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House Committee on Agriculture
September 14th, 2016
“American Agricultural Trade With Cuba”

Thank you, Mr. Chairman, Ranking Member and Members of the Committee.

It's truly a privilege to join you here today to discuss important and consequential issues surrounding U.S. agricultural trade with Cuba. I commend you for including a dissenting voice on this panel.

My name is Mauricio Claver-Carone and I'm the Executive Director of Cuba Democracy Advocates, a non-profit, non-partisan organization dedicated to the promotion of human rights, democracy and the rule of law in Cuba.

My testimony will be divided into two parts. *First*, I would like to present key facts regarding agricultural trade with Cuba and highlight the counter-productive trends we are seeing since President Obama announced a new policy of unconditional engagement with the Castro regime on December 17th, 2014. *Second*, I would like to focus on the issue of financing agricultural sales to Cuba, which I understand is a priority for my fellow panelists, with the good faith and disposition to find common ground.

The Reality of Trade With Cuba

As you are surely aware, pursuant to the Trade Sanctions Reform and Export Enhancement Act of 2000 ('TSREEA'), the sale of agricultural commodities, medicine and medical devices to the *Castro regime* in Cuba was authorized by Congress, with one important caveat – these sales must be for “cash-in-advance.” Prior to that, the export of food, medicine and medical devices to the *Cuban people* had already been authorized under the Cuban Democracy Act of 1992 ('CDA').

This is an important distinction that needs to be made, for in order to have a productive discussion about agricultural trade with Cuba, one should understand how the island's totalitarian regime conducts business.

In most of the world, trade means dealing with privately-owned or operated corporations. That's not the case in Cuba. In Cuba, foreign trade and investment is the exclusive domain of the state, namely the Castro regime. There are no "exceptions."

Here's a noteworthy fact: In the last five decades, *every* single "foreign trade" transaction with Cuba has been with a state entity, or individual acting on behalf of the state. The state's exclusivity regarding trade and investment remains enshrined in Article 18 of Castro's 1976 Constitution.

Since the passage of TSREEA in 2000, over \$5 billion in U.S. agricultural products have been sold to Cuba. It is an unpleasant fact, however, that all of those sales by more than 250 privately-owned U.S. companies were made to *only one Cuban buyer* – the Castro regime.

As the U.S. Department of Agriculture's ('USDA') own report on Cuba notes, "*The key difference in exporting to Cuba, compared to other countries in the region, is that all U.S. agricultural exports must be channeled through one Cuban government agency, ALIMPORT.*"

ALIMPORT is an acronym for *Empresa Cubana Importadora de Alimentos, S.A.* It is a subsidiary of Cuba's Ministry of Foreign Trade and serves as the sole procurement agency for U.S. agricultural products. Throughout the years, the Castro regime has ensured the Ministry of Foreign Trade is run by senior officials from Cuba's intelligence services (known as *Directorio General de Inteligencia*, or 'DGI'). The current Minister of Foreign Trade is a DGI official, Rodrigo Malmierca Diaz, who is the son of Isidoro Malmierca Peoli, a historic Castro family confidant and founder of Cuba's counter-intelligence and state-security services.

Hence another unpleasant fact: All business decisions in Cuba are based on the political and control-based calculations of the Castro regime -- *not* on market forces. If the Cuban people enjoyed property rights to establish their businesses and were allowed to freely partake in foreign trade and investment – my testimony today would be *very* different.

ALIMPORT primarily supplies government institutions, and the Cuban military's hard currency retail stores (known as *Tiendas de Recuperacion de Divisas*, 'TRDs'), hotels and other facilities that cater to tourists and other foreigners.

So let's immediately debunk a myth: Financing agricultural transactions with Cuba is *not* about assisting small and midsize farmers on the island, but about financing a monopoly of the Castro regime.

Again, as the USDA itself recognizes: "*U.S. food products will be sold and delivered to Alimport, which will take control of the imports at the Cuban point of entry, manage distribution throughout Cuba and coordinate payments. Consequently, U.S. agricultural firms planning on doing business with Cuba need to learn to negotiate and transact business with the Cuban government through Alimport.*"

As a result, we already know what any further lifting sanctions towards Cuba would look like. TSREEA sales from the U.S. and business ventures with other nations exhibit the model: A mercantilist system whereby commerce is simply a tool to benefit and strengthen its totalitarian regime.

President Obama's Policy Changes Have Proven Counter-Productive

President Obama's policy of unilaterally easing sanctions has proven to be counter-productive for agricultural sales to Cuba. But before focusing on those figures, it's important to note how President Obama's new policy has *broadly* proven to yield counter-productive results.

