


# THE SOURCE

SEPTEMBER, 2015

## INSIDE THIS ISSUE:

CUBA: THE END OF PROHIBITION	1-2
FILING A CLAIM VS SET-OFF	3
PORT OF OAKLAND POISED TO IMPOSE PIERPASS-STYLE CARGO FEES	3
TRIVIA! 	4

## CUBA: THE END OF PROHIBITION

Back in the 1920's and 30's, Havana was THE place to be. Writers rubbed elbows with movie stars, gangsters, and regular Americans chafing under the restrictions of the 18th Amendment. They all flocked to the "Paris of the Caribbean" for the rum, the cigars, the casinos, and the nightlife, the spectacle and decadence that was Havana in its heyday. Ernest Hemingway, who spent the last 22 years of his life living in Cuba, once wrote that *"In terms of beauty, only Venice and Paris surpassed Havana."*



Havana continued to be a vibrant and flourishing city until the 1950's. After the military coup in 1952 reinstated Batista as President, Cuba suffered under high unemployment, limited water infrastructure, and links to organized crime. The armed revolt, led by Fidel and Raul Castro, that ensued rocked Cuba between the years of 1953 to 1959, ending in the ousting of Batista on January 1, 1959. His regime was replaced with a revolutionary socialist state that eventually developed into a Communist Party state in 1965.

The Cuban Revolution had powerful domestic and international repercussions, particularly in terms of its relationship with the United States, which has continued an economic embargo that is still in place today. The U.S. did, however, begin exporting food to Cuba under the Bush administration following a devastating hurricane in 2001, and is now the island's second-largest food supplier.

In April, 2015, Presidents Barack Obama and Raul Castro met at the Summit of the Americas in Panama, marking the first meeting between a U.S. and Cuban head of state since the two countries severed ties in 1961. In May of 2015, the U.S. State Department removed Cuba from its list of state sponsors of terrorism. And, as we all know, the U.S. has just recently reopened diplomatic ties with Cuba and has eased trade restrictions for limited categories

But only Congress can repeal the decades-old trade embargo, and experts say the repeal of Helms-Burton is unlikely to happen anytime soon—certainly not before the 2016 election. A 2014 report by Human Rights Watch said that Cuba "continues to repress individuals and groups who criticize the government or call for basic human rights" through detentions, travel restrictions, beatings, and forced exile. The U.S. would like to see a better record in the area of human rights violations. In addition, U.S. domestic politics have made it politically risky for either party to support a policy of détente with Cuba, for fear of alienating the Cuban exile community, particularly in Florida where the exile community in Miami alone makes up about 5% of Florida's population.

On the other hand, a July 20 survey conducted by the Pew Research Center found that 73% of Americans approve of re-establishing diplomatic relations with Cuba and 72% favor ending the trade embargo. Support was consistent across all demographic groups—gender, age, ethnicity, level of education—and with a surprising 59% of Republicans.

## OF INTEREST

- **ARE WE DOING A GOOD JOB FOR YOU?** If the answer is yes, consider introducing us to a customer or supplier. If they go with the Outsource team you win, too. Ask us about our residuals program.
- **DO YOU SHIP WITH US SOME OF THE TIME?** Become a Program Customer and we will guarantee savings of 10%.

Continued on Page 2

continued from page 1

## CUBA: THE END OF PROHIBITION—PART 2

Lifting the embargo is a step strongly urged by the current U.S. Administration and vigorously supported by business and agricultural leaders; various organizations, including the National Foreign Trade Council, the U.S. Chamber of Commerce, and the National Farmers Union, to name a few; church leaders; and many governors.

Within Congress there have been signals that lifting the embargo may eventually happen, although opposition among a cadre in Congress remains strong. Several bills and amendments, all related to trade and designed to bring outdated U.S.-Cuba policy in line with present-day needs and sentiments, have been introduced and have largely met with bipartisan support. The Cuba Trade Act of 2015, introduced by Rep. Tom Emmer (R-MN), would grant U.S. businesses the freedom to trade with Cuba while protecting taxpayers from risk. The Cuba DATA Act, introduced by Rep. Kevin Cramer (R-ND) and Rep. Peter Welch (D-VT) seeks to help to connect Cubans with each other and the rest of the world by advancing telecommunications and digital technology.

