**Developments in US-Cuban Relations:**

**Are There Opportunities for Barbados?**

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# the start[[1]](#footnote-1)

On December 17, 2014, the United States and Cuba exchanged prisoners and agreed to move to normalize relations, demonstrating how international enforcement cooperation remains in the forefront of the thaw in relations.

* 1. *Release of Alan Gross*

Cuba released U.S. citizen, Alan P. Gross, on “humanitarian grounds” and he traveled on an American government plane to the U.S.[[2]](#footnote-2)

In 2009, Mr. Gross visited Cuba to deliver satellite telephone equipment that could mask connections to the Internet, when he was arrested. Initially, Cuban authorities claimed Gross was a spy. A Cuban court convicted him of importing the equipment without a permit as part of a subversive scheme to “destroy the revolution.”[[3]](#footnote-3) He was also convicted of “crimes against the state,” for which he was sentenced to 15 years and incarcerated at a military hospital.[[4]](#footnote-4)

Mr. Gross was employed by Development Alternatives of Bethesda, Maryland. He had traveled to more than 50 countries as an international development worker. Development Alternatives had a $6 million contract with the U.S. Agency for International Development to distribute equipment which could circumvent Cuba’s Internet blockade.[[5]](#footnote-5)

Gross was sent to Cuba to secretly distribute Internet equipment to Jewish community groups, part of a congressionally required program to encourage Cuban democracy.[[6]](#footnote-6) In 2009 and prior to his arrest, he had made four other trips to Cuba.

Although Gross was a contractor for the U.S. Agency for International Development, the project was illegal in Cuba. His activities were at least semi-covert and he took efforts to conceal them. He was furnishing a “Telco-in-a-bag” card, which was a “discreet” subscriber identification module (SIM). In a September 2009 document, Gross said the card would “impede the ability [of Cuban government technicians] to track or detect” his equipment by “masking the signal so that it’s GPS location cannot be pinpointed to within 400km (about 250 miles).” [[7]](#footnote-7)

As Mr. Gross’s health deteriorated, his case gained increasing prominence. Gross became despondent and hinted of suicide. His wife Judy Gross and other supporters pleaded for his release.

When Cuba raised the case of three of its spies serving federal prison time in Florida and the fact that they had been unjustly convicted, U.S. officials responded that the cases were not comparable and that Mr. Gross was not an intelligence agent.[[8]](#footnote-8)

* 1. *Release of Other Prisoners by Cuba*

Along with Gross, Cuba also released Rolando Sarraf Trujillo, a non-American U.S. intelligence 'asset' (a Cuban native). According to officials, the U.S. spy had been held for nearly 20 years and was responsible for some of the most important counterintelligence prosecutions that the United States has pursued in recent decades, including convicted Cuban spies Ana Belen Montes, the former Defense Intelligence Agency’s top Cuba analyst; Walter Kendall Myers, a former State Department official; and his wife Gwendolyn Myers – all part of a group known as the “Cuban Five”.[[9]](#footnote-9)

* 1. *Release of Prisoners by the U.S.*

The U.S. released three of the so-called Cuban Five, who were arrested for trying to infiltrate Cuban exile groups, including Brothers to the Rescue, the activist non-profit organization formed by Cuban exiles whose planes were shot down by the Cuban Air Force back in 1996. The three Cuban agents belonged to the Red Avispa network, or the Wasp Network, in Florida. Mr. Obama used his clemency power to commute their sentences and they were flown to Cuba. [[10]](#footnote-10)

* 1. *Reaching an Agreement*

The U.S. and Cuba negotiated the agreement during 18 months of secret talks hosted largely by Canada and encouraged by Pope Francis, who hosted a final meeting at the Vatican. In a phone call, Mr. Obama and Cuban President Raúl Castro agreed to embark on a new and positive start to relations and overlook decades of hostility.[[11]](#footnote-11) Secret talks and release of prisoners have long been a mechanism of cooperation for the two countries, starting with the use of James Donovan who negotiated, *inter alia*, the release of the Bay of Pigs prisoners.[[12]](#footnote-12)

## Obama’s Actions to Reduce Sanctions and Normalize Relations

In his remarks on the normalization of relations, President Obama said he was taking action “to cut loose the anchor of failed policies of the past, and to chart a new course in U.S. relations with Cuba that will engage and empower the Cuban people.”[[13]](#footnote-13)

President Obama announced he is taking steps to improve travel and remittance policies that will further increase people-to-people contact, support civil society in Cuba, and enhance the free flow of information to, from, and among the Cuban people.

