



# Case Study: The U.S. Embargo on Cuba

Kevin J. Fandl, J.D., Ph.D.

## Geography

- Cuba is located 90 miles south of Florida.
- Population: 11 million
- GDP/ Capita: US\$7,000
- Gini: 38/100 (U.S. is 41/100 and 0 is perfect equality)
- President: Miguel Diaz-Canel
- Government: Socialist
- Employment: 78% Public Sector

A map of the Caribbean region. Cuba is highlighted in orange and labeled 'Cuba'. Other islands shown include The Bahamas (Nassau), Cayman Islands, and Jamaica (Montego Bay). The map also shows parts of Florida, Miami, and Beach in the United States.

## Cuba: Trade

- Exports (US\$2.4 billion in 2005):

- Sugar
- Nickel
- Tobacco
- Fish
- Medical Products
- Citrus Fruits
- Coffee

- Export Destinations:

- Canada (18%)
- China (17%)
- Venezuela (13%)
- Netherlands (9%)
- Spain (6%)

- Imports (US\$6.9 billion in 2005)

- Food
- Fuel
- Clothing
- Machinery

- Import Sources:

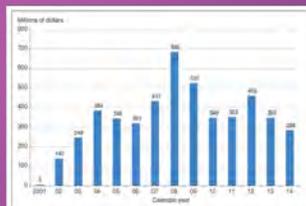
- Venezuela
- China
- United States
- Brazil
- Spain
- Canada



## U.S. - Cuba Trade

- Trade between the U.S. and Cuba goes in one direction only, with U.S. exports to Cuba but no Cuban exports to the U.S.

- Prior to 2000, U.S. entities could only export to Cuba with special OFAC licenses. In 2000, the Bush Administration enacted TSRA, which enabled exports of agricultural products and goods to Cuban entrepreneurs.

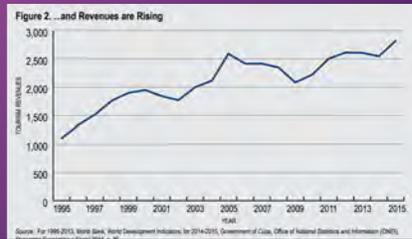
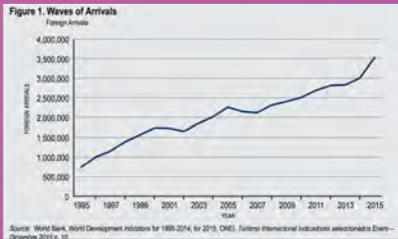


Product	Value, \$1,000	Percent of Total
<b>Total Agricultural Exports</b>	<b>345.3</b>	<b>100%</b>
Animals and Products	161.2	46.7%
Chicken meat	148.9	43.1%
Pork	4.3	1.2%
Grains and Feeds	97.3	28.2%
Corn	72.9	21.1%
Soybean/soybean products	14.1	4.1%
Hood feeds	10.3	2.9%
Oilseeds and Products	103.5	29.9%
Soybean meal	59.4	17.2%
Soybeans	44.1	12.7%

Source: U.S. Department of Agriculture, Foreign Agricultural Service.  
Note: Totals do not add up because list is limited to major products.

## Cuba Tourism

- Tourism generated US\$2.1 billion in revenue for Cuba in 2003.
  - Tourists come primarily from Canada and the EU
  - Medical tourism accounts for some of the 1.9 tourists that visit annually
- 4 million tourists visited Cuba in 2016 and revenue has risen to US\$3 billion



## History

- Cuba was a Spanish colony until 1898, when the U.S. took control of the island.
- In 1902, Cuba declared independence from the U.S.
- Various military leaders, some harsh, led Cuba until 1959.
- Fidel Castro led a socialist revolution against Fulgencio Batista that ended in a consolidation of power by Castro.



## Socialism

- Economic Theory:
  - The state is the most effective manager of the means of production, such as natural resources, factories, tools, and infrastructure.
  - Some forms of socialism use cooperatives to control the means of production.
- Began as an alternative to capitalism in the late 1700s.

## Socialism vs. Capitalism

Commanding Heights: <https://www.youtube.com/watch?v=l1El1xyS5w>

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• Socialism           <ul style="list-style-type: none"> <li>• Usually Democratic</li> <li>• Central Planning</li> <li>• Focus on community</li> <li>• Emphasis on cooperation</li> <li>• Focus on equality</li> </ul> </li> <li>• Variations:           <ul style="list-style-type: none"> <li>• Communism (USSR)</li> <li>• Mixed-Market Socialism (Nordic Countries, China)</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Capitalism           <ul style="list-style-type: none"> <li>• Usually Democratic</li> <li>• Decentralized Planning</li> <li>• Focus on individual</li> <li>• Emphasis on competition</li> <li>• Less focus on equality</li> </ul> </li> </ul> |
|--|--|

## Cuban Socialism

- Resources
  - Largely state owned
- Property
  - Individuals allowed one principal residence and one vacation home
  - Newly enacted laws allow foreign investment in limited properties
  - Policy: your home should not be an investment
  - Property can be sold at any price
- Employment/ Income
  - State-issued jobs that provide basic living expenses - most industries are state-owned
  - Black market provides secondary income (such as Air BnB)
- Socialism
  - Health care is free
  - Education is free
  - Food is subsidized
- Taxes
  - Top individual rate is 50%
  - Corporate rate is 30%

## Major Cuba Events: Bay of Pigs

- April 1961.
- Eisenhower had the idea and set aside funding; Kennedy executed the plan.
- The CIA trained 1400 Cuban refugees/ exiles to prepare them to invade and take back the country from Castro.
- They landed at the Bay of Pigs, south of Havana.
- After 3 days of fighting in Cuba, Castro's military defeated the invaders.

