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The Trump Administration has not declared war upon the (current) twenty-eight (28) members of the Brussels, Belgium-based European Union (**EU**) and its operational cabinet, the Brussels, Belgium-based European Commission (**EC**) or the 164-member Geneva, Switzerland-based World Trade Organization (**WTO**).

The Trump Administration does, however, quietly harbor an opportunity, directly or indirectly, to obtain assistance from the three entities to influence the Republic of Cuba. That goal won't presently be simple to achieve.

Problems thus far are at least twofold: **First**, the Trump Administration lacks a cohesive strategy in terms of defining what it wants, when it wants it, and how to achieve it. **Second**, the word choices by the Trump Administration in expressing what it says that it wants from the three multi-national entities, as well as, other countries from whom assistance would be beneficial.

The Trump Administration's misapplication of provisions within a statute (law) designed primarily (and believed as such by those impacted) as a tool to obtain a settlement for 5,913 certified claims against the Republic of Cuba has tarnished multinational cooperative opportunities by focusing upon seeking what would realistically be remote in the near-term, unlikely in the medium-term, and perhaps likely in the long-term: political/behavioral change within the Republic of Cuba rather than focus upon seeking a monetary settlement from the Republic of Cuba which could be negotiated and then implemented expeditiously.

The EU, EC, WTO and other countries (Canada, Japan, Mexico among others) are willing, some more robustly than others, to assist the Trump Administration and the Republic of Cuba for a singular purpose: a bilateral negotiation to resolve the 5,913 certified claims.

The Trump Administration's decision earlier this month to partially-implement Title III of the Cuban Liberty and Democratic Solidarity Act of 1996 (**Libertad Act**) is not (yet) about creating an efficient timeline to negotiate a settlement with the Republic of Cuba for the certified claims. It's about politics rather than commerce.

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Using its 185-word statement from the United States Department of State on 4 March 2019, the Trump Administration confirmed that a resolution of the fifty-nine (59) year-old unresolved 5,913 certified claims against the Republic of Cuba **is not a priority**.

Had the focus been upon resolving the certified claims, the words "*certified claims*" would have been included in the official statement of the United States government. The phrase "*certified claims*" was mentioned by an unidentified "*Senior Administration Official*" from the United States Department of State during a Background Briefing on 4 March 2019.

Title III of the Libertad Act authorizes lawsuits in United States District Courts against companies and individuals who are using a certified claim where the owner of the certified claim has not received compensation from the Republic of Cuba or from a third-party who is using the asset.

Title IV of the Libertad Act restricts entry into the United States by individuals who have connectivity to unresolved certified claims. One company is currently subject to this provision.

The Trump Administration mantra is much about resolving what its predecessors failed to do; and the Trump Administration heralds its negotiating prowess. To date, the mantra and the prowess are missing from the discussion- could The Honorable Donald J. Trump, President of the United States, not have been fully-briefed as to his options? *Negotiation is his preferred default position and thus far the Trump Administration has been devoid of negotiations (and negotiators) relating to the Republic of Cuba*.

No Meetings With Certified Claimants

Why didn't the Trump Administration convene a meeting or series of meetings with representatives of the largest certified claimants to seek their input?

If the focus was upon seeking a settlement of the certified claims, there would have been not one meeting, but many- individual and group; private and public. Since there was no such outreach, the focus of the Trump Administration was not about seeking a settlement of the certified claims.

Have any of the largest, or the two largest, certified claimants indicated publicly that implementation of Title III is preferable to a direct, bilateral negotiation to settle the certified claims? No.

No Member of the United States Congress has publicly acknowledged obtaining a meeting with senior-level officials at The White House (including the National Security Council) and at the United States Department of State and at the United States Department of Justice and at the United States Department of the Treasury for any executives of the United States companies who hold the largest certified claims against the Republic of Cuba.

In December 2018, a detailed settlement negotiation proposal [https://www.cubatrade.org/blog/2018/11/18/lojx6s6oe5epgonh6mub855d5ak143] was presented to representatives of the Trump Administration, staff and members of the United States Congress and to representatives of the Republic of Cuba. The proposal outlined a public-private settlement process and included a timetable.

The purpose of the proposal was to remove the settlement process from the traditional United States government playbook and insert the private sector, the certified claimants and settlement

representative. Most Members of the United States Congress believe that a settlement process is preferable to intimidation. That intricate proposal remains valid.

