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In this Issue

Q&A: Chad Olin

How Plan B is working out for a U.S. travel entrepreneur

• Page 4

Paseo 206

Taking the 'casa particular' to an entirely new level

• Page 6

Tourism in decline

A steep drop in visitor follows Trump's cruise ban

• Page 7

Cuba responds

Cuba hires lawyers in ExxonMobil Title III lawsuit

• Page 10

Banco Nuñez

Title III suit could turn more banks into targets

• Page 12

Wage hikes

Setting the base for more government transformations

• Page 16

New aircraft

Cuba acquires two regional aircraft from Europe's ATR

• Page 21

Biomass

Two new power projects are advancing quietly

• Page 22

Law analysis

As the EU response to U.S. sanctions falters, companies could go to court - in the U.S.

• Page 28

Tourism minister reverses visitor growth forecast

| by JOHANNES WERNER

After two years of escalating travel restrictions by the Trump administration and spotty and sometimes contradictory Cuban statistics, Cuban tourism officials admit that visitor numbers are declining.

In his half-year report to the National Assembly, Tourism Minister Manuel Marrero Cruz backtracked from a previous forecast of 7.4% growth this year, revising the expected total down from 5.1 million to 4.3 million visitors, which

Companies

Cuba lands multinational

| by JOHANNES WERNER

Scoring a symbolic victory amid the Trump administration's "maximum pressure" policy and Helms-Burton lawsuits, Cuba signed an agreement with a British spirits giant to create a joint venture that will market eastern Cuba-made rum worldwide.

A European subsidiary of London-based Diageo plc formed the Ron Santiago S.A. joint venture with state company

Cont'd on p. 8 ▶



Tourism (2)



would be a 10% decline from 2018.

Even though this is a drastic turnaround and the first decline since 2007, Cuban authorities bet on continued expansion over the long term.

The correction is mostly a function of Trump's June 5 cruise ban, which took an estimated 1 million visitors from the books in Cuba this year. During the first month of the cruise ban, total visitor numbers were down 20.33% in June, according to Marrero. Also, U.S. travel agencies and booking portals dropped hotels that could be subject to Title III lawsuits — such as the Nacional, Capri and Habana Libre in Havana, the Kawama in Varadero, and the San Carlos in Cienfuegos — from their offerings, he said.

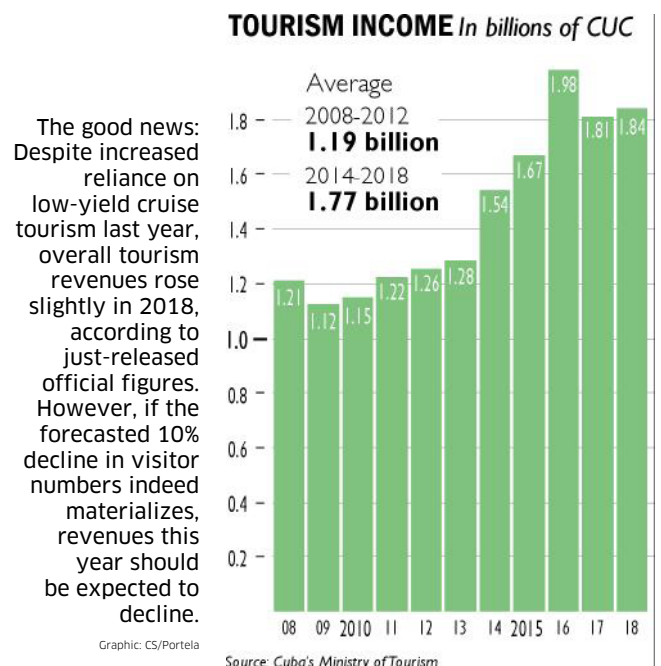
Holding on to hotel construction plans

At the same time, Marrero told assembly members, with President Miguel Díaz-Canel looking on, that — because there still is “rising demand for the Cuban market” in land-based travel — it is necessary to “continue developing tourism”.

Plans to add hotel rooms and new facilities are

on track, Marrero said, with 3,808 new rooms planned by the end of this year and 20 new hotels with 4,200 rooms in 2020.

Marrero did say that Title III lawsuits in U.S. courts over “trafficking” of confiscated properties in Cuba are slowing down ne-



Tourism (3)



High-profile Gaviota project, still on track? The 42-floor hotel at La Rampa in Vedado appears as No. 9 on map below of Grupo Gaviota's current construction projects in Havana.

negotiations with foreign investors. However, only a handful of new hotel projects — all outside Havana, the country's No. 1 destination — are funded with foreign capital.

Meanwhile, state enterprise Grupo Gaviota has been adding luxury hotels — particularly in Havana, where it has 18 construction projects — at a frantic pace. As it is about to open the SO Paseo del Prado on the high-profile corner of Prado and Malecón, earthmoving has begun on a



| Projected hotel | Rooms | Projected hotel | Rooms |
|---------------------|-------|----------------------|-------|
| 1 Monte Barreto | 400 | 10 Lot 4 (L) | 400 |
| 2 Metropolitano ["] | 120 | 11 Lot 10 | 300 |
| 3 Obispo y Cuba | 120 | 12 Lot 6 | 600 |
| 4 Payret | 300 | 13 Lot 1 (L) Hotel 1 | 500 |
| 5 Lot B | 400 | 14 Lot 1 (L) Hotel 2 | 500 |
| 6 Lot 2 (L) | 400 | 15 Lot 11 | 500 |
| 7 Lot 7 (L) | 400 | 16 Lot 12 Hotel 1 | 400 |
| 8 Lot 3 | 100 | 17 Lot 12 Hotel 2 | 400 |
| 9 Lot 9 | 400 | 18 Lot 5 | 350 |



Tourism (4)

42-floor, 565-room skyscraper — Havana's tallest building yet — at La Rampa, two blocks from the Habana Libre hotel, and construction is underway for another hotel on the Malecón, one block east of the Meliá Cohiba.

Out-of-proportion investments?

In an analysis of 2018 figures, Cuban economist Pedro Monreal estimates that one-third of all public investments went into tourism last year, prompting him to question the timing and proportion.

"Yes, tourism is one of the pillars of development in Cuba, and it should be prioritized," the Centro de Estudios sobre América (CEA) economist said in a Tweet. "But this should not necessarily mean to assign one-third of the country's investments to tourism."

While the number of hotel rooms keeps shooting up, visitor numbers are flattening and occupancy is declining, Monreal pointed out (*see sidebar on p. 7*).

"It's not economically rational to continue investing in tourism at the recent high levels. How rational is it to continue at this fast pace when half the existing capacity is unused?"

"Wouldn't it make more sense to put a red light to investments in new hotels and concentrate on making the installed capacity more efficient?"

More efforts to stimulate visitor flow

The tourism ministry has taken steps to "stimulate the visitor flow", Marrero told the Assembly, highlighting tourism fair participation, cultural attractions such as festivals, and increasing social media advertising and online sales.

One measure he did not mention was lowering prices. Some tourism players are already slashing prices; apparently responding to declining demand for Cuba among European travelers, Spain's Ocean by H10 has begun offering 20% discounts for all its Cuba packages.

In his report to the economic commission of the Assembly, Marrero also highlighted private-sector contributions to tourism. Private owners, offering 26,224 rooms, hosted 858,702 tourists in 2018, he said. ■



How 'Plan B' is working out for a U.S. travel entrepreneur

Life didn't exactly become easier when Chad Olin left Wall Street to reinvent himself as an entrepreneur. After working in investment banking and private equity, the 30-year old Harvard Business School graduate in 2015 moved to Miami and founded Cuba Candela — in his own words, "with no prior connection to Cuba, no Spanish speaking ability, no industry experience, no clients, no partners, no investors, no market research and no business relationships". The first 18 months were "brutal", according to Olin. And then, the Trump administration's war on Cuba travel began. Things became even harder, including "100-hour weeks, sleepless nights and bottomless cups of coffee stacked up, [and] my health began to suffer symptoms of chronic stress and physical exhaustion, yet another challenge to overcome."



Describe your company.

CO: Cuba Candela provides private custom tours primarily to individuals, also known as FIT travelers, who tend to be couples and families. Our target clientele are affluent Americans residing in major U.S. cities. Our exceptional service and authentic local experiences differentiate us from other travel service providers. ▶

Q&A Chad Olin (2)

What impact did the people-to-people prohibition have on Cuba Candela?

CO: We were operating tours under both the 'people-to-people' and 'support for the Cuban people' travel licenses, depending on the nature of the group and the client preferences. Now, we have modified our 'people-to-people' offerings to comply with the 'support for the Cuban people' requirements.

And how is Plan B working?

CO: As we had already been operating client programs under 'support for the Cuban people', we had previously studied the legal requirements in detail and were experts on the nuances of the 'support for the Cuban people' license. Accordingly, we were able to quickly and legally modify our 'people-to-people' programs to avoid disruption to those client groups.

Any expectations of how your re-jigged programs will do?

CO: As with any new operation, there are always kinks to work out. The first program is typically the hardest. To address the added complexity, we build multiple safeguards into our service to ensure the highest degree of quality with each program, such as surprise 'bonuses' for clients, which go above and beyond the initial client promise. These could be little things like a welcome gift or a handwritten note on a special piece of vintage Cuban memorabilia, or bigger things like a 'spontaneous' concert experience built around an activity. Additionally, we always price these first programs at a meaningful discount to ensure that we deliver above and beyond on the clients' value expectation.

How has your company fared in its first years, and particularly the first half of this year?

CO: I launched Cuba Candela toward the end of the friendlier Obama administration and had to quickly adjust to the Trump administration's policies. All things considered, we have grown significantly every year

Q&A

since inception, including in the first half of 2019.

Cuba is a market with a lot of political and financial disruption potential. How do you plan for that in your business?

CO: Our business model of providing private custom tours for individuals is relatively insulated from the U.S. political volatility for a few reasons. First, we don't work with many institutions that can get tripped up by a perceived risk or other internal controls related to Cuba. Second, we strictly comply with all U.S. and local laws, even when industry practice may suggest we are unnecessarily rigid in our compliance. However, this allows us to welcome the spotlight and as a result, we can pound the table that much harder about how Cuba is one of the world's most incredible destinations, which really does help to offset confusion about travel rules. This also allows us to provide certain guarantees regarding the legality of our services, which encourages bookings. Lastly, we treat all constituents with whom we engage, whether local partners, clients or staff, with the utmost respect and integrity to build goodwill and trust among all parties, which helps mitigate disruption from U.S. rule changes, while bolstering our mission to make a positive 360-degree impact. ▶



Olin in Havana

Photo: Kate Wozniak

Q&A Chad Olin (3)

How do you plan to make it through December 2020, or December 2024, if Trump is re-elected?

CO: Like the rest of the industry, I was shocked when the Trump administration cancelled Cuba cruises because it dealt a major blow to U.S. businesses. Moreover, it was highly disruptive for American consumers, trampled on U.S. citizens' constitutionally protected right to freely travel, and resulted in significant losses of U.S. jobs. Honestly, I think the Cuba cruises had become more popular than anyone initially imagined, with 800,000 booked clients cancelled overnight in the latest change. The billion-dollar Cuba cruise market arose from nothing in a few short years and is just one example of the irresist-

Q&A

ible appeal of Cuba as a destination for Americans, a reminder of the long-term opportunity there. While new restrictions may come during Trump's first term and a possible second term, the longer-term trend of U.S.-Cuba engagement is here to stay. These travel restrictions are not in the best interest of the American people, nor the Cuban people, and as this becomes increasingly well known to American voters, a more sensible policy will emerge. ■

More information:

<https://www.cubacandela.com/chad-olin-founders-story>

PHOTO ALBUM

Taking the 'casa particular' to a new level

A Cuban-Italian family has taken the concept of the 'casa particular' to a whole new level. By all appearances, the Paseo 206 — named after its address in Havana's Vedado district — is a high-end boutique hotel. Offering an Italian-Cuban fusion restaurant and 10 rooms, including a "rooftop suite" for \$750/night in season, the entrepreneurs have turned a stately 1933 residence into an austere-yet-warm design destination. TripAdvisor users rated six Cuban b&b's among the Top 10 in the Caribbean this year.