Amendments already adopted include one that will lift the ban on travel to Cuba (Moran Amendment), one that will allow the use of private credit for the sale of U.S. agricultural commodities (Boozman-Heitkamp Amendment), and one that will repeal the requirement that any vessel that has traveled to Cuba cannot load or unload in the U.S. within 180 days without a license.

So, what's in it for us? Plenty. Consider:

- Cuba is just 90 miles south of the U.S. and imports 80% of its food. The U.S. is already a major supplier of food to Cuba, but relaxing trade restrictions and allowing the extension of credit can boost food U.S. agricultural exports exponentially.
- Before the embargo, U.S. exports accounted for 70% of Cuba's imports. The embargo allowed industry competitors in places like China, Vietnam, Brazil, and the European Union to expand their market share in Cuba. Given the physical proximity of the U.S. to Cuba, the U.S. can expect to regain the market share it lost. It is estimated by the Peterson Institute for International Economics, a non-partisan research institute, that merchandise exports to Cuba could reach \$4.3 billion annually if the embargo were lifted.

- The cost to U.S. exporters of maintaining the embargo is estimated at about \$1.2 billion per year, according to the U.S. International Trade Commission.
- Analysis conducted by Texas A&M University found that opening trade with Cuba could create 6,000 new jobs in the U.S., primarily in the agricultural industry,
- Increased trade and investment in Cuba would bring a surge of new business to ports and airports, especially in southeastern states.

There have been compelling arguments presented both for and against lifting the embargo. Some say the embargo enables the U.S. to apply pressure on the Cuban government to improve human rights, and that ending the embargo before the Cuban government meets the conditions specified by us makes the U.S. look weak. On the other hand, the embargo has been shown to harm the people of Cuba, not the government as intended; in addition, lifting the embargo would put pressure on the Cuban government to address problems that it had previously blamed on the embargo.

The United Nations has formally denounced the U.S. embargo on Cuba every year since 1991, and in 2013 all nations in the U.N. except Israel voted to condemn the U.S. policy. In fact, some of the U.S.'s staunchest allies—Canada, Britain, Italy, Mexico, and France—are the leading suppliers of tourists to Cuba. And during his March, 2012, visit to the island, Pope Benedict XVI said the embargo “unfairly burdens” the Cuban people.

It seems that the majority of the American people stand ready to end fifty years of failed policy, and a growing number of their elected officials from both sides of the aisle agree that the time is right.



SOURCE: Council on Foreign Relations “U.S.-Cuba Relations”; Pew Research Center study “Growing Public Support for U.S. Ties with Cuba—and an End to the Trade Embargo”; WOLA articles—7/23/15-7/29/15; Wikipedia “History of Havana”; American Shipper “Senate Committee Approves Measures to Ease Cuba Trade.”

### FILING A CLAIM vs SET-OFF

The Journal of Commerce recently posted a question from a shipper as to the legality of their standard practice of subtracting the amount of money involved in a claim from freight charges owed and notifying the carrier. Most of the time they have encountered complaints, but no serious arguments. A new claims manager at one of their carriers, however, informed them that this practice was illegal based on old rulings put in place by the defunct Interstate Commerce Commission. The shipper was asking counsel at the JOC for clarity as to the legality of their normal practice.

The answer was that it is not illegal, but to do this reflexively is discourteous at best, and potentially risky.

The first ICC Administrative Ruling, issued in 1937, prohibited set-off of unpaid claims, stating that shippers were obliged by law to pay all freight charges “in money”, not by debt off-set. A second Administrative Ruling issued in 1978 repeated the same thing. There is, however, case law supporting the idea that set-off is legal, from courts with jurisdiction superseding that of the ICC, both lower courts and the Supreme Court. But it is a moot point since the ICC has been defunct for 20 years, rendering its rulings invalid.

The reason it is considered a bad idea, though, is because

there is a degree of rudeness in that the action is saying that the shipper is categorically holding the carrier liable and there is no discussion. It also implies a mistrust on the part of the shipper that the carrier would do the right thing and pay the claim if the claim was deemed to be valid. This is bound to cause friction in the shipper’s relationship with the carrier.