Can What Happened Happen

There remain questions as to whether the United States Department of State has the legal (or constitutional) authority to selectively implement portions of Title III of the Libertad Act.

There are no words in Title III of the Libertad Act that specifically authorize or specifically do not authorize a partial implementation of Title III of the Libertad Act. United States District Courts, and United States Supreme Court, generally provide deference to the Executive Branch when in doubt as to the intention(s) of a statue and of the United States Congress.

The wording of Title III does not seem to present the Executive Branch with an opportunity to select, as from a *statutory buffet*, who can sue, who can't sue, who can be sued and who can't be sued. The only decision seems to be whether it's everyone or no one.

The Trump Administration's strategy may be to gradually expand, or threaten to gradually expand, the impact of Title III. Permit some lawsuits, then suspend. Permit some lawsuits, then suspend. Each time changing the group of proposed plaintiffs in response to the appetite of plaintiffs and the appetite of defendants- and the governments of the countries where those defendants are domiciled and members of the United States Congress.

Might the Trump Administration's next decision (scheduled for 17 April 2019) be a further limited authorization of Title III, if a United States District Court does not fully implement Title III beforehand, with a focus upon countries with unfriendly, unhelpful, or inconsistent relationships with the United States? Possibly, China, Iran, Nicaragua, North Korea, Russia, Syria, Turkey and Venezuela? Insulating, for the moment, member countries of the EU and Canada and Japan and some in The Americas.

Venezuela Could Prompt Delay

Likely only issues relating to the commercial, economic and political situation within Venezuela and its impact upon other countries could create enough momentum for a delay in the implementation of Title III and Title IV.

If the Maduro Administration ends, the financial peril for the Republic of Cuba becomes far more problematic as other countries are unlikely to replicate the sustainable economic and commercial support which has primarily not been market-based.

The successor government in Venezuela will on its own, and certainly with encouragement from the Trump Administration, curtail non-market-based transactions with the Republic of Cuba and require payment arrears to be brought current. The Trump Administration could sense then an opportunity to align additional leverage to seek a settlement of the certified claims.

Unsurprising would be for the Trump Administration to link, publicly or privately, issues relating to Venezuela with support from the EU, EC, WTO and other countries (Canada, China, Japan, Mexico, Russia, Turkey, etc.) to convince the Republic of Cuba to agree to settlement negotiations of the certified claims.

No coincidence the Trump Administration is focusing upon commercial interests in Venezuela- as there are United States-based companies whose assets were expropriated by the government of Venezuela without compensation. That connectivity will not serve well the Republic of Cuba.

Unhelpful to creating a bilateral (or multilateral) landscape for a settlement of the certified claims, the Trump Administration is creating a foundational narrative from which to re-designate (or threaten to re-designate) the Republic of Cuba as a "***State Sponsor of Terrorism***" primarily due to the involvement of the [Miguel] Diaz-Canel Administration in Venezuela, Colombia (ELN, FARC) and Nicaragua; and support for and relations with Iran, Syria and North Korea. Add to this the unresolved health-related issues of diplomats from the United States and Canada in the Republic of Cuba. Such a decision by the Trump Administration would not be in the interests of the certified claimants.

View Of Careerists

The decision to do something relating to Title III is done. What the something is remains in review.

United States Government careerists are in a majority believing that a partially or fully operational Title III would **1)** re-create tensions last visited in 1996 and in 1998 with the WTO, EU, EC, New York, New York-based United Nations, Washington DC-based Organization of American States and with countries and **2)** create distractions to solving other issues that are far more important to the United States than is the Republic of Cuba.

Senior officials at the United States Department of State, United States Department of Commerce, United States Department of Agriculture and United States Trade Representative substantially concur that there is no vital United States interest in or gain from "*pitching a hand grenade when uncertain as to how much powder is in it*" in the direction of the Republic of Cuba. That position is shared by most members of the United States Congress, but not necessarily shared by the staff at the National Security Council in The White House.

What Is The Legal Basis?

Every six months, the Libertad Act requires the President to either suspend the implementation of Title III or permit the implementation of Title III. Since the inception of the Libertad Act in 1996, every President has suspended the implementation of Title III, including on four occasions by the Trump Administration.