Details matter: Gastronomic entrepreneur Fabrizio Gallina, his brother Andrea, mother-in-law Diana Sainz, and sister-in-law Ana Maria Gallina Sainz have created a perfect and charming little clockwork.

Pampered guests: The Paseo 206 offers 24-hour concierge service, valet parking, personalized tour and security services, hypoallergenic mattresses and linen, Hermes bathroom fixtures, and Marshall speakers.



PHOTOS COURTESY
PASEO 206 AND
BOUTIQUEHOMES.COM

TOURISM

Steep visitor drop follows Trump travel restrictions

The total number of visitors to Cuba dropped 23.6% in July, following a ban by the Trump administration on people-to-people travel and cruises in early June.

According to data published by the National Statistics Office (ONEI), 295,000 people arrived in the island during the month, 91,000 fewer than in July 2018.

The July drop follows a 20% decline in June.

ONEI did not break down the June or July figures by country of origin or mode of transportation.

For January-July, the total number of visitors is down 1.1%, but the number of U.S. visitors — who made up the bulk of fast-growing cruise passengers — was still up 20%.

The apparent drop in U.S. visitors this summer adds to weakness in Cuba's key source markets in Europe. The number of visitors from most European markets is down by double digits for the year so far: France -11%, Germany -11.7%, UK -20.8%, Italy -25.9%, and Spain -14.3%.

The number of visitors from Canada — Cuba's No. 1 source market — stagnated through July.

Cuba's tourism authorities responded in July by revising their

visitor forecast for 2019 from +7.4% to -10% (see article on page 1).

Focus on Cuban tourists

Meanwhile, Tourism Minister Manuel Marrero tweeted that the number of overnight stays by Cuban tourists in luxury hotels rose 15% during the summer months. State travel agency Cubatur is currently offering deeply discounted Havana-Cayo Coco-Havana flights for 44 CUC. Most of the inaugural guests after the grand reopening of the Hotel Internacional — Varadero's largest hotel yet — were domestic customers, according to local reports.

Revenues up, but barely

According to a dataset for the first quarter recently published by ONEI, tourism revenues rose 1.1% through the end of March, thanks to increases in recreational activity, retail, and restaurant sales.

However, indicating a drop in prices, revenues from accommodations were down 14.3% and transportation 9.6%.

The number of overnight stays — which does not include private accommodations — was up 2.6%,



but — as Cuba continues hotel construction at a fast pace — occupancy dropped to 52.7% in the first three months this year, from 54.2% in the first quarter 2018.

Business travel was down 5.2% in the first quarter, but event-related travel rose 19.6%.

The quarterly ONEI statistics did not break down cruise travel. ■

—Johannes Werner

Multinational (2)

From Page 1



Cuba Ron S.A. to market and distribute Santiago de Cuba-brand rum outside of Cuba. Following a traditional pattern of foreign investment in Cuba, Diageo agreed to be a 50% partner.

The marketing muscle of Diageo — the world's second-largest alcoholic drinks producer and distributor — will likely boost sales and production of Santiago de Cuba rum. Diageo handles a vast portfolio of brands — ranging from Guinness beer to Johnny Walker whiskey and Captain Morgan rum — that generated \$16 billion in revenues last year.

However, Diageo is not planning any investments in Cuba at this point, according to a company spokesperson.

"The focus of the JV is the distribution and marketing of Santiago de Cuba in Europe and Latin America — including Mexico — and travel retail," Clemmie Raynsford told *Cuba Standard*, adding that there are "no investment plans at this stage".

The partners signed the agreement at the Hotel Nacional in Havana, in the presence of Foreign Trade and Investment Minister Rodrigo Malmierca.



Santiago de Cuba rum fits perfectly between mainstream Captain Morgan and premium Ron Zacapa in Diageo's rum lineup, according to a commentary in trade publication *Just Drinks*.

After signing the JV agreement at the Hotel Nacional: Diageo President of Global Production and Purchasing David Cutter, and Juan González, head of Corporación Cuba Ron.

Photo: Foreign Office

In a press release, Diageo described Santiago de Cuba as a "premium Cuban heritage rum brand". Premium products are driving most spirit companies' sales growth; the "premium-plus rum" segment in Europe, the key market for development of the Santiago de Cuba brand, is growing at double-digit rates.

"The joint venture with Corporación Cuba Ron is in keeping with our strategy to invest behind growth opportunities in premium and above brands," said Dayalan Nayager, managing director of Diageo GB, Ireland and France, in the press release. "Consumers are looking for new and authentic experiences and working with Corporación Cuba Ron provides a great opportunity to expand our portfolio in segments of the rum category whose growth is being driven by premiumisation globally and in Europe."

Santiago de Cuba, the second-largest premium rum brand in Cuba following Havana Club, offers Carta Blanca, Añejo, 11-year old and 12-year old varieties.

If Santiago sales go well, Diageo's abstinence from funding capacity growth in Cuba may be just temporary. Investing more than \$1 billion in Latin America and the Caribbean since 2012, Diageo produces other local spirits in the region, such as Cacique-brand rum in Venezuela, Zacapa rum in Guatemala, Don Julio tequila in Mexico, and Ypioca cachaça in Brazil.

"We are constantly looking to create new experiences for our customers through ▶



Multinational (3)

local brands," Diageo says on its website. Cuban rum exports are growing, making up 9% of the global premium spirits trade.

End of monopolies

Although it is Cuba Ron's fourth joint venture with a foreign partner, the agreement with Diageo sends a clear signal that the era of quasi-monopolies for foreign investors is over. For 26 years, French competitor Pernod Ricard through its joint venture with Cuba Ron was the only foreign company able to market coveted Cuban rum abroad, boosting sales to 5 million cases a year and making Havana Club one of its best-performing brands.

Even so, Pernod Ricard apparently is taking the arrival of Diageo in stride.

"It is a growing category, and to date we are the only one promoting it," trade publication *Just Drinks* quotes an anonymous source close to Pernod Ricard. "It's nice to see other players involved."

A commentary in *Just Drinks* also speculated that Pernod Ricard probably welcomes the arrival of a potential partner in its two-decade long fight against U.S. sanctions and legal efforts by competitor Bacardí to lay claim on trademarks for Cuban rum.

Havana Club and Santiago de Cuba aside, Corporación Cuba Ron also produces Cubay, Isla del Tesoro, and Siglo y 1/2-brand rum.

In 2013, Cuba Ron signed a five-year agreement with French liquor distributor Groupe Belvédère for sales of Cubay Carta Blanca worldwide; the rum was made in Cuba but bottled in France. However, the company that changed its name to Marie Brizard Wine & Spirits in 2015 does not carry the Cubay brand today.

Conscious of U.S. sanctions

At a press conference the day of the signing in Havana, Luca Cesarano, general director of Ron Santiago S.A., suggested the joint venture is not subject to U.S. sanctions because the European subsidiary that is a partner in Ron Santiago S.A.

Ron Santiago S.A. – the joint venture



Partners:

Havana-based state enterprise Corporación Cuba Ron S.A. and a European subsidiary of Diageo plc. London-based Diageo is a \$16 billion spirits company, the world's second-largest alcohol producer and

distributor after Anheuser-Busch InBev.

Shares: 50-50

Capital: Unknown

Duration: Unknown

Based in: Unknown. Most likely Havana, possibly Santiago

Tasks: Cuba Ron is in charge of production, Diageo in charge of marketing and distribution, with exclusive rights.

Markets: Worldwide; focus on western Europe

Information compiled by Cuba Standard

has no links to the United States.

"Neither the subsidiary of Diageo, which is the partner, nor the venture will interact with any Diageo entity or person that interacts with the United States," Cesarano said.

"We are of course conscious of all relevant U.S. and non-U.S. legislation in relation to Cuba and the U.S. sanctions in place, and this transaction

has been conducted with the utmost care to ensure we are compliant with all applicable law," spokesperson Raynsford said. "We are aware of our obligations, and we have taken measures to ensure we do not violate applicable regulations, including, for example, the use of clear prohibitions to ensure no U.S. employees are involved at any stage and in any way, either with the transaction that we

announced or operationally with the JV going forward."

Diageo officials did not respond to questions regarding potential Title III lawsuits against the company under the Helms-Burton law in U.S. courts.

Diageo shares trade in London and on the New York Stock Exchange. ■



Cesarano

Law/Politics

Cuba responds to Title III suit filed by ExxonMobil

| by JOHANNES WERNER

In a move that took many in the United States by surprise, Cuba decided to defend two state companies against a Title III lawsuit in U.S. courts.

Responding to a complaint filed by ExxonMobil Corp. against Unión CubaPetróleo (Cupet) and Corporación CIMEX S.A. in federal court in Washington, D.C., the Cuban government hired New York law firm Rabinowitz, Boudin, Standard, Krinsky & Lieberman to defend the state companies. RBSKL, which has a long history representing Cuban entities in the United States, describes itself as "Cuba's only U.S. counsel since 1960".

Some previous lawsuits against Cuban entities in U.S. courts resulted in large default judgments after Cuba decided not to engage because it did not recognize the jurisdiction of U.S. courts.

Neither side responded to requests for comment by *Cuba*



Standard, but one legal observer believes Cuba's decision to take action indicates officials believe they can prevail in this complaint over the nationalizations of the early 1960s.

In its lawsuit, ExxonMobil argues Cupet, which operates refineries once run by Standard Oil, and CIMEX, which manages former Esso gas stations, are "trafficking" in confiscated properties, and asks for \$71.6 million in damages, plus 6% annual interest since 1960. In the filing, Exxon indicates it could go after payments made to Havanatur, a tourism subsidiary of CIMEX. The lawsuit became possible after the Trump administration in May activated Title III of the Helms-Burton law, which had been dormant for more than two decades.

Exxon is represented by Washington law firm Steptoe & Johnson.

Odds against plaintiff

According to Robert Muse, a Washington lawyer who has represented corporate claims holders, the odds are stacked against ExxonMobil. The only way for the company's lawyers to comply with the Foreign Sovereign Immunity Act of 1976 — which establishes the limitations

Also see P. 28

Law Analysis

As the European Union's response to extraterritorial U.S. sanctions falters, EU businesses should go to court — in the United States.

Three months of Title III suits — any effects?

The goal of the drafters of Helms-Burton, who responded to Cuba's foreign investment law of 1995, was to make the island too toxic for investors.

Some Title III plaintiffs, such as Evan Stroman, a lawyer representing the descendants of the owners of pre-Castro era Banco Nuñez, hope so, too. When asked by *Cuba Standard* about his clients' lawsuit

against French bank Société Générale, Stroman didn't hesitate to say that one of goals of that litigation is to, at the very minimum, prevent the Cuban government from accessing international capital.

But after three months of Title III suits, EU and Canadian investors, armed with Helms-Burton blocking statutes, seem set to stay the course.

"Based on conversations with my

clients, foreign investors will be intelligently cautious, but will not abandon Cuba, given the enormous economic potential of the island," said Gregory Biniowsky, an attorney at Toronto-based Gowling WLG who advises Canadian firms on doing business with the island. "Foreign companies have told me that they will simply do the additional due diligence with regards to Cuban properties

ExxonMobil (2)

as to whether a foreign sovereign nation may be sued in U.S. courts — is by demonstrating a direct effect of the Cuban confiscations on the U.S. operations of Exxon, which will be difficult.

Moreover, as part of the due process to establish appropriate jurisdiction, the Exxon lawyers will have to demonstrate "substantial contacts with the United States by CIMEX and Cupet," Muse says — which these Cuban state companies obviously don't have.

"Also, judges are just human," Muse says about District Judge Amit P. Mehta, who is presiding over the case. "Judge Mehta was appointed by Obama; he doesn't exist in the emotional vortex of South Florida. I am at a loss as to why they would file in D.C., and not in Miami or Houston, where the company is based."

Even if it prevails, Exxon is far from assured to get its hands on Cuban assets worth upwards of \$100 million.

Finally, the oil giant could take a long-term hit in Cuba.

Cuba responded to the activation of Title III of Helms-Burton by emphasizing the "Cuban Dignity and Sovereignty Reaffirmation Act of 1996", an antidote law passed in response to the Helms-Burton law that strips any U.S. companies that decide to sue in U.S. courts of the ability to participate in any future settlement of property claims.

Neither ExxonMobil nor its lawyers responded



to questions by *Cuba Standard*.

