

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

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### What Do Advocacy Groups & Their Supporters Do Now? Their Candidate Lost & There Was No Viable Back-Up Plan Need To Create Negotiation Dynamic Encouraging President Trump Negotiate With President Castro

The 44<sup>th</sup> President of the United States *did not negotiate what was difficult* with the President of the Republic of Cuba; the 45<sup>th</sup> President of the United States *seems eager to do so because it's in his DNA*.

From **17 December 2014** through the early evening of 8 November 2016, advocacy organizations and their sources of funding focused upon legislative remedies for policy, regulatory and statutory impediments to a normalized commercial, economic and political bilateral relationship between the United States and the Republic of Cuba.

During the early morning hours of **9 November 2016**, as the United States national election results were confirmed, that misguided and futile legislative focus, rather than a regulatory (and license issuing) focus, placed twenty-three months of Obama Administration initiatives in grave peril.

Then, on the evening of **25 November 2016**, sixteen days after the election, H.E. Dr. Fidel Castro Ruz, former president of the Republic of Cuba, died. This event catapulted all that is the Republic of Cuba again into a leadership position within a global media pageant.

The death of former President Castro, at a moment when the President-Elect was identifying and solidifying who will serve in his administration, provided bountiful opportunity for individuals currying favor (and employment) to solidify and to amplify their Post-Castro bonafides.

With forty-six (**46**) days before Inauguration Day, and the ascension of Mr. Donald J. Trump (70) as 45<sup>th</sup> President of the United States, there are individuals amongst the Transition Team and Landing Teams ensconced within the United States Department of State, United States Department of the Treasury, United States Department of Commerce, United States Department of Justice and National Security Council in The White House who are predisposed, either by personal journey or professional purpose, to restrain in some manner each of the Obama Administration initiatives.

Some organizations, attorneys and United States-based companies, those with a knowledge base predating 17 December 2014 (and having engaged with Republic of Cuba issues prior to the advent of *Google, Facebook & Twitter*) had advocated beginning January 2009 (and more forcefully since 17 December 2014) for the Obama Administration to do as much as was possible through changes in regulations, and then issue as many licenses as possible so that licensees could implement those licenses, which are generally valid for one to three years; and leave only statutory issues for his successor.

In this way, the bilateral commercial relationship, the landscape, would have an opportunity to root, adhere, bond, flourish and potentially be less impervious to external pressures, for example, unanticipated election results.

However, this approach was not deemed erotic and visual enough- seeking to convince a simple majority (and sixty-vote majority) of 535 Members of the United States Congress rather than the singular occupant of the Oval Office was believed to be a far simpler task- and one that was potentially far more lucrative for those employed in the effort.

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Unfortunately, the government of the Republic of Cuba too chose poorly and failed to embrace the winning narrative and, a result, but not the only unpleasant result, finds a potential bilateral political conflict- which some in the government may find of value.

And, with the expectation that some United States-based companies will announce before 20 January 2017 agreements to further engage in export, import or provision of services, the President-Elect (and his staff and advocates) will have additional targets upon which to focus his energies. These announcements, especially relating to hospitality, should have been made months ago by the government of the Republic of Cuba, even if implementation would be postponed.

Now, advocacy organizations are attempting to pivot from seeking funds to change United States statutes to seeking funds to preserve what exists in those statutes and policies and regulations.

The most egregious example of a lack of preparation and execution by advocacy groups was in seeking changes to the Trade Sanctions Reform and Export Enhancement Act (TSREEA) of 2000. The goal was to change the provision requiring payment of cash in advance for food products and agricultural commodities, which the United States business community publicly supported as a matter of philosophy; with companies believing that they, not the United States government, should determine the credit-worthiness of a customer.

Unfortunately, during Congressional hearings, at press events, in media releases and at conferences, there has not been a statement by a company (or financial institution) as to what payment terms they would offer to the government of the Republic of Cuba if permitted to do so- *30 days, 60 days, 90 days, 120 days, 180 days, one year?* This lack of specificity was one reason for a crippled and ultimately failed legislative initiative.

Advocacy groups had no success for almost two years since 17 December 2014 and now they expect to have influence with a Trump Administration that has placed revising Obama Administration initiatives on a particularly public pedestal in conjunction with the leadership in the United States Congress which leans favorably (some might argue mightily) towards embracing, albeit with perhaps modifications, the agenda of the 45<sup>th</sup> President of the United States. *Astonishing.*

The choice is both simple and fundamental- attempt to obtain funds and media access to battle the President of the United States for potentially four years (or at least through 24 February 2018) or accept reality that he and those whom he has selected (and those who have volunteered) to advise him are focusing on Post-Castro Cuba.

The outcome of this battle will be the same as the outcome (failure) of the latest twenty-three-plus month legislative effort only this time, more onerously, the President of the United States and the leadership of the United States House of Representatives and the United States Senate will be aligned. A reminder, that three-way symbiotic dynamic did previously exist- from 2009 to 2011 when the same political party controlled the executive and legislative branches of government; there was no full-on legislative effort at the time focusing upon the Republic of Cuba.