For example, since December 17th, 2014:

- **Political arrests have intensified.** Throughout 2015, there were more than 8,616 documented political arrests in Cuba. Thus far, there have already been over 7,935 political arrests during the first eight months of 2016. This represents the highest rate of political arrests in decades and nearly *quadruples* the tally of political arrests throughout all of 2010 (2,074), early in Obama's presidency.
- **A new Cuban migration crisis has unfolded.** The United States is faced with the largest migration of Cuban nationals since the rafters of 1994. The number of Cubans fleeing to the United States in 2015 was nearly *twice* that of 2014. Some 51,000 Cubans last year entered the United States and this year's figures will easily surpass that. The numbers of Cuban nationals fleeing the island have now *quintupled* since President Obama took office, when it was less than 7,000 annually.
- **Castro's military monopolies are displacing "self-employed" workers.** There are fewer licensed "self-employed" workers in Cuba today than in 2014. In contrast, Castro's military monopolies are expanding at record pace. The Cuban military-owned tourism company, Gaviota S.A., announced 12% growth in 2015 and expects to double its hotel business this year. Even the limited spaces in which "self-employed" workers previously operated are being squeezed as the Cuban military expands its control of the island's travel, retail and financial sectors of the economy.
- **Internet "connectivity ranking" has dropped.** The International Telecommunication Union's (ITU) Measuring the Information Society Report for 2015, the world's most reliable source of data and analysis on global access to information and communication. ITU has dropped Cuba's ranking to 129 from 119. The island fares much worse than some of the world's most infamous suppressors of the Internet suppressors, including Zimbabwe (127), Syria (117), Iran (91), China (82) and Venezuela (72).
- **Religious freedom violations have increased tenfold.** According to the London-based NGO, Christian Solidarity Worldwide ('CSW'), last year 2,000 churches were declared illegal and 100 were designated for demolition by the Castro regime. Altogether, CSW documented 2,300 separate violations of religious freedom in 2015 compared to 220 in 2014. In the first half of 2016, there have already been 1,606 separate violations of religious freedom.
- **Democracy's regional foes have been emboldened.** President Obama's unconditional recognition and engagement of the sole remaining dictatorship in the Western Hemisphere has sent a message to Castro's allies in the region that there are no consequences for rogue and undemocratic behavior. Hence the recent militarization (with Cuba's support) of Venezuela's regime and the parliamentary coup in Nicaragua.

Agricultural sales have not escaped this downward trend.

Over the years, in this same Committee room, I have heard testimony professing that an easing of sanctions; re-defining of “cash-in advance”; improving U.S.-Cuba relations; and an increase in travel to the island, would benefit U.S. farmers. And, as we all know, since December 17th, 2014, the Obama Administration has engaged the Castro regime and extended a litany of unilateral concessions.

As part of these concessions, the Obama Administration has redefined “cash-in-advance”; eased payment terms for agricultural sales; American travel to Cuba has increased by over 50%; Cuba’s GDP grew last year by over 4%; diplomatic relations were established; and endless U.S. business and trade delegations have visited Havana.

Yet, U.S. agricultural exports to Cuba *plummeted* by nearly 40% in 2015. During the first quarter of 2016, the slide continued, as ALIMPORT purchased only \$63 million in U.S. agricultural products. That is an additional 21% percent drop from the same period in 2015. These are the lowest numbers since the United States authorized agricultural exports to the Castro regime in 2000.

Of course, those who understand how the Castro regime operates are not surprised -- for it has long used agricultural sales as a tool of political influence.

As a 2007 report of the U.S. International Trade Commission (‘ITC’) confirmed:
"Alimport reportedly initiated a policy in 2003 that limited or ceased purchases from U.S. companies that did not actively lobby the U.S. government for changes to laws and regulations regarding trade with Cuba. Purchases are also allegedly geared to particular U.S. States or Congressional districts in an effort to heighten local interests in pressing the Administration to normalize trade with Cuba."

Today is no different. The Castro regime wants the U.S. Congress to lift tourism, financing and investment sanctions that would overwhelmingly benefit its military monopolies, so it is putting on the squeeze.

Financing Agricultural Sales to Cuba

We will surely hear testimony today about Cuba being one of the U.S.’s largest export markets pre-1959 and how we need to “recapture” it. Politics aside, I would caution that Cuba’s economy is nowhere near the same today as it was throughout its pre-1959 history, when it was free-market oriented, with a dynamic private sector, property rights, and among the largest middle class and highest per capita income in Latin America at the time. Today, Cuba is a totalitarian dictatorship, with a centralized control economy and the lowest per capita income in Latin America.

We will also surely hear testimony about Cuba purchasing rice from Brazil and Vietnam, instead of from the United States, as a result of the prohibition on U.S. financing for agricultural sales. But I would caution that Brazil and Vietnam’s rice sales to the Castro

regime are heavily state-subsidized and made pursuant to political arrangements. They are *not* based on competitive terms and rates. I would further argue that the recent downfall of the socialist government in Brazil -- and its shady financing deals with the Castro regime that are currently under investigation by the Brazilian authorities -- may lead to a bigger increase in U.S. rice sales to Cuba than anything the U.S. Congress could do.