Muse's best guess about the motives behind the ExxonMobil suit is that the company may have responded to prodding by the Trump administration, with its eyes on a bigger prize: Venezuela.

"There were expropriations in Venezuela, and Exxon was very disappointed with the outcome of forced arbitration," Muse suggests.

And why did Cuba engage?

Official media reports, such as in *Cubadebate*, downplayed the significance of Cuba's legal response to ExxonMobil, emphasizing it is "not unusual" that "Cuban companies defend their interests in the U.S. judicial system". According to *Cubadebate*, Cuban firms have taken action in U.S. courts "on more than 40 occasions, and have secured favorable rulings in several cases."

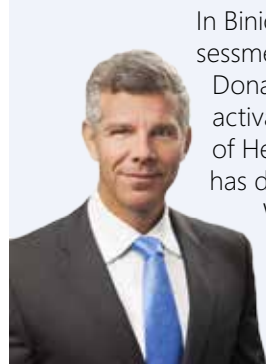
However, Muse believes the engagement in this case does indeed represent a new quality.

"Yes, Cuba did respond in trademark cases, or in cases years back where money or cargo was confiscated. But Cuba declined when they thought that the jurisdiction was impermissible. Helms-Burton, in Cuban eyes, is a fundamental violation of international law. So, this is a new departure for Cuba to engage in a Helms-Burton lawsuit."

Muse speculates that Cuban authorities may have felt pressure from foreign investors to signal a robust defense of their interests in Cuba. ■

Title III effects, from previous page

that are connected in their business/investment on the island."



In Biniowsky's assessment, President Donald Trump, by activating Title III of Helms-Burton, has deteriorated Washington's relations with his coun-

Biniowsky

try and the EU, to the point where Helms-Burton verdicts will never be enforced in those jurisdictions.

"This legislation has not been extensively tested before Trump's implementation, so its power (remains) to be seen," he said about the blocking statute. "Now we will be able to see its application in the Canadian courts and the degree to which the Canadian government firmly implements some of the law's administrative mechanisms."

Biniowsky feels that the Trump

administration will test his country's sovereignty by trying to enforce Title III judgments against Canadian investors. But a lot will be at stake for Canada's leaders.

"If Canada and other Western countries allow the U.S. government to get away with extraterritorial projection of U.S. laws on third countries with regards to Cuba, what country will be next?," he said. "This issue is bigger than Cuba." ■

—Vito Echevarría

Nuñez suit could turn more banks into targets

| by VITO ECHEVARRÍA

A lawsuit filed by a Cuban exile family against Société Générale under the recently activated Title III of the Helms-Burton law targets a defendant that has not physically done business on a plaintiff's confiscated properties in the island.

While an office that the French bank rented at Lonja del Comercio in Old Havana may expose it to a prospective lawsuit from the former owner of the building, the central issue of this complaint are digital transactions.

In the lawsuit filed in July against the French bank, the descendants of the former owners of Banco Nuñez – with reported assets of \$105 million and 22 branches as of 1958 one of the largest Cuban banks in the pre-revolution era — argue that the French bank has been “trafficking” in their confiscated property by simply doing business with Cuban state bank Banco Nacional de Cuba (BNC), which was formed during the early days of the revolution in part from confiscated Banco Nuñez assets.

The 14 Nuñez descendants, who claim they're entitled to 10.5% of BNC's assets, assert that Société Générale “trafficked” in their confiscated property by conducting financial transactions with BNC.

Using evidence from U.S. investigation

Miami law firm Kozyak, Tropin & Throckmorton, which represents the plaintiffs, bases its “trafficking” argument on information from a deferred prosecution agreement with the U.S. Department of Justice, where Société Générale admitted that it violated the U.S. embargo against Cuba. In the 2018 deal, Société Générale agreed to pay \$1.4 billion in penalties and fines, in exchange for a suspension of prosecution.

Using publicly-available court documents involving Société Générale's settlement, the lawyers argue that the bank admitted to financial transactions involving Cuba, including credits and loans

to BNC, and to concealing them.

If a judge accepts this approach, it could turn other international banks into a target. However, even if that happens, plaintiffs are still facing the challenge of obtaining information about banks'

Cuba transactions.

“The OFAC enforcement action against Société Générale made them more vulnerable and visible, as it provided a load of information on their transactions with BNC,” said Miami attorney Ambar Diaz, who advises

U.S. companies on legally doing business with Cuba. “It will be therefore difficult, but not impossible, to articulate the same arguments against another bank, although the door is open.”

Any international bank that was sanctioned by OFAC for their dealings with Cuba could



Regime change through U.S. courts? Evan Stroman: “Banco Nuñez hopes to be a driving force in toppling that dictatorship.”

Nuñez (2)



Photo: Courtesy Ambar Díaz P.A.

be sued by the Nuñez descendants, she suggests.

Beyond physical assets

What makes this Title III case stand out is the fact that Société Générale's business with BNC was purely electronic. Unlike the Helms-Burton litigation against cruise company Carnival Corp. and hotel operator Meliá, which

Ambar Díaz: "OFAC enforcement made Société Générale more vulnerable and visible."

involves their physical use of confiscated Cuban assets, the French bank never set up branches or offices in confiscated Banco Nuñez properties in Cuba (although it did lease the representative office at Lonja del Comercio until at least Nov. 2018).

The Nuñez attorneys believe that any kind of business transaction, whether physical or not, can trigger a "trafficking" case. Indeed, the Helms-Burton law has a broad definition of which property plaintiffs can assert in a Title III action, including not only physical assets such as land and buildings, but patents, trademarks, intellectual property, "or other interest therein."

"To be crystal clear, Société Générale does not need to touch Banco Nuñez's physical branches to be liable for trafficking," said Evan Stroman, one of the Nuñez attorneys at Kozyak, Tropin & Throckmorton. "It is black-letter law taken straight from the Helms-Burton statute."

The Nuñez lawyers, including Stroman, are asserting that Banco Nuñez's confiscated



Judge allows Title III suit against U.S. company to proceed

On July 31, U.S. District Judge James Lawrence King denied Carnival Corp.'s motion to dismiss a Title III lawsuit filed against the Miami-based cruise company by Javier García-Bengochea, a Florida man who says he holds an ownership interest in Santiago harbor dating before the revolution.

The Miami circuit court judge made a tentative ruling that the plaintiff's claim of an ownership interest in the La Marítima Parreño docks and Terminal Naviera — used by the cruise company from 2016 to this year to disembark passengers on U.S. licensed travel — was sufficient.

García-Bengochea holds a claim registered with the U.S. government.

Judge King rejected Carnival's argument that a decision on the

plaintiff's ownership claim — essential for a Title III case — should be made at the pre-trial stage.

"It seems to me that it's taking the court beyond perhaps where it should be at this point," said Judge King, also noting that "facts well pled" are the "guiding star" on when deciding a motion to dismiss.

"He said he owns it," the judge said, referring to García-Bengochea's claim, which was confiscated by the Cuban government during that country's revolution. "It may be proven totally wrong. But it's a claim."

Carnival will now have to wait until the trial itself to prove its assertion that García-Bengochea's ownership interest is insufficient to prevail in a Title III trafficking case.

The cruise company will also have

to wait until the trial to show that its transactions involving Santiago harbor meet exceptions to "trafficking" permitted under Helms-Burton,

A lawyer close to Carnival argues that Helms-Burton was not designed to be used against U.S. companies engaged in lawful interactions with Cuba.

"The law was not intended as course of action against American companies," said George Fowler, a trial lawyer with Jones Walker LLP in New Orleans and former counsel for the Cuban American National Foundation who was involved in drafting the original law in the 1990s. "There is a clear-cut exemption if you're there on legal business."

—Vito Echevarría

Nuñez (3)

equity and assets, which they say helped create and maintain BNC over the years, enabling it to conduct business with Société Générale and other international banks, will be sufficient to sue the French bank for trafficking.

If nothing else, the Banco Nuñez case will likely resolve one main issue for Title III litigants.

“The definition and scope of ‘trafficking’ will be



at its core,” said Diaz.

If the U.S. district court judge hearing this Title III case agrees that transactions such as wire transfers are sufficient to establish “trafficking”, any other international bank — including U.S. banks — could be liable. That

could even ensnare those conducting OFAC-licensed transactions, such as BNP Paribas, which processed Cuban payments for U.S. food

Cuban exile family goes to court ... in Spain

Instead of suing in U.S. courts, the Florida-based descendants of the Sánchez-Hill family have chosen to sue Spanish hotelier Meliá in a court in Spain over their ongoing management of two beachside resorts built on land the Cuban government confiscated from the family during the early days of the revolution.

Apparently due to a European Union blocking statute against the enforcement of a U.S. Helms-Burton Title III judgment within Spanish jurisdiction, the Sánchez-Hill legal team, which includes Helms-Burton expert Nicolás Gutiérrez, is taking a different legal route: a €10 million “unjust enrichment” civil suit filed against the hospitality giant in Palma de Mallorca, where Meliá has its headquarters.

Whether the Sánchez-Hills can prevail in Spanish courts in an “unjust enrichment” case is doubtful, given that Spanish law is tilted against them.

“The chances of winning the claim under Spanish laws are very little,” said José María Viñals, a Madrid-based corporate attorney who advises international companies on doing business in Cuba. “The basis for the claim is Spanish law, specifically the so-called ‘unjust enrichment’ action, which is a (sort of) equity remedy that Spanish tribunals have in the past granted based on the regulation of quasi contracts in our Civil Code.”

Viñals asserts that the applicable substantive law to this matter should

be Cuban law, meaning that the Sánchez-Hills must take their grievance directly to Cuban courts, which are not likely to rule in their favor.

“The claim does not attempt to establish why Spanish law should be applicable, contrasting with the extensive argumentation on why the Spanish Tribunals are competent,” said Viñals, who is a partner with Squire Patton Boggs.

Because the Sánchez-Hill claim disputes the validity of a sovereign act by a foreign government — the Cuban government’s confiscation of private property during the revolution — and a Spanish Civil Tribunal does not have the jurisdiction to do so, the court may dismiss the suit.

“Even if Spanish substantive law were applicable, the claim does not mention or attempt to justify the test that the Supreme Court jurisprudence on the matter (which is extensive and well-known) has established for ‘unjust enrichment’ claims to prosper,” said Viñals.

Despite such long odds in Spanish courts, the Sánchez-Hills’ legal advisors are optimistic.



“We have a good chance, if we can survive the jurisdictional motion to dismiss hearing (at Palma de Mallorca) in September,” said Gutiérrez, who has worked with the Sánchez-Hills since the 2000s, when they tried but failed to work out a Helms-Burton related settlement with Meliá. “(Unlike in U.S. courts) we cannot get treble damages or attorneys’ fees over there, but it could still be very interesting.”

This is a test case for Gutiérrez and his group. If they somehow prevail in Spanish civil court, they will likely use such precedent to file similar “unjust enrichment” suits against other EU-based hotel operators who also run resorts on the Sánchez-Hills’ extensive beachfront property in Holguín province. ■

—Vito Echevarría

Nuñez (4)



imports for years, or Stoenegate, the Florida bank taken over by an Arkansas bank last year that offers a debit card that can be used in Cuba's banking system.

"Be patient," said Stroman, noting that his firm will eventually file similar lawsuits against other international banks.

Stroman pointed out that in 1996, National Security Adviser Sandy Berger argued that during the time Title III lawsuits were not permitted, "liability will continue to accrue, the meter will be ticking" and despite the passage of time, liability "can't be extinguished".

The lawyer suggested that by targeting more international banks, his clients intend not only to be paid, but that they pursue the bigger goal of regime change.

