

competitive bidding process and allow the successful bidders to pay for their licenses in installments. Pursuant to this authorization, auctions of certain licenses were held in 1996. NextWave successfully bid approximately \$4.7 billion for a substantial block of these licenses.

Subsequently, however, the market value of these licenses became depressed in response to various events, which in turn, adversely impacted the ability of some licensees to obtain funding for their purchases and operations. After making an initial payment of approximately \$500 million, NextWave failed to obtain financing for the balance it owed to the government and filed for bankruptcy relief under Chapter 11 of the Bankruptcy Code in 1998. It thereafter made no other payments to the FCC for the licenses. Eventually, 20 other licensees also filed for bankruptcy relief under Chapter 11.

Extensive litigation over NextWave's licenses dragged on for several years. The FCC ultimately canceled the licenses and reaucted them in January of this year, with winning bids of nearly \$16 billion. Nevertheless, the United States Court of Appeals for the District of Columbia subsequently found the FCC's cancellation of the licenses violated the Bankruptcy Code and thereby rendering their reauction null and void.

In an effort to resolve the various issues presented by the disputed ownership of these licenses, the FCC, NextWave and certain other interested parties have entered into a comprehensive settlement agreement late last month. The agreement provides, in essence, for the transfer of the licenses by NextWave to the FCC, which in turn will convey them to the successful reauction bidders. In exchange for agreeing to transfer the licenses, NextWave will receive a cash payment from the United States government (in addition to which the government will make a cash payment directly to the IRS on behalf of NextWave). As the result of these transactions and certain related payments, the United States will receive approximately \$10 billion as net proceeds from the settlement.

In response to certain concerns expressed with regard to the settlement agreement, the Subcommittee on Commercial and Administrative Law and the Subcommittee on the Courts, the Internet, and Intellectual Property of the Committee on the Judiciary held a Joint hearing last week on this matter. Over the course of that hearing, various issues presented by the settlement agreement and proposed legislation were closely scrutinized, particularly those provisions requiring expedited judicial review and limiting the venue of certain appeals.

Largely as a result of that hearing and extensive consultations with the interested parties, I am now confident that the settlement agreement is in the best interest of the public and the national fisc, under the circumstances.

H.R. 3484, the Prompt Utilization of Wireless Spectrum Act of 2001 ensures that the settlement agreement will be implemented with the ultimate goal of making these telecommunications licenses available to those who will best utilize them for the American people.

Given the time constraints implicit in the pending settlement agreement and the need to tree up these licenses as soon as possible, it is my hope that Congress will promptly consider and pass H.R. 3484.

A WIDENING WINDOW OF OPPORTUNITY FOR WASHINGTON AND HAVANA TO CONSTRUCTIVELY ENGAGE

### HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, December 13, 2001

Mr. RANGEL. Mr. Speaker. With the bipartisan momentum for the abrogation of the U.S. trade embargo against Cuba gaining steam, along with the recent courteous diplomatic exchange between the State Department and Havana and the subsequent trade initiative that was struck between U.S. agricultural groups and Cuba's Foreign Trade Ministry, such development should be of great interest to those in this country who have long been concerned with the course of U.S.-Cuba relations. These two long time foes seem to be exercising a newfound flexibility that could evolve into normalized relations between Washington and Havana.

Michael Marx McCarthy, Research Associate at the Washington-based Council on Hemispheric Affairs (COHA), has recently authored an article of considerable importance entitled, *A Widening Window of Opportunity for Washington and Havana to Constructively Engage*, some of which appeared in a recent issue of the organization's estimable biweekly publication, the *Washington Report on the Hemisphere*. McCarthy's article examines the polite exchange that transpired after Hurricane Michelle rained hundreds of millions of dollars of destruction on Cuba, and closely analyzes how the White House's expediting of Havana's cash purchase of U.S. foodstuffs could establish a diplomatic framework and a new mood which could lead to the restoration of regular political and economic ties. There is some possibility that, if we are lucky, this development could engender further constructive discussion and congressional action on the status of the archaic U.S. trade embargo that Washington slapped on Havana in 1962.

