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Is Trade with Cuba a Reality?

by Dan McCue
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Just days after President Barack Obama announced a minor thaw in the longstanding estrangement between the United States and Cuba, Jack Maybank Jr. stood before an audience of entrepreneurs gathered at the College of Charleston in South Carolina and warned them not to misinterpret the opening as a newfound bridge to business relations with the United States' most notorious neighbor.

Yes, he acknowledged, the Obama administration's gambit may indeed have been the first step in a long journey toward a normalization of relations—with all the implications of commercial exchange those relations imply—but the fact of the matter is that scores of U.S. companies have been doing business with Cuba for years. With the appropriate product, the opportunities are now, he explained.

"Right now, at least 150 companies in 35 states are doing business with Cuba, thanks in large part to a loosening of the trade embargo during the Clinton years with regards to agricultural products," the president and CEO of Charleston-based Maybank Industries said.

Recent developments in the Obama administration could open the door wider.

In fact, it was the announcement of President Clinton's decision regarding the embargo—a decision to allow the sale of products that fell into a very loosely defined category of "humanitarian" agricultural products—that inspired Maybank's late father, Jack Maybank Sr., to throw caution to the wind in 2000 and make a little history of his own in U.S.-Cuba relations.

For six years beginning in 2002, Maybank Shipping effectively cornered the market of moving goods (nominally lumber and newsprint) to Cuba through a string of U.S. ports extending from Jacksonville, Florida to Corpus Christi, Texas.

From then until roughly two years ago, when the company became Maybank Industries and the family sold off its shipping component, the family-owned business made nearly monthly trips to Cuba.

"Given the location of our operations, Cuba was a natural place for us to grow," Maybank said.

A photograph taken the day Maybank's first vessel arrived at the Port of Havana on July 11, 2002, reveals how extraordinary a relationship it was: An American flag flies over El Morro Castle, adjacent to the harbor; it was the first time the stars and stripes had done so since 1961.

Seizing an opportunity

The elder Maybank first learned of the slight loosening of the longstanding embargo over Easter weekend in 2000. Within days, and not knowing a soul in the Communist country, Maybank set out for Cuba and waited several days before finally connecting with Pedro Alvarez, chairman of the Cuban food import company Alimport and the government official in charge of trade.

Maybank's decision to jump on the opportunity was a master stroke. Alvarez, and Cubans generally, it turned out, place a tremendous amount of weight on personal contact and in doing business face-to-face.

"What we found was that when it comes to doing business in Cuba, everything revolves around friendship," the younger Maybank said. "The folks at Alimport know their clients, know their clients' wives, and remember birthdays."

"The other thing is that you can't do anything over the phone or through e-mail, in large part because the communications network is not the best there. They like to see you, and they love to negotiate," he continued.

The forum at which Maybank spoke was co-sponsored by the College of Charleston's School of Business and Economics and the South Carolina World Trade Center.

More than three dozen entrepreneurs ranging from property developers and entertainment industry consultants to, in one case, a retired Ph.D. considering the start of a second career, crowded a conference room at the College's Tate Center for Entrepreneurship, for the day-long session.

Maria Conchita Mendez, another speaker on the day's panel and director of Latin American trade and development for the Alabama State Port Authority, said she also sees Cuba as both a missed and future opportunity.

She spoke from a unique perspective: Born in Cuba, she came to the United States immediately after the revolution. Today, she regularly sees cargo leaving her port for her home country, as the island nation is already Alabama's top customer for poultry products.

But its Mendez's contention, given how close Cuba is to the U.S.—a mere 32 hours by cargo ship—that several more shiploads of goods could be making their way weekly through the Port of Alabama, if only the embargo was lifted and U.S. exporters could offer Cuba and its consumers a variety of goods.

Pointing to economic development successes Alabama and the entire Southeast has enjoyed in recent years—luring Hyundai, Kia, Nissan and Toyota plants, not to mention foreign-based companies making everything from agricultural machinery to fiber-optic cable—Mendez said the goods and infrastructure are already in place in the U.S. to slake pent up demand for new cars and other products.

Thus far, President Obama has lifted longstanding restrictions on family travel and remittances to Cuba—a significant shift in U.S. policy—but is waiting to see how Cuba responds to a host of human rights and other issues before making further changes with respect to the trade embargo.

