

# U.S.-Cuba Trade and Economic Council, Inc.

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## U.S. Companies Won't Like It; Government of Cuba Will Hate It... But It's Likely (Short-To-Medium Term) Reality

The United States business community must move swiftly beyond whether it will accept what the Trump Administration may do relating to the Republic of Cuba and prepare for what the Trump Administration may do relating to the Republic of Cuba.

There may be extremes- rescission of policies and regulations; revocation of licenses. What had been authorized by a general license may now require a license. There may be amendments to existing licenses- require that United States companies (hotels & airlines, etc.) make payments directly to Republic of Cuba nationals whom are currently contracted through Republic of Cuba government-operated entities... and make payments at a 1:1 ratio. There may be no changes- only threats to implement changes, knowing that threats can be dissuasive. There may be an expansive approach- overwhelm the government of the Republic of Cuba with viable and valuable potential opportunities, but withhold implementation until there is an agreement to settle the certified claims- with a target date of 24 February 2018.

Telephone calls, emails, and facsimiles, may no longer be responded to by career employees within departments and agencies; and meetings may no longer be offered or accommodated... at least until political appointees are in place and have provided policy guidance.

Policy towards the Republic of Cuba may not be created, but will be coordinated from the West Wing and Eisenhower Executive Office Building (EEOB), not necessarily from Foggy Bottom.

Advocates supporting the Obama Administration initiatives will no longer maintain a favored and often undisclosed and selective *Pre-Check Lane* into 1600 Pennsylvania Avenue, NW.

Members of the United States Congress who opposed Mr. Donald J. Trump during the primary process and through the general election are *unlikely to gain traction* with the Trump Administration without considerable effort when seeking support for Republic of Cuba-related legislation.

Representatives of the government of the Republic of Cuba may find officials and diplomats whose doors were open during the last twenty-four (24) months are now *unavailable* in Washington DC and in Havana.

A challenge for the United States business community is how to address a government of the Republic of Cuba that will *recoil* from adjectives and adverbs the use of which may be necessary for United States companies to create opportunities for and/or maintain exports, imports and the provision of services.

United States-based companies need to anticipate a return to the “*civil society*” and “*support for the Cuban people*” overt advocacy framed during the presidencies of The Honorable William J. Clinton (1993-2001) and The Honorable George W. Bush (2001-2009), which is detested by the government of the Republic of Cuba.

Meaning, if the granting and implementation of a license from the **Office of Foreign Assets Control** (OFAC) of the United States Department of the Treasury and/or **Bureau of Industry and Security** (BIS) of the United States Department of Commerce will in some measure be demonstrative and reinforce failures of the commercial, economic and political systems in the Republic of Cuba, the license application will have a better chance of approval by the OFAC, BIS or through the Inter-Agency Review Process.

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Simply put- If the government of the Republic of Cuba is likely not to want the implementation of the license, then the license likely will be granted.

This is a check-list for United States companies to consider when seeking licenses after 20 January 2017 from the OFAC and/or BIS. It's not pretty, will be offensive to many, but may be reality:

- Will implementation of the license **Embarrass** the government of the Republic of Cuba
- Will implementation of the license **Humiliate** the government of the Republic of Cuba
- Will implementation of the license **show Limitations of Current Systems** in the Republic of Cuba
- Will implementation of the license **create Inspiration** for the 11.3 million citizens of the Republic of Cuba
- Will implementation of the license **create Aspiration** for the 11.3 million citizens of the Republic of Cuba
- Will implementation of the license create and **increase Transparency** within the Republic of Cuba
- Will implementation of the license **increase Accountability** by the government of the Republic of Cuba to its 11.3 million citizens
- How will implementation of the license **create Employment** in the United States
- Will the United States company be **Transparent rather than Translucent** in terms of what is being done in the Republic of Cuba? Provide details of the transaction- value, payments, location, etc. (The disclosures by Mountain View, California-based Alphabet Inc. subsidiary **Google** relating to the installation of servers are an example of what not to do).

Important to remember that any license issued by the OFAC/BIS may be rescinded at any time if the OFAC/BIS believe (or are instructed to do so by The White House) that the implementation of the license is no longer in the interest of United States policy- just as a license application may be denied if its issuance would not be in the interest of United States policy.

***The Trump Administration will view policies, regulations, and OFAC/BIS licenses and license applications through a prism as to how they focus toward a resolution of the certified claims.***

The Trump Administration will focus upon the *resolution of the certified claims as it provides the legislative foundation* to revise and rescind the Cuban Assets Control Regulations (CACR), the Cuban Democracy Act (CDA) of 1992, the Libertad Act ("Helms-Burton") of 1996, and the Trade Sanctions Reform and Export Enhancement Act (TSREEA) of 2000.

There were 8,821 claims of which 5,913 awards valued at US\$1,902,202,284.95, have been certified by the United States Foreign Claims Settlement Commission (USFCSC) at the United States Department of Justice.

Of these claims, thirty (30) United States-based companies hold 56.85% of the total value. The USFCSC permitted interest to be accrued in the amount of 6% per annum; with the current value ranging from US\$6 billion to US\$9 billion.

Significant to note that no United States-based company who has engaged with the Republic of Cuba since 17 December 2014- exports, imports, provision of services, and who has a certified claim(s) against the government of the Republic of Cuba has reported a repudiation of its filing(s) with the USFCSC.

*Why is the United States business community in this place? Because the Obama Administration was so excited at starting, it forgot about finishing. President Barack Obama (and his staff) lacked a vision beyond the optics. President Raul Castro focused on preserving the status quo and feared changes that would be irreversible. The most consequential moment in fifty-seven years was bilaterally mismanaged.*