And here’s the real potential problem:

If the carrier sues for the unpaid freight charges and the shipper cites the unpaid claim as their defense, this will only work out as long as the court finds in the shipper’s favor. But in order to have a valid claim, one must have filed a claim timely. It is open to question as to whether notifying the carrier of the off-set satisfies this, and whether the court will agree. Also, if the carrier is able to mount an adequate legal defense to the shipper’s untested claim, then the validity of the off-set is refuted. The shipper will owe not only the withheld freight charges, but also any penalties the carrier may legally impose for late or non-payment.

For this reason, it is recommended that set-off only be used as a measure of last resort.

*SOURCE: Journal of Commerce “Shippers Should File Claims; Use Set-Off as Last Resort”—8/21/15.*

### PORT OF OAKLAND POISED TO IMPOSE PIERPASS-STYLE CARGO FEES

The Port of Oakland has requested approval from the Federal Maritime Commission (FMC) to implement a fee, similar to the PierPass fee charged at the Los Angeles—Long Beach complex, to cover the cost of adding a Saturday day gate to its terminal operations. The proposed fees of \$17 per 20-foot container and \$34 for other size containers are set to go into effect on September 7, unless the FMC requires more information. They would apply to trucks using terminal gates during the peak hours of 7 a.m. to 6 p.m. Monday through Friday. Trucks hauling empty containers, bare chassis, and transshipment cargo would be exempt.

In this era of megaships, five weekday gates each week has



become inadequate to handle the increased cargo volumes. Major gateways across the country are forced to extend their gate

hours to ease the stress of cargo surges.

Truck turn times at many ports can be as long as an hour or more. Long delays are financially disastrous for truckers, most of whom are paid by the trip and not compensated for time spent waiting in line. Truckers who can’t make a living in harbor drayage will find jobs in other industries, which will lead to problems with truck capacity shortage.

Some ports have been able to offset the cost of extended gate hours and Saturday gates by increasing the gate fees charged to the shipping lines. Much of the cost, however, has fallen on shippers.

The PierPass program has recently come under fire from the FMC for its lack of transparency, giving rise to mixed feelings on the part of shipper and trucker organizations as to the efficacy of the program. You can read more about this in the [August issue of THE SOURCE](#).

*SOURCE: Journal of Commerce “US Port Push to Extend Gate Hours Comes with Cost” - 8/25/15; Wall St. Journal Logistics Rept.*

VISIT US ON THE WEB!

[WWW.OUTSOURCEFREIGHT.COM](http://WWW.OUTSOURCEFREIGHT.COM)

*Delivering Results... Not Promises*

## OUTSOURCE FREIGHT, INC.

72 SHARP STREET  
SUITE C-11  
HINGHAM, MA 02043

Phone: 781-340-5656

Toll Free: 800-286-5306

Fax: 781-340-0080

***CAN WE HELP YOU REDUCE  
YOUR SHIPPING COSTS,  
OPTIMIZE YOUR DELIVERY  
TIMES, AND IMPROVE YOUR  
FREIGHT'S VISIBILITY?***

**CONTACT KERRIE GENDREAU FOR  
SOLUTIONS TO ALL OF YOUR SHIPPING  
NEEDS**

- **Kerrie Gendreau—Vice President, Business Development**  
**781-340-5656 x 7011**  
[kgendreau@outsourcedfreight.com](mailto:kgendreau@outsourcedfreight.com)

## ABOUT US

Established in 1990, OUTSOURCE, Inc. offers a complete range of freight management services and supply chain solutions to help you improve control and increase profitability.

OUTSOURCE specializes in worldwide logistics and transport, offering your organization an optimized transportation management solution. Our customer-driven approach to doing business allows us the flexibility to select services and solutions that best serve our clients' individual needs, and our extensive collective experience in distribution, warehousing, retailing and transportation logistics provides us with the expertise to make it happen.

Air, sea, rail and truck—we can handle all of your domestic and international shipping logistics and transport needs, freeing you to do what you do best.....grow your business.



## TRIVIA

1. Men are banned from what activity on the island of Jersey during the months of August and September?
2. What is the name given to September's moon?
3. Both genders get them, but men get them longer. What are they?
4. If you have nomophobia, what are you afraid of?

*[Click here for answers to Trivia questions.](#)*