"That saddens me, and it's not just because I am a Cuban-American," Mendez said. "I honestly believe that we are sacrificing our economies, jobs and economic development to a policy [the embargo] that has not worked."

"Once the embargo is lifted there are going to be tremendous opportunities in textiles, construction materials, electronics, communications and appliances," she added. "You're going to see a country go through a massive reconstruction process, and one for which they'll need many goods and many products."

Easier said than done

But that's not to suggest that getting involved in trade with Cuba—even under the auspices of selling or moving agricultural humanitarian aid—is easy now or will be easy later, when and if the embargo is lifted.

Maybank said despite President Clinton's loosening of trade policy with Cuba, it was still enormously difficult for Maybank Shipping to actually carry out a trade transaction.

To begin with, U.S. banks were, and continue to be, forbidden from doing business with Cuba under threat of being cut off from access to the Federal Reserve. That meant that to do a transaction and deliver its cargo, Maybank Shipping had to work with third-party, international banks, which added to the cost of the individual transactions.

Even then, U.S. rules forbid companies doing business with Cuba to extend credit to its trading partners. The U.S. government does not want any U.S. entity in a credit arrangement with Cuba because if there's a dispute or disagreement over payment, there's no way to enforce it through American courts.

Everything must be handled on a cash-on-delivery basis, and unlike traditional trade shipping, where ships ideally discharge cargo and pick up some more at each port of call, nothing can be moved from Cuba—even if it is destined for someplace other than the United States.

"There's no question, you have to be committed," Maybank said.

He then launched into an anecdote to illustrate his point. A Maybank barge had pulled into port in Cuba, and a Cuban inspector had come aboard and certified the cargo, a requisite step before payment is approved. But before payment could be handed over and the unloading of the vessel begun, it was learned that the bank handling the transaction had been blacklisted by the U.S.

"It's something that happened from time to time, whenever the U.S. deemed that a bank was 'doing business with the enemy,'" Maybank said. "Basically, it meant that we were left hanging, and suddenly had to scramble and line up another bank."

While Maybank scrambled, his vessel was stuck at the dock and the clock was ticking on the fees it would be required to pay for its space at the wharf.

"The longer it took to line up another bank, the more expensive that delivery was becoming," Maybank said. "And we couldn't pass the costs on to Cuba, because the delay wasn't Cuba's fault."

While some challenges could be resolved and consigned to experience, others recurred. One of those was the matter of documentation. The United States has strict rules when it comes to documenting a shipment to Cuba, and requirements that reams of documents be filed with multiple federal agencies.

Among the documents Maybank Shipping had to secure before sailing to Cuba was a temporary export license—not for the goods it was carrying, but for the ship itself, which technically, was being exported to Cuba as part of the transaction.

That license needs to be renewed every year. Then, the shipping line had to secure a State Department license to cover the ship's crew, and only then could it begin filing documentation for the voyage with the U.S. Department of Commerce and the U.S. Coast Guard.

"And you absolutely have to have all of your documentation in order at all times," Maybank said.

Jake Colvin, vice president for Global Trade issues at the National Foreign Trade Council, a Washington D.C.-based think tank and trade advocacy organization, said these requirements are part and parcel of "the most comprehensive group of sanctions the U.S. places on trade with any country in the world."

"And, so strident has the U.S. been in trying to enforce this embargo that it has even attempted to enforce it in other countries where it has no legal jurisdiction," he said. "As a result, the EU and Canada, among others, have adopted 'blocking legislation' to preserve the rights of companies within their border to trade with Cuba."

Know the culture

But if logistics and the teeth of the current embargo are daunting, Douglas Friedman, director of the College of Charleston's Latin American and Caribbean Studies, said those still wanting to do business with Cuba need to overcome one more hurdle: the potential of misunderstanding Cuba's history and culture.

And as anyone experienced in international commerce knows, getting to know the culture of a new trading partner is a key prerequisite to a successful business relationship.

While most businessmen and women today view Cuba through the prism of the Cold War and the nearly 50-year reign of Fidel Castro, Friedman said anyone traveling to Cuba will find that the average Cuban on the street doesn't quote Karl Marx so much as Jose Marti, the 19th Century poet and journalist who was a leading figure in Cuba's bid for independence from Spain in the late 1800s.