## Major Cuba Events: Cuban Missile Crisis

- October 1962
- President Kennedy announced that Soviets had installed nuclear missiles in Cuba, which could reach the United States.
- In response, the U.S. enacted a Naval Blockade around Cuba.
- Kennedy and Soviet leader Nikita Khrushchev agreed that Soviets would remove the missiles if the U.S. promised not to invade Cuba.



## Major Cuba Events: Mariel Crisis



*Say Hello to My Little Friend...*

## Embargo: What is a Trade Embargo?

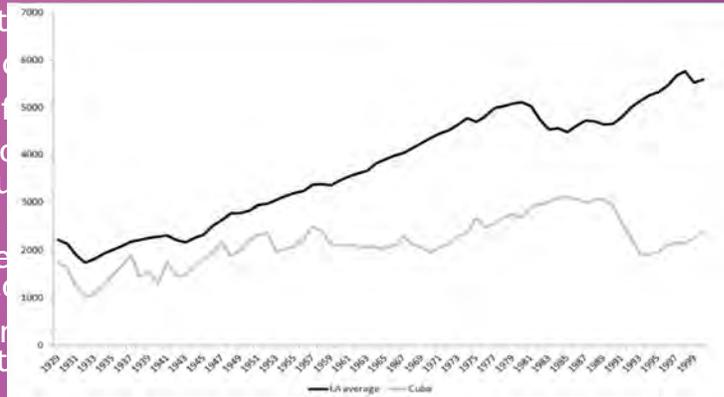
- An economic embargo is a legal tool used to motivate a particular action by a country. It restricts trade with that country until a goal is achieved.
  - Embargo Act of 1807 (President Jefferson blocked trade with England and France). Lifted in 1809.
  - NSD 75 (1983) trade embargo against Eastern Europe during the Cold War.
  - Embargo on China and North Korea during 1950 Korean War.
  - Embargo on Iran and Libya in 1996.
- Goals:
  - Punish countries that support particular policies
  - Stop countries from engaging in certain behaviors (nuclear proliferation)
  - Change a political regime

## The Embargo on Cuba

- 1960: Eisenhower prohibited U.S. refineries in Cuba from refining Soviet oil, reduced the sugar quota, and limited U.S. trade to medicines and food.
  - In response, Castro nationalized U.S. refineries and industries on the island.
- 1961: Eisenhower implements an embargo under the Trading with the Enemy Act authority (used during wartime).
  - In response, Castro said, “[t]he U.S. need not worry that a strategic embargo will damage private industry in Cuba,....It no longer exists.”
- 1961: Bay of Pigs Invasion
- 1962: Formal embargo on Cuba issued by Kennedy
- Subsequent Presidents renewed the Executive Embargo on Cuba
  - Some (Carter) tried to soften relations; others (Reagan, Bush) tightened the restrictions

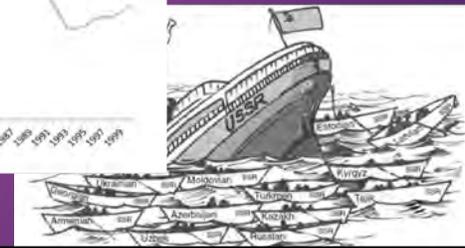
## The Embargo on Cuba: The End of the USSR

- The Soviet
- Cuba was
- The end of
- Some in Co
- Selected Cu
- Given the
- Congress e
- 1992 - a C
- The Embar
- Burton Act



ed.

, but newly



## The Helms-Burton Act of 1996

- Turned the Executive embargo into a Congressional embargo.
- Tied lifting of the embargo to:
  - Democracy in Cuba
  - Removal of any Castro relative or associate from power
  - Repayment of debts to the United States
- Allowed U.S. Citizens to sue in U.S. courts to be compensated for nationalized property by the Castro regime (this section has been waived by every administration).

## Helms-Burton, Title III and Trump

- Title III of the Helms-Burton Act stipulates that:
  - Any U.S. National has a cause of action in federal court against any person that “traffics” in property that was expropriated from a U.S. National on or after January 1, 1959.
- This clause could enable parties to use U.S. courts to sue foreign entities directly or indirectly benefiting from seized property in Cuba.
- The EU (and others) have strongly objected to this Title and sued the U.S. in the WTO. An agreement was reached whereby the U.S. continue to waive application of this Title.
- Every President has waived Title III. Until now.