The United States and government of the Republic of Cuba must cease the focus on winning a battle and begin to focus on resolving a problem. Advocates and Members of Congress need direct energies in support of efforts by the Trump Administration to negotiate a settlement of the certified claims. This effort must not be encumbered by discussing claims against the United States by the government of the Republic of Cuba.

The *resolution of the certified claims 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.

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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- 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.

This position includes Stamford, Connecticut-based **Starwood Hotels & Resorts Worldwide** (2014 revenues exceeded US\$5.7 billion), a subsidiary of Bethesda, Maryland-based **Marriott International** (2015 revenues exceeded US\$14 billion), which as a result of a series of mergers and acquisitions during the last fifty-seven years, a US\$51,128,927.00 claim initially made by New York-based **International Telephone & Telegraph Corporation** (ITT) is now controlled by Starwood Hotels and Resorts Worldwide.

In 2016, the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury granted a license(s) to Starwood Hotels & Resorts Worldwide to manage properties owned by Republic of Cuba government-operated entities located in the city of Havana, Republic of Cuba. The properties are Gran Caribe-owned Hotel Inglaterra (scheduled for transition in 2017); Habaguanex-owned Hotel Santa Isabel and Hotel Quinta Avenida (re-branded in June 2016 as Four Points by Sheraton Havana).

Obtaining a settlement of the certified claims can be a success for the Trump Administration- one that was impenetrable for the Obama Administration. By removing an obstacle to productive negotiations- the United States Department of State, and replacing career United States government employees with seasoned veterans of the private sector, the likelihood for success will be significantly magnified. The good people at the United States Department of State are not equipped to negotiate this issue due to the immense historical environment; the skill set for success is different. The issue can no longer be viewed in increments of two years, four years or six years- the terms of elected officeholders.

There is now a date by which a settlement of the certified claims must be reached: **Saturday, 24 February 2018**, the retirement of General Raul Castro Ruz (85), President of the Republic of Cuba, and the inauguration of current Vice President of the Council of State, H.E. Miguel Diaz-Canel Bermudez (56), as President of the Republic of Cuba.

The message from the Trump Administration to the government of the Republic of Cuba would be succinct: There will be no expansion of the bilateral relationship until there is a settlement of the certified claims.

Once that issue is resolved, the United States can move swiftly to disable all policy, regulatory, and statutory impediments that negatively impact a thriving and respectful commercial, economic and political bilateral landscape.

If the 8 November 2016 election had a different result, the expectation would have been for the Obama Administration initiatives to be continued, although perhaps in a more qualified manner relating to reciprocity.

The Trump Administration is expected, at minimum, to freeze any expansion of the Obama Initiatives- likely rescind few or none; perhaps **revise regulations to increase enforcement** as to who is visiting the Republic of Cuba and for what purpose they are visiting the Republic of Cuba. A result would be fewer individuals subject to United States jurisdiction visiting the Republic of Cuba- impacting United States-based cruise ships and commercial aircraft along with Republic of Cuba-based private residences and private restaurants.

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As President Barack Obama sought to use regulations to **encourage** change within the Republic of Cuba, President Trump expects to use regulations to **require** change within the Republic of Cuba. The distance between encourage and require is more than twelve letters of the alphabet.

The Republic of Cuba-focused advocates of President Trump are more **passionate** than were their opposite counterparts for President Obama. On 20 January 2017, the United States business community needs to tread carefully by not discounting that passion; and grasp the obvious- President Obama is gone and President Trump is here.

President Trump believes that he will be able to create opportunities for the citizens of the Republic of Cuba in spite of the government of the Republic of Cuba.

The Trump Administration should continue to suspend Title III of the Libertad Act (“*Helms-Burton*”) of 1996. The goal is to maintain a conflict-free zone within which to negotiate a settlement of the certified claims. There is no value in creating unnecessarily impactful distractions to the primary goal- a resolution of the certified claims. Piling on will not enhance the probability that the government of the Republic of Cuba will embrace the negotiation process; it will provide the spark for friction and avoidance.

There will be individuals in the public sector who will rather adhere to the status quo of dispute and intransigence because **resolution is equated with surrender, with failure**. That’s ignorant. 5,913 certified claimants have been waiting more than fifty-five years for the government of the United States, for its President and Negotiator-In-Chief, to obtain an equitable settlement... now that leader may have arrived.

A resolution of the certified claims may be the *most difficult challenge that President Trump has encountered*. This is an opportunity for him to create a team, instruct that team, provide them with a deadline... and then await the result.

If the government of the Republic of Cuba wants to advance its Post-Castro trajectory with the weight of United States policies, regulations and statutes **pressuring** its 11.4 million citizens, then refuse to negotiate a settlement of the certified claims.

If the government of the Republic of Cuba wants to advance its Post-Castro trajectory with the unilateral, bilateral and multilateral **benefits** from a United States which seeks to do no harm, then negotiate a settlement of the certified claims.

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