



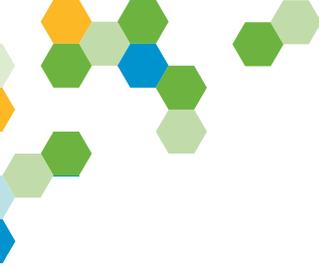
SPECIAL REPORT

# United States policy toward Cuba and the Presidential Election

Miami, October 2016

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## I. THE OBAMA CUBA POLICY SHIFT

The simultaneous announcement on December 17, 2014 by the Presidents of the United States and Cuba that they would launch formal negotiations in order to normalize the relationship between the two countries caught virtually everyone in the world by surprise. Indeed, many Cuba policy observers in the United States had all but abandoned hope that President Obama would use his remaining two years in office to push for any form of engagement with Cuba, believing that, once again, U.S. foreign policy considerations had been outweighed by domestic political concerns.

Within days, weeks and months of the announcement, however, polling conducted in the United States indicated majority support for President Obama's decision to refocus United States' diplomatic and commercial relationship with Cuba. Even a majority of the Cuban American community residing in South Florida, which for many years dominated and informed a hardline approach toward Cuba, responded favorably, if not overwhelmingly, to the news. Frustrated that the old approach – a vestige of the Cold War, when Cuba was tightly aligned with the Soviet Union – had done little to dislodge from power or dramatically change the ideological orientation of Cuba's leaders, while failing to improve the lives of ordinary people on the island, many Cuban Americans – especially those below the age of 60 and those who arrived in the U.S. within the last 20 years – had also come to recognize the need for a fresh look at the U.S.-Cuba relationship.

In Cuba, the news was embraced by the overwhelming majority of the population, which blames much of the island's woes on United States-imposed economic sanctions. These sanctions – commonly referred to as the “embargo” or, to use the Cuban Government's term, the “blockade” — among other restrictions, prohibit Cuba from engaging in normal bilateral commerce with the United States, by far its potentially largest trading partner located only 90 miles away.

Since the unexpected announcement, the two governments have re-established diplomatic ties, severed in 1961; upgraded their interest sections in each others' capitals to embassies; and signed a number of agreements that, among other accomplishments, establish regular, commercial air service between the two countries (allowing up to 110 daily flights), permit the direct delivery of mail, and promote cooperation in law enforcement and environmental protection.

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The level of interest on the part of both governments to pursue government-to-government engagement is unprecedented. This month, the wife of Vice President Joe Biden, Dr. Jill Biden, toured Havana and Camaguey Province. Her visit was preceded by visits to Havana by a half dozen Presidential cabinet secretaries, and to Washington by several Cuban ministers. More such visits are being planned as President Obama’s term comes to an end in January 2017.

To be sure, some areas of negotiations are difficult and nowhere close to being resolved. One involves U.S. criticism of human rights shortcomings within Cuba, to which the Cuban government has responded with its own criticism of conditions of minorities and women in the United States. Another area involves claims by U.S. persons – individuals and corporations – against the Cuban Government for property expropriated during early years of the revolution. In turn, the Cuban Government has raised claims for damages (in the range of several hundred billion dollars) in connection with, among other causes, the U.S. embargo.

Nevertheless, when one considers the open acrimony that characterized the

relationship between the United States and Cuba for over half a century, it is remarkable how much has been accomplished in less than two years. There should be little doubt that the driving force for this – at least on the side of the United States – is the resolve on the part of President Obama to make the rapprochement between the two nations a major part of his legacy. Clear evidence of this resolve was his decision to attend and meet formally with President Raul Castro at the Summit of the Americas in Panama in April 2015 and of course, his visit – with his wife and daughters – to Havana almost a year later, the first visit to Cuba by a sitting United States President in nearly 90 years.

The President’s views are informed by his long-held belief and recognition that the embargo and, more broadly, a policy aimed at isolating Cuba economically and politically has failed to meet United States Government objectives, while, at the same time, isolating the United States, diplomatically, at least, within the Inter-American region. Following his reelection in 2012, he also felt additional freedom to pursue a policy approach toward Cuba that was less risk averse politically speaking from a domestic electoral perspective.

