



Roll the dice

The risks of dealing with Cuba

By Nicole Rollender and Janet Plume

John Parke Wright IV and those other Florida business-people who have chosen to trade with Cuba, mostly through Jacksonville and Tampa, are justifiably worried.

The Florida-based cattle forwarder and other exporters to Cuba assumed the worst, less than two months ago, when the Treasury Department revised regulations for selling food and medicine to the struggling Communist country.

The revision changed the U.S. government's definition of a "cash-in-advance" payment for those exporting from the U.S. to Cuba. The move prompted Cuba's import agency, Alimport, to threaten to cancel U.S. shipments, whose value was expected to reach \$1.2 billion by the end of this year. In four years of limited trade, Cuba had emerged as the U.S.'s 25th-largest export partner.

Since the transition period for the revised regulation expired March 24, several shipments to Cuba have been interrupted because of an unanticipated bank holiday and the need to renegotiate contracts with new terms of payment. The American Farm Bureau Federation claims that more than \$250 million in food shipments scheduled within the next six months to Cuba are immediately at risk and hundreds of millions of dollars in future shipments are jeopardized. The American Farm Bureau Federation has joined more than two dozen other groups supporting proposed legislation in Congress that would undo the revision.

According to the producers, shippers, lawyers and forwarders involved in the Cuba trade, the biggest blow is to the integrity of the U.S. export community because it forces them to renege on contracts already signed, sealed and delivered.

The Trade Sanctions Reform and Export Enhancement Act of 2000 lifted some trade restrictions that had been in

place since the 1963 trade embargo of Cuba in December 2001. By the end of 2004, U.S. firms had sold more than \$800 million in food and medical products and that figure was expected to increase by half this year.

The law specified that Cuba could pay for the goods with either letters of credit or cash in advance. Cuba's Alimport would send its pesos to a third-country bank, which then would wire U.S. dollars to the shipper's U.S. bank, a process that would take about three days or about the length of a voyage from a Florida or Gulf port to Havana.

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Until last month, some shippers were paid with letters of credit consisting of two contracts; one in which an issuing bank promises to pay a seller for goods or services sold to a buyer after the bank receives a specified document such as an invoice, bill of lading or inspection certificate. The second contract is between the bank and the buyer, who must pay the bank a fee, which usually varies from 0.75 percent to 3 percent of the value of the cargo, for the letter of credit.

The bulk of Alimport's payments for U.S. cargo were made according to the cash-in-advance terms; Cuba sent pesos to a third-country bank as the ship left the U.S. port. Normally, by the time the vessel arrived in

Cuban waters, the payment had been received and the wire transfer to the shipper completed. In some instances, the vessel would wait offshore for one or more days while the transaction was completed.

"This arrangement is unusual in international trade," said Lisa Crosby, a trade attorney with Sidley, Austin, Brown & Wood in Washington, D.C. "Globally, most buyers use letters of credit."

Trade experts speculate that previous, unrelated incidents — in which Cuban property was seized in the U.S. to satisfy U.S. court liens won by Cuban exiles — influenced Alimport's decision from the beginning of the food shipments in December 2001 to time its cash-in-advance payments in such a fashion that the transfer of ownership of the cargo did not occur until the vessel was almost in Havana.

The difference between this cash-in-advance method of payment and a letter of credit is where the liability lies. In a cash-in-advance payment, the seller is at risk until the money is received from the buyer. In a letter of credit, the bank assumes that risk.

A letter of credit assures the seller of payment before the goods are shipped or manufactured, even if the seller doesn't receive the money until after the goods are shipped, according to Leonard Rosenberg, director at Sandler, Travis & Rosenberg, a Miami law firm. Under the old cash-in-advance method for shipments to Cuba, the seller did not receive payment until the cargo was under way.

"With a letter of credit, the seller is paid even if the buyer believes that what it has received does not conform with the order specifications," Rosenberg said. "Investigating and worrying about the credit-worthiness of the buyer is left to the issuing bank."

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