Don’t be surprised either, he warned, to find that resentment of the U.S. goes back equally as far. “Hard feelings toward the U.S., and particularly U.S. business interests, were not cemented with Fidel Castro; in fact, they go back to the island’s first two wars for independence, a period during which U.S. interests began to take a very large stake in the Cuban economy,” Friedman said.

After the United States helped defeat Spain in 1898, Cuba’s independence leadership was ignored during the subsequent peace talks and the island effectively became a possession of the U.S., with its right to intervene in Cuban affairs being written into the country’s Constitution, and the U.S. being given preferential treatment in the Cuban market.

“So, you’ll be dealing with a country where U.S. economic and political interests had an overwhelming influence for decades,” Friedman said. “That is, until the most recent revolution, which wasn’t a socialist revolution, but rather a nationalist movement…it was a revolution about sovereignty.”

Castro, of course, did embrace Socialism in the wake of his seizing control of the Cuban government in 1959, and that—as well as the early twists and turns in Cuban history—will lead to several complications as the U.S. begins to move further toward normalized relations.

The biggest complication will be property rights, Friedman said. The U.S. still recognizes the property and ownership rights—both commercial and private—of the individuals who held title to buildings and real estate prior to Castro’s revolution.

“That’s an issue that absolutely has to be addressed before full normalization of the relationship can occur,” Friedman said. “Not that it should dissuade you from your interest in Cuba, but it’s something you should be aware of and pay attention to.”

Where there's a will, there's a way

Jake Colvin said he believes that in many cases, untangling ownership claims will “ultimately come down to a matter of money.”

“If there is a political will, a way will be found to resolve those issues,” he said.

Colvin also said an immediate and full lifting of the embargo is too much to expect in any event. For the moment, it would be enough for President Obama to send a message to Congress that he wants to lift the travel ban.

“Cuba is an easy opportunity to show that there has been a change in U.S. policy, and the prospects for change have never been better,” Colvin said.

“Right now, we have people like Republican Congressman Henry Brown co-sponsoring a freedom-to-travel bill, and he’s not the usual suspect. In fact, he’s anything but…but the fact he’s more receptive to a thawing is a signal of the direction we’re moving in,” he continued, before adding, “of course, lifting the travel ban itself will be a major, major development in the drive toward an expanded trade relation.”

“After all, the one thing we all want as Americans when we travel is access to products and foods and the like that we are familiar with,” Colvin said.

Maybank said the first step for anyone contemplating getting involved in the Cuban market is to secure a visa to attend the annual Havana Trade Fair, which is typically held in late October or November.

“You’ll have to secure permission to attend through your state’s Department of Agriculture, but the Cubans really respond to the efforts you’ve made if you attend,” Maybank said.

“The other thing is, attending the fair will provide you with a real dose of reality,” he said. “It’s easy to romanticize a market that most U.S. companies have been shut out of, but the reality is, while the United States doesn’t have an open trade relationship with Cuba, many other countries do.”

"Our niche, if you will, is our proximity," Maybank said. wt

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Sidebar: A Change in U.S. Trade Policy, by Theodore R. Posner

The hallmark of the Bush administration trade policy was the pursuit of new bilateral free trade agreements (FTAs) between the United States and other countries.

When the Administration took office in January 2001, the United States had FTAs with three countries: Israel, Canada, and Mexico. Over the course of eight years, the administration continued or began negotiations with 24 countries. It concluded FTAs with 16 of those countries and brought FTAs into force with 14 countries.

The heavy emphasis on the pursuit of FTAs was signaled clearly by President Bush's first trade representative, Robert B. Zoellick, just two months into the administration. Thus, the annual Trade Policy Agenda issued in March 2001 announced, "[O]ther countries have been moving forward with trade agreements while America has stalled. We cannot afford to stand still or be mired in partisan division while other nations seize the mantle of leadership from the United States."

To lay the groundwork for catching up in the trade agreement race, the Bush Administration set as one of its "top priorities" in 2001 (which it achieved in August 2002) the establishment of new "trade negotiating authority"—or what is popularly known as "Fast Track." This was an understanding with Congress whereby the President would pursue particular objectives in trade agreements, and Congress would give legislation implementing the resulting agreements an 'up-or-down' vote, with no amendments, and within a set time period. (The lifespan of Fast Track legislation has passed; currently it is not operative and there has not been much mention of its revival).