The President, or his designee (the United States Secretary of State since 2013), must notify relevant committees of the United States Congress fifteen (15) days prior to a decision to suspend or implement. Those committees are the United States House Committee on Foreign Affairs, United States House Committee on Appropriations, United States Senate Committee on Foreign Relations, United States Senate Committee on Appropriations.

From the text of the statute: "(2) Additional suspensions.--The President may suspend the effective date under subsection (a) for additional periods of not more than 6 months each, each of which shall begin on the day after the last day of the period during which a suspension is in effect under this subsection, if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the date on which the additional suspension is to begin that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba."

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On 4 March 2019, The Honorable Mike Pompeo, United States Secretary of State, reported that there would be "*an additional suspension for 30 days through April 17, 2019, of the right to bring an action under Title III of the 1996 Cuban Liberty and Democratic Solidarity (LIBERTAD) Act is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba, with the below exception. Beginning March 19, suspension shall not apply to: The right to bring an action against a Cuban entity or sub-entity identified by name on the State Department's List of Restricted Entities and Sub-entities Associated with Cuba (known as the Cuba Restricted List), as may be updated from time to time*."

The Trump Administration believes it has authority to select components of Title III and implement them or threaten to implement them on an undefined schedule and to create a class of defendants and to create a class of plaintiffs.

A question thus far without answers is the genesis of the decision by the Trump Administration. What legal basis did the Office of Legal Adviser at the United States Department of State determine that the implementation of Title III could be selective? Or, was the legal determination from attorneys at the National Security Council? Or, was the determination from attorneys working for members of the United States Congress? Or, was the determination from attorneys outside of the United States government?

Will the Office of Legal Adviser or National Security Council provide a detailed legal analysis as to the foundation for the decision relating to Title III? Specifically, what text, if any, within the Libertad Act authorizes the President to selectively implement Title III?

Because the Trump Administration believes that it has the authority to select who may become a plaintiff and who may become a defendant does not make it so; the decision is no longer political, it is judicial.

Can the Trump Administration authorize, for example, companies and individuals whose last names begin with A through G; or by location of plaintiff, or by assets of plaintiff, by passport of the owner, age, gender or any other subjective standard? A judge may determine those questions.

The judges presiding in United States District Courts will now decide who can sue, who can't sue, who can be sued and who can't be sued. The intent of the United States Congress will be an important component as to how a ruling is constructed.

The Libertad Act is known widely as "***Helms-Burton***" for its authors: The Honorable **Jesse Helms** (R- North Carolina) of the United States Senate and The Honorable **Dan Burton** (R- Indiana) of the United States House of Representatives. Senator Helms retired in 2003 and died in 2008 and Representative Burton retired in 2013.

The now 80-year-old Mr. Burton may be shuttling between courts in Florida, New Jersey, New York and Washington DC serving as an expert witness to define the intent of provisions of the Libertad Act. He would be expected to confirm that Title III was designed to be expansive in impact and not subject to discretion once implemented- the president may neither rescind that implementation nor amend that implementation.

He may well become the key witness as to describing the intention of the framers of the law; and intent is a key component in how lawsuits are resolved. *The one-way statutory train has departed the executive branch station.*

The Obama Travel Decisions

Most significantly, judges may likely determine whether the Obama Administration when expanding who within the twelve (**12**) authorized categories of travel to the Republic of Cuba permitted by the Trade Sanctions Reform and Export Enhancement Act (**TSREEA**) of 2000 did, unlawfully, allow travel for the purpose of tourism, which is specifically prohibited by the TSREEA.

If the judges determine that the Obama Administration violated the TSREEA, then there will the question of whether the activities of United States companies (and non-United States companies) engaging in the provision of travel-related services (airlines, cruise lines, hotel management companies) incident to what is now deemed to be unlawful have not been engaging in lawful activities despite licenses (general and specific) issued by the Office of Foreign Assets Control (**OFAC**) of the United States Department of the Treasury.

Then, if the travel-related services companies are found to not be operating lawfully, they could be deemed to be subject to a determination of whether they are "*trafficking*" using the definition of the term in Title III:

From the Libertad Act: (13) Traffics.--(A) As used in title III, and except as provided in subparagraph (B), a person "traffics" in confiscated property if that person knowingly and intentionally-- (i) sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property, or purchases, leases, receives, possesses, obtains control of, manages, uses, or otherwise acquires or holds an interest in confiscated property, (ii) engages in a commercial activity using or otherwise benefiting from confiscated property, or (iii) causes, directs, participates in, or profits from, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person, without the authorization of any United States national who holds a claim to the property. (B) The term "traffics" does not include-- (iii) transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel; or (iv) transactions and uses of property by a person who is both a citizen of Cuba and a resident of Cuba, and who is not an official of the Cuban Government or the ruling political party in Cuba.

