

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

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## **Ambassador Bolton May Speak On 17 April 2019**

### **What's Next For Cuba? Five Targets**

#### **Return To The Terrorism List**

#### **Increase Travel Advisory Level**

#### **Use 7031(c) To Designate Cubans In Venezuela**

#### **Reinstate Per Diem Limits For Travelers**

#### **Adding To SDN List**

#### **Require U.S. Companies To Directly Pay Cuban Employees**

The Honorable John R. Bolton, Assistant to the President for National Security Affairs, is rumored to planning to deliver remarks on Wednesday, 17 April 2019, at a yet-to-be-confirmed location, but likely within the state of Florida.

The remarks would be focused upon the Republic of Cuba and Venezuela; with announcements of commercial, economic and political decisions designed directly and indirectly to influence the Republic of Cuba.

If the remarks are delivered, ironic that 17 April 2019 is the fifty-eighth (58<sup>th</sup>) anniversary of the military attack at the *Bay of Pigs* (Bahia de Cochinos) in the Republic of Cuba. The symbolism of a speech by Ambassador Bolton on this date will expectantly result in the interpretation- tried and failed once does not mean never try again.

1 May 2019 is the expiration of the most recent suspension (3 April 2019) of Title III of the Cuban Liberty and Democratic Solidarity Act (**Libertad Act**) of 1996. Title III is a provision within the statute authorizing the filing of lawsuits against entities using an asset upon which there is a certified claim for which the claimant has not received compensation. A notification to the United States Congress is expected by 17 April 2019 as to what the Trump Administration will decide to implement on 1 May 2019. **LINK:** <https://www.cubatrade.org/blog/2019/4/3/trump-administration-issues-another-extension-two-weeks-could-negotiations-with-eu-and-others-be-underway>

### **What might the Trump Administration do?**

#### **Return Cuba To Terrorism List**

The Trump Administration continues to consider re-designating the Republic of Cuba using as evidence the presence in Venezuela of representatives of the Revolutionary Armed Forces of the Republic of Cuba (**FAR**) and Ministry of Interior of the Republic of Cuba (**MININT**); the continued relationship by the Republic of Cuba with the Revolutionary Armed Forces of Colombia-People's Army (**FARC**) and National Liberation Army (**ELN**) in Colombia; the continued commercial, economic and political relationship with Iran, North Korea and Syria; and support for Nicaragua.

"Countries determined by the Secretary of State to have repeatedly provided support for acts of international terrorism are designated pursuant to three laws: section 6(j) of the Export Administration Act, section 40 of the Arms Export Control Act, and section 620A of the Foreign

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

Assistance Act. Taken together, the four main categories of sanctions resulting from designation under these authorities include restrictions on U.S. foreign assistance; a ban on defense exports and sales; certain controls over exports of dual use items; and miscellaneous financial and other restrictions.

Designation under the above-referenced authorities also implicates other sanctions laws that penalize persons and countries engaging in certain trade with state sponsors. Currently there are four countries designated under these authorities: the Democratic People's Republic of Korea (North Korea), Iran, Sudan, and Syria.” **LINK:** <https://www.state.gov/j/ct/list/c14151.htm>

Re-designating the Republic of Cuba would impact authorized financial transactions as United States-based and non-United States-based financial institutions would avoid transactions involving the Republic of Cuba.

### **Increase Travel Advisory Level**

The Trump Administration continues to consider shifting the *Travel Advisory Level* for the Republic of Cuba from Level 2 (exercise increased caution) to Level Three (reconsider travel), but perhaps Level 4 (do not travel). Level 1 (exercise normal precautions). Venezuela is Level 4.

Shifting to Level 4 could result in United States-based insurance companies who provide coverage for airlines, cruise lines, tour operators and travel agents to constrict or eliminate coverage. The result would be disruptive for all travelers, including those of Cuban descent residing in the United States (primarily in the state of Florida and state of New Jersey) who visit family and friends on a regular basis. United States-based insurance companies also provide coverage for non-United States-based airlines, cruise lines, hotels, and travel-related entities; thus, this revenue may be eliminated as impacted entities seek insurance coverage from other sources.

If the Trump Administration returned the Republic of Cuba to the Terrorism List, the United States Department of State would be expected to shift the *Travel Advisory Level* for the Republic of Cuba from Level 2 to at least Level Three (reconsider travel), but perhaps Level 4.

Increasing the Travel Advisory Level for the Republic of Cuba would impact authorized financial transactions as United States-based and non-United States-based financial institutions would avoid transactions involving the Republic of Cuba.

**LINK:** <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Cuba.html>

### **Use 7031(c) To Designate Cubans In Venezuela**

The United States Department of State continues to consider designating Republic of Cuba nationals residing/working/deployed in Venezuela who are deemed significant to the role of the Republic of Cuba in providing support to the Nicolas Maduro Administration in Venezuela under Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act of 2019 (Section 7031(c)). A focus would be towards members of the Revolutionary Armed Forces of the Republic of Cuba (**FAR**) and Ministry of Interior of the Republic of Cuba (**MININT**).