**“The most recent regulatory changes permit United States companies to engage in business with the Cuban Government in order to develop, repair, maintain and enhance infrastructure”**

Although President Obama’s policy shift on Cuba has been criticized by some members of the U.S. Congress with strong sway over U.S. policy toward Cuba, primarily, though not exclusively, those belonging to the Republican party — who for many years have favored maintaining severe economic sanctions against Cuba’s socialist government – the Congress to date has failed to pass any legislative act to reverse any of the President’s actions. On the other hand, the Congress, despite repeated requests by President Obama, has failed to lift any part of the embargo that is codified under U.S. law and that, accordingly, only it has the authority to affect, such as permitting U.S.-based individuals to travel to Cuba to engage in tourism.

## 2. REGULATORY CHANGES

Notwithstanding the Congress’ lack of action on Cuba, the President has exercised his executive authority on six different occasions since January 2015 to modify existing or issue new regulations aimed at permitting and facilitating travel and commercial relations. Travel regulations, for example, have been modified to permit travel in order explore business opportunities, and the requirement that individuals can only engage in so-called

“people-to-people” visits by means of an organized group has been eliminated.

Among numerous modifications, the regulatory changes now permit United States companies to export to Cuba goods and engage in business that facilitates communications among Cubans and for U.S. companies that are authorized to do business in Cuba to maintain representative offices in Cuba. To facilitate travel and commerce, U.S. vessels, such as passenger ships have been authorized to travel to Cuba, and U.S. banks are authorized to establish correspondent accounts in Cuba, and United States persons are permitted to use credit cards in Cuba for authorized transactions.

The most recent regulatory changes, announced on October 14, 2016, permit United States companies to engage in business with the Cuban Government in order to develop, repair, maintain and enhance infrastructure that “benefit the Cuban people.” Companies are also permitted to engage in joint medical research projects with Cuban nationals for both academic and commercial purposes. A previous restriction prohibiting foreign vessels from entering a United States port for purposes of loading or unloading freight

**“Any further progress will necessarily depend on the actions and priorities of the next President of the United States”**

for 180 days after calling on a Cuban port for trade purposes has been waived.

This most recent set of changes also authorizes Cuban-origin pharmaceuticals to obtain United States Government approval for importation into and sales in the United States. This is significant as previous regulatory changes only permitted the importation into the United States of certain goods and services manufactured or provided by Cuba’s non-state or private sector, which has grown rapidly over the last 5 years.

President Obama’s policy shift and regulatory changes have resulted in an increase of almost 80 % in the number of United States travelers to Cuba in 2015 by comparison to 2014, not counting Cuban Americans visiting family. Many United States-based chief executive officers and other company representatives, as well as consultants, attorneys and entrepreneurs have traveled to Cuba to obtain a closer look at potential transactions that may be authorized under current U.S. law. Such business travel is expected to increase because the regulatory changes announced on October 14<sup>th</sup> also allow for companies to enter into contracts that may not currently be authorized by the embargo, but are contingent on its abrogation.

At the same time that the latest round of regulatory changes were announced, President Obama issued a Presidential Policy Directive, which is a blue-print of sorts, that explains his Administration’s approach to U.S.-Cuba relations. Although he recognized that the embargo stood in the way of a much more robust commercial relationship with Cuba, his public announcement articulated his justification for the policies he has been pursuing since December 2014: to make the United States’ “opening to Cuba irreversible.”

### **3. U.S. POLICY UNDER CLINTON OR TRUMP**

Notwithstanding President Obama’s intentions and the work to date of his Administration, absent Congressional action to end the embargo, any further progress on the normalization of relations between the two countries will necessarily depend on the actions and priorities of the next President of the United States, who will be elected on November 8, 2016 and inaugurated on January 20, 2017. Until recently, it appeared that both Hillary Clinton, the nominee of the Democratic Party, and Donald Trump, the nominee of the Republican Party, supported President Obama’s overall decision to

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engage diplomatically and commercially with Cuba. This is no longer the case due, in major part, to the latter’s decision to shore up his support among South Florida’s pro-embargo Cuban American community.

Cuban Americans represent but a small portion of the electorate in the United States, but they have traditionally commanded tremendous authority in the design and implementation of United States policy toward Cuba. This stems from a fact that is often unknown to people outside the United States: in the United States, Presidents are not elected directly by citizens. Instead, they are elected by persons, who compose the Electoral College, chosen by voters on a state-by-state-basis. In nearly all cases, the candidate who obtains the most popular vote in a particular state wins *all* of the Electoral College votes for that particular state.

Although Cuban American voters represent a small percent of the voters in Florida, their views on U.S. policy toward Cuba is significant for two reasons. First, Florida’s Electoral College vote count is one of the highest in the country: at present, it is tied with New York in third place after California and Texas.