From the Libertad Act: (3) Commercial activity.-- The term "commercial activity" has the meaning given that term in section 1603(d) of title 28, United States Code. [Definition: (d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose].

If a judge rules that United States companies are subject to provisions of Title III, then the companies could be potential defendants.

If the courts determine that *a Cuban entity or sub-entity identified by name on the State Department's List of Restricted Entities and Sub-entities Associated with Cuba (known as the Cuba Restricted List)* may be sued, expect a decision to permit those who make payments to the Republic of Cuba government-operated entities to be sued. For example, if an entity controls the airport or a port, and airlines and cruise lines make payments to that entity, then plaintiffs may sue the airlines

and cruise lines for a portion (or all) of what the airlines and cruise lines pay to the entity. Same logic for a hotel management company.

For purposes of legal trajectory, a lawsuit could be filed in a United States District Court (likely primarily in Miami, Florida, Newark, New Jersey, and Tampa, Florida, where the majority of individuals of Cuban descent reside). If a lawsuit is lost, the appeal would be to the United States Circuit Court of Appeals. If that appeal is lost, the next venue would be in the United States Supreme Court.

If a lawsuit were to be filed prior to 17 April 2019, then the plaintiff would not be entitled to treble damages; waiting entitles the plaintiff to seek treble damages against a defendant.

If a lawsuit were to move swiftly through the court process- filing, serving the defendant, default judgement if the defendant elects not to defend itself, could be as few as seventy-five (**75**) days.

Important to note that judgements, default or otherwise, that could not be collected would take precedence to the 5,913 certified claimants. The result could be potentially insurmountable financial impediments to negotiating a settlement for the certified claimants.

A looming question is whether the government of the Republic of Cuba and/or Republic of Cuba government-operated entities will defend themselves in United States District Courts. Will they claim sovereign immunity? If so, that defense will probably fail. The New York, New York-based law firm, ***Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C.***, which has represented the government of the Republic of Cuba and Republic of Cuba government-operated entities for decades, would be the expected choice to represent defendants- and potentially the address to which process would be served by plaintiffs.

Let The Courts Decide

The Trump Administration may have creatively accomplished precisely that it wanted but will blame United States District Courts (the **Ninth Circuit** is a favorite target) if one or more of them rule that Title III must be fully-implemented. Then, when the EU and WTO complain and file actions disputing the decision, the Trump Administration will argue (ironically in court amicus briefs) that it opposes the full implementation of Title III and, thus, supports the EU and WTO against Title III.

Judges may disagree with the Trump Administration (and EU and WTO)- and then only US$6,548.00 will be required to obtain a decision from one of the eleven (**11**) United States District Courts. The filing fee itself may become subject to litigation as a plaintiff may believe that the high cost is unconstitutional.

As of September 2018, "*For filing an action brought under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, P.L. 104-114, 110 Stat. § 785 (1996), $6,548. (This fee is in addition to the filing fee prescribed in 28 U.S.C. § 1914(a) for instituting any civil action other than a writ of habeas corpus.). Related: 28 U.S. Code § 1914 - District court; filing and miscellaneous fees; rules of court (a) The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of $350, except that on application for a writ of habeas corpus the filing fee shall be $5.*"

Trump Administration Thinking

In crafting its decision, the Trump Administration was supposed to determine (and confirm clearly) if the goal of the policy decision should be to resolve the claims issue or maintain the claims issue. *Was the goal to create disruption or bring about resolution? When negotiation and mediation were options, should blunt force trauma be the preferred method of engagement?*

From the perspective of the Trump Administration and their advocates in the United States Congress, the decision to implement Title III has its roots in simple math, and the shift from the 20th Century to the 21st Century.

Since 1996, the last twenty-three (23) years, encompassing four (4) presidencies: **Clinton Administration** (5+ years), **Bush Administration** (8 years), **Obama Administration** (8 years) and **Trump Administration** (2+ years), no occupant of the Oval Office has permitted Title III to be implemented- and no occupant of the Oval Office has embarked on a focused, public effort to negotiate directly or seek mediation through a third party of the 5,913 certified claims against the government of the Republic of Cuba. And, there remains only one company deemed by the United States Department of State to be subject to provisions of Title IV? Only one.

