Cuba: The Embargo Continues

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Since the Obama administration announced the establishment of diplomatic relations with Cuba, it's common to hear people talk about what will happen "now that the embargo has ended." The new measures are significant for the tone that they set, and there are some concrete changes that will result. It will be easier for certain limited categories of US citizens to travel to Cuba, and the tension between the two governments is somewhat reduced. But the embargo is still very much in place.

The embargo against Cuba—known in Cuba as "el bloqueo," the blockade—dates back to the restrictions imposed shortly after the Cuban Revolution, under the Trading with the Enemy Act. However, once Cuba established trade relations with the Soviet Union, most of Cuba's trade was with the Eastern bloc, so the loss of trade with the US was not devastating. The disintegration of the Soviet Union triggered an economic crisis, known as the "Special Period in time of Peace." Cuba lost 75-80% of its trade (Ritter, 2010:2), and between 1990 and 1995, Cuba lost one third of its GDP (Ritter, 2010:2). But by 1995, it had restructured its economy, shifting away from sugar exports, re-opening the tourism industry on a massive scale, and developing exports related to medical services and biotechnology. Cuba also established a new network of trading partners, particularly with companies in Europe and Latin America.

The Special Period was a time of terrible deprivations. Up until that time, Cubans were provided basic foods at low prices under the ration system, but also could buy milk or bread or other goods at secondary stores at affordable prices. Once the economic crisis set in, the secondary stores stopped carrying any goods; then the ration system could no longer provide even enough basic goods to feed families, such as rice and beans. As gasoline became unavailable, public transportation collapsed. Without fuel, industry came to a standstill. In Havana, there were rolling blackouts, in which each neighborhood would have electricity only on alternate days, and sometimes even that did not happen.

In 1992, the US passed the Torricelli Act (Cuban Democracy Act), which aggressively tightened the embargo. Perhaps most significantly, it undermined Cuba's newly-established trade relations by prohibiting trade with foreign subsidiaries of US companies. Under international law, a corporation is a national of the country where it is registered, not the country where its shareholders reside. The Torricelli Act would impose prohibitions, for example, on a British company doing business with Cuba, if it was owned by an American company. The law angered much of the international community, including US allies, because it interfered in their trade relations in violation of international law. In response, Cuba introduced a resolution before the UN General Assembly, condemning the US for these measures. In 1992, the resolution was passed, by a vote of 59 to 3, with 117 countries abstaining or not voting. Each year after that, Cuba updated and reintroduced the resolution; and each year Cuba received greater support, as nations that had abstained began to vote for the resolution. In fall 2014, the vote was 188 to 2, with only the US and Israel in opposition. All of the US' major allies (other than Israel)—indeed, nearly every country in the world— now support Cuba's resolution denouncing the US for violating international trade law.

In 1996, Congress adopted the Helms-Burton law. Like the Torricelli Act, the Helms-Burton law sought to extend US jurisdiction over transactions involving foreign nationals. In cases where a foreign company—say, a Spanish hotel chain—set up a business in Cuba using property that had belonged to a Cuban citizen prior to the revolution, if he was now a US citizen, he could sue the Spanish company in US courts. Once again, this was a provision that stood in clear conflict with international law. In response, Canada, Mexico, and the European Union passed retaliatory “clawback” legislation. The European Union brought an action before the newly-formed World Trade Organization challenging the law’s legality. The Clinton administration suspended the most problematic provisions, as has each administration since then. But the law remains on the books, and its other provisions are aggressively enforced.

Because both the Torricelli and Helms-Burton laws were passed by Congress, the Obama administration does not have the discretion to lift those restrictions. Given that both houses of Congress are now Republican-controlled, it seems unlikely that Congress will rescind these. And the Obama administration’s enforcement of US sanctions has been far more aggressive than was the case under the Bush administration. In the last few years, the Treasury Department has begun imposing massive fines for violations of US embargo law, even where those laws are widely considered by the international community to be violations of international law.

Last summer, BNP Paribas paid $8.9 billion in state and federal penalties for sanctions violations. Prior to that, HSBC paid $1.9 billion for sanctions and other violations, the Dutch bank ING paid $619 million, and several other banks paid penalties on the order of half a billion dollars each. Unsurprisingly, banks and other companies are reluctant to engage in transactions with Cuba, even where those transactions are legal. Thus, for example, the Cuban diplomatic offices in Washington DC cannot find any bank that will provide them with ordinary financial services, even though it is quite legal to do so.

Within Cuba, the embargo continues to impact the economy, and daily life, quite profoundly. Under US law, Cuba cannot engage in any financial transactions in US dollars, which is the dominant international currency. International aid organizations in Cuba cannot use Dell computers, because they are made in the US. Cuba cannot buy medicines from US companies, even though it is legal, because the licensing process is so cumbersome that it is effectively impossible. Cuba is the only country in the world that cannot have access to the IMF and WorldBank to restructure its debt and obtain investment funds, because the US embargo law not only instructs its representatives on these institutions to vote against aid to Cuba. In addition, US law provides that if the major international financial institutions (IFIs) nevertheless do provide aid to Cuba, the US will withhold its payments to the IFI by the same amount.

It is not just that Cuba cannot buy goods from US companies. It is that the US forces companies in third countries to choose: you either do business with Cuba, or you do business with the US. The embargo is a major cause of the constant, severe shortages of consumer goods, durable goods, and equipment and materials necessary for agriculture, industry, and infrastructure. On any given day, it would likely take someone in Havana hours to find any store where they could buy a light bulb, or a stapler, or a toothbrush… if they could find them at all. A pair of shoes will cost someone the equivalent of four months’ salary, and the shoes will be of such poor quality they will not last long. Half of Cuba’s arable land is lying fallow, in part because pesticides and fertilizer are so expensive, but also because the purchases and the shipping are so problematic because of the US embargo.

It would be good if the embargo were in fact lifted. It would reduce the hardship the Cuban people have been experiencing for many years. It would bring the US into compliance with international law. However, the establishment of diplomatic relations and the other measures announced recently do no such thing. In regard to *el bloqueo*, we might say that rumors of its demise are greatly exaggerated.

References

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