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The Wild Card in the Caribbean - Cuba[©]

*Michael Wallace Gordon**

Cuba is indeed the wild card in the Caribbean. It is the political and economic aberration in the hemisphere. The paradoxes of Cuban society are illustrated by a dialogue between two girlfriends in Havana. One says to the other "I understand you dumped your new boyfriend. Why? I thought he was nice."

The friend responds, "I did dump him. He lied to me. He told me he was a bellhop at the new hotel in Varadero, but he is not. He is *only* a doctor."

Bellhops at Varadero earn tips in dollars. A bellhop who receives \$10 in tips a day, or perhaps \$240 a month (plus a state salary), is wealthy compared to a doctor. The latter is paid at most a state monthly salary of 400 pesos. That is worth, at the exchange rate of about twenty to one, about 20 U.S. dollars.¹ Is it surprising that your bellhop in Varadero may also be a doctor?²

Is an economy gone so astray capable of offering anything of value to the ongoing Free Trade Agreement of the Americas (FTAA) negotiations? Is there any contribution Cuba might make, other than openly displaying its failed economy that illustrates the tragic consequences of pursuing non-market economy characteristics? It remains the only nation in this hemisphere, and one of the few remaining in the world, that rejects free trade. While Cuba is a candidate for increased foreign trade, and certainly for better foreign relations with the United States, there is not much benefit to welcoming the personal participation of President Fidel Castro at the FTAA negotiating table. Mr. Castro will not be at the table, but "the Cuban issue" will be there, as it has been at each of the two concluded summits in Miami and Santiago.

The negotiations for a Free Trade Agreement of the Americas are underway with thirty-four participants. There are thirty-five nations in our long and narrow hemisphere. One of our hemispheric family is not at the negotiating table. It has not asked to come and was

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1. The Cuban Government has long maintained that the Cuban peso was worth slightly more than one U.S. dollar. The free market rate exceeded 100 to the dollar in 1994, when the Castro government was beginning to acknowledge that the economy was becoming dollarized, and by Decree 140 in 1993 depenalized possession of dollars. That action, plus opening some farmer's markets, and allowing small private businesses to operate legally under Decree 141, helped reverse the decline of the value of the peso. The free market rate at the beginning of 1999 was about 20 pesos to the dollar.
 2. It is more likely that the doctor is driving a cab, or working at some entrepreneurial activity other than employment at a hotel. Hotel employees are assigned by the Cuban Government to the hotel venture, and doctors would not be eligible. Having received a medical education at the government's expense, doctors must practice medicine where assigned. Professionals in general are prohibited from taking advantage of the Decree which permitted operating small businesses.
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not invited. Indeed, the United States wants that country to stay away. This prodigal nation of the hemisphere is of course our small and dissonant neighbor to the south - Cuba. Cuba has been over the past three successive centuries the economic dependency of Spain, the United States, and the USSR. Since the late 1980s it has been on its own. For a decade Cuba has been an independent nation. But under nonmarket economic policies, disproved and discarded in all the other nations of the hemisphere and in most of the world, Cuba has not done well. It needs all the benefits it might gain from association with democratic, market economies. Why is it not part of the FTAA negotiations and should it be?

The negotiations are to conclude a FTAA by 2005, at which time negotiators will have created the world's largest, and most disparate, trading bloc among some 800 million members of the human species, representing various languages, religions, work ethics, political and economic compositions, and cultures. Were the United States to expect that Cuba would be under new and democratic leadership in another six years when the FTAA negotiations conclude, it might make sense to include Cuba now—at least as an observer. But the United States administration must believe that its Cuban foreign policy will continue to be as unsuccessful as it has been for the past four decades; the administration apparently believes that its efforts to dislodge Mr. Castro will remain a failure for the next half-dozen years.

The absence of Cuba from the FTAA negotiations is less because the nation is the pariah of the hemisphere than because of the tenacity and longevity of its leader, Fidel Castro. He is the longest serving head-of-state in the hemisphere. In one sense it is because of his longevity that he is unwanted. No one leads for forty years in a democratic government that has free elections. Mr. Castro began his leadership when Dwight Eisenhower was president. Eight successive U.S. Presidents have held that office, four from each party. When United States foreign policy towards Cuba was formulated exclusively in Washington, the conditions for eliminating the U.S. trade embargo and renewing relations were threefold: (1) removing Cuban troops from Africa; (2) ending fomenting revolution in Latin American nations; and (3) agreeing to discuss the expropriation issue. Cuban troops are no longer in Africa, and the death of Che Guevara in Bolivia in 1967 effectively ended serious prospects of Cuban-led revolution in most of Latin America.³ With regard to the expropriations, Mr. Castro is willing to discuss the issue of compensation for the expropriations, but his conditions remain tied to the unrealistic and unlawful measure of payments offered in the 1960s.⁴ To the disadvantage of the United States, its foreign policy towards Cuba for most of this decade has not been formulated exclusively in Washington. For electoral reasons, the President has effectively deferred to certain Cuban-American exile groups in Miami (and in New Jersey) that demand the removal of the Castro brothers from governance. Does Cuban leadership currently cause any more U.S. diplomatic effort

