidence of triumphs in health, education, and welfare to establish that the Cuban profile rivals those of industrial states. They further cite constitutional mandates for race and sex equality often in the context of attainment, of educational attainment, and family support systems such as child care in the form of infantiles to show extreme social progress. Anti-*Castristas*, on the other hand, blame Castro and his rule for health epidemics, technological retrogression, and an oppressive totalitarian system, wholly lacking in human rights protections, including the right to vote, and a fair trial, or freedom of expression.

The forty-year-old embargo, prescribing the type of economic exchanges of interest in these two panels, is a subject of the same type of partisan evaluation as the economic, political, and social conditions of the island are. Indeed, some call the embargo a blockade, language that itself effectively and vividly recalls the rhetoric of the supposedly over cold war. Proponents of the embargo argue that it constitutes a perfectly legitimate exercise of sovereignty by the only surviving super power of the world and the now sole police of the world. Notwithstanding decades of failure, the embargo supporters suggest that if we hang on just a little longer, we will see the successful strangulation of the barely breathing economy and will

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\* Faculty at the University of Florida Levin College of Law since 2000 as the Levin, Mabie and Levin Professor of Law. She received her bachelor's degree from Cornell University, her law degree from Albany Law School of Union University and her master's in law (in international legal studies) from New York University. She previously was a professor at St. John's University School of Law, where she also directed the International Women's Human Rights Project of the Center for Law and Public Policy. During the late 1990s, she was an honorary senior fellow in the Institute for Legal Studies at the University of Wisconsin Law School and was a visiting professor at Georgetown University Law Center. She also has been on law school faculties of the University of New Mexico and DePaul University. She is one of the founders of the *Latina/o* Critical (LatCrit) Theory movement and is widely published. She also is active in the Association of American Law Schools, the American Bar Association, and the American Society of International Law, where she serves on the society's executive committee.

be able to have a democratic form of government without el baburo. Conversely, the foes of the embargo, which in the last years have been increasing in numbers by great leaps and bounds, claim that the extra-territorial reach of the law violates international legal principles. Further, they point at the weakened Cuban economy and point fingers in blame at the embargo for the inability of the island to feed its hungry and treat its sick. Finally, the embargo is condemned as a cold water relic no longer appropriate to this global free market of ours in which capitalism has already triumphed over communism, and Cuba would see the error of its ways if only given the chance to taste that freedom. Interestingly, even the Cuban exile community, formerly a very cohesive force against trade, is now somewhat fractured with some suggesting that engagement and dialogue is the answer. Not surprisingly, even the history of the embargo gets distorted in this process. Who did what to whom first is a strangely contested terrain.

I have to put "illegal" in quotes because even our own U.S. Supreme Court said that the field of expropriation law in the international realm is so far from clear that it refused to render a decision as to the legality of the expropriation itself. Rather, they refrained from standing in judgement of acts of Castro, carried out on its own sovereign soil, based on the act of state doctrine.

Coming back to the embargo, the reality is that the acts of Castro were responsive to U.S. acts, acts he labeled as acts of aggression. Those acts, of course, were a perfectly legal process but, to be sure, they were a change from what historically had been transpiring. The so-called act of aggression by the United States was the exercise of Eisenhower of the power Congress had delegated to him by virtue of July 6, 1960, amendment to the sugar act of 1948, unilaterally reducing the quota of sugar imported from Cuba. The very day Congress gave Eisenhower this power, he exercised it.

The Cuban response was for the Council of Ministers to adopt Law No. 851, which characterized the U.S. action as an act of aggression and gave the Cuban president and prime minister power to nationalize by force expropriation property or enterprises in which American nationals had an interest, an exercise of power which Castro, much like Eisenhower, immediately exercised. It was in reaction to the response of Castro that Eisenhower then broke off relations with Cuba. In addition to breaking off relations, in 1960 the United States imposed an economic embargo on exports to Cuba and in 1962 imposed an embargo on imports, actions possible under the Trading with the Enemy Act of 1917.

Interestingly enough, this Act in 1977 was amended so that it would apply only in times of war. However, its application being prospective only, left a little window for the restrictions to Cuba to be grandparented in

which they were. Every single president since the passage of the amendment has extended the embargo in the national interest. As Steve Powell suggested, that might be full of sound and fury and signifying nothing these days, nonetheless, we are still exercising that right.

One item that is important to mention regarding the embargo: For ten years Cuba has been bringing an initiative to the United Nations, calling for an end to the embargo. It has been passing resoundingly. In 2000, the initiative passed with 167 votes in favor with only 3 states against. Interestingly, the three states are the United States, Israel, and the Marshall Islands. There were four states abstaining.