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

“Section 7031(c) provides that, in cases where the Secretary of State has credible information that officials of foreign governments have been involved in significant corruption or gross violations of human rights, those individuals and their immediate family members are ineligible for entry into the United States. The law requires the Secretary of State to publicly or privately designate such officials and their immediate family members.”

### Reinstating Per Diem Rates For Travelers To Cuba

The Trump Administration may return to [George W.] Bush Administration policy of requiring individuals subject to United States jurisdiction visiting the Republic of Cuba to remain within daily expenditure limitations maintained by the Office of Allowances within the Office of Operations of the Bureau of Administration of the Under Secretary of Management of the United States Department of State in Washington, D.C.

One important question will be whether the Trump Administration requires travelers to use the Per Diem expenditure valuations for direct expenditures and indirect expenditures. Including indirect expenditures would expectantly result in a spending decrease by travelers subject to United States jurisdiction to entities included in the Cuba Restricted List (CRL) [<https://www.cubatrade.org/blog/2019/3/12/us-department-of-state-publishes-new-cuba-restricted-list>] maintained by the United States Department of State.

The CRL includes distinctions between direct payments and indirect payments to Republic of Cuba government-operated entities affiliated with the Revolutionary Armed Forces of the Republic of Cuba (FAR).

Individual and group travelers arriving by aircraft and cruise ship to the Republic of Cuba can easily calculate their Per Diem. However, for spending limits to be deemed impactful, the Trump Administration will need to create compliance criteria to be implemented by U.S. Immigration and Customs Enforcement (ICE) which reports to the U.S. Department of Homeland Security (DHS). **LINK:** [https://aoprals.state.gov/web920/per\\_diem.asp](https://aoprals.state.gov/web920/per_diem.asp) Foreign Per Diem Rates As Of January 2019:

Country Name	Post Name	Season Begin	Season End	Maximum Lodging Rate	M & IE Rate	Maximum Per Diem Rate	Footnote	Effective Date
CUBA	Camaguey	01/01	12/31	180	64	244	N/A	02/01/2017
CUBA	Guantanamo Bay	01/01	12/31	125	52	177	N/A	03/01/2019
CUBA	Havana	01/01	12/31	205	111	316	N/A	12/01/2015
CUBA	Holguin	01/01	12/31	100	49	149	N/A	02/01/2017
CUBA	Matanzas	01/01	12/31	110	47	157	N/A	02/01/2017
CUBA	Other	01/01	12/31	100	49	149	N/A	02/01/2017
CUBA	Santiago	01/01	12/31	130	60	190	N/A	02/01/2017
CUBA	Trinidad	01/01	12/31	128	63	191	N/A	02/01/2017

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

## Adding To SDN List

The Trump Administration continues to consider adding Republic of Cuba government-operated entities and Republic of Cuba nationals to the list of Specially Designated Nationals maintained by the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury.

“As part of its enforcement efforts, OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Collectively, such individuals and companies are called "Specially Designated Nationals" or "SDNs." Their assets are blocked and U.S. persons are generally prohibited from dealing with them.” LINK: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

## Require U.S. Companies To Make Direct Payments To Cuban Employees

The Trump Administration continues to consider requiring United States companies operating in the Republic of Cuba under a general license or specific license from the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury who directly or indirectly employ Republic of Cuba nationals in the Republic of Cuba to make salary payments in convertible currency directly to those individuals rather than through a Republic of Cuba government-operated entity.

The primary reasoning is if the companies earn convertible currency, their employees should earn convertible currency. Among United States companies with a presence (some have offices) in the Republic of Cuba who could be impacted:

**ABC Charters (Miami, Florida); American Airlines (Chicago, Illinois); Carnival Cruise Lines (Miami, Florida); Cuba Travel Services (Cypress, California); Delta Air Lines (Atlanta, Georgia); JetBlue Airways (Long Island City, New York); John Deere (Peoria, Illinois); Marriott International (Bethesda, Maryland); Norwegian Cruise Lines (Miami, Florida); RIMCO (San Juan, Puerto Rico; Caterpillar distributor); Royal Caribbean Cruise Lines (Miami, Florida); Southwest Airlines (Dallas, Texas) and United Airlines (Chicago, Illinois).**

The government of the Republic of Cuba has experience with not directly first receiving payments to Republic of Cuba nationals. Owners of properties in the Republic of Cuba registered with San Francisco, California-based **Airbnb** receive U.S. Dollars, Euros, CUCs (Convertible Pesos) and other currencies directly, without the government of the Republic of Cuba first receiving the funds and then distributing the funds to the owners of the properties, although the government of the Republic of Cuba has considered implementing a first-capture mechanism.