The Trump Administration is attracted to doing what its predecessors did not do or not doing what its predecessors did do.

Consequential to appreciate while some occupants of The White House have absorbed criticism from international organizations as **Superman would respond to kryptonite**, the Trump Administration, as the **MUTO in Godzilla 2014**, devours and fuels by such criticism.

However, the Trump Administration continues to require assistance from government members of multi-national bodies whether relating to political issues (United States Department of State) or trade issues (United States Trade Representative). So, what it wants to do is often constrained by what it needs to do.

A field goal would have the Trump Administration immediately permitting Title III lawsuits by only the certified claimants.

A touchdown would have the Trump Administration overtly seek a bilateral negotiation of the certified claims.

The Trump Administration punted- and hit the upright goal post.

Trump Administration Logic

From the Trump Administration- Don't get mad at us; get mad at the three (3) successive governments of the Republic of Cuba since 1959 that have refused to agree to negotiate a settlement for the 5,913 certified claims. And, why didn't the Obama Administration do anything?

If moments for a negotiation to settle the certified claims were not opportune during Obama Administration, then when? Certainly, the bilateral relationship today would not accurately be described as optimum, but when has it been optimum? *The Obama Administration and Castro Administration failed to use the unique opportunity they created from 17 December 2014 to 20 January 2017.*

The Trump Administration has its favorite things. Foremost is doing what the Obama Administration did not do or not doing what the Obama Administration did do. Second, is correcting or updating what other occupants of The White House did do or did not do.

For example, seeking changes to the Washington/Ottawa/Mexico City-based North American Free Trade Agreement (**NAFTA**); changes to the relationship with the Brussels, Belgium-based North Atlantic Treaty Organization (**NATO**); with the WTO, EU, EC, UN and OAS among other bilateral, regional and multilateral entities.

The Media Messaging Favors The White House

The media narrative with respect to Title III is favorable to the Trump Administration as it appreciates each day there are additional options from which readers, viewers and listeners digest information; and the number of seconds and minutes during which a subject has for explanation continues to decrease.

The history of the certified claims, non-certified claims, Libertad Act, EU and EC agreements and WTO agreements does not fit well into a segment, block, or limited inches of column.

The Trump Administration, members of the United States Congress, the plaintiffs who file a lawsuit (or multiple lawsuits) and attorneys who represent the plaintiffs will dramatize simply the story: "*Texaco had an oil refinery, its shareholders owned it, Cuba's government took it and never paid for it. Sixty years is long enough to wait to get paid*."

The Trump Administration will ask what during the last twenty-three (**23**) years, what concrete steps has the EU, EC and WTO taken that have resulted in the Republic of Cuba engaging (or wanting to engage) in direct settlement negotiations for the certified claims?

The Trump Administration is gambling the EU, EC and WTO will not engage strongly and disruptively in a rhetorical, commercial, economic and political conflict with the United States because of the Republic of Cuba and at the potential determent to cooperation on other issues. And, if the gamble is inartful, if wrong, then so be it.

The Republic of Cuba is a commodity- and its value is low and becoming lower. The Republic of Cuba today has far less influence, leverage and significance because of an increasing assurance among its trading partners, financial benefactors, and political brethren that the Republic of Cuba is *choosing* not to make commercial, economic and political changes which would provide its citizenry (and thus the government) with additional opportunities to earn foreign exchange rather than being unable to do so due to external actions by the United States. There is less empathy for the Republic of Cuba.

The Bilateral relationship between the EU and EC and the United States is more consequential to the EU and EC than is the EU and EC relationship with the Republic of Cuba. Unfair, but true.

Support by the Republic of Cuba for Venezuela, Nicaragua, Syria, Iran, North Korea, China and Russia and their respective reciprocity of support for the Republic of Cuba make the lack-of-support contagion even more manifest.

Advocacy Groups- Hysteria Now; Where Were They On Certified Claims?

The hysteria about Title III among some Washington, DC-based advocacy groups is hysterical.

They adhere to pre-packaged and meaningfully inaccurate narratives rather than focusing upon how to solve the problem. Focusing upon how "*bad*" a decision will be does little, if anything, to create alternatives for the decisionmakers. Repeating "*200,000 lawsuits*" is neither a viable counter-argument nor a viable strategy.