### Facilitating Travel to Cuba

To facilitate an expansion of travel to Cuba, President Obama will make available general licenses for all authorized travelers in 12 existing categories: family visits; official business of the U.S. government, foreign governments, and certain intergovernmental organizations; journalistic activity; professional research and professional meetings; educational activities; religious activities; public performances, clinics, workshops, athletic and other competitions, and exhibitions; support for the Cuban people; humanitarian projects; activities of private foundations, research, or educational institutions; exportation, importation, or transmission of information or informational materials; and certain export transactions that may be considered for authorization under existing regulations and guidelines.

Travelers in the above mentioned 12 categories of travel to Cuba authorized by law will be able to make travel arrangements through any service provider that complies with the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC) regulations governing travel services to Cuba, and general licenses will authorize provision of such services.[[14]](#footnote-14)

President Obama will also authorize expanded sales and exports of certain goods and services from the U.S. to Cuba. The expansion will seek to empower the Cuban private sector and facilitate Cuban citizens gaining access to certain lower-priced goods to improve their living standards and gain greater economic independence from the state.

On December 18, 2014, an Administration official said U.S. citizens may only travel to Cuba for eligible purposes, but they will no longer need a U.S. government license to do so. The Treasury Department will enforce the policy by investigating suspected violations after the fact.[[15]](#footnote-15)

### Authorizing Additional Imports from Cuba by U.S. Travelers

President Obama authorized U.S. citizens to import additional goods from Cuba. Licensed U.S. travelers to Cuba are authorized to import $400 worth of goods from Cuba, of which no more than $100 can consist of tobacco products and alcohol combined.

### Facilitating Remittances to Cuba by U.S. Persons

Personal remittance levels have been raised from $500 to $2,000 per quarter for general donative remittances to Cuban nationals, except to certain officials of the Cuban government or the Community party. Moreover, donative remittances for humanitarian projects, for supporting the Cuban people or the development of private businesses in Cuba no longer need a specific license. Remittance forwarders no longer require a specific license either. The foregoing changes in remittance policy came in the form of amended regulations by OFAC and the Commerce Department’s Bureau of Industry and Security.

### Expanding Authorization to Export Certain Goods

The U.S. expanded the list of items authorized for export to include certain building materials for private residential construction, certain goods for use by private sector Cuban entrepreneurs, and agricultural equipment for small farmers. The change is intended to facilitate access by Cuban citizens to certain lower-priced goods to improve their living standards and gain greater economic independence from the state.

### Facilitating Certain Authorized Transactions between the U.S. and Cuba

To facilitate the processing of authorized transactions between the U.S. and Cuba, U.S. financial institutions are allowed to open correspondent accounts at Cuban financial institutions. Moreover, the regulatory definition of the statutory term “cash in advance” was revised to mean “cash before transfer of title” (e.g., upon arrival of goods at a Cuban port). Hence, U.S. businesses have a more efficient means of financing authorized trade with Cuba. Finally, U.S. credit and debit cards are allowed for use by travelers to Cuba.[[16]](#footnote-16)

### Increasing Cubans’ Access to Telecommunications and their Ability to Communicate Freely

Cuba has an internet penetration of only about five percent. Hence, the U.S. has allowed the commercial export of certain items that will enable the Cuban people to more readily communicate with people in the U.S. and the rest of the world. This includes the commercial sale and export of certain consumer communications devices, related software, applications, hardware and services, and items for the establishment and update of communications-related systems.

Telecommunications providers are permitted to establish the necessary mechanisms, including infrastructure, in Cuba to provide commercial telecommunications and internet services, which will improve and enhance telecommunications between the U.S. and Cuba.

### Reviewing the Designation of Cuba as a State Sponsor of Terrorism

President Obama is also initiating a review of Cuba’s designation as a state sponsor of terrorism. He has instructed Secretary of State John Kerry to immediately start such a review, and provide a report to the President within six months concerning Cuba’s support for international terrorism. Cuba was placed on the list in 1982[[17]](#footnote-17), but its government is keen on and pushing for rapid removal.