Additionally, considering the UN General Assembly's 10th consecutive overwhelming vote in favor of ending the U.S. trade embargo, and the mounting pressure from agricultural and business groups in this country to open the Cuban market to U.S. farm and industry products, now may be the time for some of my colleagues to harmonize with the rest of the world's public opinion and join with me in revising a failed policy that already has cost us dearly in reputation and in economic opportunities.

Furthermore, as the Castro government is reaching its natural end, the U.S. should want to build upon the recent discussions to bring about a watershed in these two neighbors' ties. To allow this positive momentum to relapse would be a grievous error. The Cuban government and people are aware that a majority of U.S. legislators and citizens desire friendly relations. To ensure that a peaceful transition of power follows the Castro government's end, U.S. officials should not relent on efforts to engage Cuba now. In fact, U.S. officials need to consider widening their humanitarian initiative by addressing basic bilateral issues, such as drug interdiction, laws of the sea, refugee and air space questions, as well as a broad range of economic, terrorism, trade, human rights observance and democra-

tization concerns. Action on these issues will provide the foundation necessary for a natural evolution in the development of constructive relations. As such, COHA researcher McCarthy's article is of great relevance since the effort to constructively engage Cuba is likely to grow in importance in the coming months.

A WIDENING WINDOW OF OPPORTUNITY FOR WASHINGTON AND HAVANA TO CONSTRUCTIVELY ENGAGE

Possibly marking a watershed moment in U.S.-Cuban relations, Washington broke its four decade-long history of obdurately naysaying any move in favor of a constructive relationship with Havana—even if that means denying assistance to Cuban civilians caught up in heart-wrenching natural calamities—when a U.S. administration, for the first time, decided to facilitate Havana's multimillion dollar purchase of lumber, corn, wheat, rice, soy and medical products to help Cuba restock its reserves of essentials seriously depleted by hurricane Michelle. The hurricane was the worst storm to hit the island in a half a century, causing millions of dollars in damage to Cuba's sugar and citrus crops, as well as infrastructure losses and adverse effects to its tourist industry.

The delivery of such goods, initially called for by Castro to take place aboard Cuban vessels, will instead be carried out by U.S. or third-country vessels, marking a major concession on Havana's part. This unfolding scenario might provide the basis for how a newfound flexibility can build significant momentum in favor of a constructive engagement.

Because the unprecedented agreement falls within the existing parameters of the U.S. embargo, the arrangement presented a delicate political issue for Havana to rationalize. Last year, the Cuban president swore to never purchase American goods under the White House's terms, after legislation to ostensibly liberalize the embargo was hijacked by ultra conservative members of congress intent on eliminating any U.S. financing of exports to the island. Despite its heated disagreement with the embargo, Havana's decision to live with the formula for the present purchase indicates the gravity of the economic situation and Castro's ability to learn new tricks by accepting Washington's goodwill gesture at face value. What remains to be seen, however, is whether this episode will morph into a more substantive and broadened diplomatic discussion on such bilateral issues as navigation, air space, refugees and drug interdiction, or if it is merely a one-shot arrangement which will go nowhere.

#### THE GOOD SAMARITAN

The White House, acting out of a "humanitarian need context," played an active role in clearing a major hurdle to the deal by expediting the Commerce Department's issuance of the licenses necessary for American companies to sell and deliver to Havana. This was done after Havana had, with respect, turned down an earlier offer of assistance which would have to go through intermediaries and not involve any Cuban government agency. On the surface, the significance of the initiative is a more modest version of Nixon's opening to China in 1973, but presents a widening window of opportunity that could initiate a deepening and broadening of a dialogue between the two long-time foes. Conceivably, the process could spur preliminary discussions that could end up phasing out the outmoded 40 year-old U.S. economic embargo against the island, something that a majority of Americans appear to want.

In fact, in this latest round of hurricane diplomacy, Cuba's foreign minister expressed optimism regarding recent developments, calling for the U.S. to terminate its stepped-up restrictions on travel to the island and pronouncing Havana ready for normalized relations with Washington. As of now, according to the State Department, the diplomatic exchange associated with the sale (which was in cash, with the purchaser being the Cuban Foreign Trade Ministry) is over and it is up to U.S. companies and Havana to seal the deal. Cuban authorities already are in contact with 15 agro-industrial companies and 15 firms that produce medical supplies or pharmaceuticals. The first actual deal between U.S. food companies and Cuba was completed on November 22 in Havana and was emotionally hailed as an extraordinary historical moment by an official from Riceland Foods. The rice will be picked up by Cuban vessels flying third country flags from the port of New Orleans in December and January. Cuba, for the record, stated that the purchase is a one-time arrangement that does not alter its fundamental opposition to the terms of the U.S. trade embargo.