## Title III in Practice

- Because Title III has not been used, no precedent exists to guide us. However, USSC precedent disfavors extraterritorial application of U.S. law.
- Claims under this Title allow treble damages and legal fees for plaintiffs.
- Valuation of confiscated properties use a “market value” measure, which may be extraordinarily high depending on the use.

## Title III Outcomes

- Suspension of Title III claims will be lifted on May 2, 2019.
- Lawsuits may exceed billions of dollars and will likely involve foreign companies as well as U.S. companies.
- Litigation at the WTO as well as in U.S. courts to stop implementation of Title III is likely.
- Europe, Canada and Mexico already enacted “Blocking Legislation” that would allow defendants to Title III claims to clawback their losses against the assets of the plaintiffs.



## Has the Embargo on Cuba Achieved Its Goal

- The goal of the embargo on Cuba is to end communism and bring about a democratic government in Cuba.
  - Special immigration laws (Cuban Adjustment Act of 1966) have allowed Cubans to come to the U.S. lawfully and become citizens. This creates an exile community that might fight back against Castro.
    - However, today, most Cuban migrants are economic, not political refugees.

## Has the Embargo on Cuba Achieved Its Goal

*Cuba shows no signs of ending communism or adopting democracy.*

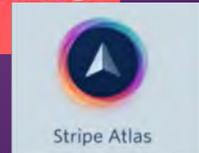


## Evolving Relations: Cuba and the United States

- Raul Castro took over power in Cuba in 2006. Raul has more pro-market inclinations than his brother.
- Obama has had pro-Cuba policies in place since 2009.
  - 2009: Lifted restrictions on family travel and remittances to Cuba
  - 2014: Restoration of full diplomatic ties between U.S. and Cuba
  - 2015: Embassies reopened in Washington and Havana
  - 2015: Cuba removed from State Dept.'s State Sponsors of Terrorism list
  - 2016: Flights to Cuba from the U.S. began operating
  - 2018: Cuba travel restrictions re-implemented by Trump Administration

## Doing (U.S.) Business in Cuba

U.S. companies, enticed by gestures made by the Obama Administration, explored opportunities in Cuba. Some have invested there already:



## Should the Embargo on Cuba be Lifted?

### Remove the Embargo Now

- It has not brought about democratic transition
- It has harmed the Cuban people more than the government
- Cuba has taken steps to create a market economy, like China
- Cuba is in our neighborhood and should be a partner with us
- Communism is no longer a threat to the United States
- Cuba is not a threat to the United States

### Keep the Embargo for Now

- Cuba commits human rights abuses against its citizens
- Communism remains in place in Cuba
- Castro would “win” if the embargo is lifted



## American Attitudes About the Embargo on Cuba

### Republicans Less Supportive Than Democrats of U.S. Ties With Cuba, But 59% Favor Ending Trade Embargo

% saying they approve/favor...

	Re-establishing diplomatic relations			Ending trade embargo		
	Jan 2015	July 2015	Change	Jan 2015	July 2015	Change
Total	63	73	+10	66	72	+6
Republican	40	56	+16	47	59	+12
Cons Rep	33	52	+19	40	55	+15
Mod/Lib Rep	54	66	+12	61	67	+6
Independent	67	75	+8	69	72	+3
Democrat	74	83	+9	78	82	+4
Cons/Mod Dem	69	79	+10	72	78	+6
Lib Dem	80	90	+10	87	88	+1

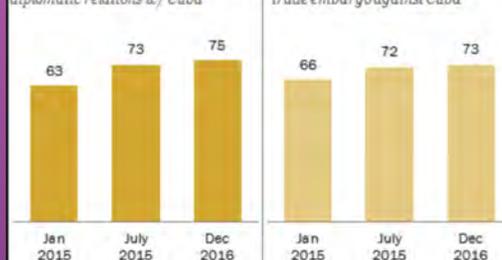
Survey conducted July 14-20, 2015.

PEW RESEARCH CENTER

### Public remains supportive of renewed U.S. diplomatic ties with Cuba, ending the Cuban trade embargo

% who approve of U.S. re-establishing diplomatic relations w/ Cuba

% who favor U.S. ending trade embargo against Cuba



Source: Survey conducted Dec. 1-5, 2016.

PEW RESEARCH CENTER

Thank you for your attention. Comments welcome.

- Kevin J. Fandl
- [Kevin.Fandl@Temple.edu](mailto:Kevin.Fandl@Temple.edu)

• Other articles on Cuba:

- Kevin J. Fandl, *Trading with the Enemy: Opening the Door to U.S. Investment in Cuba*, 49 *Geo. J. Int'l L.* 563 (2018).
- Kevin J. Fandl, *Adios Embargo: The Case for Executive Termination of the U.S. Embargo on Cuba*, 54 *Am. Bus. L. J.* 2 (2017).
- Kevin J. Fandl, *Cuban Migration to the United States in a Post-Normalized Relations World*, *Minn. J. of Int'l L.* (2017).
- Kevin J. Fandl, *Foreign Investment in Cuban Real Property: The Case for American Investors*, 45 *Real Estate L. J.* 166 (2016).