### Amending Sanctions Regulations

The changes announced by President Obama were implemented through amendments to regulations of the Departments of Treasury and Commerce on January 16, 2015. At present, OFAC primarily administers U.S. economic sanctions against Cuba pursuant to the Cuban Assets Control Regulations and other related regulations.[[18]](#footnote-18) Prior to the thaw in relations, the Cuban sanctions program required that any commercial transaction between a U.S. person involving Cuba or with a Cuban company or person anywhere in the world must be licensed by OFAC through a general or a specific license. Until now, OFAC’s policy had been to deny applications for specific licenses, except for certain travel-related requests. Hence, U.S. companies were not able to directly or indirectly export any goods or provide any services to an end-user or customer in Cuba or any Cuban company or person anywhere in the world. Additionally, U.S. companies and persons were not able to import anything of value from Cuba.[[19]](#footnote-19)

The Cuban sanctions program casts a very wide net and covers all persons, including entities as well as individuals, subject to U.S. jurisdiction. Hence, all U.S. citizens and permanent residents wherever located, all persons in the U.S., and all branches and subsidiaries of U.S. entities throughout the world, as well as all persons engaging in transactions that involve property in or otherwise subject to the jurisdiction of the U.S. are covered by such sanctions. The latter part of the jurisdiction definition covers the activities of non-U.S. persons and businesses where some part of a prohibited Cuba-related transaction, no matter how small, occurs in the U.S. In addition, the U.S. is mostly on its own in sanctioning Cuba. The largest U.S. trading partners, such as Canada and members of the EU, do not sanction Cuba, and instead have statutes penalizing companies based in those jurisdictions if they comply with any part of the U.S. sanctions program.

Criminal penalties for violating the Cuban sanctions program are severe and range up to 10 years in prison, $1 million in corporate fines, and $250,000 in individual fines. Civil penalties for violations of the sanctions program can be as high as $65,000 per violation.[[20]](#footnote-20)

The Obama administration has also updated the application of Cuba sanctions in third countries. U.S.-owned or –controlled entities in third countries will be generally licensed to provide services to, and engage in financial transactions with, Cuban individuals in third countries. Additionally, general licenses unblocked the accounts at U.S. banks of Cuban nationals who have relocated outside of Cuba; allow U.S. persons to participate in third-country professional meetings and conferences related to Cuba; and allow foreign vessels to enter the U.S. after engaging in certain humanitarian trade with Cuba, among other measures.[[21]](#footnote-21) The extraterritorial application of U.S. sanctions in third countries had led to action by third country governments to nullify the sanctions and punish U.S. persons enforcing them.[[22]](#footnote-22)

President Obama will increase actions to support improved human rights conditions and democratic reforms in Cuba. The U.S. Congress already funds democracy programming in Cuba to provide humanitarian assistance, promote human rights and fundamental freedoms, and support the free flow of information in places where it is restricted and censored.[[23]](#footnote-23)

## Enforcement Cooperation as a Driver of Normalization of US-Cuban Relations

Completely dismantling the economic sanctions against Cuba will require Congressional action as required by the Helms-Burton Act, enacted in March 1996 during the Clinton Administration. Persuading the Republican-led Congress to dismantle the law will be difficult, considering the hostile relations between the Congress and the executive branch, especially due to Obama’s recent actions to help some illegal migrants in the U.S. Already Marco Rubio, a Republican from Florida and son of Cuban immigrants who may run for president in 2016, and Senator Robert Menendez, Democrat of New Jersey and chairman of the Foreign Relations Committee, criticized the announcement of normalizing relations.[[24]](#footnote-24)

Nevertheless, with OFAC and the Department of Commerce issuing new regulations, U.S. export controls on Cuba will become more consistent with those of its largest trading partners, such as Canada and the EU members, facilitating greater commerce and investment in Cuba by multinational companies. Further easing of sanctions and normalization of economic relations may perhaps be driven by international enforcement cooperation.