Before I close this brief historical section, I should note that Cuba has always been a unique case. Pre-Castro, it had one of the highest standards of living in Latin America. In 1959, figures place Cuba second or third in Latin America in terms of numbers of radios, television sets, cars, telephones, refrigerators, daily newspapers and magazines, doctors and dentists per capita, as well as ranking high in industrial salary, fiscal stability, meat consumption (as if that were important, but that was at that time), and literacy rates. In addition, Cuba had an increasingly high percentage of domestic ownership of important industries. Notwithstanding those figures, as soon as he took over, Castro using the same data, said that Cuba was really an underdeveloped state because of its high unemployment rates, the lack of electricity and housing with sanitary facilities, by about half the population, close to forty percent illiteracy rate, high infant mortality, low life expectancy, and large foreign ownership of public services and industry. Yet today, forty-two years after he took power, Cuba has now one of the lowest standards of living in Latin America.

Having considered this history and the Cuban present economic location, it is appropriate at this juncture to take a brief look at its human rights record. Just to be clear at this juncture, let me note that my position regarding human rights in general is that they are indivisible and interdependent. That is, not any one type or classification of right is superior to the other. In order for human flourishing, it is my view, we need to enjoy all the rights. For example, the right to vote might mean sorry little to someone who is hungry or has no roof over his or her head. So with that in mind and my perspective in particular in mind, let us take a look at Cuba.

It is at this juncture a rather unanimous assessment that the Cuban human rights record is rather weak. That, however, is really based on the western perspective of the primacy of civil and political rights. Nonetheless, let me continue.

On April 19, 2002, the U.N. Human Rights Commission met in Geneva, and passed a resolution, 23-21 with nine abstentions, censuring Cuba on its human rights record. Significant in the vote were the Mexican and Chilean

vote. This was the first time in eleven years that Mexico, the only Latin American state who refused to break diplomatic relations with Cuba after the 1959 revolution, voted in favor of the resolution, which was sponsored by Uruguay.

The resolution calls on Cuba to grant its citizens individual liberties while recognizing the efforts of the government to give effect to the social rights of the population, despite an adverse international environment, a not-so-subtle jab at the U.S. embargo. A call for the U.N. High Commissioner for Human Rights to send a representative to Cuba to monitor the compliance of Havana in improving human rights was immediately rejected by the Cuban representative. Indeed, Cuba insists that it respects human rights by guaranteeing its people social services such as free health care, education, and notes that rich nations that fail to protect the poor are in no position to preach.

Cuban Ambassador Jorge told the fifty-three member commission that "None of the resolution's sponsors has the moral authority to judge human rights in Cuba." Notwithstanding that official comment, human rights activists in Cuba welcomed the vote so that the Cuban human rights record may remain before the international spotlight. Elisa lo Sanchez, a leading human rights activist, said that Cuba is government by the "tropical Taliban," who, "have a lot of power over a silent majority who desire greater space and liberty."

It seems most of the observers of human rights compliance would agree that the majority in Cuba deserve more space and liberty. By all reports, Cubans in Cuba lack basic civil and political liberties. There is no right to vote for a candidate of one's choice with elections being held pursuant to all candidates that are selected by the party.

Prison conditions are harsh and even life-threatening with prisoners subjected to corporal punishment, including political prisoners, simply for expressing their views. And prisoners often do not receive adequate nutrition or medical attention. Prisoners also are denied the right of correspondence and medication, and food that is brought by their families is often confiscated. Prisoners are even denied access to religious workers. Arbitrary arrest and detentions are ongoing problems.

Human rights advocates and journalists are targets of such arrests. Although the constitution provides for independent courts, the courts are indeed subordinate to the party. The party itself is the one who chooses the judges.

Law and trial practices do not meet international standards for public trials. Criteria for presenting evidence are arbitrary and discriminatory. The law provides the accused with the right to an attorney but the government

controls the collective of lawyers, so naturally attorneys are rather hesitant to defend those charged in political cases, all for fear of their own careers.

Even though the constitution provides for the inviolability of the home and correspondence of a citizen, official surveillance of private and family affairs by government-controlled mass organizations, such as the CDR, remains a pervasive and repressive feature of daily life. The government controls, indeed it owns, all the media and all access to the internet, all electronic mail is subject to censorship. The government does not allow criticism of the revolution or of its leaders.

There is no freedom of speech or the press, although tourist venues do carry foreign magazines and newspapers. But even foreign diplomatic missions in Havana are prohibited from printing or distributing publications unless they deal exclusively with the conditions in the home country of the mission and they obtain prior government approval. There is in Cuba no right to peaceful assembly.

Unauthorized assembly of more than three persons including assembly for religious purposes is punishable by law. Authorities have never approved a public meeting by any human rights group. Freedom of movement is also denied, not only between the island and other states, but within the island itself.

Unauthorized departures are punishable by imprisonment. Blacks and women remain under-represented in government and are effectively second-class citizens. Finally, workers do not have the right to association.

There is no right to organize and/or bargain collectively. Foreign firms coming to Cuba, as was mentioned earlier, lack capacity directly to negotiate wages, benefits, the basis of promotions, or any other working conditions, practices that are deemed exploitative. It is the state with whom the negotiation is made, the state gets a big chunk of change and then pays the workers sorry little. Notwithstanding this, however, and these are the realities, one also must consider other rights.