Finally, we will surely hear many theories and estimates about how much more money one commodity sector or another -- or one state or another -- can make from exports to the Cuba, if U.S. sanctions were further eased or lifted. However, as we've learned from the dramatic decline in agricultural sales figures over the last year -- despite the Obama Administration easing of sanctions and establishing diplomatic relations with the Castro regime -- that is hardly guaranteed.

Let me be absolutely clear. Those of us who support sanctions and oppose the financing of transactions with the Castro regime do not do so with the intent of harming American farmers. Conversely, I know that American farmers do not seek to sell their products with the intent of supporting or subsidizing the Castro regime.

American farmers are the best in the world and we all share their desire to establish and expand markets. As a matter of fact, I'm sure Cuban-Americans in Florida consume more rice than any amount ever sold to Cuba pre- or post-1959. However, the agricultural groups represented here today remain steadfast in their desire for the financing of agricultural sales to Cuba and there is even legislation before this Committee to that end.

But any such proposition must be weighed by serious factual considerations regarding the troubling structure of Cuba's business entities (military-run monopolies), its beneficiaries (the Castro family and regime cronies), the rights of its victims (both Cubans and Americans), and whether such practices are in the U.S.'s security interests.

Thus, the question comes down to: How to authorize private financing for U.S. agricultural sales to Cuba without subsidizing its derelict regime and in a manner consistent with U.S. security interests and the rights of victims?

We are obviously not going to resolve this challenge today. But hopefully, this discussion can be helpful in understanding each other's concerns and in highlighting important safeguards that could address broader policy implications.

These safeguards fall into three categories:

1. Protect American Taxpayers.

Cuba ranks among the world's worst credit-risks and debtor nations. Moody's Investors Service gives Cuba's sovereign debt a Caa2 rating, which translates into "very high credit risk."

Despite highly publicized (and politicized) debt forgiveness concessions from Russia and the Paris Club, Cuba still owes upward of \$75 billion to a long international list of creditors. As recently as 2010, *Reuters* reported how Cuba “failed to make some debt payments on schedule beginning in 2008, and then froze up to \$1 billion in the accounts of foreign suppliers by the start of 2009.” That should make anyone unwise enough to leave money sitting in a Cuban bank account reconsider.

And just a few months ago, on July 8th, 2016, General Raul Castro stated, in his own words: "I should recognize that there have been some delays in current payments to creditors."

I am confident we all agree that American taxpayers must not be exposed to any *direct* bailout of the Castro regime. It is for this reason that TSREEA includes a prohibition (Sec. 7207(a)) on United States assistance, which reads:

“No United States Government assistance, including United States foreign assistance, United States export assistance, and any United States credit or guarantees shall be available for exports to Cuba.”

But American taxpayers should also not be exposed to any *indirect* bailout of the Castro regime. Thus, TSREEA should further be supplemented by a prohibition in the Internal Revenue Code that would prevent any losses stemming from commercial transactions with Cuba’s regime -- pursuant to Obama’s policy changes -- from being deducted when calculating business taxes.

2. Protect American Victims of Stolen Property.

According to the *Inter-American Law Review*, the Castro regime’s confiscation of U.S. assets was the “*largest uncompensated taking of American property by a foreign government in history.*” Unfortunately, President Obama’s policy of expanding business transactions with the Castro regime is already encouraging American companies to traffic and exploit properties stolen from other fellow Americans. Any expansion of such transactions by the U.S. Congress would further expose American victims.

There are nearly 6,000 unpaid, certified claims, worth nearly \$7 billion arising from the Castro regime’s confiscation of American-owned business and properties. They include many of the ports and other infrastructure used for agricultural exports to Cuba.

American farmers understand the importance of property rights. Property is the very core of farming. As such, it is easy for farmers to appreciate the injustice of having your property stolen, and then coopted, exploited and marketed to someone else to the benefit of the thief. This injustice must be corrected and resolved for the victims. Part of that solution will involve restitution from those collaborators who have knowingly benefited from the theft. The injustices occurring today in Cuba regarding confiscated property must be resolved; U.S. law promises that it will, and it is not just the Castro regime that is on the hook.

It is for this reason that Section 103 of the 1996 Cuban Liberty and Democratic Solidarity Act ('Libertad Act') contains a prohibition on the indirect financing of Cuba, which states:

“No loan, credit, or other financing may be extended knowingly by a United States national, a permanent resident alien, or a United States agency to any person for the purpose of financing transactions involving any confiscated property the claim to which is owned by a United States national.”