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3. There have been other revolutions, perhaps most notably that in Nicaragua in 1979. That revolution may have been inspired by the Cuban revolution, but it was not fomented by the Cuban Government.
 4. This is perhaps most recently affirmed in writing by the Cuban response to the U.S. Cuban Liberty and Democratic Solidarity (Libertad) Act, better known as Helms-Burton, of 1996. Cuba responded with the Ley de Reafirmación de la Dignidad y Soberanía Cubana (Ley No. 80), Dec. 24, 1996, which affirms the appropriateness of the compensation proposals made in the 1960s. Those proposals clearly fell short of any international law norms of compensation.
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to confront than that of Colombia, where so much of the U.S. drug traffic commences, and where U.S. "certification" procedures are rejected? Or of Panama, where the words "banco" and "lavandería" often seem synonymous; or Brazil, where U.S.-backed IMF plans are accepted, but rarely fulfilled; or Mexico, where government corruption retards development; or perhaps even Canada, which persists in subsidizing softwood lumber exports and blocking magazine imports for questionably legitimate reasons of protecting Canadian culture? The only threat from Cuba is the impact from renewed surges of uncontrolled migration. In addition, there exists the threat of the Juragua nuclear plant, if ever completed, which uses the best of Russian technology, thoroughly tested at Chernobyl. We have indeed negotiated an agreement with Cuba to limit immigration, and the Juragua construction appears to remain dormant.⁵

The degree to which Cuba participates in the FTAA negotiations is a political question rather than a legal one. Political goals are often the motivation for imposing legal trade controls. The current goal is to remove Castro from office. The United States has tried for nearly forty years. It started long before Bill Gates knew how to spell monopoly, before Toyotas and Datsuns roamed the West, and even before Dallas was known as a city rather than a sit-com. The Greeks gave up after laying siege to Troy for ten years and tried another way. If ousting Castro is our crusade, we have forty-three years to go before we match the duration of the European crusades to rid the Holy Land of Muslims. But surely Castro will not survive that lengthy period. He has lived so long, however, that in Florida they recently debated the wisdom of holding the fortieth annual post-Castro Cuba conference. If we held that conference today we might appropriately ask the question - why is Cuba not part of the FTAA negotiations, and should it be?

The first question is rather easy to answer. Cuba was not invited. The second is more difficult - whether Cuba should be present. The question is really should there be Cubans at the negotiations, because the Cuban question will be present with or without the physical presence of any Cuban negotiators. Cuba will thus have at least a *de facto* participation in these negotiations, just as there is a *de facto* trade relationship with Cuba, *de facto* tourism from the United States to Cuba, and *de facto* diplomatic relations between the United States and Cuba.⁶ These *de facto* relationships mask the reality. Indeed, the gap between the reality of the *de facto* relations, and the public statements declaring no relations and affirming the embargo, is so great as to cause continual embarrassment between the United States and numerous third nations.

Cuba's denial of a formal role in the FTAA negotiations raises no legal issues of significance, although Cuba's exclusion has an impact on the development of laws relating to

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5. I drove by the site in March, 1998, and there was no sign of work in progress. The Libertad Act illustrates the U.S. concern regarding the Juragua construction. Section 111 is entitled "Withholding of Foreign Assistance from Countries Supporting Juragua Nuclear Plant in Cuba." Eleven findings in the provision address the development of the facility, specific concerns of nuclear experts, and potential danger to the United States. The law then withholds any U.S. assistance to countries that support the completion of the plant. 22 U.S.C. § 6041 (1998).
 6. The absence of formal diplomatic relations was "in part" the reason for Cuba's absence, according to Uruguayan Ambassador to Canada Albio Rosselli. 12 BNA Int'l Trade Rep. 1641 (Oct. 4, 1995). Since relations are extensive, albeit *de facto*, this reasoning seems weak. Ambassador Rosselli did not state the "other" part of the reason for Mr. Castro's failure to be invited.
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trade in this hemisphere. We trade with all the other nations of the hemisphere because they have varying degrees of democratically elected governments; although, the United Nations and the United States have been called upon on several occasions during the past decade to monitor elections in several of these nations because of convincing evidence of routine election fraud in previous elections. But to the United States administration, fraudulent elections are better than none at all. If Cuba would have some fraudulent elections that the United States could monitor, perhaps all would be well. The United States just wants a little de facto democracy. The appearance rather than the reality is the foundation of our foreign policy.

The United States has extensive relations of diplomacy, but not diplomatic relations, with Cuba. On the Malecon in Havana—the beautiful drive along the Gulf Stream that runs westward from the entrance to the Harbour at Old Havana—rises a refurbished stone-faced building providing offices to the largest collection of foreign persons trained in diplomacy from a single nation in Cuba. It is officially the Swiss Embassy. Probably not many Cubans know the building as that. They know it as the U.S. embassy, but it is not really an embassy. It is the U.S. “Interests” Section. Thirty plus U.S. citizens, and additional Cubans, work in this building and do exactly what diplomats do in embassies in other nations.⁷ President Carter (some of you may be old enough to remember him) reestablished relations with Cuba in 1977 on a limited basis. That means the person who heads the Interests Section is not called “Mr. Ambassador,” although he has that rank in the foreign service. The past few American heads of the Interests Section have tended to be persons of exceptional skill and experience in the U.S. diplomatic service. The head of the Interests Section does not have a flag on his car, but he does live in the same residence that served American ambassadors in the pre-Castro era. Additionally, American flags are not flown from the office building or the residence. But Cubans know what these buildings are. The head of the Interests Section has never presented his credentials to Castro, but he speaks with him and has dined with him, even at a state dinner.