"Know that there are banks presently lending to BNC that concurrently conduct business in USA," he said. "Know that Banco Nuñez seeks to prevent the Cuban dictatorship from borrowing on an international scale, and by doing so, Banco Nuñez hopes to be a driving force in toppling that dictatorship." ■

Esta Era la Banca de Cuba a la Llegada del Comunismo
Diciembre 31, 1952

| Bancos Nacionales | | | | |
|---------------------------------|-------------|-------------|-------------|--------------------|
| Bancos | Activos | Préstamos | Depósitos | Capital y Reservas |
| 1. The Trust Co. of Cuba | 231,282,818 | 92,452,144 | 215,232,438 | 12,419,853 |
| 2. Banco Nuñez | 186,972,054 | 51,451,899 | 88,482,619 | 7,892,820 |
| 3. Banco Continental | 140,006,104 | 49,287,449 | 82,179,114 | 2,639,443 |
| 4. Banco Agrícola e Industrial | 56,811,565 | 25,874,894 | 45,755,448 | 4,000,000 |
| 5. Banco Golias | 39,901,688 | 29,518,955 | 43,407,378 | 5,734,911 |
| 6. Banco de los Colonos | 38,631,778 | 17,171,384 | 29,738,981 | 3,443,000 |
| 7. Banco Pajol | 25,872,965 | 10,143,714 | 22,929,881 | 1,814,759 |
| 8. Banco Pedroso | 17,399,483 | 9,329,355 | 15,987,475 | 1,235,382 |
| 9. Banco Godoy Sayán | 18,455,657 | 4,704,596 | 15,137,838 | 891,676 |
| 10. Industrial Bank | 15,484,975 | 6,328,543 | 12,889,831 | 790,468 |
| 11. Banco Garrigó | 15,330,591 | 7,585,327 | 13,110,554 | 1,552,930 |
| 12. Banco Financiero | 15,147,883 | 7,715,325 | 12,857,688 | 1,294,923 |
| 13. Banco Hispano Cubano | 12,708,617 | 8,197,643 | 10,435,554 | 878,832 |
| 14. Banco de la Construcción | 9,291,629 | 4,392,691 | 7,392,251 | 1,232,487 |
| 15. Banco Agrícola y Mercantil | 9,262,296 | 4,242,949 | 8,099,117 | 602,587 |
| 16. Banco González y Hno. | 7,448,944 | 2,895,680 | 6,217,184 | 519,785 |
| 17. Banco Hipotecario | | | | |
| 18. Banco Franco Cubano | 5,894,119 | 3,117,022 | 5,212,424 | 542,497 |
| 19. Banco Asturiano de Ahorros | 5,435,978 | 2,829,797 | 4,885,329 | 728,200 |
| 20. Banco Crédito e Inversiones | 4,744,157 | 2,865,579 | 3,854,846 | 778,837 |
| Totales | 724,876,864 | 331,968,431 | 645,811,229 | 58,996,006 |

| Bancos Extranjeros | | | | |
|----------------------------------|---------------|-------------|---------------|------------|
| | | | | |
| 1. Royal Bank of Canada | 151,821,274 | 72,354,039 | 143,741,728 | 7,481,831 |
| 2. National City Bank | 104,065,722 | 57,541,323 | 90,527,177 | 4,706,148 |
| 3. First National Bank of Boston | 75,392,659 | 39,423,479 | 70,836,221 | 3,745,000 |
| 4. Bank of Nova Scotia | 56,963,936 | 21,929,287 | 52,785,729 | 2,761,844 |
| 5. Chase Manhattan Bank | 44,739,634 | 25,715,154 | 50,876,786 | 4,906,000 |
| 6. Banco de China | 11,788,996 | 4,878,814 | 11,129,789 | 597,596 |
| Totales | 487,382,324 | 229,935,694 | 424,396,354 | 22,334,811 |
| GRAN TOTAL | 1,212,259,188 | 561,904,125 | 1,069,407,583 | 74,324,819 |

The plaintiffs' Exhibit A: A ranking – apparently produced years later – showing Banco Nuñez on the No. 2 spot among domestic banks in the 1950s.



Former Cuban intelligence officer Domingo Amuchastegui has lived in Miami since 1994. He writes regularly on Cuba's internal politics, economic reform, and South Florida's Cuban community

Wage hikes: Setting the base for more transformations

The June 27 salary increases, limited to the non-enterprise sector of the state economy, are modest, given Cuba's economic context. However, the measure does carry weight because it serves as a base for the current leadership to steer the system in a new direction, completing the transformation process.

The wage hikes benefit 1.47 million workers of the central state administration, as well as 1.28 million pensioners who receive less than 500 non-convertible pesos a month. The measure adds 7.5 billion pesos to the annual budget, although Finance Minister Meisi Bolaños Weiss emphasizes that "these raises should not increase the budget deficit for 2019".

Meanwhile, Economy Minister Alejandro Gil Fernández — one of the architects of reforms since he assumed his post barely a year ago — highlighted three key aspects. In his words, they are:

- Defend domestic production; diversify and increase exports, substituting imports; encourage productive links; boost state enterprises; advance on food sovereignty; promote local development; stick to the plan in housing construction; and use science to solve problems.
- The upcoming measures will cover "dis-similar aspects such as the increase in domestic production, municipal self-sufficiency, local development projects, investments, commercial

monetary circulation, and the encouragement of agricultural production."

• Particularly important: "It is essential to achieve the changes corresponding to the institutions of the country, because we have made modifications to the economic model, and basically we continue to work with the same institutional structures."

President Miguel Díaz-Canel highlighted some of the key problems and discussed short-term adjustments.

Most notably, he became the first Cuban leader to use the term "internal blockade" — used by many Cubans for decades — referring to extended stagnation and resistance to change, bad policies, bureaucratic centralization, and other factors that have completely distorted the original Cuban project.

Díaz-Canel also countered fears and rumors by categorically excluding the possibility of a return of conditions similar to the "Special Period" of the 1990s, and he highlighted the trial-and-error nature of measures.

Domingo on Cuba (2)

He defined Cuba's most productive core as the knowledge economy, which, he says, is able to confront and overcome the "extraordinary challenge" facing Cuba today.

State enterprises will be allowed to keep "completely or partially" their hard-currency revenues to boost their development, he said, adding that they can open operations at the Mariel Special Development Zone.

In the future, state enterprises may also borrow from financial institutions, Díaz-Canel said.

The private sector should not have to overcome "obstacles or brakes," and the government should be "stimulating best practices, helping them emerge from illegality, so they can be active economic actors". Private businesses will be allowed to export their goods and services through state entities, he said.

The president clarified that the recent pay raises for state employees is "only a first step" towards a bigger salary reform, which will include a pricing policy, the currency merger, and the end of subsidies.

Díaz-Canel categorically prohibited "price rises of goods or services, neither in the state sector, nor in the non-state sector." This will preserve household buying power and keep budget deficits under control, he suggested.

Those are the most important aspects of the first stage of the redesign of the Cuban model. A dynamic towards inevitable and irreversible change has begun. As they say: "Better late than never".



Cuba is entering a new stage

— not only due to the Trump administration's draconian unilateral measures, but also thanks to

Cuba is entering
a new stage,
thanks to the
important
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that are slowly
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economy and
institutions.

important internal changes that are slowly reshaping the economy and institutions, as well as to international actions boosting the image and credibility of the island.

The highlights of internal change are:

- A new law (Decreto Ley No. 365 and its regulations) that seeks to grant more flexibility and autonomy to agricultural cooperatives, by way of negotiation and contracting with the state and natural persons; direct sales to individuals and tourism enterprises; access to bank credit, supplies and services; and the unhindered leasing and renting, buying and selling of equipment that is personal property of farmers. To be sure, state domination through purchasing and distribution monopoly Acopio and meddling by state enterprises in the internal affairs of cooperatives persist.

- Rising flexibility and support for the private sector, with fewer restrictions, faster application processes, better access to financing, and particularly faster creation of wholesale markets to serve non-agricultural co-ops.

- The large-scale expansion of Web access for all Cubans, and the informatization of economic activity and government, with major ripple effects.

- President Miguel Díaz-Canel and other leaders have grabbed every opportunity to promote foreign investment as a key component of economic development, allowing new forms of investment such as in renewable energies, opening up new opportunities, and reducing red tape. For the first time, officials have pointed out that the five-year old foreign investment law does not exclude Cuban American businesspeople.

International highlights:

- The unanimous rejection of the Trump Administration's activation of Title III of the Helms-Burton law, particularly by Euro-

Domingo on Cuba (3)

pean Union leaders sending a clear message that EU interests are at stake and that Washington is violating a 1996 agreement.

Since the Title 3 announcement, within just a couple of months, Cuba was visited by Prince Charles, Spain's minister of trade and tourism, a ministerial delegation from the Netherlands, a British business delegation with weighty proposals in their suitcases, and the EU head of cooperation and development announcing more development aid; the King and Queen of Spain are scheduled to visit later this year. In the same short period, there were foreign investor summits with no less than six countries; Cuban officials keep hammering away that "Cuba is a safe place for investments". It remains to be seen what, if anything, comes from this intense diplomatic and business agenda.

•Equally important on the political-diplomatic level has been the call for Cuba to contribute to dialogue and negotiation in Venezuela. The first steps were initiated by Norway, which co-hosted with Cuba the successful Colombian peace talks. The Lima Group, Mexico, Uruguay, Canadian Prime Minister Justin Trudeau, EU foreign policy chief Federica Mogherini, and Norwegian Foreign Minister Anika Soder all have talked with Díaz-Canel and Foreign Minister Bruno Rodríguez asking Cuba to participate constructively. This reinforces not only Cuba's international standing but also its credentials as conflict mediator, as proven in peace processes in South Africa and Central America.

Still needed: Total redesign

That said, nothing of all this is decisive. It helps, but it doesn't go yet to the core: The need to totally redesign Cuba's system, which should not rile up anyone. Years ago, even Fidel Castro admitted that the system doesn't work, and more recently Raúl Castro put it more bluntly: "Either we change or we drown". Two years ago, an *Economist* article said that "the regime can no longer rely on the generosity of its allies. It has no idea what to do." On the latter, the journalists were wrong.

For decades, the vast majority of Cuban economists have identified the problems and proposed

Intransigence to change among the leadership does not mean ignorance or denial of the economy's great dilemmas.

wholesale solutions rather than temporary fixes. Yes, they do know the challenges and possible solutions. So does the leadership, but it resists implementing these solutions, fearing their risks and cost. As a former Politburo aide put it a while back: "Change, in general, implies risk; but inertia guarantees setbacks".

Intransigence to change among the leadership does not mean ignorance or denial of the Cuban economy's great dilemmas. Among economists there is consensus on the following:

- Growth continues to be very slow, far from the rates needed.
- Goods exports are insufficient and concentrated in too few items.
- Dependency on imports, with no solution in sight.
- Budgetary pressures leave little room to maneuver.
- Employment has failed to grow and becomes more precarious.
- Salaries, despite recent raises, are insufficient to cover daily needs.
- The exodus of skilled workers, particularly young people and women, continues.
- Investment rates — at only half of what is needed — are too low to sustain growth.
- Short-term debt to suppliers and unpaid dividends to foreign investors are negative incentives to growth and generate uncertainty among potential investors.
- Socialist state enterprises, supposedly the pillar of the Cuban economy, have failed to rise to the challenge. Yet another reform to the structure of the state enterprise sector has been

Domingo on Cuba (4)

announced.

- Foreign investment, which has been declared key to economic development, has failed to take off. Even though Cuba has managed to attract more investment from abroad than in the past, the amounts are far from meeting the needs.

- The basic infrastructure continues to be in shambles.

- The technology gap in Cuba's productive sector is significant.

- The private sector still lacks a proactive legal framework that would allow a qualitative leap.

- Key sectors such as agriculture and manufacturing still fail to achieve continued growth.

All these problems and inconsistencies the economy has dragged along for decades, together with the overall inefficiency of the system, are urgently calling for comprehensive solutions. The current changes seem to move in that direction, which is why they are important. If not, Raúl Castro's quote is still valid: "Either we change, or we drown." ■

Former Cuban intelligence officer Domingo Amuchastegui has lived in Miami since 1994. He writes regularly on Cuba's internal politics, economic reform, and South Florida's Cuban community

Government imposes private-sector price controls

| by JOHANNES WERNER

In a move with implications not only for private businesses in Cuba but also for the economic recovery in general, the Ministry of Finance and Prices imposed a price freeze on all private businesses and co-ops and sets maximum prices private businesses can charge for agricultural products.

Resolution 302/2019 prohibits private businesses any increases “from current prices” charged to state entities and consumers, and sets price limits on what private businesses can charge consumers for agricultural products.

The top prices were set Aug. 15 by municipal and provincial authorities, which are also in charge of enforcement.