With their professed relationships and "*under the radar*" influence with the government of the Republic of Cuba and during the eight years of the Obama Administration, where was a focus by the advocacy groups upon seeking settlement negotiations for the 5,913 certified claims against the Republic of Cuba? It did not exist.

Arguably, the Republic of Cuba would have received a most beneficial settlement result during the Obama Administration- but it, like to Obama Administration, never modeled for a 2016 election result that was neither anticipated nor desired.

Where were the advocacy groups when the Obama Administration would approve only 50% of the license required to implement direct correspondent banking? *Silent.*

Where there they during the Obama Administration when the United States Department of Commerce and the United States Department of Agriculture wrongly declared that their respective secretaries could not have representatives of United States companies travel with them to the Republic of Cuba? *They blindly defended the position of the Obama Administration.*

Losers & Winners

The perceived winner: the government of the Republic of Cuba who without doing anything, once again has a delay of bilateral negotiations to provide US$1.9 billion to US$8.5 billion in compensation to 5,913 certified claimants. Does the Trump Administration really want third-parties to pay for what the Republic of Cuba did in terms of expropriating assets?

The losers: **1)** The Republic of Cuba because absent a settlement of the certified claims, the country will continue to be impacted by United States statutes, regulations and policies which, coupled with the unwillingness of the government of the Republic of Cuba to permit commercial, economic and political changes which would maximize its ability to earn foreign exchange, exacerbates, retards, its attractiveness as a target for Direct Foreign Investment (DFI). **2)** The governments who failed to persuade the government of the Republic of Cuba to negotiate a settlement with the certified claimants and thus see an immediate increase in value for the interests of companies within their countries who are exporting, importing from, providing services to and have investments within the Republic of Cuba.

What Can The EU-Member Countries And Non-EU Member Countries Do?

The Trump Administration punted rather than go for a field goal or touchdown; used a wedge rather than a driver- and holed-up on the fairway; went for the easy two-pointer rather than a three-pointer; safely hit a single rather than go for a triple. Advocates of more are today frustrated. Opponents of anything are somewhat relieved.

Is the decision a "*self-created disaster*" establishing a "*horrible precedent*" which will result in "*calamitous multi-lateral destruction*" and "*never create an atmosphere for a settlement of the certified claims*"? No, it is not.

Is implementation of Title III in any format potentially helpful to creating an atmosphere for a mediation/settlement of the certified claims? Perhaps, although the atmospherics are now more akin to a shotgun wedding than to a coronation.

The Trump Administration is enabling a twenty-three-year-old provision of a law enacted by the United States Congress; in a fashion, the decision is fulfilling the intention of the United States Congress. This does not mean that the intention of the United State Congress was correct at the time or should be considered constructive today.

The Trump Administration (and supporters in the United States Congress) is relatively unconcerned as to the impact of implementing Title III upon the 1998 agreement with then fifteen (15) members of the EU/EC negotiated by The Honorable **Stuart Eisenstadt**, then Under Secretary of State for Economic and Business Affairs, to remove a legal challenge by the EU and EC to the WTO.

Their primary argument by the Trump Administration is the 1998 agreement was with the Clinton Administration- which ended on 12:00 pm on 20 January 2001. That the Bush Administration, Obama Administration and until 2019 the Trump Administration were continuing to adhere to it was fortunate for the EU and EC and WTO and other countries; *they were lucky and their luck as run out*: https://www.nytimes.com/1998/04/21/world/europeans-drop-lawsuit-contesting-cuba-trade-act.html

The EU, EC and WTO have one primary means by which to benefit themselves and benefit the Republic of Cuba- convince the Republic of Cuba to agree to a negotiation for the certified claims and only the certified claims.

This would require the Republic of Cuba to endure statements by the Trump Administration that the Republic of Cuba is only agreeing to negotiation due to commercial, economic and political pressure by the Trump Administration. This will be hard-to-digest for the Republic of Cuba- but the upside is substantial for a small portion of temporary diplomatic indigestion to achieve an important goal for its 11.3 million citizens.

