

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

## **New York, New York**

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**The Trump Administration May Have A Credibility Problem**  
**Distance Between Rhetoric And Action**  
**Is It A Problem It's Willing To Endure?**  
**Will Marriott Be The Trump Administration's Next Target?**  
**US\$203 Billion In Revenues Is Powerful Motivation For Status Quo**  
**Challenge For Seven Members Of The United States Senate**  
**Challenge For Two Governors**  
**Will The Courts Decide That Everyone Can Sue?**

A subsidiary of Bethesda, Maryland-based **Marriott International, Inc.** (2018 revenues approximately US\$20 billion), Stamford, Connecticut-based *Starwood Hotels and Resorts Worldwide LLC*, has a series of two-year licenses from the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury in Washington DC to manage two (2) properties located in the Republic of Cuba.

Marriott International also controls the second-largest certified claim against the government of the Republic of Cuba which it inherited in 2016 as a result of the purchase of Starwood Hotels and Resorts Worldwide LLC.

Both properties managed by Marriott International (through Starwood Hotels and Resorts Worldwide LLC) are in the city of Havana, *Four Points by Sheraton Havana* and *Hotel Inglaterra* (delayed opening without explanation from December 2016 to December 2019) and owned by entities controlled by the Revolutionary Armed Forces of the Republic of Cuba (FAR).

The OFAC licenses were first issued during the Obama Administration and were renewed during the Trump Administration, although there has been a reported delay by the OFAC in transferring the licenses from Starwood Hotels and Resorts Worldwide LLC to Marriott International.

Licenses issued by the OFAC may be rescinded at any time if their use is no longer deemed in the interest of United States policy; and recipients of licenses have limited defense using the judicial concept of estoppel (*we did it, we made decisions depending upon continuity, you can't take it away*) because the applicant willingly seeks a license, and thus acknowledges uncertainty since the Republic of Cuba is under statutory, regulatory, and policy sanctions. What one administration does is not generally compelled upon a subsequent administration.

There are, however, exceptions including the airlines, cruise lines and hotel management operations commenced during the Obama Administration and continuing (thus far) through the first nearing twenty-six (26) months of the forty-eight (48) month Trump Administration. Another well-known example is the agreement by the Clinton Administration to license the *U.S. Food & Agri-Business Exhibition*, but the license was not issued prior to 20 January 2001. The Bush Administration adhered to the previous agreement and the event was held in the Republic of Cuba in September 2002.

Since 20 January 2017, no airline, cruise line, or hotel management company has had their license or authorization to operate in the Republic of Cuba rescinded by the OFAC.

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*The credibility of the Trump Administration will continue to be challenged within the United States and other countries in terms of the level of impact it desires to inflict upon the Republic of Cuba and why United States companies are a protected class while non-United States companies are a hunted species.*

For example, the Trump Administration has prohibited “*direct*” transactions with entities in the Republic of Cuba who are controlled by the FAR rather than “*direct and indirect*” transactions. Including “*indirect*” transactions could impact United States airlines, cruise lines and hotel management contracts in the Republic of Cuba. Exempting “*indirect*” transactions protects United States airlines, cruise lines and hotel management contracts.

The distinction has permitted individuals subject to United States jurisdiction who visit the Republic of Cuba within the twelve (12) categories of authorized travel purposes codified in the Trade Sanctions Reform and Export Enhancement Act (TSREEA) of 2000 to make indirect payments to entities listed on the Cuba Restricted List (CRL) maintained by the United States Department of State. Visiting the Republic of Cuba for the purpose of tourism is specifically prohibited by the TSREEA.

As long as Marriott International, Fort Worth, Texas-based **American Airlines** (2018 revenues approximately US\$20 billion) and Miami, Florida-based **Carnival Corporation** (2018 revenues approximately US\$19 billion) among others continue to operate throughout the Republic of Cuba, and do so directly and/or indirectly with entities controlled by the FAR, the correct interpretation will be the Trump Administration will want to do, and will likely say they want to do, more than they will do. United States companies take solace in that space.

Likely some of those who work in The West Wing of The White House and the adjacent Eisenhower Executive Office Building (**EEOB**) are supportive of an increased aggressiveness while those occupying offices on the 6<sup>th</sup> floor and 7<sup>th</sup> floor of the United States Department of State generally prefer a less confrontational profile.

## **Challenge For Members Of Congress & Governors- US\$203 Billion**

Members of the United States Congress representing Marriott International: The Honorable **Benjamin Cardin** (D- Maryland), The Honorable **Chris Van Hollen** (D- Maryland) and The Honorable **Jamie Raskin** (D- 8<sup>th</sup> District). They are supportive of the hotel management licenses held by Marriott International for the Republic of Cuba.

The Honorable **Mitt Romney** (R- Utah) remains a valuable asset to Marriott International, given his multi-decade relationship with the Marriott Family and longtime service as a member of the Board of Directors of Marriott International: <https://www.cubatrade.org/blog/2018/11/22/marriott-will-have-an-influential-friend-in-senator-mitt-romney-r-utah?rq=mitt%20romney>

There is a challenge for seven (7) members of the United States Senate and two (2) Governors as they generally or fully support Trump Administration policies toward the Republic of Cuba, including Title III (law suits against traffickers) and Title IV (visa restrictions for traffickers) of the *Cuban Liberty and Democratic Solidarity Act of 1996* (Libertad Act).

Members of the United States Senate: The Honorable **Marco Rubio** (R- Florida), The Honorable **Rick Scott** (R- Florida), The Honorable **Robert Menendez** (D- New Jersey), The Honorable **Ted Cruz** (R- Texas), The Honorable **John Cornyn** (R- Texas), The Honorable **Johnny Isakson** (R-

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Georgia), The Honorable **David Perdue** (R- Georgia; his first cousin is *The Honorable Sonny Perdue, United States Secretary of Agriculture*) and two governors: The Honorable **Ron DeSantis** (R- Florida) and The Honorable **Greg Abbott** (R- Texas) have to align the short-term (to 3 November 2020) political calculus with longer-term commercial constituent interests.

**The question: Do they support the Trump Administration when that support is detrimental to the commercial interests of companies located (operating) within their states? And, in the cases of the airlines, the majority of their passengers are individuals subject to United States jurisdiction who are of Cuban descent and reside in the politically significant State of Florida?**

Eventually, judges of United States District Courts may determine who can sue, who can't sue, who can be sued, and who can't be sued; the politicians may be biding their time. Then, politicians can feign blamelessness.

Companies in the states of *Florida, Georgia, Maryland, New Jersey and Texas* with commercial operations in the Republic of Cuba:

Atlanta, Georgia-based **Delta Air Lines** (2018 revenues approximately US\$44 billion); Bethesda, Maryland-based **Marriott International** (2018 revenues approximately US\$20 billion); Chicago, Illinois-based **United Airlines** (2018 revenues approximately US\$41 billion; operates flights from Newark Liberty International Airport in New Jersey); Dallas, Fort Worth, Texas-based **American Airlines** (2018 revenues approximately US\$42 billion); Dallas, Texas-based **Southwest Airlines** (2018 revenues approximately US\$22 billion); Miami, Florida-based **Carnival Corporation & plc** (2018 revenues approximately US\$19 billion); Miami, Florida-based **Norwegian Cruise Line** (2018 revenues approximately US\$6 billion); Miami, Florida-based **Royal Caribbean International** (2018 revenues approximately US\$9.5 billion).

## 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.

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*“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**.