The price controls come amid shortages, cash crunch and what increasingly looks like a recession brought on by the Venezuelan crisis and harsher U.S. sanctions. It was preceded by an across-the-board pay raise for government employees in June that triggered raised fears of inflation.

Economists not happy

The negative reactions of Cuban economists seem to indicate that the measures were prompted primarily by political considerations.

“The price limits will only prompt more black market and shortages,” says Pavel Vidal, a former Central Bank economist who now teaches

in Colombia.

“Administrative price controls and pay raises without productivity increases or financial backing are not the kinds of measures needed to overcome the crisis. The more they control prices in formal markets, the more inflation and instability there will be in informal markets. The more they prohibit price increases, the less the productive sector is incentivized to expand the supply of



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goods and services, which is definitely the only option to keep inflation in check.”

“The objective should not be to stop price increases, which is a natural response to a sudden expansion of demand, but rather that prices do not rise in the same proportion as nominal wages, in order to achieve a positive net effect on real income. This can only be achieved by changing regulations that block a positive production response. Let’s wait and see what the government has prepared along these lines, although expectations are low after so much disappointment.”

“The government argues that the measures are designed to avoid another ‘Special Period’. But they actually make it more likely. The economic adjustment had been quite well managed, despite an enormously complex international environment. We had shortages, but there was monetary stability. Now we’ll have shortages on top of higher inflation in informal markets, something more like what we lived through in the 1990s.” ■

Transportation

Cuba acquires regional aircraft in France

by JOHANNES WERNER



As its entire Russian-made fleet of regional jets has been grounded due to mechanical problems, Cubana de Aviación has acquired two regional aircraft in France.

The flag carrier took delivery of the first of two freshly assembled turboprop ATR 72-600 directly from Franco-Italian manufacturer ATR Aircraft in late June, according to industry publication *Transponder 1200*. Negotiations began early this year, and Cuban crews completed training in Toulouse in July.

No financial details have been released. The average unit cost of an ATR 72-600 in 2017 was \$26 million.

This is Cuba's first purchase of western-made aircraft since it acquired four ATR 42-500 in 2002 for €60 million, according to the publication. The aircraft, which contain less than 10% U.S. content, have been operated by regional carrier Aerogaviota.

According to *Transponder 1200*, the new aircraft replace two ATR 72-500 Cubana currently wet-leases through South Africa's Solenta Aviation.

The publication puts Cubana's current ope-

ration fleet at two ATR 42-500 originally used by Aerogaviota, an ATR 72-200 originally used by Aerocaribbean, two Embraer 110 Bandeirante, and a long-haul IL-96 jet. The carrier also leases an A320 from Jordan Aviation, and a Boeing 737 from Blue Panorama, and two ATR 72-500 from Solenta.

A Boeing 737 leased from Mexico's Global Air crashed last year, causing 112 deaths.

Cubana has been in a tight spot since last year, when it had to ground two Russian-made Tu-204, two IL-96, and six Ukrainian-Russian An-158, due to numerous technical problems; all jets were delivered between 2005 and 2015. The case of the An-158 is particularly tricky amid political conflicts between Moscow and Kiev, due to disagreements between the Russian lessor IFC, Ukrainian manufacturer Antonov, and key vendors in Ukraine.

In February, Russia agreed to restore the airworthiness of Cubana's Russian- and Ukrainian-made jets and open a maintenance and repair center in Cuba, while funding the costs. ■



Energy

Biomass power plants advance quietly

by JOHANNES WERNER

While most of the public attention is focused on the progress and challenges of a British-Chinese power plant at the Ciro Redondo sugarmill, two state-run biomass projects are advancing quietly.

Construction of one \$40 million, 20-mw plant at the Jesús Rabí sugarmill in Matanzas province (see map below) is well advanced, according to Bárbara Hernández, director of electricity generation at state sugar holding Azcuba, and construction of another 20-mw biomass plant at the Héctor Rodríguez sugarmill in Villa Clara province has begun, she told *Prensa Latina*.

The \$187 million Ciro Redondo project, which is being built by Biopower S.A., a joint venture between Havana Energy and Azcuba, will generate 62 megawatts using Chinese technology. According to Hernández, it is half completed and on track to begin feeding into the grid during the 2019-20 sugar harvest.

If Ciro Redondo is successful, Havana Energy says it wants to build four more biomass plants.

Oil firm seeks extension, empty-handed

Australian oil junior Melbana Energy Ltd. says it has applied for an at least 12-month extension to its production sharing contract with state company CubaPetróleo (Cupet) for on-shore Block 9.

The second subperiod of its current contract, which stipulates drilling of one exploration well, expires Nov. 3.

Exploration drilling failed to materialize after a farmout deal with a Chinese company fell apart earlier this year.

The company "continues to progress discussions with potential farminees to Block 9 with the objective of securing funding for a minimum two well drilling program in 2020," Melbana said in a press release.

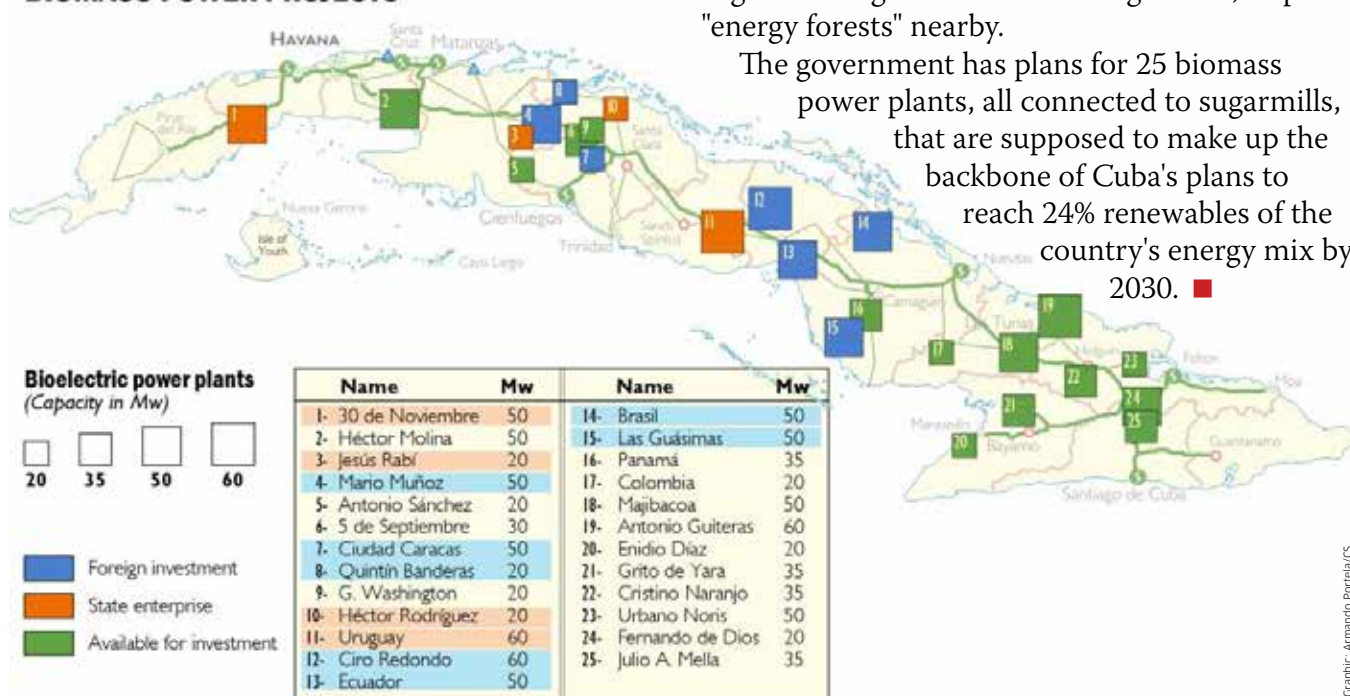
This would be the second time Cupet agrees to a waiver for Melbana. ■

There has been only scant information about biomass plans by other Chinese and Vietnamese investors.

Dysfunction and dropping production at Cuba's aging sugarmills are presenting bigger challenges than expected to biomass power developers. According to a report in Communist Party daily *Granma*, unless there are substantial investments at the Ciro Redondo sugarmill, the operators of the new power plant may have to draw on sugarcane bagasse from other sugarmills, or plant "energy forests" nearby.

The government has plans for 25 biomass power plants, all connected to sugarmills, that are supposed to make up the backbone of Cuba's plans to reach 24% renewables of the country's energy mix by 2030. ■

BIOMASS POWER PROJECTS



Cuba buys German chicken farm technology



Big Dutchman chicken farm

Amid egg and chicken shortages and a lack of hard currency to pay for imports, Cuba is building two fully automatic and air conditioned laying hen batteries at state-owned farms, using technology developed in Germany.

No financial details have been published.

At the 28 de Enero farm, near Consolación del Sur in Pinar del Río province, construction is completed and testing is underway, according to a report in official daily *Granma*. The totally automatized facility, in two buildings, has a capacity of 72,000 hens for 15.7 million eggs per year, managed by only two employees.

Likewise, construction of a similar battery is completed at Clavellinas near Camagüey.

The investment at state farms comes in addition to at least two planned poultry joint ventures with German and Spanish investors that may materialize "soon", according to a Cuban agriculture official cited by Cuban media.

Germany's largest player, Big Dutchman International GmbH, has been a presence at Cuba's annual FIAGROP agriculture fair

recently.

Big Dutchman did not respond to inquiries.

In November, Spain's Grupo Kodysa signed a letter of intent to build and operate a \$50 million chicken

farm in Cuba that would cover 25% of demand in the island for chicken meat.

Small European cruise ship fills void left by U.S. giants

Filling the big void left by U.S. giants Carnival, Royal Caribbean and Norwegian after the Trump cruise ban, FTI Cruises announced it will home-port the *Berlin* again in Havana this winter season.

This will be the third Cuba cruise season for the traditional 420-passenger vessel, after 2017 and 2018, but not in 2019 when it was bumped from Havana by bigger U.S. competitors.

Beginning in January 2020, the Munich-based cruise line

will offer 11 weekly around-Cuba cruises on the *Berlin* from Havana Jan. 4-March 14, calling at Santiago de Cuba as well as Georgetown and Montego Bay.

FTI also offers a land program in Cuba starting in November, offering a range of tours, including a seven-day e-bike tour and a Fiat Ducato Camper tour.

Cuba home to six of the Caribbean's 10 best B&B's

TripAdvisor travelers rated Cuban *casas particulares* highly in 2019, taking six spots — including the top spot — in the list of the 10 Best Caribbean B&B's and Inns.

No. 1 in this year's ranking is Hostal Dr. Amaro y Dra. Yamira in Trinidad. Located in the heart of the colonial city, for \$45 a night guests enjoy access to a terrace with amazing views.

The second spot was taken by the Mis Cumbres B&B in Viñales; No. 4 went to Casa Brisas de Alameda, an 18th century home in Trinidad; No 6 to Casa Tamara & Chen in Old Havana; No. 8 to Casa Flamboyán Boutique Guest House in Havana's Vedado district; and No. 9 to Casa Aurora y Mario in Havana.



No. 1 in the 2019 TripAdvisor ranking of best B&B's in the Caribbean: Hostal Dr. Amaro y Dra. Yaira in Trinidad and its famous terrace.

»Briefs

Rising Cuban pop star signs with Miami agency



One of Cuba's rising young music stars has signed with Magnus Media, the Miami agency founded by Marc Anthony and Michel Vega, trade magazine *Billboard* reported.

Cimafunk, aka Erik Alejandro Iglesias, told *Billboard* that the agreement is mostly about reinforcing the quality and reach of his live shows.

After a two-month tour of the United States early this year, he was on tour in August in France and Spain, and he will be back on tour in the United States late this month.

The Magnus roster also includes Jennifer López, Fonseca and Gente de Zona.

Cuban horror movie completes U.S. circuit

A privately funded and -made horror movie from Cuba, after touring film festivals in the United States, celebrated its theatrical opening at the Laemmle Music

Hall in Los Angeles before heading to DVD and VOD.

Directed by Rudy Riverón Sánchez, a Cuban filmmaker based in Britain, "Is That You?" (¿Eres Tú, Papá?) is the first psychological horror film to come out of Cuba.