The United States maintains this de facto recognition of the Castro Government because it believes it to be in the country’s best interest. After all, important dialogues remain to maintain issues of immigration, occasional problems with the naval base at Guantanamo, assistance to the many U.S. visitors to Cuba, and U.S. trade with Cuba.

I did say U.S. visitors to Cuba and trade with the United States. Many U.S. citizens visit Cuba under license from the U.S. Government. Thousands of additional U.S. citizens are estimated to travel to Cuba as tourists and business visitors without a license, by way of the Bahamas, Canada, and Mexico.⁸ United States visitors are often surprised to find so many U.S. goods used by Cubans and available for sale in Cuban dollar stores. It is because of the substantial trade between the United States and Cuba - de facto trade. While the

7. These services include a useful web site: *The United States and Cuba* (visited Mar. 29, 1999) <<http://www.usia.gov/regional/ar/us-cuba>>.

8. An estimated 18,000 illegal visits were made in 1998. See ST. AUGUSTINE RECORD, Nov. 8, 1998, at 8C. This article, under a Washington Post byline, listed Canadian tourist firms catering to Americans, including telephone numbers. It also gave telephone numbers of Havana hotels. Cuban immigration officials agree not to stamp U.S. passports to avoid informing U.S. customs agents of the visit to Cuba upon the person’s return to the United States.

Cuban Assets Control Regulations,⁹ the Cuban Democracy Act,¹⁰ and the Cuban Liberty and Democratic Solidarity Act (Libertad or Helms-Burton act),¹¹ severely restrict formal trade, United States goods are present and for sale in Cuba in greater quantity and variety than the goods of most nations that have formal trading relations. Soft drinks, candy, cigarettes, wine, and liquor from the United States are readily available in dollar stores and hotels throughout Cuba. Chrysler minivans are used as taxis. Trade with Cuba is prohibited; the sale of U.S. goods in Cuba is not. Canada, Mexico, and Panama are major conduits for imports from the United States, bought by middlemen in those nations and resold to Cuba.¹² The lowering of tariffs for trade between the United States and Canada, and the United States and Mexico, has made Cuba a third party beneficiary of the NAFTA.

If the reality is that there are relations and trade with Cuba by the United States, should the reality be some role for Cuba at the FTAA table? After all, Cuba has diplomatic relations and trades with almost all other nations of the Western Hemisphere. Perhaps Cuba should be allowed to participate as an observer? The "Cuban issue" will continue to influence discussions. Prospective FTAA parties are very unlikely to allow some of the provisions that were included in the NAFTA at the U.S. insistence to be part of the new agreement. For example, Article 309(3) of the NAFTA states:

In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, nothing in this Agreement shall be construed to prevent the Party from . . . limiting or prohibiting the importation from the territory of another Party of such good of that non-Party.

Will FTAA parties accept that affirmation of a boycott? Perhaps they will. But in view of the perception from abroad that the U.S. boycott of Cuba has led to the unreasonable, if not unlawful, coercion of third nations to join the boycott, perhaps the following language will be insisted upon by other nations:

Parties shall be prohibited from imposing upon any other party any actions which are intended to require the other party to comply with, further or support any boycott fostered or imposed by the party against a country which is friendly to the other party.

9. See 31 C.F.R. § 515.101 (1999).

10. National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102-484, 106 Stat. 2315 (1992).

11. Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, Pub. L. No. 104-114, 110 Stat. 785 (1996).

12. I asked the maitre d' in the Hotel Nacional how he was able to maintain such a wide selection of California wines. He expressed surprise, indicating that they were easily available by way of Mexico.

If these words appear familiar it is because they are adapted from the U.S. antiboycott provisions of the Export Administration Act (EAA).¹³ The EAA boycott provisions were adopted to prevent the Arab nations from gaining assistance from U.S. persons in the support or furtherance of the Arab boycott against Israel. The FTAA negotiators may be observant of any attempts of the United States to preserve or extend its tendency to apply U.S. laws extraterritorially. They may further wish to clarify that the national security threat exception, certain to be included, does not allow self-determination of the justification of that defense when the issue is clearly economic.¹⁴

At the First Summit of the Americas, held in Miami in December 1994, the thirty-four nations agreed to negotiate a FTAA by 2005.¹⁵ Some "concrete progress" was expected by 2000. The trade ministers from the thirty-four nations met in Denver the following year to commence work and issued a joint declaration outlining an initial work program.¹⁶ The

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13. The boycott provisions state that:

"The President shall issue regulations prohibiting any United States person . . .

From taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States . . ."

Export Administration Act, 50 App. U.S.C. § 2407(a)(1) (1998).

14. The national security exception in the NAFTA states:

Subject to Articles 607 (Energy-National Security Measures) and 1018 (Government Procurement-Exceptions), nothing in this Agreement shall be construed:

(b) to prevent any Party from taking any action that it considers necessary for the protection of its essential security interests

(ii) taken in time of war or other emergency in international relations, . . .