When one does so, the human rights picture becomes more complex. Cuban health, education, and welfare figures rival those of industrial states. Over three-quarters of all Cubans are under age forty, and that group has a ninety-eight percent literacy rate.

Cuba has the highest percentage of university graduates per capita in Latin America. Thus, if one considers only civil and political rights, the Cuban human rights record is abysmal. If one considers only social rights, its record is much better. In the indivisible construct, considering all rights, Cuba then is pretty generous and becomes an enigma not so easy to categorize.

That is the framework with which we have to move to and look at trade and U.S. trade policy. Dealing with enigmatic Cuba, it becomes important

then to try to articulate the *raison detre* of the embargo. The first place to look for an explanation is U.S. trade policy. If we look there, however, we will be faced with an incoherent melange. After all, the United States now has granted China permanent MFN status by welcoming it into the WTO, although to be sure China is a much larger and much more lucrative market than Cuba could ever be, so one can see the little bending of rules. But the United States is also dealing with Vietnam. It is having conversations with North Korea. In light of these realities, it is difficult to insist on a Cuban embargo. This is particularly true in light of the apparently shifting sentiments in the U.S. public realm. One item to consider, however, is what the embargo has to do with it at all.

Cuba does have the entire rest of the world to trade with and it cannot to the full content of its heart, it is not the concern of the United States that it might be more expensive to trade with other states than because of Cuba, because other resources are farther away. Not much consideration is often given to the reality which has been mentioned earlier here in the context of blaming the United States for Cuba not having food to feed its hungry and malnourished or medicine to cure its sick.

Cuba does not have a red cent with which to trade and indeed is in deep debt, most of which is defaulted. So it is not clear that even if the trade policy were to be changed tomorrow, if we keep the subsidy finance prohibition in tact that Cuba could take advantage of any opening. Last, as I see it, no country has an obligation to subsidize another economically, although both the United States and the Soviet Union subsidized Cuba with sugar and the USSR also with oil for quite some time. It is estimated, however, that the cost of the embargo to the Cuban economy — and this is a figure from four years ago — is approximately sixty-seven billion dollars.

Another item to consider is the so-called Cuban comparative advantage in the market. Its geographical location, highly literate population, and the lowest wages for skilled labor in the western hemisphere make Cuba a very desirable location for trade, investment, and production. A new information technology initiative could catapult Cuba into the Twenty-First Century, if only the United States might play along. So why not take advantage of the Cuban comparative advantage? Well, of course, that is where the human rights issues come in, as well as the pro-embargo position. So let us look at those factors. I hate to raise Elian but I must. It seems that that experience has greatly eroded both the political power of and the American sympathy for the Cuban community. The desires of the majority community in this era of globalization is increasingly to tap any markets it can. In this regard the aspirations of the embargo to topple the Castro regime appear rather dated. Yet, majoritarian desires are not the end all and be all of our

lives. We are, after all, those who pride ourselves in protecting the minority from the tyranny of the majority. So is there something in the trade regime that can still today support the embargo? If that is decided to be the morally compelling route to take. I am going to suggest that there is, if we want to find it, and I look at the trade regime for that.

The question is, it seems to me, are trade and human rights part of a whole international system or are they separate parts of a public/private divide? As my philosophy with respect to human rights is one of indivisibility, I cannot see altering it now. I am going to say that indeed we ought to have a policy of indivisibility and interdependence of rights when we consider trade and human rights. My answer is that trade and human rights are really simply parts of a whole, interdependent parts of a whole. I will try to convince you that this is not pure folly.

The trade and human rights systems were created and organized at about the same time by representatives of pretty much the same sovereigns. They appeared to develop in parallel tracks with different vocabularies and processes, but ultimately they are interconnected. The language of Article 20 of the GATT is

subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this agreement — that's the GATT — shall be construed to prevent the adoption or enforcement by any contracting party of measures (a) necessary to protect public morals; (b) necessary to protect human life or health; (c) relating to the products of prison labor. . .

and there is other sections but these are the ones on which, I am going to suggest that these sections contemplate the ability of a state to refrain from trading with a state in which human rights violations are taking place. Significantly, there is no adjudicated case of which I am aware that has brought the human rights versus trade confrontation to the surface. The one opportunity that could have brought it to the surface, ironically, was with Cuba. It was a case in which the United States was going to be sued, its embargo was challenged. But it raised a national security protection argument that made the case just fizzle out and have it be settled. Yet, I posit that trade does not occur in a vacuum. I doubt that anyone would suggest, for example, that trade practices that rely on slave labor could go unchallenged simply because they are insulated by trade. The prison labor exception is expressed in the GATT; the slave labor provision would certainly fall under the public morals clause. I submit that human rights

violations can well fall within the morals clause as well. However, this does not answer the question of whether trade with Cuba is appropriate. We still have to deal with incoherent U.S. policy which suggests we do not trade with China either, and it certainly does not answer the question of whether Cuban policies would be more positively influenced by engagement than by isolation. What it does tell us is that we have to have more conversations to decide what the right thing to do is, in a holistic way, not just thinking of dollars.