There is confidence by advocates for the policy change that they can withstand any pressure from United States companies with a presence in the Republic of Cuba. According to one advocate, *“If we can shift even one company to making payments directly, that could permit other governments to pressure their companies operating in Cuba to do the same; a desired result would be squeezing out the military from what should be a civilian-led economy to empowering Cuban employees to demand salaries in the same currencies earned by the companies.”*

Another advocate added, *“American, United, Jet Blue, Delta, Caterpillar, John Deere, Marriott and the cruise lines all receive U.S. Dollars or other convertible currencies as revenue. Why*

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

*shouldn't Cubans working as ticket agents, baggage handlers, salesmen and saleswomen, service technicians, tour guides, tour bus drivers, housekeepers and front desk workers also earn U.S. Dollars or convertible currencies... and be paid directly by those multinational companies? Isn't that setting a better example? Wouldn't the companies benefit by a better-paid workforce and a happier workforce?"*

United States companies will submit they are abiding by the laws and regulations of the government of the Republic of Cuba, contracting with Republic of Cuba government-operated entities for the employment of Republic of Cuba nationals. They will submit they make fair-market payments in convertible currency for the monthly salaries of Republic of Cuba nationals they directly and/or indirectly employ. They will submit they have received licenses from the OFAC and/or the Bureau of Industry and Security (BIS) of the United States Department of Commerce and/or approval from the Office of the Legal Advisor (OLA) at the United States Department of State to engage in their respective operations- and have done so under the Obama Administration and thus far under the Trump Administration.

**NOTE:** Licenses from the OFAC and BIS and approval from the OLA may be reviewed and altered at any time if the license is deemed no longer consistent with United States policy.

Currently, companies with operations in the Republic of Cuba who employ a Republic of Cuba national generally make payment to a Republic of Cuba government-operated entity in convertible currency and the Republic of Cuba national receives a non-convertible Peso.

An example: a company wants to employ a Republic of Cuba national and the position would pay US\$500.00 per month, the company would pay a Republic of Cuba government-operated entity US\$500.00 (or 500.00 CUCs- Convertible Pesos with or without a 10% currency exchange fee implemented in 2004) which would then pay the Republic of Cuba national 1,000 Pesos. One CUC is worth approximately 25 Pesos, so 500 Pesos is worth approximately US\$20.00. The government of the Republic of Cuba retains approximately US\$480.00. Within the Mariel Special Economic Development Zone (**ZED Mariel**) companies have increased salary flexibility; the US\$500.00 per month could equate to 5,000 Pesos to the Republic of Cuba national. Joint Ventures also have increased salary flexibility.

Bethesda, Maryland-based **Marriott International** would be the most impacted company as it has a management contract (since 2016) for the 186-room Four Points By Sheraton Havana.

The property is owned by Republic of Cuba government-operated Gaviota which is a subsidiary of the Enterprise Administration Group (**GAESA**) which is controlled by the Revolutionary Armed Forces of the Republic of Cuba (**FAR**). GAESA has a substantial role throughout the economy of the Republic of Cuba with a specific focus upon hospitality, transportation and infrastructure.

Marriott International previously announced that the company would commence in December 2019 (delayed without reason from December 2016) management of the 83-room Hotel Inglaterra, also owned by Gaviota. **LINK:** <https://www.cubatrade.org/blog/2017/5/10/starwoodmarriott-now-reporting-36-month-delay-to-manage-hotel-inglaterra-no-reasons-provided?rq=Marriott>

The Four Points By Sheraton Havana reportedly has approximately **300** employees who are Republic of Cuba nationals. The Hotel Inglaterra reportedly has approximately **150** employees who are Republic of Cuba nationals.

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

United States airlines would also be substantially impacted as they contract for ticket agents (through Republic of Cuba government-operated Havanatur) at five (5) ticket offices within the city of Havana, Republic of Cuba and gate agents, ground handlers, and aircraft maintenance personnel at airports throughout the Republic of Cuba through Republic of Cuba government-operated Empresa Cubana de Aeropuertos y Servicios Aeronauticos (**ECASA**).

United States cruise lines would be impacted as they contract for ground transportation and tour guides with Havanatur and Gaviota for hundreds of thousands of passengers who visit the Republic of Cuba.

Peoria, Illinois-based **Caterpillar Inc.**, dealer San Juan, Puerto Rico-based RIMCO has a distribution center located in ZED Mariel, so Republic of Cuba nationals employed by the company may have a higher monthly salary than Republic of Cuba nationals employed by companies outside of the ZED Mariel.

Boston, Massachusetts-based **General Electric** continues to manage a power generation equipment delivery contract commenced in 2017 under a license from the OFAC. Thus far, equipment valued in excess of US\$21 million has been delivered to the Republic of Cuba.