Today, eight years later, the Obama Administration has set itself on a very different course. Thus, the annual Trade Policy Agenda issued by the Office of the U.S. Trade Representative on March 2, 2009 states, "[W]e will consider proposals for new bilateral and regional agreements when they promise to deliver significant benefits consistent with our national economic policies. If new negotiating authority is required, we will seek that from Congress."

The contrast—a certainty that if we don't negotiate more FTAs we will lose "the mantle of leadership" versus an openness to "consider proposals" for new agreements—is stark, but not surprising. For at least two reasons, it would have made no sense for the Obama administration to continue the steady pace of FTA negotiations that marked the last eight years.

First, the support of Congress (and, in particular, the House of Representatives) for new FTAs is weak. Legislation to approve the U.S.-Central America-Dominican Republic FTA passed the House by only a single vote in July 2005—and only after a scene on the House floor that the Washington Post described as "resembl[ing] the wheeling and dealing on a car lot." Two years later, Congress approved the U.S.-Peru FTA only after the parties amended the agreement (originally concluded in April 2006) to accommodate changes including worker rights, environmental protection, intellectual property rights, and port security, among others. And, in April 2008, when President Bush sent the U.S.-Colombia FTA to Congress, the House dispensed with the Congressional-Executive trade negotiating authority deal altogether, amending House rules to make the implementing legislation ineligible for Fast Track treatment.

Moreover, even if the Obama administration wanted to continue the FTA negotiation marathon, it is not at all clear whom it would negotiate with. FTAs are complicated deals. To comport with World Trade Organization (WTO) rules, they must eliminate barriers to substantially all trade in goods and services between the parties. The United States historically has gone even further in its FTAs. Among other things, it has insisted on opening markets for government procurement and investment, establishing detailed disciplines on the protection of intellectual property, and committing not to relax labor or environmental standards in ways that might distort trade and investment.

The universe of countries that are willing and able to negotiate an FTA with the United States that would provide commercially meaningful benefits and that would not run up against insurmountable obstacles is relatively small. Several negotiations that began during the last administration with high hopes on both sides are now in negotiation limbo. The fate of the negotiation of a Transpacific Strategic Economic Partnership Agreement—an exercise begun last year involving the United States and Brunei, Chile, New Zealand and Singapore (known as the "P4"), and possibly other Asia-Pacific economies—also is uncertain.

A key question then for the Obama administration, and in particular, for U.S. Trade Representative Ron Kirk, is this: If the era of the FTA negotiating marathon is at an end, what will take its place as the hallmark of U.S. trade policy for the next four to eight years?

It is difficult to discern an answer from the current administration's first Trade Policy Agenda. That document says a lot about themes the administration will emphasize, but much less about concrete initiatives it will undertake. For example, it expresses a commitment to enhancing "social accountability and political transparency," using trade as a policy tool for advancing energy and environmental goals, and being "a strong partner to developing countries." However, it says little about steps the administration will take to fulfill these commitments.

Here are three possible trends (by no means mutually exclusive) to look for as the Obama administration's trade policy evolves:

- First, look for a greater emphasis on regulatory cooperation outside the context of formal trade agreement negotiations. Governments—particularly major trading partners, such as the United States and the European Union—can provide a substantial economic benefit to their suppliers of goods and services by recognizing one another's regulatory schemes or by avoiding costly and unnecessary regulatory divergences in the first place. Opportunities for cooperation may occur in areas such as consumer product safety, financial services, and many others.

- Second, look for negotiation of international agreements that focus less on market access (i.e., the elimination of tariffs and other barriers to trade in goods and services) and more on provisions to bolster the enforcement of existing disciplines. A case in point is the Anti-Counterfeiting Trade Agreement that the United States and Australia, Canada, the European Union, Japan, Jordan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland, and the United Arab Emirates began negotiating in June of last year. That agreement aspires to promote greater cooperation and stronger enforcement in the area of intellectual property rights protection, and building on disciplines agreed to in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

- Third, to the extent that international agreement negotiations do seek to expand market access, look for them to focus on individual sectors rather than broad swaths of the economy. An example is the U.S. and EU proposal on negotiation of an Environmental Goods and Services Agreement in the context of the Doha Round of WTO negotiations. While any market access negotiation will encounter obstacles, those obstacles are likely to be lower for a sector-specific negotiation than for a comprehensive free trade agreement negotiation.

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