The American victims of stolen property in Cuba must not only remain protected from any financing involving their property, but they should be provided recourse.

Unfortunately, President Obama is denying any recourse -- through his waiver of Title III of the Libertad Act -- to Americans who are now seeing their property rights trampled upon by other fellow Americans. That used to be unimaginable. If the Obama Administration is unwilling to protect the rights of grieved Americans, then a private right of action should allow for the victims to do so directly through the rule of law.

As such, the U.S. Congress should pass legislation to end the President's waiver authority over Title III of the Libertad Act and grant Americans the legal standing to pursue justice.

3. Prevent Support for Cuban Military Entities.

Today, the Cuban military owns and operates one of the largest conglomerates in Latin America, known as the *Grupo de Administración Empresarial, S.A.*, or GAESA. Its portfolio includes companies that dominate ports, trade zones, tourist attractions, restaurants, hotels, real estate, retail stores, currency exchanges, gas stations, airlines, and other transportation services. Its head, Gen. Luis Alberto Rodriguez Lopez-Callejas, is Raul's son-in-law.

Far from empowering Cuba's small sector of "self-employed" residents, the Castro regime is taking full advantage of President Obama's new policy to accelerate the military's holdings of every entity poised to benefit from current U.S.-Cuba relations.

As an *Associated Press* report this weekend confirmed: “the [Cuban] military's long-standing business wing, GAESA, assumed a higher profile after Gen. Raul Castro became president in 2008, positioning the armed forces as perhaps the prime beneficiary of a post-detente boom in tourism. Gaviota, the military's tourism arm, is in the midst of a hotel building spree that outpaces projects under control of nominally civilian agencies like the Ministry of Tourism. The military-run Mariel port west of Havana has seen double-digit growth fueled largely by demand in the tourism sector. The armed forces this year took over the bank that does business with foreign companies, assuming control of most of Cuba's day-to-day international financial transactions, according to a bank official.”

Let there be no doubt, the Cuban military is already encroaching into the U.S. agricultural trade sphere, which is currently under the direction of the nominally-civilian Ministry of Foreign Trade. However, if Congress were to authorize any financing for agricultural sales to Cuba, I guarantee that GAESA would absorb ALIMPORT as swiftly -- with no legal process and lack of transparency -- as it recently did *Habaguanex, S.A.* and *Banco Financiero Internacional*. (Both were the focus of the *AP* story referenced in the prior paragraph).

With great foresight, just a few months after President Obama announced his new Cuba policy, the Chairman of the House Intelligence Committee, U.S. Rep. Devin Nunes (Cal.), and the Chairman of the House Armed Services Committee, U.S. Rep. Mac Thornberry (Tex.), anticipated this trend and introduced the *Cuban Military Transparency Act* (H.R. 2937), which seeks to ensure that any increase in resources to Cuba -- pursuant the Obama Administration's recent policy changes -- truly reach the Cuban people and are not funneled through the Castro regime's armed forces.

After all, these are the same Cuban armed forces that recently held a stolen U.S. Hellfire missile for nearly two years; that have been caught twice internationally-smuggling heavy weaponry, including the worst sanctions violations ever to North Korea; that oversee the most egregious abuses of human rights in the Western Hemisphere; that are subverting democracy in Venezuela and exporting surveillance systems and technology to other countries in the region; that welcome Russian military intelligence ships to dock in their ports; that share intelligence with the world's most dangerous anti-American regimes; and of which three senior Cuban military officers remain indicted in the United States for the murder of four Americans.

As such, I would urge that this important piece of legislation, introduced by your national security counterparts, remain the priority of any Cuba policy consideration by the U.S. Congress.

Mr. Chairman, this concludes my testimony. Again, I thank you for the opportunity to testify today. I look forward to continuing this important discussion and working in furtherance of our common interests.

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Mauricio has served as an Attorney-Advisor for the U.S. Department of the Treasury, where he authored regulations on securitizations and the implementation of the Basel II framework for international capital standards. Prior to his work in government, he served as a Clinical Assistant Professor at The Catholic University of America's School of Law and as an Adjunct Professor at The George Washington University's National Law Center.

His writings have been featured in a variety of publications including: The New York Times, The Wall Street Journal, Politico, The Hill, The Georgetown Journal of International Law and the Yale Journal of International Affairs. A leading commentator on issues of international affairs, Mauricio is also the Editor of the well-known blog, Capitol Hill Cubans, and served as host of the foreign policy show "From Washington Al Mundo" on Sirius-XM's Channel 153.

Mauricio has previously provided expert testimony before the U.S. House of Representative's Committees on Foreign Affairs, the Judiciary and Natural Resources.

Mauricio earned his Bachelor of Arts degree from Rollins College, Juris Doctor from The Catholic University of America and Master of Laws (LL.M.) in International and Comparative Law from Georgetown University Law Center.