North American Free Trade Agreement, drafted Aug. 12, 1992, revised Sept. 6, 1992, U.S.-Can.-Mex., 32 I.L.M. 605 (entered into force Jan. 1, 1994) [hereinafter NAFTA], art. 2102.

See Michael Wallace Gordon, *The Conflict of United States Sanctions Laws with Obligations under the North American Free Trade Agreement*, 27 STETSON L. REV. 1259 (1998).

15. See Summit of the Americas: Declaration of Principles and Plan of Action, Dec. 11, 1994, 34 I.L.M. 808. The working groups are 14 BNA Int'l Trade Reporter 481 (March 12, 1997). The Plan of Action adopted at the Miami Summit included four sections: (1) Preserving and Strengthening the Community of Democracies of the Americas, (2) Promoting Prosperity Through Economic Integration and Free Trade, (3) Eradicating Poverty and Discrimination in Our Hemisphere, and (4) Guaranteeing Sustainable Development and Conserving our Natural Environment for Future Generations. See, e.g., Frank J. Garcia, *NAFTA and the Creation of the FTAA: A Critique of Piecemeal Accession*, 35 VA. J. INT'L L. 539 (1995); Craig L. Jackson, *The Free Trade Agreement of the Americas and Legal Harmonization*, AMERICAN SOCIETY OF INT'L LAW NEWSLETTER (1996).
16. Final Joint Declaration, Summit of the Americas Trade Ministerial, Denver, Colorado, June 30, 1995, 1996 BDIEL AD LEXIS 23. There were three invited observers, representatives from the OAS, the Inter-American Development Bank (IADB), and the U.N. Economic Commission for Latin America and the Caribbean (ECLAC). Working groups were given guidelines to address issues of (1) market access; (2) customs procedures and rules of origin; (3) investment; (4) standards and technical barriers to trade; (5) sanitary and phytosanitary (SPS) measures; (6) subsidies, antidumping and countervailing duties; and (7) smaller economies. The March 1996 Trade Ministerial meeting would establish additional working groups for (8) government procurement; (9) intellectual property rights; (10) services; and (11) competition policy.
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declaration made no mention of the non-participant, Cuba.¹⁷ But, several of the working groups did address subjects that may raise the "Cuban issue." Subject one is dispute resolution. If sanctions are discussed, provisions of the United States-Cuban boycott laws that many nations believe unlawfully attempt to interfere with trading with or investing in Cuba, may be discussed. There is a working group on smaller economies, which was asked to pinpoint and explore ways to help the adjustment of the smaller economies to the FTAA process. One can hardly question that Cuba is most in need of assistance in making adjustments to join the FTAA, and perhaps Cuba's presence as an observer would accelerate the process of change. The Miami Summit Declaration speaks of "strengthening democracy," but not to the establishment of democracy.¹⁸ Would not assisting Cuba in the transitional phase from socialism to democracy be at least as laudable as, for example, strengthening the fledgling democracies that exist in so many of the Latin American nations?

A second Ministerial meeting in Cartagena, Colombia, in March, 1996, furthered plans for the Second Summit in Santiago, Chile. As in Denver, the representatives identified some areas where there are considerable differences, from conceptual, such as whether the FTAA should look more like the NAFTA or more like the MERCOSUR, to technical, such as governing standards, and to social, such as the role of worker's rights in the FTAA. It would have been good for Cuba to listen to these discussions, and to learn the intensity of desire to further develop these many market economies.¹⁹

At the Santiago Second Summit in April of 1998,²⁰ the United States' role had weakened since the Miami Summit, due to otherwise-preoccupied President Clinton's inability to gain "fast-track" negotiating authority from a Congress whose membership has listened to considerable public opposition to new trade agreements.²¹ Cuba was not present at this summit, but once again the Cuban question was present. Canadian Prime Minister Jean Chretien said at the meeting that "Cuba should be here."²² President Alberto Fujimora of

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17. Cuba was, nevertheless, a major topic of conversation among delegates. See Sibylla Brodzinsky, *Cuba overtakes trade, education and drugs at Americas summit talks*, AGENCE FRANCE PRESSE, Apr. 19, 1998.
 18. Lack of a democratic government has been often mentioned by hemispheric leaders as the reason for Cuba's absence. For example, Uruguay's Ambassador to Canada, Albio Rosselli, stated at an Ottawa seminar that the Latin American participants at the Miami Summit effectively made a statement that the FTAA ought to include only countries with democratic systems in place. 12 BNA Int'l Trade Rep. 1641 (October 4, 1995).
 19. A third Ministerial meeting was convened in San Jose, Costa Rica, on March 19, 1998, to undertake some final work before the Santiago Summit, then only a month away.
 20. The Summit drew 22 presidents, and prime ministers or premiers of 12 other nations.
 21. Another blow to the United States in April was the refusal of a number of Latin American nations to condemn Cuba for human rights violations at a meeting of the U.N. Human Rights Commission in Geneva, where a U.S.-sponsored condemnation of Cuba was voted down. John Rice, *The U.S. is Almost Alone in Trying to Isolate Cuba*, GRAND RAPIDS PRESS, Aug. 2, 1998.
 22. Jose Zambrano, *Americas: Cuba, Absent Protagonist at OAS Assembly*, INTER PRESS SERVICE, May 28, 1998. Prime Minister Chretien visited Cuba after the meeting. But Mr. Chretien has not hesitated to criticize Cuba's human rights record, raising it during his visit with Mr. Castro.
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Peru agreed, stating it was unfair to exclude Cuba from the Summit, adding that Cuba was no longer a threat to any nation.²³ Brazil's President Fernando Henrique Cardoso referred to Cuba as "the great absentee," and suggested Cuba's presence was essential for the group to be able to say that "our America is one."²⁴ All the comments about Cuba were not so generous. Brazilian President Cardoso and Chilean Foreign Minister Miguel Insulza criticized Cuba's record on human rights and lack of political pluralism, although they believed more was to be accomplished by engagement than isolation.²⁵ The increasing sympathy for some Cuban presence may again be raised prior to the Third Summit, planned for Canada in 2001. Canada had initiated discussions of the Cuban issue informally, although the final documents included no references to the issue. Political pressures in Canada may make Cuba a major issue prior to the 2001 summit.