#### POLITE EXCHANGE SETS TONE FOR AGREEMENT

The genesis of the truly important agreement can be attributed to the natural calamity that ravaged 45,000 homes on the island nation, attracted international attention to Cuba's pressing need for humanitarian assistance and helped produce an unusually civil diplomatic exchange between Washington and Havana. The State Department, in a dramatic shift from its past policy of total intransigence on the issue of Cuba qualifying for U.S. disaster relief, initiated the discussions by publicly offering hurricane relief aid to Cuba. Shortly thereafter, Havana responded to the U.S. tender in a manner devoid of its usual bitter bite, thanking Washington for its kind gesture, but requesting that the Cuban government be allowed to have direct access for purchasing U.S. medical supplies and food and arranging for its delivery.

#### POLITICAL FALLOUT

The surprisingly new, almost amicable, tone in their discussions suggests that the beginning of a détente might be possible down the road. Such a development could prove to be politically beneficial for both Washington and Havana. Bona fide dialogue, beginning at a relatively low diplomatic level, which would focus on chipping away at the four decade-old and anachronistic trade embargo, rather than seeking its abrogation in one major step, would follow a realistic scenario. The fact is that aside from the more ultra right-wing members of the Miami Cuban-American community, and a handful of highly conservative legislators, support for the embargo rapidly has been withering away. Many in the U.S. business, religious, academic and agricultural sectors, as well as some of the most prominent cold war policy makers from the Reagan era, oppose the outdated embargo. In fact, advocates of the embargo have been overtaken by the recent hurricane food aid purchase and are now on the fringe of the U.S. political process.

Miami's Cuban exile leadership, now politically facing a dead end, would do well to assess the changing dynamics of U.S.-Cuban relations. In reality, the agreement on the purchase of essentials gives a marginal boost for the Castro government just when it was going through hard times due to the worldwide economic slowdown. The Cuban economy, already weakened by the recent region-wide reduction in tourism from EU and Canada, particularly resulting from the repercussions of September 11, faced the prospect of a major financial crisis considering the magnitude of Michelle's destruction. The

American supplies should help in short-term relief efforts. More importantly, however, the arrangement could set an important precedent for future trade, as Havana would prefer to reduce shipping costs on imported goods, which in some cases have had to travel from as far as Vietnam, by instead purchasing from a neighbor only 90 miles away. It is estimated that Cuba now spends between \$700 million and \$1 billion on purchasing foodstuffs from U.S. competitors in Asia, Argentina and France, among others. Much of that amount, U.S. suppliers passionately believe, could be in their hands if regular sales between the two nations were permitted.

Castro derided the embargo as an act of economic imperialism, unjustly denying Cubans vital food and medical imports. While Washington's present move could prove to be a powerful political tonic for Castro and almost inevitably will lift his prestige, the delivery of U.S. goods (possibly even on U.S. vessels) to Cuban docks will attract positive international press coverage for the White House. The Bush administration will at least be an equal beneficiary of worldwide praise since it has been U.S. policy towards Cuba, and not the Castro regime, which has been discredited and isolated.

For Washington, the political motivation for its change of policy on hurricane relief is difficult to precisely track. Previously, the Bush administration sent Havana an inflammatory signal by nominating Otto Reich—an anti-Castro Cold War extremist who was tenaciously supported by the far right leadership of the Miami Cuban-American community—to the State Department's top Latin American policymaking post. The food and medicine deal, however, sends a constructive message to Cuba. Although the move has not been explained beyond its obvious humanitarian purpose, it is without question that the recent sale is in the interest of Cuban democratization and could signify that Secretary of State Powell desires to generate a constructive dialogue with Havana.

