

Letter from the Editors

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“Brother, don’t let anybody tell you there isn’t plenty of water between Havana and Key West”. (To Have and Have Not, Ernest Hemingway, 1934)

United States Public Law 104-114 enacted March 12th, 1996, the Cuban Liberty and Democratic Solidarity Act of 1996 (Libertad Act), commonly cited as the Helms-Burton Act, intensifies the 36 year old U.S. economic embargo of Cuba by extending its reach to foreign companies, individuals and governments who “traffic” in property expropriated from U.S. nationals, and links the lifting of the embargo to the establishment of a “transition government” in Cuba.

Sec. 205 of the Libertad Act, *Requirements and Factors for Determining a Transition Government*, spells out the required characteristics and actions of a “transition government”. A notable and problematic criterion that must be satisfied by the “transition government” is its exclusion of both Fidel Castro and Raúl Castro. Thus it will not be sufficient for Castro’s government to move towards a more open less repressive regime, President Fidel Castro and his brother First Vice President Raúl Castro must abdicate their political and military positions before the embargo can be lifted.

“The basic problem is one: Capitalism and Social development have been, are, and will be eternally irreconcilable”. (Speech by President Fidel Castro closing the “Cuba Lives” festival August 7th, 1995)

“And those who doubt what we are doing, the things we want to do, and the way in which we are doing it, without attempting to be wise, let them know for sure that we will remain socialists and communist. (Fidel Castro, May 1st, 1996, Closing the 17th Cuban Workers Federation.)

Although unwilling to publically admit, that communist and socialist economic systems ultimately crush the individual and thus are inconsistent with economic development and progress, Castro has

recognized that the Cuban economy must adopt certain elements of a free market if it is to recover from the economic disaster caused by the collapse of the Soviet Union and avoid civil disorder.

“As a result of the reduction in financial aid and trade from the former Soviet Union and communist block countries, the Cuban government has encouraged the investment of foreign capital and has granted foreigners the right to own as much as 100 percent of Cuban companies. Long term leases on land lasting 50 years are also obtainable. Although Cuba is the object of a trade embargo by the United States government, companies from 217 different countries currently operate there”. (Republic Goldfields, Inc. Annual Report, 1993)

The Libertad Act compounds Cuba’s already high cost of capital resulting from the U.S. embargo by increasing the uncertainty investors have with regard to concessions or joint ventures, which may involve U.S. property confiscated by the Cuban Government, and by constraining the ability of Castro to negotiate an end to the embargo with current or future U.S. administrations.

Investors who consider entering into commercial arrangements and credit agreements with the Castro government must weigh the relatively low cost of entry into the Cuban market against the legal and financial actions U.S. nationals and the U.S. government can take against entities that trade with and provide commercial assistance to Cuba.

Under Section 104 of the Libertad Act, the Secretary of the Treasury can offset the value of assistance or credit extended to Cuba by the International Monetary Fund, the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guaranty Agency, and the Inter-American Development Bank against the U.S. government’s participation in capital stock in these institutions. Under Title I, section 111 of the Libertad

Act the President can offset assistance to any country which provides assistance or credits that support the completion of the Cuban nuclear facility at Juragua, near Cienfuegos, Cuba.

Under Title III, Section 302, of the Libertad Act which at the President's discretion has not yet been executed, foreign companies, individuals, and governments who traffic in property confiscated by the Cuban government after 1959 to which U.S. nationals have a valid claim, will be liable up to amounts equal to the greater of three times the value of the claim, as determined by the Foreign Claims Settlement Commission plus interest or either the current market value of the property plus interest or the value of the property at the time it was confiscated plus interest, which ever is greater .

The foreign Claims Settlement Commission has certified 5,911 expropriation claims against the Castro regime for a total of \$5.6 billion including interest. In a periodic report required by the Libertad Act, the U.S. Department of State estimates that in addition to the claims certified by the FSCS, there may be between 75,000 and 200,000 claims on property confiscated by the Castro regime held by U.S. Nationals who were Cuban citizens at the time of the confiscation. The Department of State estimates the value of these additional claims on Castro's government to be in the "tens of billions of dollars". (Settlement of Outstanding United States Claims to Confiscated Property in Cuba September 27, 1996 by the Department of State to the Chairman of the Foreign Relations Committee, U.S. Senate, the Honorable Jesse Helms).