Second, Florida for many years has been considered a “battleground state”, meaning that either candidate of the Democratic or Republican Parties has a reasonable chance to win that state. This is in contrast to states, regardless of size, that are expected to be won easily by one party or another. As a result, the views of voters in battleground states, especially large states, tend to be much more important than those of reliably Democratic or Republican states. Thus, a voting block that is clearly identifiable with a particular issue or position in a state like Florida, even though relatively small in numbers, will command a great deal of attention.

The best proof of this is what occurred during the Presidential election of 2000, which was declared in George W. Bush’s favor when he officially won the state of Florida by only 537 votes. One of the major reasons for his win, without getting into the intricacies of irregularities and problems encountered by voters and voting machines, is that a large number of Cuban American voters turned out to vote against Al Gore, President Bill Clinton’s Vice President, to protest the Clinton Administration’s support for reuniting Elian Gonzalez with his family in

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Cuba. It is estimated that while President Clinton obtained approximately 35 % of the Cuban American vote in 1996, Al Gore received only about 20 % of the Cuban American vote in 2000.

Demographic changes in Florida’s Cuban American community since 2000, however, as mentioned above, favor greater flexibility on the part of United States Presidents to formulate policy toward Cuba.

In Hillary Clinton’s book, *Hard Choices*, published in June 2014, she wrote that near the end of her tenure as Secretary of State, she “recommended to President Obama that he take another look at [the] embargo,” because it was not achieving United States goals, but was negatively impacting relations with the rest of Latin America. This was a bold statement given that she was already considering, if privately, a run for the Presidency and the conventional wisdom at the time that there was little upside to a pro-engagement policy stance on Cuba, but a fair amount of downside risk.

Clinton’s first extended remarks on her approach toward Cuba following President Obama’s policy shift were made in Miami in July 2015 at Florida International

University in Miami, Florida. During the speech, she made clear her strong support for President Obama’s approach, noting with approval his and Secretary of State’s John Kerry’s “historic steps forward – re-establishing diplomatic relations, reopening our embassy in Havana, expanding opportunities further for travel and commerce, [and] calling on Congress to finally drop the embargo.” She went on to emphasize that the “last step about the embargo is crucial, because without dropping it, this progress could falter,” and specifically called on the Republican leadership in Congress to “step up and answer the pleas of the Cuban people,” which by “large majorities, ... want a closer relationship with” the United States. She further underscored that “[we] can’t go back to a failed policy that limits Cuban-Americans’ ability to travel and support family and friends. We can’t block American businesses that could help free enterprise take root in Cuban soil – or stop American religious groups and academics and activists from establishing contacts and partnerships on the ground.”

She pledged that as President, she would work with the Congress to end the embargo, but, as was the case with President Obama, she would

**“Trump thinks that President Obama should have negotiated with the Cuban government to drop the claims in exchange for a better relationship”**

use her authority to push for additional regulatory changes aimed at promoting travel and business between the United States and Cuba.

Recognizing the continued importance of the Cuban American vote in Florida, she enlisted the support of prominent Cuban Americans, such as former Commerce Secretary (under President George W. Bush) Carlos Gutierrez to press the case for her candidacy over that of Donald Trump.

Donald Trump’s initial reaction to President Obama’s policy shift appeared to be generally supportive, although he suggested that he would have yielded more concessions from the Cuban Government. In September 2015, in a published interview, he was asked about the new opening toward Cuba and responded as follows: “I think it’s fine, but we should have made a better deal. The concept of opening with Cuba — 50 years is enough — the concept of opening with Cuba is fine. I think we should have made a stronger deal.”

The following month, during a radio program, he criticized the Obama Administration for demanding few concessions from the Cuban Government, which, according to him, encouraged the latter to

demand “reparations” from the U.S. (he was most likely referring to Cuba’s counter claims for damages against the United States, as mentioned above), but continued to support the engagement approach:

“But the concept — it’s been out there for 50 years or whatever, and I think the concept of having there be some normalization is not a bad thing. Ultimately, it’s going to be good.”

He appeared to be making the same argument during a Republican Party primary election debate in Miami, Florida, in March 2016, when Trump was asked about his views on the new approach. He again referenced Cuban claims for “reparations,” declaring that President Obama should have negotiated with the Cuban government to drop the claims in exchange for a better relationship. Specifically, he said: “I do agree something should be—should take place. After 50 years, it’s enough time, folks. But we have to make a good deal and we have to get rid of all the litigation that’s going to happen.”

