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## **The Dog That Didn't (yet) Bite Trump Administration Did Not Project Preparedness OFAC Is Feared Because It's Unpredictable With Its SDN List State Department Has Become Predictable With Its RESAC List U.S. Companies Prefer Predictability Trump Administration Seems To Be Accommodating**

An important component of the Trump Administration's strategy towards the Republic of Cuba is the creation and maintenance of uncertainty. Absence of predictability is an essential tool for reducing and eliminating commercial interest toward any marketplace.

On 8 November 2017, the United States Department of State published its *List of Restricted Entities and Subentities Associated with Cuba (RESAC)*. There have been no changes since.

In an unpublished restricted draft of prepared remarks by The Honorable John Bolton, Assistant to the President and National Security Advisor, on 1 November 2018 at Miami Dade College (MDC) in Miami, Florida, the text included "*Further, today, the State Department added over two dozen additional entities owned or controlled by the Cuban military and intelligence services to the restricted list of entities with which financial transactions by U.S. persons are prohibited.*"

In the published text of the remarks by Ambassador Bolton, released by The White House in the late evening of 2 November 2018, the present tense in terms of publication of additions to the RESAC was replaced with the future tense: "*In this respect, I believe that within days the administration will add over two dozen additional entities owned or controlled by the Cuban military and intelligence services to the restricted list of entities with which financial transactions by U.S. persons are prohibited. And I believe even more will come as well. The Cuban military and intelligence agencies must not profit from the United States, its people, its travelers, or its businesses.*"

Changes to the RESAC have not been published on the Internet site of the United States Department of State (<https://www.state.gov/e/eb/tfs/spi/cuba/cubarestrictedlist/275331.htm>). If the United States Department of State was not prepared to release an update to the RESAC, then Ambassador Bolton should not have included the reference in his remarks.

Additionally, neither the prepared nor delivered text of Ambassador Bolton's remarks was not released by The White House in advance; and were not released on 1 November 2018.

During the event, Ambassador Bolton shared that "*And I believe even more will come as well.... We're going to make sure that we put as much pressure on as we can.*"

Ambassador Bolton confirmed that the Trump Administration has discussed (using a term to create and maintain uncertainty and fear) with members of the United States Congress to permit the implementation of Title III of the Libertad Act of 1996 which would authorize lawsuits in United States Federal Courts for assets expropriated by the government of the Republic of Cuba from individuals who were not United States citizens at the time of expropriation.

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The 5,913 certified claimants (those who were United States citizens at the time of expropriation) oppose the implementation of Title III on the basis that the interests of United States citizens should not be subjugated to the interests of non-United States citizens; and that the certified claimants, whose expropriated assets represent the foundation for United States policies, regulations and laws impacting the Republic of Cuba should remain the primary focus of The White House. The implementation of Title III has been suspended by the occupant of The White House every six months since 1996.

While uncertainty can be an effective political tool, when a statement is made about the availability of material information that is critical to ***real-time decision-making*** by individuals and companies subject to United States jurisdiction, important for the material information to be available in real-time.

Normally, when a text is subjected to a thorough multi-week or multi-day inter-agency review, particularly in advance of a high-profile address such as that of Ambassador Bolton, the three (3) primary departments: United States Department of State, United States Department of the Treasury and United States Department of Commerce have their respective notifications issued simultaneously and/or immediately following the high-profile address. That did not happen on 1 November 2018 or thus far on 2 November 2018. The event at MDC was in the planning process from at least 18 October 2018 and had been scheduled for 30 October 2018.

When The Honorable Donald Trump, President of the United States, delivered remarks in Miami, Florida, on 16 June 2017, the United States Department of the Treasury, United States Department of Commerce and United States Department of State each published corresponding regulatory and policy changes on their respective Internet sites.

A primary reason for the effectiveness of the Office of Foreign Assets Control (**OFAC**) of the United States Department of the Treasury is the absence of predictability when publishing changes to the list of Specially Designated Nationals And Blocked Persons List (**SDN**).

If the Trump Administration genuinely wanted to discourage individuals and companies subject to United States jurisdiction from interest towards the Republic of Cuba, it would instruct the United States Department of State to adopt the unpredictability of the OFAC.

However, when a public statement is delivered, particularly by a senior official at The White House, the information should be immediately available.

The United States Department of State should announce that changes to the RESAC may be published at any time and then add one or more every month.

Doing so would then require constant monitoring of the RESAC; and that would require time and money to be allocated by interested parties. The result would be exhaustion by some individuals and companies.

OFAC is powerful and feared because it is unpredictable.

The United States Department of State has become predictable which lessens its power.

***Thus far, for United States companies, the restraint shown through what the Trump Administration has chosen not to do, the bite, is an indication of the limits to which its bark need be feared.***