Prior to the Cuban revolution in 1959, the Cuban telephone system was owned by the U.S. corporation International Telephone and Telegraph (ITT). The telephone system was nationalized in 1961 by Castro's government. The value of ITT's claim with the FCSC is \$130.7 million net of interest. At 6% simple interest the value of the claim would be approximately \$410 million. STET International, Italy's state owned telecommunications company currently has a 29.9% stake in the Cuban telecom company ETESCA. STET International, recently paid ITT \$25 million to avoid possible liability under Title III of the Libertad Act. Payment of 6% on the value of ITT's claims against the Cuban government removes the risk of ITT suing STET under the Libertad Act for 10 years. STET has essentially purchased the right to traffic in ITT's property for 10 years. It appears that this type of transaction does not violate the embargo and may offer firms with certified claims the possibility of issuing securities which give investors the right to "traffic" in the underlying confiscated property for a limited time.

West Indies Sugar Co. in liquidation since 1960 has the

sixth largest claim under the FCSC Cuba Program, totaling \$273 million including interest. Prior to nationalization the company's extensive properties in Cuba were composed of four sugar mills, 246,000 acres of land and significant transportation infrastructure and equipment.

According to the most recent 10-K filing made by West Indies Sugar, its "sole remaining business activity is the pursuit of its claim against the People's Republic of Cuba for the expropriation of the Company's Cuban properties without compensation". In the 10-K, implicit reference is made to the deal between STET and ITT and the company indicates that it would be interested in exploring "a possible settlement of its claim with any interested parties, including without limitation foreign nationals seeking to make Cuban investments or Cuban government entities, which it deems to have reasonable prospects of realizing value for the Company's stockholders". One unintended result of the Libertad Act that may actually benefit the Castro government is that U.S. claims against the Castro government have become negotiable instruments. U.S. nationals can participate in Cuba's possible emergence from the dark ages of communism by selling liability insurance to firms interested in trafficking in their confiscated property.

Concessions to build infrastructure projects may offer exceptional value if one truly believes that the transition to a post Castro government will be peaceful and is likely to occur within a time frame that is reasonable from a commercial perspective.

Investments in infrastructure concessions and industrial project can be analyzed as real options, that is options on value generated by physical plant and equipment as opposed to options on financial instruments. Should investors believe that the Libertad Act destabilizes the political situation in Cuba and increases the likelihood that a transition government assumes power in Cuba, real option values may increase. Castro who is first and foremost a guerrilla fighter may retreat and realign his fight against the U.S. under the camouflage of the international opposition to Title III of the Libertad Act. Castro may be able to raise just enough foreign exchange to sustain his regime and keep democracy and capitalism at bay until the fiftieth anniversary of Castro's Cuban revolution in 2009.

"As the sun set he remembered, to give himself more confidence, the time in the tavern at Casablanca when he had played the hand game with the great negro from Cienfuegos who was the strongest man on the docks. They had gone one day and one night with their elbows on a chalk line on the table and their hands gripped tight.

The odds would change back and forth all night

and they fed the negro rum and lighted cigarettes for him. Then the negro, after the rum, would try for a tremendous effort and once he had the old man, who was not an old man then but was *Santiago El Campeón*, nearly three inches off balance. But the old man had raised his hand up to dead even again. He was sure then that he had the negro, who was a fine man and a great athlete, beaten. And at daylight when the bettors were asking that it be called a draw and the referee was shaking his head, he had unleashed his effort and forced the hand of the negro down and down until it rested on the wood. The match had started on a Sunday morning and ended on a Monday morning. Many of the bettors had asked for a draw because they had to go to work on the docks loading

sacks of sugar or at the Havana Coal Company". (The Old Man and the Sea, Ernest Hemingway, 1952, published by Charles Scribner's Sons)

It is our obligation and our pleasure to refer the reader to the outstanding internet site of the University of Texas-Latin American Network Information Center (LANIC), <http://www.lanic.utexas.edu/>. One of the many resources the site contains is the "Castro Speech Data Base" which is searchable by key word and title across the four decades of Castro's revolution.

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