Until the State Department made its surprising move on hurricane relief, the decades-long schism between the two nations had been, if anything, worsening. Formulating a new, positive diplomatic posture could prove useful to the two nations as the Castro era approaches its natural end. To ensure that a peaceful transition of power will be the paramount goal of U.S. policy makers, Washington must not go back on its constructive posture. Even the most basic diplomatic ties will prove helpful in avoiding a bellicose struggle over the succession of leadership on the island that would inevitably affect the U.S. mainland. In fact, the two nations would be wise to widen the agenda of issues to be discussed to include the establishment of cooperative initiatives on drug interdiction, laws of the sea, refugee and air space jurisdiction as well as a broad range of economic, terrorism, trade, human rights observance and democratization concerns.

#### MOVE CONSONANT WITH RECENT TREND TO LIBERALIZE AND DISPENSE WITH EMBARGO

The humanitarian food and medicine relief agreement comes at an interesting time in the ongoing congressional debate on Cuba. For the past two years the Florida delegation on the Hill has lost much of its influence on issues pertaining to Cuba. The House voted to repeal the travel ban and measures to abrogate the entire embargo failed by relatively small margins. Several weeks ago, however, the Senate decided not to act on the controversial Cuba travel ban repeal, a move which was perceived to have pleased a White House loath to appear soft on Cuba.

Of greatest importance in the present trend towards more normalized relations,

however, is the rising profile of the anti-embargo campaign by various U.S. farm interest groups as well as a broad range of multinationals and the legislators representing them, who are insisting that trade links with Cuba be extended in order to facilitate American exports to the island. On November 15, the Senate Agricultural Committee passed its funding measure, which permits federal financing of agricultural exports to Cuba, a bill that would establish a direct ongoing economic link between Washington and Havana. In the absence of such permissive legislation, there was no such financing involved in the Hurricane Michelle sale to Cuba. A delegation from the USA Rice Federation, which represents a majority of the nation's rice farmers, recently returned from a Havana International Trade Fair, marking the first official visit of a U.S. trade group to such an event in nearly four decades. Upon their return from Havana, USA Rice officials announced their support of the State Department's hurricane relief effort and the Agricultural Committee's vote on federal financing, as well as their serious interest in gaining access for U.S. rice farmers to Cuba's billion dollar produce purchasing market.

#### THE LESSON OF HURRICANE LILI

In the past, Washington has been unyielding when it came to providing any form of disaster relief to Cuba if it was assaulted by a natural calamity. In 1996, when Hurricane Lili leveled thousands of structures on the island, the only U.S. relief effort came from one Miami-based Catholic Charities group. Historically, Miami exile polemics shaped the debate over Cuba, automatically ruling the country out from receiving any U.S. assistance. This obstacle still plagues efforts at constructively engaging Cuba today.

In 1996, militant anti-Castro forces argued once again that assistance sent to the island would never reach those most in need and would end up in the hands of Castro officials, where the goods would be used to strengthen a despised dictatorship. Some Cuban-Americans fear that sending aid would signify an ideological decision, not a humanitarian gesture. In the absence of such assistance, aid sent family-to-family as a permitted remittance would have to do the job, but it would not be sufficient in terms of total volume. That is why skeptics on this issue should reconsider and view Washington's recent step as an astute decision that shuns the sterile responses inexorably made by all White Houses dating back to the Kennedy era.

Furthermore, the State Department's monitoring of the 1996 church donation to Caritas, the Cuban equivalent of Catholic Charities, concluded that such aid had in fact reached its intended destination. Ironically, this little-recalled episode might have established a platform of trust between the State Department and Havana and encouraged U.S. officials to immediately intercede after Michelle rained its destruction.

#### TOWARDS RESTORED TIES

Despite the deep-rooted prevailing mistrust between the two capitals, Washington would be wise to follow Havana's lead in expressing its interest in expanding its present minimal ties. Washington should view the successful 1996 shipment of aid, the Senate Agricultural Committee's recent key vote, USA Rice's scouting of trade opportunities on the island, the Bush administration's intervention on behalf of the cash purchase, Havana's decision to let the goods be delivered by U.S. or third-country vessels, and the positive tone of the recent diplomatic exchanges between the two nations as the foundation for initiating talks that could produce the critical mass necessary for the development of positive relations in the coming months.