After winning the Republican Party’s nomination for President, it was believed that Trump would pivot toward the center in general

**“The relationship between the United States and Cuba, which affects the rest of Latin American and Spain”**

in order to expand his base of supporters by attracting independent voters. But this has not occurred. Instead, he has pursued a strategy aimed at shoring up and energizing his support among Republicans and conservative voters. This may explain why, in September, he altered his views on Cuba. At a public event in Miami, he proclaimed that, as President, he would revoke President Obama’s Executive Orders with respect to Cuba until Cuba met his Administration’s “demands” with respect to political and religious reforms.

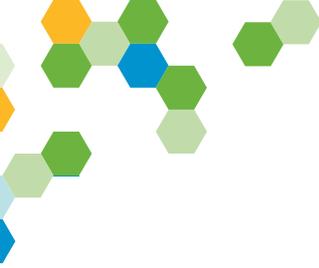
His running mate, Mike Pence, in response to President Obama’s October 14<sup>th</sup> round of regulatory changes and the new Presidential Policy Directive wrote via Twitter that Donald Trump “will reverse Pres Obama actions w/Cuba & maintain the embargo until we see real political change & freedom in that country.”

This is not to suggest that Donald Trump does not see the value – from a purely commercial perspective — in doing business in Cuba. Recent articles published in the United States suggest that his organization or affiliates have explored the possibility of doing business on the island. In July, *Bloomberg Business Week* suggested that several senior officials of Trump’s

business organization or with strong ties to it had traveled to Cuba from 2011 to 2013 to scout for potential golf business opportunities. In September, *Newsweek* magazine accused the Trump organization of possibly breaching the embargo by contracting a consultant in 1998 and paying him nearly \$70,000 to travel to the island to explore hospitality and gaming opportunities.

Of course, regardless of who wins the Presidential election, United States policy toward Cuba, indeed, any country will be both proactive and reactive. The more interest that Cuba displays in wanting to engage with the United States in pursuing a mutually beneficial economic relationship and cooperation regionally and globally, the greater the probability that a United States President will want to spend time and political capital to further weaken the embargo.

A win by Hillary Clinton would be a strong predictor that, absent provocative moves by the Cuban government, the U.S. will continue to pursue engagement. If such a win is accompanied by the establishment of Democratic Party majorities in both the Senate and the House of Representatives, then there is a strong probability that the embargo will be lifted



during the next Congress. Even if Republicans maintain a majority in the House of Representatives, lobbying by farmers and business organizations that want to access the Cuban market will place strong pressures on the Republican leadership to lift all or portions of the embargo.

A win by Donald Trump would most likely be accompanied by the maintenance by the Republican Party of control of both houses of Congress, thereby making a lifting of the embargo highly unlikely, especially if Trump will aim to use maximum leverage to force Cuba to undergo political and civil rights reforms as he claims to want to do. Under such a scenario, there is little doubt that a President Trump would reverse many if not all of President Obama's executive actions relating to Cuba. It is unclear at the moment if this would affect

those executive actions of 2009 that increased the ability of Cuban Americans to visit their relatives in Cuba more often than once every three years (as was the case during the Bush Administration) and send increased amounts of remittances to those relatives, or those of 2011, which reauthorized people-to-people travel, but there is little questions that U.S.-Cuban relations would suffer significantly under a President Trump, if he follows through on his campaign promises.

In either case, given the global interest generated by President Obama's Cuba policy shift, and the unique historic relationship between the United States and Cuba, which, in turn, affects the rest of Latin American and Spain, the Cuba policy of the new U.S. President toward Cuba will be highly anticipated and carefully monitored.

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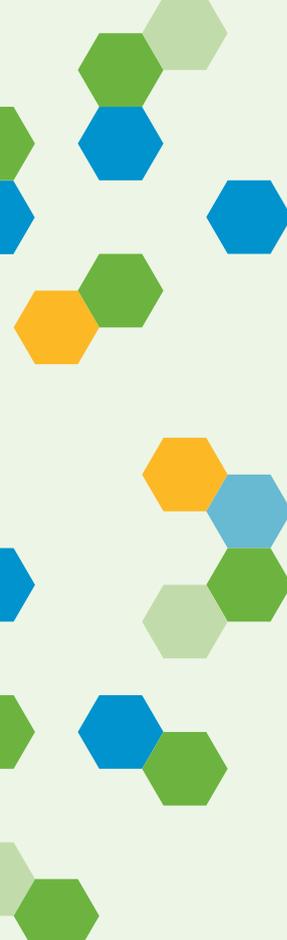
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