Made with Cuban producer Sandy Pérez and Cuban cinematographer Bilko Cuervo, the thriller won the jury choice award at the BiFan Film Festival in Korea.

Nothing is what it seems in this film that tells the story of a 13-year old girl whose father dies in an accident.

"Living in a modest shack in the Cuban countryside, thirteen-year-old Lili and her mother appear trapped in a meager, suffocating existence by her domineering father, Eduardo. His sudden absence should represent a new freedom for the girl and her mother, but Lili is distraught, and we come to discover just how strong the influence of this monstrous man is over his family," the filmmaker teases the plot.

Is That You? stars Gabriela



Ramos, Eslinda Nuñez, Lynn Cruz, Osvaldo Doimedadiós, and Jorge Enrique Caballero.

Cuba and China to jointly develop AI technologies

Universities in Cuba and China are cooperating to create a joint research institute for artificial intelligence.

The institute, to be based in Camagüey, is expected to open within a year.

The University of International Studies in Hebei, and experts from Cuba's Universidad de Ciencias Informáticas (UCI), the Academia de Ciencias de Cuba, Universidad Tecnológica in Havana, University of Camagüey, University of Granma, University of Ciego de Ávila, and University of Villa Clara have formed a joint team led by Yailé Caballero Mota, head of international relations at the University of Camagüey.

Caballero said the partners are seeking to add institutions and scientists from Spain and Belgium to the project.

The institute's research areas will include intelligent systems, data science with emphasis on bioinformatics and Big Data, natural language processing, programming technologies, and information systems.

Japanese regulators approve Cuban medicine

Japanese regulators have approved the sale of a Cuban-made natural medicine in Japan.

Policonasol (PPG), used to treat ischemic cerebrovascular diseases, will be pro-

»Briefs



duced in Japan with raw material from Cuba.

PPG will be available in Japan online beginning September.

Made from sugarcane wax, PPG lowers bad cholesterol and has an antiplatelet and antioxidant effect, making it an option for the treatment of vascular diseases.

In addition, it is a supplement that improves quality of life in the

elderly with hypertension and diabetes. Japan has one of the highest life expectancies.

PPG has been registered and used in Cuba, where it is manufactured by the Center for National Research (CNIC),

for more than 25 years. Since its launch, it has been approved by 30 nations around the world.

Cultural space in Havana among 'Best 100 Places'

Fábrica de Arte, a privately managed space for edgy culture in Havana, got a boost from *Time* magazine, which listed it as

No. 16 in its 2019 ranking of the world's "Best 100 Places to Visit".

"Created by Cuban rocker X Alfonso in 2014, the cooking-oil factory turned community project has quickly become the city's buzzy creative hub," *Time* says. "Within the cavernous warehouse's refurbished walls, you'll find galleries, performance-art spaces and a dance floor that's home to the capital's most captivating movers and shakers." ■

Cuentapropistas to global brand: 'Stop plagiarizing!'



Original

The feisty designers behind Clandestina, the Old Havana-based fashion label, are taking on a global brand. Tongue-in-cheek.

After the third instance of Spanish clothing line and retailer Zara taking apparent cues from the Cubans, company

founders Idania del Río and Leyre Fernández posted a viral YouTube video, asking the Spanish company to stop plagiarizing their ideas.

At issue are Clandestina's slogans "Actually, I'm in Havana" (Zara: "Mentally I am in Havana"), "Se acabó el drama" (Zara: "Delete the Drama"), and "País en construcción" (Zara: "Under construction").

The Clandestina folks have not threatened to sue. But they are engaging in the commercial equivalent of a duel, with a new t-shirt design

that says "Actually, Zarita you have to stop."



Copy?

actually,
Zarita
tienes que
parar

Politics

Free travel bill launched in U.S. Congress, for the fourth time in 17 years

| by JOHANNES WERNER

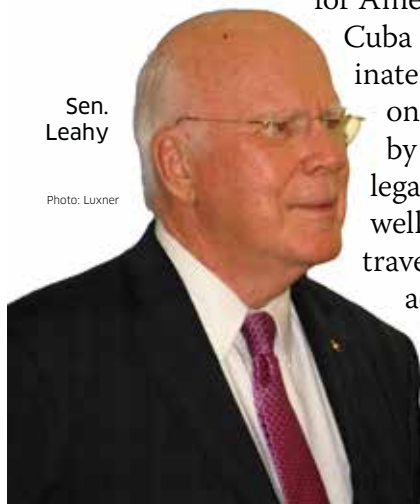


Reps. Jim McGovern (D-Ma.) and Tom Emmer (R-Mn.) introduced a bill in the House of Representatives that would lift all Cuba travel restrictions.

Coming just as the Trump administration is doubling down on Cuba sanctions, the “Freedom for Americans to Travel to Cuba Act” would eliminate any restrictions on travel to Cuba by U.S. citizens and legal residents, as well as restrictions on travel-related transactions such as banking.

Sen. Leahy

Photo: Luxner



Sen. Patrick Leahy (D-Vt.) followed up with a Senate

companion bill a couple of days later. Leahy, vice chairman of the Senate Appropriations Committee, has 46 Senate co-sponsors for the measure.

History of failure

Even so, the bill will be facing an uphill struggle. The U.S. Congress has not passed any embargo-easing law since 2001, with the exception of a minor amendment to the agriculture budget bill passed in December that allows the use of federal agriculture marketing funds for food exports to Cuba.

This is the fourth bill under this name introduced to Congress in 17 years. The predecessor bills in 2002, 2009 and 2015 all failed to even make it to a floor vote. Like the 2019 version, the 2015 Senate version of the bill had 46 co-sponsors.

Helping travelers and businesses

“Because of the Trump Adminis-



Travel bill (2)

tration's restrictions on travel, the number of Americans visiting Cuba this year is projected to plummet by half," Leahy said in a statement about Trump's recent elimination of the "people-to-people" travel category and de facto banning of cruises. "Hundreds of thousands of Americans who want to travel to Cuba are being denied that right by their own government. It is they, and Cuba's struggling private entrepreneurs who depend on American customers, who are penalized."

A Miami-based travel entrepreneur applauded the measure.

"These lawmakers are the ones that have actually visited Cuba, met with the people and studied the bilateral relationship," said Colin Laverty, founder of Cuba Educational Travel. "They understand that getting out of the way and allowing Americans and Cubans to engage will produce more positive change in weeks and months than 60-plus years of a failed policy of sanctions." ■

The Freedom for Americans to Travel to Cuba Act of 2019

is the fourth bill under this name to seek a lifting of U.S. travel restrictions. Neither of the three predecessor bills in 2002, 2009 and 2015 made it to a floor vote.

It would

- Block the president from "prohibiting or otherwise restricting travel to or from Cuba by United States citizens or legal residents, or any of the transactions incident to such travel, including banking transactions";
- undo "any law, regulation, or policy in effect on such date of enactment that prohibits or otherwise restricts travel to or from Cuba";
- still allow the president "to restrict travel ..., or any transaction incident to such travel, on a case-by-case basis", due to concerns for national security or the safety of U.S. citizens;

Full text at https://www.leahy.senate.gov/imo/media/doc/Freedom_for_Americans_to_Travel_to_Cuba_Act_of_2019.pdf



Sascha Lohmann is an associate in the Americas Division of Stiftung Wissenschaft und Politik, a Berlin-based think tank

Extraterritorial U.S. sanctions? Resort to U.S. courts!

The long reach of U.S. law affects persons, property, and acts around the world. In trying to shield EU-based individuals and entities with commercial interests from its adverse impact, European policymakers have recently been exposed as more or less helpless.

In order to pursue their strategic objectives more effectively, Europeans must not only focus on increasing strategic autonomy vis-à-vis the U.S. government. Absent a diplomatic agreement with the executive branch, they must also better utilize available channels of influence. One potential avenue would be to substantially support EU-based companies in domestic courts – both diplomatically as well as financially – in order to challenge the executive branch when enforcing U.S. law beyond borders. Only the judicial branch can effectively curb the extraterritorial application of U.S. jurisdiction.

Since the founding of the republic, the U.S. government has continuously asserted authority beyond its borders in the pursuit of economic, foreign, and national security policy objectives. Three main factors account for the extension of U.S. law

to persons, property, and acts located or conducted abroad: Firstly, an ideological commitment to natural law expressed in a firm commitment to the sanctity of inalienable rights believed to transcend national borders. Secondly, a legal culture shaped by the experience of steady territorial expansion and domination – initially as a former frontier society, and later as a self-restrained occupying force after World War II. And, thirdly, an independent judiciary that enjoys wide latitude to determine the geographical scope of statutory law and its implementation through administrative regulations.

The extraterritorial reach of U.S. law derives from statutes enacted by Congress (prescriptive jurisdiction); regulations and rules administered by the administration (enforcement jurisdiction); as well as litigation in domestic courts (adjudicative jurisdiction). During the late 18th and

U.S. sanctions (2)

early 19th centuries, the long reach of U.S. law mostly concerned torts and piracy. Starting in the early 20th century, U.S. law gradually began to be applied extraterritorially in the realms of environmental and economic regulation, with the latter including anti-trust, banking, bankruptcy, securities, taxation, and labor. Since the 1970s, the extraterritorial reach of domestic law has increased significantly as U.S. policy-makers have pursued a wide range of foreign policy and national security objectives. Encroaching upon the sovereignty of other nations, the assertion of U.S. authority beyond borders has repeatedly sparked intense political conflicts with adversaries and allies alike. An acute contemporary conflict of U.S. and EU law is currently unfolding in the case of Iran.

How U.S. trumps European law

On May 8, 2018, President Donald J. Trump fulfilled yet another campaign promise by announcing to cease U.S. participation in the Joint Comprehensive Plan of Action (JCPOA). Under the terms of the executive agreement, which was not ratified by the U.S. Senate but endorsed in Security Council Resolution 2231, the Iranian government agreed to strict limits on – and enhanced monitoring of – its nuclear program in exchange for relief from international sanctions. Criticizing the limited duration and insubstantial scope of the JCPOA, the Trump administration's withdrawal was immediately followed by a "maximum pressure" strategy. Its objective, as laid out by Secretary of State Mike Pompeo in May 2018, is to force the Iranian leadership into accepting a set of 12 far-reaching demands that are geared to fundamentally change not only its nuclear but also regional and domestic policies.

The principle means to pursue these maximalist demands is the use of unilateral U.S. sanctions. On August 6, 2018, President Trump issued Executive Order 13846, which re-instated the so-called nuclear-related, unilateral U.S. sanctions previously lifted under the terms of the JCPOA. The impact of those measures had crippled the Iranian economy between mid-2010 and late 2013. A first wave entered into effect immediately, encompassing a limited set of prohibitions on purchases of U.S.

Only the judicial branch
can effectively curb the
extraterritorial application
of U.S. jurisdiction.

dollar banknotes by the Iranian government; the sale, supply, or transfer of various metals to or from Iran; the purchase or holding of Iranian rials or Iranian sovereign debt; as well as transactions involving the Iranian automotive sector. A second wave entered into effect on November 5, 2018, containing numerous measures collectively aimed at curtailing the Iranian government's revenue from oil exports.

Additionally, the Trump administration continued to strictly enforce the so-called non-nuclear sanctions. Until early November 2018, the departments of the Treasury and State had blacklisted 168 individuals and entities in 19 rounds for their involvement in the Iranian ballistic missile program and alleged human rights violations against the Iranian people.

Well ahead of the deadlines set by the Trump administration and absent any enforcement action, major European and Asian companies withdrew from the otherwise lucrative Iranian market. Most notably, this included the Society for Worldwide Interbank Financial Telecommunication (SWIFT) – the most widely used messaging system among international financial institutions – which cut off most of the more than 50 Iranian banks in early November 2018, including the Central Bank of Iran, after they again became subject to U.S. financial sanctions.

The withdrawal of EU-based companies from Iran-related business further decreased the

U.S. sanctions (3)

incentives for the Iranian leadership to uphold its commitments under the JCPOA, as it contributed to the worsening of economic conditions. Apart from further pushing the JCPOA to the brink of collapse, the exodus of EU-based companies has revealed an inconvenient truth to European policy-makers, namely that those companies are effectively regulated in Washington, D.C.

