

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

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The re-establishment on 28 November 2016 of the first regularly-scheduled non-stop commercial flights from the United States to Havana, Cuba, and return provide a highly-visible and an additional measure of normalcy in an anything-but-normal bilateral commercial, economic and political relationship.

Roundtrip services from the United States to Jose Marti International Airport (HAV) in Havana, Republic of Cuba, commence with American Airlines & JetBlue Airways on 28 November 2016; United Airlines on 29 November 2016; Delta Air Lines, Frontier Airlines and Spirit Airlines on 1 December 2016; Southwest Airlines on 12 December 2016; and Alaska Airlines on 5 January 2017.

In some respects, the flights are Potemkinesque- camouflaging the real and imagined issues that each country has with the other; but doing so in a picturesque manner... with the expectation that the one-dimensional will become three-dimensional.

The commencement of the flights will increase already unrelenting pressures upon the hospitality infrastructure of Cuba, particularly airports, ground transportation and hotels- which will continue to unnaturally restrict capacity and create reasons for travelers to select alternative destinations in the short-to-medium term.

Individuals associated with President-Elect Donald J. Trump, both officially and unofficially, are not enthusiastic about the resumption of the flights; they view each flight as a *satchel of United States currency traveling on a one-way journey to Cuba*- with no meaningful measurable return other than to perpetuate abhorrent commercial, economic and political systems. And, most significantly, they will view the passengers on those flights as “tourists”- in violation of United States law, not policy or regulation, per provisions of the Trade Sanctions Reform and export Enhancement Act (TSREEA) of 2000 which created twelve (12) categories of authorized travelers; with tourism specifically prohibited.

Members of the United States Congress will share their expectation that a Trump Administration will eliminate or reduce the flights.

Reasonable to expect that the Trump Administration will direct the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury to increase enforcement to ensure that only TSREEA-authorized travelers are using the flights- and the OFAC will have a position that both the “*letter*” and the “*spirit*” of the categories will be enforced. The result would be a decrease in the number of passengers using the flights and impact overall visitor revenues to the Republic of Cuba.

The President-Elect, his transition team, and supporters may initiate a discussion relating to the implementation of **Title III of the Libertad Act of 1996**. This provision enables those with assets expropriated by the government of the Republic of Cuba to bring lawsuits in United States Federal Courts. The Libertad Act requires the president to either enable or suspend the provision every six months; and Presidents Clinton, Bush and Obama have done so.

**Secretary's Determination under Title III of Libertad**  
**Bureau of Western Hemisphere Affairs**  
**Washington, DC**

**July 15, 2016**

*The Secretary of State reported on July 11, 2016 to the appropriate congressional committees that, consistent with Section 306(c)(2) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Public Law 104-114; 22 U.S.C. 6021-6091) and the authority delegated to the Secretary by the President*

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*on January 31, 2013, the Secretary had made the statutorily-required determination in order to suspend for six months beyond August 1, 2016 the right to bring an action under Title III of the Act.*

## **Secretary's Determination of Six Months' Suspension under Title III of Libertad Bureau of Western Hemisphere Affairs Washington, DC**

**January 21, 2016**

*The Secretary of State reported on January 14, 2016 to the appropriate congressional committees that, consistent with Section 306(c)(2) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Public Law 104-114; 22 U.S.C. 6021-6091) and the authority delegated to the Secretary by the President on January 31, 2013, the Secretary had made the statutorily required determination in order to suspend for six months beyond February 1, 2016, the right to bring an action under Title III of the Act.*

The next decision upon a suspension must be by the end of January 2017; President Obama could (and will likely) suspend Title III before he departs office at 12:00 pm on 20 January 2017, thus providing at least six months of reprieve- and an opportunity for United States companies to advocate for continued suspensions.

The President-Elect, his transition team, and supporters may view creating uncertainty about the statue of Title III as an effective means of destabilizing the interest by the United States business community toward the Republic of Cuba; and it would be successful.