One enforcement issue going forward will be efforts by both countries to more effectively extradite fugitives from the other country. The number of American fugitives in Cuba is estimated at 70.[[25]](#footnote-25) JoAnne Chesimard, also known by her chosen name, Assata Shakur, symbolizes Cuba’s granting sanctuary to American political dissidents. Shakur was a member of the Black Panther Party before joining the Black Liberation Army (BLA). In 1993, two state troopers stopped Shakur and two other BLA members on the New Jersey Turnpike for a faulty taillight. According to the FBI, Shakur and one of her associates opened fire, and a fire fight ensued. Trooper Werner Foerster and one of the BLA members were killed. The other trooper and Shakur were wounded.[[26]](#footnote-26)

New Jersey Attorney General John J. Hoffman said his office would work with federal authorities to try to return Shakur from Cuba. Bernadette Meegan, Spokeswoman for the National Security Council, said the U.S. will continue to press for the return of U.S. fugitives in Cuba.[[27]](#footnote-27) In a letter to President Obama, New Jersey Governor Chris Christie demanded the immediate return of Shakur “before any further consideration of restoration of diplomat relations with the Castro government.”[[28]](#footnote-28)

U.S. law already requires the President to “instruct all United States Government officials who engage in official contacts with the Cuban Government to raise on a regular basis the extradition of or rendering to the United States all persons residing in Cuba who are sought by the United States Department of Justice for crimes committed in the United States.”[[29]](#footnote-29)

The use of third countries (i.e., Canada) has been a longstanding mechanism to help normalize relations. In the past, to maintain plausible deniability, U.S. presidents have used third countries, among them Mexico, Spain, Britain, and Brazil, as hosts and facilitators. To limit the political risk of direct contact, both countries have developed creative clandestine methods of communications, using famous literary figures, journalists, politicians, businessmen, and even a former president of the U.S. as interlocutors.[[30]](#footnote-30)

The U.S.-Cuban initiative to normalize relations will help U.S. efforts to lead regional enforcement and other issues. As the White House has stated, the U.S. stance against Cuba alienated the U.S. from regional and international partners. [[31]](#footnote-31) In April 2015 when Obama and Castro both attend the Summit of the Americas, the pressure in most bilateral relations will no longer focus on trying to force the U.S. to change its isolation of Cuba.[[32]](#footnote-32) The new policy will also weaken the position of anti-U.S. countries, such as Bolivia, Ecuador, and Venezuela.[[33]](#footnote-33) The Obama Administration hopes that in the future U.S. support for Cuba’s civil society and dissidents will become more effective, partly because other governments in the Western Hemisphere will no longer be able to treat Cuba as a victim of the U.S. government’s sanctions.[[34]](#footnote-34)

# U.s. issues regulations liberalizing relations with cuba

On January 16, 2015, OFAC and BIS respectively issued final regulations amending the Cuban Assets Control Regulations (CACR)[[35]](#footnote-35) and the Export Administration Regulations (EAR),[[36]](#footnote-36) liberalizing economic relations with Cuba. OFAC also issued Frequently Asked Questions Related to Cuba.[[37]](#footnote-37)

## OFAC Regulations

### Travel to Cuba for Authorized Purposes

Sections 515.533, 515.545, 515.560 through 515.567 and 515.574 through 515.576 of CACR are amended to authorize travel-related transactions and other transactions incident to activities within the 12 existing travel categories under OFAC’s regulations without the need for case-by-case specific licensing, while continuing to not authorize travel for purely tourist purposes, which U.S. law forbids. The 12 categories of authorized travel include the following activities: family visits; official business of the U.S. government, foreign governments, and certain intergovernmental organizations; journalistic activity; professional research and professional meetings; educational activities; religious activities; public performances, clinics, workshops, athletic and other competitions, and exhibitions; support for the Cuban people; humanitarian projects; activities of private foundations or research or educational institutes; exportation; importation, or transmission of information or informational materials; and certain authorized export transactions. The authorizations contain certain restrictions appropriate to each category of activities.

Under Section 515.564 the general license authorizes, *inter alia* and subject to certain conditions, professional meetings or conferences in Cuba relating to a traveler’s profession, professional background, or area of expertise, provided that the purpose of the meeting or conference is not the promotion of tourism in Cuba. The traveler’s schedule of activities must not include free time or recreation in excess of that consistent with a full-time schedule.

Under Section 515.565 the “educational activities” authorized include travel-related transactions and other transactions that are directly incident to certain educational activities in Cuba. This general license authorizes faculty, staff, and students at U.S. academic institutions and secondary schools to engage in certain educational activities in Cuba, Cuban scholars to engage in certain educational activities in the U.S., certain activities to facilitate licensed educational programs, and certain people-to-people exchanges.