Europeans exposed as helpless

In response to President Trump's decision to cease U.S. participation in the JCPOA, European foreign policy-makers publicly vowed to keep the Iranian nuclear deal from falling apart. In order to protect EU-based companies from the looming threat of re-imposed unilateral U.S. sanctions, the governments of France, Germany, and the United Kingdom (E3), together with the European Union (EU), acted on four different fronts. Firstly, the European Council updated Council Regulation (EC) No 2271/96 to include many – but not all – unilateral U.S. sanctions against Iran. This so-called blocking statute prohibits EU-based individuals and companies from complying with six statutes and one set of regulations listed in the annex, while providing a clawback provision to recover incurred damages in European courts. Secondly, the European Council and the European Parliament updated the External Lending Mandate of the European Investment Bank to facilitate loans for private investment in Iran. Thirdly, the European Commission unveiled a set of confidence-building measures, including a €50 million support package for economic cooperation with – and assistance for – the Iranian private sector. Fourthly, the High Representative of the European Union for Foreign Affairs and Security Policy, working jointly with the British, French and German governments, set up a payment mechanism independent from the U.S. dollar. The Instrument in Support of Trade Exchanges (INSTEX) – registered in France and overseen by three high-ranking bureaucrats from

the E3 – is designed to enable the bartering of Iranian commodities, and potentially those from other suppliers, in exchange for European goods, technology, and services without an underlying financial transaction. The Russian and Chinese governments have previously engaged in similar steps. For example, the China International Payment System has allowed cross-border and offshore financial transactions denominated in renminbi since October 2015.

However, these steps have fallen short of achieving their intended purpose of protecting EU-based companies from the re-imposed unilateral U.S. sanctions. To start with, Council Regulation (EC) No 2271/96 had previously been ineffective because its comparatively small fines did not outweigh the much greater damage resulting from disobeying unilateral U.S. sanctions. Moreover, the so-called blocking statute was undercut by mixed signals that were mainly sent from the German chancellor, Angela Merkel, who had raised doubts about its effective implementation on the national level. In fact, the language of the statute is am-

These steps have fallen short of achieving their intended purpose of protecting EU companies.

biguous while also enabling EU-based companies to make their own business decisions to abstain from certain transactions. Those may incidentally happen to be targeted by certain unilateral U.S. sanctions. In any case, favorable judgments secured in European courts would be largely unenforceable in the United States.

Whereas the technical implementation is relatively straightforward, the INSTEX seems hardly connectable to private businesses, the majority of which would remain highly reluctant to engage in potentially illegal – or, at least, sanctionable – activity under U.S. law. This substantial risk extends to small and medium-sized companies willing to continue trade with Iran and without – or very little – exposure to the U.S. market, given that their respective business partners might stop dealing with them. Due to these difficulties of connecting such a special purpose vehicle to

U.S. sanctions (4)

the broader European economy, it may not even be suitable to facilitate trade in agricultural commodities, medicine, and medical goods that is still legal under U.S. law.

Therefore, the currently available policy options at the disposal of European foreign policy-makers fall short of effectively changing the risk calculus of EU-based companies threatened by the extraterritorial reach of U.S. law. As a consequence, the EU/E3 seem unable to safeguard the JCPOA – one of their major foreign policy achievements – from being actively sabotaged by the Trump administration. Whereas previous administrations have backed down out of a concern for not wanting to alienate their European allies, the Trump administration shows no intention of resolving the trans-Atlantic conflict of laws in a similar fashion. This uncompromising stance could intensify, as the administration may soon be mandated by Congress to significantly increase its enforcement of unilateral U.S. sanctions against Russia or China, with potentially devastating effects for European – and particularly German – economic and security interests. As a matter of fact, any potential decrease in European exposure to U.S. goods, technology, and (financial) services will offer little protection against extraterritorial U.S. sanctions, which increasingly target persons, property, and acts without any nexus to U.S. jurisdiction whatsoever.

Statutory sources

The most important statutory sources prescribing unilateral U.S. sanctions in the realm of foreign policy and national security are the Trading with the Enemy Act of 1917 (TWEA) during wartime, and the International Emergency Economic Powers Act of 1977 (IEEPA) during peacetime. Upon a prior declaration of the existence of a national emergency under the National Emergencies Act of 1976, the president can invoke the broad powers delegated by Congress under the IEEPA in order to prohibit almost any unlicensed import into, as well as any unlicensed export of goods, technology, and (financial) services from the United States, including re-exports from third countries. Most notably, the IEEPA allows the president to block property, as well as any interest therein,

under the jurisdiction of the United States.

Besides the TWEA and the IEEPA, further statutes prescribe unilateral U.S. sanctions. Most importantly, those include the Atomic Energy Act of 1954 (AEA), the Arms Export Control Act of 1976 (AECA), and the Export Controls Act of 2018 (ECA), which provide the president with the authority to prohibit almost any unlicensed export of nuclear equipment and materials (AEA), military items and software (AECA), as well as dual-use goods, technology, and services (ECA), including re-exports from third countries.

All of the aforementioned statutes contain so-called primary sanctions, as they only target persons, property, and acts that are “subject to the jurisdiction of the United States.” Although the concrete reach of any of those laws may vary – depending on the specific legal language employed – some similarities do exist. The term “U.S. person” usually encompasses individuals physically present within the United States, as well as U.S. citizens and nationals anywhere in the world. The term “entity” typically includes both non-profit organizations as well as companies organized under U.S. laws, including their foreign branches. And the term “property” commonly applies to any goods, technology, and (financial) services that are exported from the United States or re-exported from third countries.

Since the early 1990s, bipartisan majorities in Congress have begun to enact statutes prescribing so-called secondary sanctions. Despite continuous opposition from the executive branch, a steadily growing number of laws target non-U.S. persons engaged in specific conduct such as investing in specific sectors of the Iranian and Russian economies or transacting with persons blacklisted by the U.S. administration. Technically, there can be no violation of secondary sanctions because the triggering activities are not prohibited under U.S. law but sanctionable. In any case, the president enjoys considerable flexibility in implementing secondary sanctions, as doing so requires a prior determination of non-compliance by non-U.S. persons. Consequently, U.S. persons are prohibited from engaging in certain transactions, which may result in a partial or comprehensive cut-off from

U.S. sanctions (5)

The secretary of the Treasury can impose the 'Wall Street equivalent of the death penalty' on a foreign bank.

the \$14 trillion U.S. economy. For example, the secretary of the Treasury can order U.S. banks to close or impose strict conditions on the opening or maintaining of correspondent or payable-through accounts on behalf of a foreign bank, thereby closing down access to dollarized transactions – the “Wall Street equivalent of the death penalty.” Furthermore, Congress authorized the Department of the Treasury in 2012 to block property under U.S. jurisdiction of those non-U.S. persons transacting with certain blacklisted Iranian persons.

Extraterritorial enforcement

Unilateral U.S. sanctions are enforced extraterritorially by various executive agencies. Those include, but are not limited to, the Nuclear Regulatory Commission within the Department of Energy, which administers regulations promulgated under the AEA; the Bureau of Industry and Security within the Department of Commerce, which administers regulations promulgated under the ECA; and the Directorate of Defense Trade Controls within the Department of State, which administers regulations promulgated under the AECA.

The Office of Foreign Assets Control (OFAC) within the Department of the Treasury promulgates regulations under the IEEPA as well as a small number of other statutes. The OFAC also maintains the notorious Specially Designated Nationals (SDN) and Blocked Persons List, currently composed of more than 13,000 individuals and entities. A listing results in the blocking of

property, and any interest therein, that is owned or controlled by any one of the entries and falls under U.S. jurisdiction. Moreover, U.S. persons are generally prohibited from transacting with so-called SDNs.

All SDNs were designated under at least one of the more than 30 country-based or issue-specific programs targeting both state and non-state actors. Most of these programs have been initiated by executive orders pursuant to the IEEPA, although some were directly enacted through statutes passed by Congress. The respective reasons for being added to the SDN List can either be status- or conduct-based. The latter includes a variety of alleged actions incriminated under various statutes, such as material support for international terrorism; proliferation of weapons of mass destructions and their means of delivery; human rights abuses; as well as transnational crimes such as narcotics trafficking and malicious cyber-enabled activity.

The regulations promulgated by the OFAC under the IEEPA commonly lack any applicable threshold for establishing liability. Consequently, any export of goods, services, or technology from the United States that has not previously been authorized either through a specific or general license is strictly prohibited, regardless of the quantity. But compared to its wartime predecessors, the OFAC has generally shown forbearance in defining the reach of its enforcement jurisdiction. Hence, most regulations solely apply to U.S. persons, except for the Cuban Assets Control Regulations and the Iran Transaction and Sanctions Regulations, which apply to “any person subject to the jurisdiction of the United States.” This seemingly small difference carries profound legal implications because it effectively extends U.S. jurisdiction over the large number of independently operating foreign subsidiaries of U.S. parent companies.

In order to enforce the IEEPA, the OFAC can impose civil monetary fines of up to \$295,141 per violation, or twice the amount of the incriminated transaction. The exact amount is calculated by weighing various factors laid out in the Economic Sanctions Enforcement Guidelines. This administrative process offers little transparency and is not subject to judicial review under the Ad-

U.S. sanctions (6)

ministrative Procedure Act of 1946. In December 2007, Congress established liability for anyone who causes a U.S. person to violate the IEEPA. This led the OFAC to slap huge civil fines on major foreign banks facilitating financial transactions cleared in dollars on behalf of persons blacklisted by the U.S. administration.

Furthermore, the OFAC can directly monitor compliance with its regulations by delisted non-U.S. persons. Such a case recently involved an agreement between the OFAC and three companies previously controlled and majority-owned by an SDN, the Russian billionaire Oleg Deripaska. In the future, the OFAC may become more and more adept in targeting prominent individuals who may be important shareholders of major companies without disrupting global value chains.

Finally, the OFAC can refer violations of the IEEPA to the Department of Justice for criminal prosecution. This guarantees more due process protections under the U.S. Constitution. However, a conviction might result in huge monetary penalties as well as imprisonment of up to 30 years. The extraterritorial enforcement is supported by extradition treaties to detain individuals sought by the U.S. Department of Justice in third countries. Recent prominent cases involve the arrest of the Chief Financial Officer of the Chinese telecommunication company Huawei, Meng Wanzhou, who was detained by Canadian authorities in early December based on a warrant issued by the U.S. Attorney in the Eastern District of New York. Another high-profile case revolved around Reza Zarrab, who was arrested during a family trip to Miami, FL, in March 2016. He was charged with six counts – among them conspiracy to evade unilateral U.S. sanctions against Iran – that would have carried a sentence of up to 70 years in prison. By pleading guilty and agreeing to act as a witness against another defendant in the same case, Zarrab eventually reduced his pending sentence.

No limits under international law

The extraterritorial prescription of U.S. law and its extraterritorial enforcement by means of unilateral sanctions occupies a gray area in public international law, which governs interactions between sovereign nation-states either through formal treaties or widely accepted customs.

With regard to conventional international law, the U.S. government enjoys wide latitude to curtail trade and financial transactions. In its numerous bilateral treaties of friendship, commerce, and navigation concluded with other nations, the U.S.

OFAC can refer violations to criminal prosecution, and a conviction may result in huge monetary penalties.

government faces no limits on its use of unilateral sanctions due to foreign policy and national security exceptions. This lack of legal barriers to the extraterritorial reach of U.S. law also holds true for multilateral treaties, which commonly contain broad exceptions for matters of national security. Those include Article VIII Section 2(b) of the Articles of Agreement of the International Monetary Fund and Article XXI of the World Trade Organization. Contrary to the vocal critics of unilateral U.S. sanctions, there exists no right to economic exchange, according to the landmark ruling *Nicaragua v. United States* by the International

Court of Justice dating from June 1986. Up until today, the application of economic power in international relations has so far largely defied attempts at legalization.

With respect to customary international law, the U.S. government is generally permitted to assert prescriptive and enforcement jurisdiction extraterritorially on the basis of the following five principles. Firstly, the objective territoriality principle allows the U.S. government to address direct and substantial effects resulting from acts committed beyond U.S. borders. Also known as the “effects doctrine,” this principle originated from the century-old subjective territoriality principle, which establishes jurisdiction over persons, property, and acts located or conducted within U.S. territory. Secondly, the active nationality principle

U.S. sanctions (7)

permits the U.S. government to regulate its own citizens and nationals anywhere in the world. Thirdly, the passive nationality principle enables the U.S. government to prosecute harm or injuries done to its citizens or nationals abroad. Fourthly, the protective principle may establish jurisdiction to counter threats to U.S. national security. Finally, the universality principle can be advanced to bring to justice the perpetrators of crimes against humanity.