The Second Summit in Santiago offered participants an opportunity to raise a separate issue: Cuba's exclusion from the Organization of American States (OAS), which dates to 1962, when Cuba was expelled because the Cuban Government was "incompatible with the principles and objectives of the Interamerican system,"²⁶ and when all the hemispheric nations except Canada and Mexico began to break diplomatic relations. By now, nearly all of the nations of the hemisphere have restored some form of diplomatic relations with Cuba, in a few instances limited to interests sections much like the United States.²⁷ A number of the diplomatic relations restorations have occurred recently, such as that of the Dominican Republic and Guatemala in 1998.²⁸ Many of the nations appear ready to accept Cuba back into the OAS. But not the United States.²⁹

The increasing hemispheric receptiveness to Cuba's readmission to the OAS has not been well received by the United States. The United States' attitude has been clearly expressed—until Cuba is a democracy, there is no room at the table, indeed there is no

23. Ved Nanda, *End U.S. Embargo on Cuba*, DENVER POST, May 4, 1998.

24. LATIN AMERICAN WEEKLY REPORT, May 5, 1998, at 192. His comments offered some hint that the FTAA might be willing to accept a non-market economy regime, a view not often openly discussed. *Gazeta Mercantil*, Rio de Janeiro, April 27, 1998.

25. President Cardoso hoped that Cuba would take the indispensable "steps towards democracy." *Gazeta Mercantil*, Apr. 27, 1998.

26. Also of concern was Cuba's military alliance with the USSR. The collapse of the USSR has eliminated this concern, but the incompatibility of the Cuban Government with the Interamerican system persists. In 1991, after the USSR had withdrawn considerable support to Cuba, the OAS reaffirmed its commitment to democracy in the Santiago Commitment to Democracy and the Renewal of the Inter-American System. OAS Resolution No. 1080. The motivation was the disruption to democracy occurring in several OAS nations, especially Guatemala, Haiti, and Peru.

27. Cuba has trade relations with some 135 nations, and more than 150 foreign companies have established offices in Havana. Steven Girardi, *Cuban Diplomat Speaks in Favor of Ending "Cold War Mentality"*, TAMPA TRIBUNE, May 28, 1998, at 11.

28. The Honduran Congress urged the president to restore relations in late 1998. Reuters Ltd., Oct. 8, 1998, *Cuba Net* (visited Mar. 29, 1999) <<http://www.cubanet.org/CNews>>.

29. U.S. Ambassador to the OAS Victor Marrero spoke at length in opposition to Mexico's proposal for readmission of Cuba. See *U.S. Information Agency Int'l web site* (visited Mar. 29, 1999) <<http://www.usia.gov/abtusia/posts/CU1>>.

room anywhere in the room, for the Castro Government.³⁰ But other nations reject the United States' position. Canadian Foreign Affairs Minister Lloyd Axworthy called for Cuba's reintegration during the March, 1998, OAS Conference on the Americas.³¹ Prime Minister Chretien has stated Cuba ought to be readmitted.³² Venezuela and Chile have also expressed similar views.³³ At the very brief June, 1998, 28th General Assembly of the OAS in Caracas, Venezuela, the United States blocked debate on Cuba's readmission, after Mexico placed the matter before the meeting.³⁴ The Secretary General, Chilean Alvaro Gaviria, stated that Cuba was the "most important political problem to be solved in the hemisphere," but the meeting did little to assist Cuba's return to the democratic fold. There was a second recent rejection of the U.S. Cuban policy. The opinion of the OAS Inter-American Juridical Committee in August, 1996, which by an eleven to zero vote found numerous international law violations in the U.S. Libertad Act, was not well received by the United States.³⁵ Nor was the United States pleased with the 1996 OAS General Assembly resolution criticizing U.S. legislation that allows challenges to third-nations doing business with Cuba and using assets nationalized by Cuba, a direct reference to the Libertad Act.³⁶ The ineffectiveness of the OAS in dealing with Cuba was emphasized when a Chilean government official at the Summit of the Americas in Santiago noted that the Pope's visit to Cuba had done more to restore Cuba in the hemisphere than the OAS had accomplished during the thirty-six years since Cuba's expulsion.