For example, there are individuals who maintain they have Title III-actionable claims relating to HAV and port at Santiago de Cuba. In the case of HAV, United States-based air carriers and those from other countries could find their assets attached if they do not avoid Cuba. In the case of the port at Santiago de Cuba, passenger cruise ships and cargo ships might avoid docking and unloading for fear of expensive and enduring legal proceedings.

If President Obama leaves the decision to suspend Title III to President Trump in January 2017, expect that there would be a suspension. However, there would likely be an aggressive signing statement (*see below President Clinton's in 1996*) accompanying the document to be delivered to the United States Congress designed to create uncertainty relating to what will happen six months from January 2017.

## **Statement on Signing the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 March 12, 1996**

*Today I have signed into law H.R. 927, the "Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996." This Act is a justified response to the Cuban government's unjustified, unlawful attack on two unarmed U.S. civilian aircraft that left three U.S. citizens and one U.S. resident dead. The Act imposes additional sanctions on the Cuban regime, mandates the preparation of a plan for U.S. assistance to transitional and democratically elected Cuban governments, creates a cause of action enabling U.S. nationals to sue those who expropriate or "traffic" in expropriated properties in Cuba, and denies such traffickers entry into the United States. It is a clear statement of our determination to respond to attacks on U.S. nationals and of our continued commitment to stand by the Cuban people in their peaceful struggle for freedom.*

*Immediately after Cuba's brutal act, I urged that differences on the bill be set aside so that the United States could speak in a single, strong voice. By acting swiftly—just 17 days after the attack—we are sending a powerful message to the Cuban regime that we do not and will not tolerate such conduct.*

*The Act also reaffirms our common goal of promoting a peaceful transition to democracy in Cuba by tightening the existing embargo while reaching out to the Cuban people. Our current efforts are beginning to yield results: they are depriving the Cuban regime of the hard currency it needs to maintain its grip on*

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*power; more importantly, they are empowering the agents of peaceful change on the island. This Act provides further support for the Administration's efforts to strengthen independent organizations in Cuba intent on building democracy and respect for human rights. And I welcome its call for a plan to provide assistance to Cuba under transitional and democratically elected governments.*

*Consistent with the Constitution, I interpret the Act as not derogating from the President's authority to conduct foreign policy. A number of provisions—sections 104(a), 109(b), 113, 201, 202(e), and 202(f)—could be read to state the foreign policy of the United States, or would direct that particular diplomatic initiatives or other courses of action be taken with respect to foreign countries or governments. While I support the underlying intent of these sections, the President's constitutional authority over foreign policy necessarily entails discretion over these matters. Accordingly, I will construe these provisions to be precatory.*

*The President must also be able to respond effectively to rapid changes in Cuba. This capability is necessary to ensure that we can advance our national interests in a manner that is conducive to a democratic transition in Cuba. Section 102(h), concerning the codification of the economic embargo, and the requirements for determining that a transitional or democratically elected government is in power, could be read to impose overly rigid constraints on the implementation of our foreign policy. I will continue to work with the Congress to obtain the flexibility needed if the United States is to be in a position to advance our shared interest in a rapid and peaceful transition to democracy in Cuba.*

*Finally, Title IV of the Act provides for the Secretary of State to deny visas to, and the Attorney General to exclude from the United States, certain persons who confiscate or traffic in expropriated property after the date of enactment of the Act. I understand that the provision was not intended to reach those coming to the United States or United Nations as diplomats. A categorical prohibition on the entry of all those who fall within the scope of section 401 could constrain the exercise of my exclusive authority under Article II of the Constitution to receive ambassadors and to conduct diplomacy. I am, therefore, directing the Secretary of State and the Attorney General to ensure that this provision is implemented in a way that does not interfere with my constitutional prerogatives and responsibilities.*

*The Cuban regime's lawless downing of two unarmed planes served as a harsh reminder of why a democratic Cuba is vitally important both to the Cuban and to the American people. The LIBERTAD Act, which I have signed into law in memory of the four victims of this cruel attack, reasserts our resolve to help carry the tide of democracy to the shores of Cuba.*

WILLIAM J. CLINTON

*The White House, March 12, 1996.*