The application of these principles to concrete situations is open to interpretation. Beyond the protective principle, the U.S. administration has extensively stretched two particular principles in order to justify the long reach of its jurisdiction to enforce U.S. law abroad in recent years. Firstly, the OFAC commonly has relied on the active nationality principle in order to claim enforcement jurisdiction over foreign companies that are owned or controlled by a U.S. person more than 50 percent (or, in some instances, even less). This so-called control theory has remained controversial ever since it was initially adopted by the Theodore S. Roosevelt administration in late 1942 in the fight against the Axis powers. Later on, this expansive interpretation of U.S. jurisdiction had been repudiated in the landmark decision *Barcelona Traction*, handed down in February 1970 by the International Court of Justice, which ruled that the place of incorporation would determine the nationality of a company, and not the nationality of its owners or shareholders. This line of reasoning was strongly reaffirmed by the Commission of the European Communities in an aide-mémoire sent to the Department of State in August 1982. The démarche was part of the European response to a prior extension of U.S. export controls to subsidiaries of U.S. parent companies incorporated in Europe, and that had been involved in the construction of a gas pipeline between West Germany and the Soviet Union.

Furthermore, the U.S. government regularly stretches the nationality principle by attaching its enforcement jurisdiction not only to goods, technology, and (financial) services after they are exported, but also to any goods, technology, and (financial) services located beyond U.S. borders that contain more than 10 percent of U.S.-origin

components. Most importantly, the clearing of dollars between two foreign banks – a ubiquitous practice at the heart of the global economy – is construed by the U.S. administration and some federal courts as constituting an export of services from the United States. This is because it involves a correspondent account held at a U.S. bank.

Secondly, the OFAC and other agencies have stretched the objective territoriality principle, shifting the focus away from the location in which a regulated act occurs to where its effects materialize. Initially recognized by the Permanent Court of International Justice in its landmark *Lotus* case dating from September 1927, it found its way into U.S. jurisprudence through the decision *United States v. Alcoa* by the Court of Appeals for the Second Circuit (148 F.2d 416) in March 1945. In contrast to established practice in the realm of U.S. anti-trust statutes, the extraterritorial enforcement of the IEEPA generally lacks any objective criteria as to when certain effects materializing within the United States may be deemed as “direct” and “substantial.” Therefore, interpretations of the objective territoriality principle with respect to U.S. foreign policy and national security policy remain highly subjective.

By simultaneously stretching the nationality and objective territoriality principle and undermining the subjective territoriality principle, the U.S. government further contributes to sidelining the century-old principle of comity, which counsels restraint in the case of concurrent jurisdiction by more than one state. Without comity, however, President Trump’s favored reassertion of the nation-state within the international order is bound to perpetuate legal conflicts.

Curbs through domestic courts

Contrary to Article 25 of the German Grundgesetz, which incorporates international law into domestic law, the U.S. Constitution spells out no limits for Congress to extend its laws extraterritorially. But most U.S. statutes and their implementing regulations remain silent on their geographical scope, including the IEEPA. The precise reach of U.S. statutes beyond borders must consequently be discerned by the judiciary. ▶

U.S. sanctions (8)

Indeed, many federal district courts have supported the U.S. administration's expansive interpretation of its enforcement jurisdiction while not even considering possible limits to the extraterritorial reach of the IEEPA. Thus, the district courts did not engage in weighing the respective interests of the United States and those of the other nations involved in each respective case. Most foreign defendants charged with violating U.S. law abroad have generally preferred to forego criminal proceedings in exchange for entering into Deferred Prosecution Agreements, in which they submit to civil enforcement by the U.S. administration. Up until now, the extraterritorial application of the IEEPA has rarely been litigated in U.S. courts.

Despite this reluctance, which is understandable given the high reputational and business risks involved, the prospects for successfully challenging the U.S. administration's expansive interpretation of its enforcement jurisdiction in domestic courts may have grown recently. This is due to a strengthening of a set of rules developed by the Supreme Court to interpret the reach of extraterritorial U.S. jurisdiction, which is binding for the lower courts. Known as the "presumption against extraterritoriality," it holds that U.S. law would primarily apply domestically unless Congress has explicitly determined otherwise. This set of rules complements an earlier set of rules known as the "Charming Betsy" presumption, which dates back to the early 19th century. Accordingly, the intent of Congress could only be interpreted to violate international law if no other construction is possible.

Taken together, these two so-called canons of statutory construction could provide leverage for defendants charged with having violated U.S. law abroad, arguing that U.S. jurisdiction may not be applied to them or their conduct. Additional leverage may soon be provided, given the unobstructed nominations of conservative judges to the federal bench by a solid Republican majority in the U.S. Senate. Most of the candidates nominated by

The
extraterritorial
application of
the IEEPA has
rarely been
litigated in
U.S. courts.

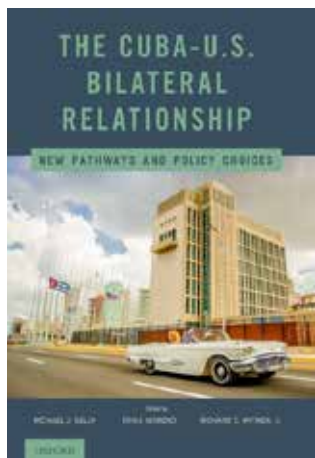
President Trump share a particular judicial philosophy that espouses a textual reading of the U.S. Constitution and is deeply skeptical about the growth of executive power and the expansion of the administrative state during the last 60 years. A sign in this direction: The Supreme Court has recently agreed to hear a case that might revoke – or at least circumscribe – the so-called Auer deference. This precedent was initially set in the decision *Auer v. Robbins* dating from 1997, which has allowed executive agencies to

interpret ambiguous regulations on their own ever since. A conservative majority on the Supreme Court may even go a step further and reconsider the precedent set in *Chevron U.S.A. v. Natural Resources Defense Council*. The 1984 decision has allowed executive agencies to interpret the meaning of statutes that authorize their actions.

As a complement to the rather helpless efforts at increasing their strategic autonomy vis-à-vis the U.S. government, European foreign policy-makers could better utilize existing channels of influence by relying upon the U.S. judiciary within the constitutional system of check and balances. In practice, this means systematically encouraging and eventually assisting EU-based companies in domestic courts to challenge the U.S. administration's extraterritorial enforcement of the IEEPA, and potentially also other statutes. Such a course of action would require close cooperation between the European Commission, individual member states, and the private sector on both sides of the Atlantic. But absent a diplomatic agreement with the U.S. administration or significant pushback from Congress, it may provide the only remedy to effectively protect European sovereignty through the normative power of the rule of law. ■

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Bookshelf



Michael J. Kelly, Erika Moreno, Richard C. Witmer (eds.)

The Cuba-U.S. Bilateral Relationship. New Pathways and Policy Choices

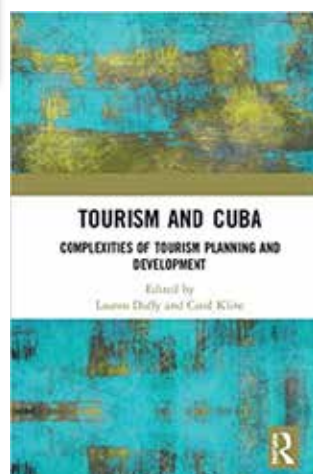
Oxford University Press
New York/Cary
Hardcover, 392 pages
\$85

→ Two years into the Trump administration, there are several pathways for the neighbors to either drift further apart, continue the rapprochement, or extend the status quo. Drawing insight from the U.S. political, economic, and legal experts, this book examines possible pathways. Key among the issues that demand attention are unresolved property claims, establishing regularized bilateral economic relationships, as well as addressing legal and political constraints in both Cuba and the United States. With a foreword by the first U.S. ambassador in Havana since 1959.

Lauren Duffy, Carol Kline (eds.)

Tourism and Cuba. Complexities of Tourism Development and Planning

Routledge
London
Hardcover, 170 pages
\$65



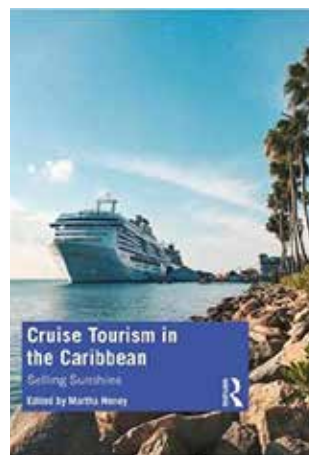
→ The U.S. authors examine how Cuba has restructured some of its core economic policies in order to tackle stagnation, such as allowing more private enterprises, reducing the number of state workers, and fostering foreign investments. The essays explore the surge of entrepreneurial activity in tourism among Cuban residents, tourism and land-use policy, competitiveness, responsible practices, gender and ethical advertising, the role of tour guides, emergence of casas particulares, experiential learning and solidarity, and authenticity through local art.

Martha Honey (ed.)

Cruise Tourism in the Caribbean. Selling Sunshine

Routledge
London
Paperback, 180 pages
\$31

→ In 2016, following the historic Obama-Castro agreement, Cuba quickly became the Caribbean's fastest growing cruise destination. This book considers the limited economic benefits of cruise tourism, its environmental and social impacts, and the effects of climate change, and "overtourism." Based on this analysis and case studies of key Caribbean and Mediterranean destinations, this book cautions against overdependence on cruise tourism and outlines reforms needed to bring more benefits and equity to Caribbean countries.



CALENDAR OF EVENTS

Sept. 11-13

The Demand for Food in Cuba: Current Patterns and Future Trends

— U.S.-Cuba Agriculture Business Conference to understand demand for food in Cuba and to learn how FMD/MAP funds can be most effectively used in Cuba. Hotel Nacional, Havana. www.usagcoalition.com, usagcoalitionforcuba@gmail.com

Sept. 25-27

FELTI 2019: Forum of Entrepreneurs and Leaders in Information Technology

— Hosted by state holding GEIC, this event mixes up entrepreneurs with scientists, technicians and government officials from Latin America. Hotel Meliá Habana, Havana. www.felti.org

Sept. 30-Oct. 5

1st Int'l Conference on Biotechnological Product Manufacturing

— Hosted by the Center for Genetic Engineering and Biotechnology (CIGB) and co-chaired by Cuban and U.S. scientists, the event focuses on development, manufacturing, and regulatory issues. Marina Varadero Resort, Varadero. <http://biomanufacturing.solwayscuba.com>

Oct. 14-17

23rd MITM Americas — Annual meetings and incentive travel conference with strong networking elements and tours to new hotels in Varadero, Cayo Guillermo and Cayo Ensenacho. Hotel Nacional, Havana. <https://www.mitmevents.com/23-mitm-americas-en.html>

Oct. 23-26

Cuba Golf Grand Tournament

— Annual international amateur golf competition at the historical Varadero

If your organization is sponsoring an upcoming event, please let our readers know!

Send details to **Cuba Standard Monthly** at johanneswerner@cubastandard.com

Golf Club. Two categories each for male and female competitors. www.torneo-cubagolf.com

Nov. 4-Nov. 8

FIHAV 2019 — The International Havana Fair is Cuba's biggest annual event promoting trade and investment in and with the island. ExpoCuba, Havana. <http://www.feriahavana.com/es/>

Oct. 29-Nov. 2

6th Congress of Tropical Animal Production — With a focus on agriculture and animal production, the conference also offers a round of negotiations for farmers, companies and research institutions. Palacio de Convenciones, Havana. membresia@camara.com.cu, Dr. C. Raúl Cobo Cuña, rcobo@ica.co.cu

Nov. 20-22

CubaConf — Second edition of a Cuban conference about free software and open technologies. University of Havana. <https://www.cubaconf.org>

Nov. 26-29

Cuba Energy Oil & Gas — Focusing on opportunities in oil and gas in Cuba; sponsored by CubaPetróleo and Unión Eléctrica. Meliá Cohiba, Havana. <http://cuba-energy.com>

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