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30. President Clinton stated he would not accept a democratic vote on the readmission of Cuba to the OAS. One of his reasons was the fear that the fledgling democracies of Latin America might be threatened by participation in an OAS which included non-democratic Cuba. *INTER PRESS SERVICE*, Apr. 30, 1998, available in 1998 WL 5986986.
 31. *Albright Signals FTAA's Importance for Cooperation in Hemisphere*, 15 BNA Int'l Trade Rep. 426 (Mar. 11, 1998).
 32. Ved Nanda, *End U.S. Embargo on Cuba*, DENVER POST, May 4, 1998, available in 1998 WL 6109976.
 33. *Venezuela Backs Cuba in Joining Regional Blocs*, XINHUA ENGLISH NEWSWIRE, Apr. 25, 1998, available in 1998 WL 2808421.
 34. Mexico had proposed a task force to study how Cuba's isolation might be ended. Estrella Gutierrez, *The Ball is now in Cuba's court, says OAS*, *INTER PRESS SERVICE*, June 4, 1998, available in 1998 WL 5987577. Apparently, Cuba had not formally asked to return, which might have presented a different issue. The United States was irritated at the forceful manner in which Mexico presented the matter at the meeting, proposing readmission rather than a discussion of the issues. There was really no reason for the issue to arise because Cuba had not made a formal request for readmission, required under OAS procedures. The U.S. rejection of Cuba's readmission was unsupported by a majority of the other governments, but no decision was made. The end result was another blow to U.S. prestige, as it showed its determination to be the superpower in the hemisphere and act unilaterally even with very considerable opposition from other hemispheric nations.
 35. *Organization of the American States: Inter-American Juridical Committee Examining the U.S. Helms-Burton Act*, Aug. 27, 1996, reprinted in 35 I.L.M. 1322 (1996). The opinion is nonbinding. Included among the eleven votes was that of the U.S. member of the Committee, Keith Highet, a highly respected international lawyer.
 36. *OAS Resolution on Free Trade and Investment in the Hemisphere*, June 4, 1996, OAS Doc. OEA/SER.P AG/doc.3375/96.
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At the CARIFORUM summit, a meeting of sixteen heads of state of Caribbean nations, in August of 1998, Castro was an invited observer; his invitation was the result of a decision of the European Union Council of Ministers.³⁷ A group of the African, Caribbean, and Pacific former colonies had suggested Cuban participation to the European Union, since the CARIFORUM summit was scheduled principally to discuss forthcoming negotiations for a new Lomé Convention to replace Lomé 4, which expires in 2000.³⁸ Cuba came away from the August meeting a full member of CARIFORUM and an observer at the September negotiations for the replacement of Lomé 4. Full Cuban membership to the Lomé group, however, will only be granted with a better human rights record and improved management of the economy.³⁹

The Caribbean nations have been especially receptive to Castro's participation in trade negotiations. He visited Barbados, the Dominican Republic, Granada, and Jamaica prior to the August CARIFORUM meeting.⁴⁰ During that meeting, Surinam President Jules Widdenbosch, speaking on behalf of the CARICOM (Caribbean Community and Common Market), asked the Caribbean nations to accept Cuba as a member of CARICOM with full rights.⁴¹ Cuba's integration into CARICOM would undoubtedly occur, but for the threats from Washington to end economic aid to the nations supporting Cuba. But as U.S. aid to the Caribbean diminishes,⁴² such threats

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37. The Cuban Press reported on an interview with Dominican Republic President Leonel Fernandez at this first CARIFORUM summit. President Fernandez reportedly had urged Cuba's admission because Cuba was important as part of the "Caribbean family." Dominican President on Regional Integration, Ties with Cuba, *Cuba Vision*, Havana, Sept. 1, 1998; See also, *Caribbean Forum Ends Meeting on Promoting Integration*, XINHUA NEWS AGENCY, Havana, Aug. 22, 1998.
 38. BBC Summary of World Broadcasts, Aug. 15, 1998, AL/D3306/L (from Notimex News Agency, Mexico City).
 39. Cuba Becomes Observer of ACP, but membership Depends on Human Rights, *AGENCE FRANCE PRESSE*, June 29, 1998, available in 1998 WL 2312286.
 40. Visits to Cuba have been made in the past year by leaders of such Caribbean nations as the Barbados, Dominica, Jamaica, the Grenadines, St. Kitts and Nevis, and St. Vincent. Chris Hawley, *Cuba woos Caribbean Neighbors with Hope of Tying Economic Knot*, *HOUSTON CHRONICLE*, Aug. 2, 1998, available in 1998 WL 16763029.
 41. CARICOM is composed of 15 members, comprising all the members of the CARIFORUM except Cuba and the Dominican Republic. Since the withdrawal of USSR assistance, Cuban bilateral trade with CARICOM members has risen from \$6 million to \$70 million. 11 *World Magazine* No. 9 (Sept. 1, 1998). Membership in CARICOM might open the EU's markets, especially sugar, to Cuba. ACP members (the Lomé countries) are given special preferences for commodity exports to the EU. In November 1998, CARICOM agreed to create a preferential trade area between the member countries and Cuba. Gary G. Yerkey, *Caribbean Nations Move to Conclude Preferential Trade Agreement with Cuba*, 15 *BNA Int'l Trade Rep.* 2005 (Dec. 2, 1998).
 42. A decade ago the United States provided about \$200 million annual aid to the Caribbean; it is now closer to \$25 million. Yana Marull, *Castro Arrives in Dominican Republic Amid Tight Security*, *AGENCE FRANCE PRESSE*, Aug. 20, 1998, available in 1998 WL 16582325.
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are less significant.⁴³ These nations are especially upset with the United States for failing to grant NAFTA parity for Caribbean exports to the United States.