However, the Republic of Cuba can with muscularity respond that it's focus is upon negotiating a settlement- and that is what the Trump Administration should be focused upon. The Republic of Cuba can promote that it is focusing upon solving a problem while the Trump Administration is focused upon maintaining a problem. The largest of the certified claimants will embrace the position of the Republic of Cuba and so will members of the United States Congress.
Lacking the issue of the certified claims, the Republic of Cuba would gain commercially, economic and politically as United States statutes, regulations and policies would adjust- removing impediments that are in place solely as a result of the expropriation of assets upon which there are certified claims.

EU-member and other governments would then find a Republic of Cuba that has an increased ability to repay what it owes (current debt and defaulted debt) and companies headquartered in EU-member countries and other countries would find a Republic of Cuba that has an increased ability to repay what it owes (current debt and defaulted debt).

The Republic of Cuba needs to separate its relationship with the United States Government from its relationship with the certified claimants. There remains a proposal outline for a certified claims negotiation which has been available since December 2018: [https://www.cubatrade.org/blog/2018/11/18/lojx6s6oe5epgonh6mub855d5ak143].

What Could Happen & EU Reaction

Will the Trump Administration interpret language in Title III to permit only certain claimants to file lawsuits, thus excluding others and providing preference to one class of plaintiffs at the expense of another class of plaintiffs? That might be basis for another lawsuit.

Certainly, the EU, EC and WTO will do something to forestall the impact of an operational Title III. Certain countries will likely pursue recourse to further protect the assets of their companies and individuals.

The EU, EC and WTO and countries will howl if the Trump Administration permits Title III lawsuits against companies and individuals within their jurisdictions while excluding Title III lawsuits against United States-based companies and individuals who are operating in the Republic of Cuba and using an asset upon which there is a certified claim or non-certified claim.

There will be cries of a double standard. Lawsuit against Spain-based **Iberia Airlines**- OK; against Atlanta, Georgia-based **Delta Air Lines** (which has a certified claim)- No. **MSC Cruises**- OK; against Miami, Florida-based **Carnival Corporation & plc**, Miami, Florida-based **Norwegian Cruise Line** and Miami, Florida-based **Royal Caribbean International**- NO. The Trump Administration response will be: *So what*.

All countries who have companies and individuals using assets that could be subject to Title III will argue, as they did in 1996, that Title III is exterritorial- inflicting United States laws on individuals and companies not subject to United States jurisdiction. The countries will also remind individuals and companies subject to their jurisdiction that there are regulations and statutes in place which prevent them from complying with provisions of Title III.

Questions To Consider

Does filing lawsuits against non-United States-based companies serve as an inducement for the government of the Republic of Cuba to agree to mediation to resolve the certified claims?

Will the EU file actions with the WTO?

Will the EU pressure companies to settle or pressure the government of the Republic of Cuba to settle or pressure the government of the United States to settle the issue of the certified claims?

Might the EU and other governments take, not just threaten to take, punitive action against United States companies operating in their respective jurisdictions?

The government of the Republic of Cuba retains chronically delinquent and precariously-balanced commercial and economic structures; issues in recent years have been negatively exacerbated due primarily to the inability of Venezuela to provide support and other governments unwillingness to continue their support for the government of the Republic of Cuba when the government of the Republic of Cuba remains unwilling to introduce commercial, economic and political changes that

would enhance its ability to repay what it owes. Does this status make the Republic of Cuba vulnerable to persuasion from the EU and countries? It should.

Will lawsuits against governments be permitted? For example, Cuban nationals whose property was expropriated by the government of the Republic of Cuba and subsequently leased to a government for use as an embassy or consulate?

Will there be a court challenge if individuals who were Republic of Cuba nationals at the time of expropriation are denied access to provisions of Title III? Might they want to bring action against non-United States-based and United States-based airlines, cruise lines, hotel management companies, equipment manufacturers, and technology companies who have a presence in the Republic of Cuba whereby there is believed to be a use of an expropriated asset? Might they want to bring action against the foreign subsidiaries of United States-based companies?

The Trump Administration likes to negotiate. The Trump Administration likes to win. Resolving the certified claims is negotiable and winnable.

Use Of Title IV Remains

Title IV of the Libertad Act is the likely next tool in the Libertad Act arsenal to be used by the Trump Administration. Expect that the United States Department of State will focus upon companies and individuals who meet the "trafficking" definition and are located in countries not deemed to be commercial, economic and political allies of the United States. In this way, the Trump Administration would avoid confrontation with members of the EU and WTO.

The United States Department of State maintains that it is prohibited from releasing the names of individuals who have been denied visas; so expect the number of companies, number of individuals, and perhaps country location to be published as a means to demonstrate activity relating to enforcement of Title IV.