The LAIA or ALADI (Latin American Integration Association), was formed in 1980 to develop trade and establish trade preference and integration agreements.⁴⁴ There are eleven members with intra-regional trade of some \$44 billion.⁴⁵ Cuba, which has trade and economic agreements with some of the members, became an observer in 1986 and submitted a formal request for full membership in March, 1998. Because membership is based solely on economic rather than political grounds (i.e., there is no democracy clause), full membership was granted at the group's summit in November, 1998.⁴⁶ The admission had the support of a consensus, including the more conservative nations of the hemisphere, such as Chile, which had signed a trade accord with Cuba in August.⁴⁷

Although a minor economic integration of Cuba into Western Hemispheric organizations is occurring, major participation would be having some presence at the FTAA negotiations. Little possibility exists that Cuba will be allowed as a formal party. What might Cuba add to or detract from the FTAA negotiations as an observer, if formal participation is not acceptable?

While the foundations of the U.S. boycott of Cuba appear increasingly tenuous, the participation of Castro in any event that has a table and a podium is troubling. Castro's comments during his visit to the Dominican Republic for the summit meeting of CARICOM confirm such concern. Castro called for an alliance of the Caribbean, Central, and South American nations against the United States, which he compared to an elephant that Latin America needs to fight like a bull.⁴⁸ Earlier in the same month, Castro had spoken in Jamaica in terse words about Latin America. He reminded his hosts that only Mexico had not broken relations with Cuba in the 1960s,⁴⁹ criticized Latin American health and education systems, blamed them for allowing the United States to have such disproportionate power in the hemisphere, and suggested that if Latin America had followed Cuba rather

43. One group opposing admission of Cuba to CARICOM are the Caribbean journalists, who at a May 1998, conference voted to oppose such admission unless Cuba reduced its control over the news media.

44. ALADI was created by the Treaty of Montevideo to succeed the ALALC, the Latin American Free Trade Association, established by an earlier treaty of Montevideo in 1960.

45. Latin American Weekly Report, pg. 198 (May 5, 1998). Members are Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Mexico, Paraguay, Peru, Uruguay, and Venezuela.

46. *Cuba Becomes Member of Latin American Trade Group*, 15 BNA Int'l Trade Rep. 1891 (Nov. 11, 1998). Cuba became entitled to trade benefits under the ALADI regional tariff preference system.

47. Chile exported \$17 million worth of goods to Cuba in 1997. Gustavo Gonzalez, *Chile Broadens its Economic Ties with Rest of Region*, INTER PRESS SERVICE, Aug. 19, 1998, available in 1998 WL 5988865.

48. Dalia Acosta, *Castro Calls for Alliance Against United States*, INTER PRESS SERVICE, Aug. 24, 1998, available in 1998 WL 5988928.

49. Mr. Castro nevertheless a few months later managed to also alienate Mexico by his comments that more Mexican children know about Mickey Mouse than their own national heroes. N.Y. TIMES, Dec. 19, 1998, at A5.

than the United States, it would be a better place.⁵⁰ If these kinds of comments are a reflection of how he might use participation at the FTAA negotiating sessions, the FTAA does not need him. However beneficial it might be for him to hear and witness the proceedings, the concern would be for when he speaks. It is likely that given an opportunity to speak, he would continue to try to leverage the nations of Latin America against the United States, such as his criticism about the U.S. assistance to Central and South American nations in support of the WTO petition regarding European Union limits on bananas.⁵¹

While Castro's participation would predictably be disruptive, the participation of many of Cuba's younger, mid-level ministry officials could be constructive. Most of those I have met are closet reformists, waiting for the day when Cuba moves much more towards a market economy. Participation by observing might well push Cuba towards democracy and a market economy. But only if they were able to participate without Castro present to engage in his commonly disruptive rages.

In reality, perhaps all this concern about Cuba and the FTAA is irrelevant. Is Cuba anything more than a *de minimus* entity in the Western Hemisphere's economic community?⁵² Cuban trade in the Western Hemisphere was relatively negligible while Cuba was an USSR dependency. The collapse caused a drop in trade of as much as seventy-five percent, and economic output fell about fifty percent.⁵³ But Cuban exports have increasingly found markets in this hemisphere.⁵⁴ Before the collapse, most of Cuba's trade was with the USSR and Eastern Europe. Now some fifty percent is with Europe (mostly Western Europe), about twenty-five percent with Canada and Latin America,⁵⁵ and about twenty percent with Asia.⁵⁶ Some forty-nine percent of Cuba's imports come from the hemisphere, partly from the United States by way of third nations such as Canada, Mexico, and