What Is Title IV?

SEC. 401. EXCLUSION FROM THE UNITED STATES OF ALIENS WHO HAVE CONFISCATED PROPERTY OF UNITED STATES NATIONALS OR WHO TRAFFIC IN SUCH PROPERTY. (a) Grounds for Exclusion.--The Secretary of State shall deny a visa to, and the Attorney General shall exclude from the United States, any alien who the Secretary of State determines is a person who, after the date of the enactment of this Act-- (1) has confiscated, or has directed or overseen the confiscation of, property a claim to which is owned by a United States national, or converts or has converted for personal gain confiscated property, a claim to which is owned by a United States national; (2) traffics in confiscated property, a claim to which is owned by a United States national; (3) is a corporate officer, principal, or shareholder with a controlling interest of an entity which has been involved in the confiscation of property or trafficking in confiscated property, a claim to which is owned by a United States national; or (4) is a spouse, minor child, or agent of a person excludable under paragraph (1), (2), or (3).

Executives From Canadian Company Remain Subject To Title IV

From Media Reports on 10/11 July 1996: Under the measures announced today (10 July 1996) by the State Department, the director of the Toronto-based company, Sherritt International Corp., will be barred from entering the United States, along with eight of his top officers and their immediate

families. The ban will take effect in six weeks, after a waiting period designed to allow the company time to terminate its investments in Cuba. At a briefing in Washington announcing the notification of the company executives affected, State Department spokesman Nicholas Burns defended the provision affecting families as "*likely to enhance . . . the threat that is contained very clearly in Helms-Burton*." Burns said company executives were notified in letters dated Tuesday that after 45 days, they will not be allowed to enter the United States. The period is supposed to allow the company time to reconsider its investments in Cuba. "*It is unconventional*," Burns said. "*It is a very tough action that we are taking today*."

The Certified Claims

There are 8,821 claims of which **5,913** awards were certified by the United States Foreign Claims Settlement Commission (USFCSC- https://www.justice.gov/fcsc) at the United States Department of Justice which are valued at **US$1,902,202,284.95.** The USFCSC permitted interest to be accrued in the amount of 6% per annum; with the current value of the 5,913 certified claims approximately **US$8,521,866,156.95**.

The first asset to be expropriated by the government of the Republic of Cuba was an oil refinery in 1960 owned by White Plains, New York-based **Texaco, Inc.**, now a subsidiary of San Ramon, California-based Chevron Corporation (USFCSC: CU-1331/CU-1332/CU-1333 valued at **US$56,196,422.73).**

The largest certified claim (*Cuban Electric Company*) valued at US$267,568,413.62 is controlled by Boca Raton, Florida-based **Office Depot, Inc.** The second-largest certified claim (*International Telephone and Telegraph Co, ITT as Trustee, Starwood Hotels & Resorts Worldwide, Inc.*) valued at US$181,808,794.14 is controlled by Bethesda, Maryland-based **Marriott International**. The smallest certified claim is by Sara W. Fishman in the amount of US$1.00 with reference to the Cuban-Venezuelan Oil Voting Trust.

The two (**2**) largest certified claims total US$449,377,207.76, representing **24%** of the total value of the certified claims. Thirty (**30**) certified claimants hold **56%** of the total value of the certified claims. This concentration of value creates an efficient pathway towards a settlement.

"*The Foreign Claims Settlement Commission of the United States (FCSC) is a quasi-judicial, independent agency within the Department of Justice which adjudicates claims of U.S. nationals against foreign governments, under specific jurisdiction conferred by Congress, pursuant to international claims settlement agreements, or at the request of the Secretary of State. Funds for payment of the Commission's awards are derived from congressional appropriations, international claims settlements, or liquidation of foreign assets in the United States by the Departments of Justice and the Treasury*."

Certified claimants with current or recent activity within the Republic of Cuba include New York, New York-based ***Colgate-Palmolive****,* Moline, Illinois-based ***Deere & Company****,* Atlanta, Georgia-based ***Delta Air Lines****,* Boston, Massachusetts-based ***General Electric****,* Bethesda, Maryland-based ***Marriott International****,* Chicago, Illinois-based ***University of Chicago****,* Denver, Colorado-based ***Western Union*** and New Haven, Connecticut-based ***Yale University***.