50. Michelle Faul, *Castro Aims Wrath at Latin America*, AUSTIN-AMERICAN STATESMAN, Aug. 2, 1998, available in 1998 WL 3620347. On his next stop in the Barbados, he criticized the U.S. WTO challenge to the EU banana preferences, suggesting that the beneficiaries were large U.S. companies. *Id.*

51. *Id.*

52. Cuba would only add some 11 million persons to the 800 million in the 34 participating nations.

53. M2 COMMUNICATIONS PRESS WIRE, Sept. 23, 1998, available in 1998 WL 16524295.

54. New trade agreements are announced frequently, further illustrating refusal to follow the U.S. demands for reducing trade with Cuba. See, e.g., Foreign Affairs Minister to Visit Cuba to Discuss FTAA, *Gazeta Mercantil Investment News*, Rio de Janeiro, May 12, 1998 (announcing Brazilian negotiations with Cuba for sales of Brazilian food for Cuban medicines, and Brazilian oil-drilling in Cuban waters); Gustavo Gonzalez, *Chile Broadens its Economic Ties with Rest of Region*, INTER PRESS SERVICE, Aug. 19, 1998, available in 1998 WL 5988865 (announcing new trade agreement with Cuba); Trinidad and Tobago Seeks Trade Relations with Cuba, INT'L MARKET INSIGHTS REPORT, Aug. 14, 1998, available in 1998 WL 13711703 (noting proposed investment protection and promotion agreement with Cuba).

55. Canada is Cuba's major trading partner, followed by Spain, China, France, and Mexico. *Central American Exports up 38%*, MEXICO BUSINESS MONTHLY, Aug. 1, 1998, available in 1998 WL 17145306 (reporting Mexico's joining the top five trading partners of Cuba).

56. *Id.* In addition to exports, tourism is an important source of revenue. Canada, Colombia, and Mexico are among the leading sources of tourists.

Panama.⁵⁷ Cuba is producing at a pace far below its potential, which means trade with Latin America will increase regardless of the U.S. boycott.⁵⁸ Latin American nations thus view Cuba as logically included in any trade discussions in the hemisphere. But until Cuba takes some steps, perhaps granting some clear freedoms, there is unlikely to be a major Latin American movement to bring Cuba into hemispheric organizations, especially the OAS. That may be as much for fear of economic retribution from the United States as for any true feeling that democracy *in situ* is a precondition to readmission. The steps required by the United States are considerably more extensive. They are expressed by, and locked into, the Libertad Act.⁵⁹

The FTAA will proceed without Cuba as a participant or observer until changes occur in Cuba. That may be soon, or it may be after the conclusion of a FTAA in another few years. At some time Cuba will be given the opportunity to join. Cuba's current non-market economy characteristics make it an inappropriate formal participant in the negotiations. The FTAA parties are not prepared to allow a non-market economy to join by establishing the kind of special status that the members of the GATT did by adding Article XVII "State Trading Enterprises." The FTAA will be a market economy agreement for market economy participation. While Cuba may be a nation in transition, that transitional status discloses that only a few very small steps have been taken. They are steps that were allowed with reluctance by Castro, who remains mired in the ancient philosophy of nations since converted. Cuba remains a nation of paradoxes, distant perhaps from the Cuba of USSR dependency, but even more distant from the democratic and market economy movements in this hemisphere. Cuba is a special case. To Castro, Cuba is in what is called the "Special Period in Peacetime." It is a period of economic austerity, with rationing of a central characteristic. Another dialogue of this special period, which commenced in 1990, soon after the USSR withdrawal, and continues today, reaffirms that Cuba is a wild card in the Caribbean.

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57. These are not exports directly from the United States, nor transshipments with the knowledge of the U.S. exporters. They are purchases in such nations as Canada, Mexico, and Panama by non-U.S. citizens who resell them to Cuba. Unless U.S. exporters have reason to believe that the products are being resold to Cuba, they are not likely prospects for challenge by the U.S. authorities.
 58. The U.S. has acknowledged that it is unable to prevent other nations from doing business in Cuba, a clear failure of U.S. attempts to have other nations join the United States trade boycott. The current position is to encourage Cuba's trading partners to engage in what the U.S. calls "best business practices." They have not been defined, but would presumably include avoiding using expropriated property in Cuba. See Stuart Eizenstat, Under Secretary of State for Economic, Business and Agricultural Affairs, Press Statement, July 20, 1998, available in 1998 WL 14096888.
 59. Libertad Act at § 205.
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In conclusion, a short joke:

God has called the leaders of Russia, Cuba, and the United States together and told them that the world will come to an end and go prepare their people. Mr. Clinton calls the American people together and tells them he has good news and bad news. The good news is that there is a God and we were right to so believe. The bad news is that the world will come to an end in forty days. Mr. Yeltsin calls the Russian people together and says there is bad news and there is more bad news. The first bad news is that there really is a God, and we were wrong. The other bad news is that the world will come to an end in forty days. Mr. Castro calls the Cuban people together and tells them that there is good news and more good news. The first good news is that the Cuban people are among the most important people in the world because God chose to call only the people of Cuba, Russia, and the United States together for important news. The other good news is that the special period will end in forty days.