According to Section 515.565(a)(6), educational exchanges sponsored by Cuban or U.S. secondary schools involving secondary school students’ participation in a formal course of study or in a structured educational program offered by a secondary school or other academic institution, and led by a teacher or other secondary school official are authorized under this general license.[[38]](#footnote-38)

Section 515.565(h) authorizes persons subject to U.S. jurisdiction to engage in certain educational exchanges in Cuba under the auspices of an organization that is a person subject to U.S. jurisdiction and sponsors such exchanges to promote people-to-people contact. In addition, an employee, paid consultant, or agent of the sponsoring organization must accompany each group traveling to Cuba to ensure the full-time schedule of educational exchange activities. Moreover, the predominant portion of the activities must not be with individuals or entities acting for or on behalf of a prohibited official of the Government of Cuba or prohibited member of the Cuban Community Party, as defined in the OFAC regulations.

Section 515.567 authorizes travel-related transactions and other transactions that are directly incident to participation in amateur and semiprofessional international sports, federal competitions, and other athletic events or competitions and public performances, clinics, workshops, and exhibitions in Cuba. Throughout the U.S. Embargo, sports exchanges, such as the games between the Baltimore Orioles and the Cuban national team on March 28, 1999 and May 3, 1999 have been important social and cultural initiatives to try to improve relations.[[39]](#footnote-39)

Section 515.574 authorizes travel-related transactions and other transactions that are intended to provide support for the Cuban people, which include activities of recognized human rights organizations; independent organizations designed to promote a rapid, peaceful transition to democracy; and individuals and non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba.[[40]](#footnote-40)

Amendments to 515.575 authorize travel-related transactions and other transactions that are related to humanitarian projects in or related to Cuba. These authorized humanitarian projects include medical and health-related projects; construction projects intended to benefit legitimately independent civil society groups; environmental projects; projects involving formal or non-formal educational training, within Cuba or off-island, on the following topics: entrepreneurship and business, civil education, journalism, advocacy and organizing, adult literacy, or vocational skills; community-based grassroots projects; projects suitable to the development of small-scale private enterprise; projects that are related to agricultural and rural development that promote independent activity; microfinancing projects, except for loans, extensions of credit, or other financing prohibited by Section 515.208.

Section 515.576 authorizes travel-related transactions and other transactions that are directly incident to activities by private foundations or research or educational institutes with an established interest in international relations to collect information related to Cuba for noncommercial purposes, among other things.

The per diem rate previously imposed on spending limits for authorized U.S. travelers while in Cuba no longer applies. Hence authorized travelers may engage in transactions ordinarily incident to travel within Cuba, including payment of living expenses and acquisition in Cuba of goods for personal consumption there.[[41]](#footnote-41)

### Travel Services

Section 515.572 is amended to allow persons subject to U.S. jurisdiction, including travel agents and airlines, to provide authorized travel and carrier services. The carrier must retain a certification from each traveler regarding their authorization to travel. While no additional license is required from OFAC, air carriers wanting to provide service will still need to secure regulatory approvals from other U.S. government agencies, including the Federal Aviation Administration (FAA) and the Department of Homeland Security (DHS). The revised regulations will no longer be limited to charter services. Instead, they will authorize scheduled operations. In this regard, the U.S. government will engage with the Cuban government to assess its aviation relations and establish a bilateral basis for further expansion of air services.[[42]](#footnote-42) Already United Airlines has announced plans to fly to Cuba from Houston, Texas, and Newark, New Jersey, if it receives authorization by the FAA.[[43]](#footnote-43)

### Remittances

Section 515.570 is amended to increase the limits on remittances which can be sent to Cuban nationals from $500 to $2,000 per quarter, and to generally authorize, without limitation, remittances for humanitarian projects, support for the Cuban people, and development of private business in Cuba. Currently, such remittances are authorized, as appropriate, on a case by case basis. Section 515.560(c) is also amended to increase to $10,000 the total amount of remittances which a traveler may carry to Cuba.

### Credit and Debit Cards, Per Diem, and Importation of Certain Goods and Services

Section 515.560 is amended and a new section 515.584 authorizes the use of U.S. credit and debit cards in Cuba for travel-related and other transactions consistent with sections 515.560 and to permit U.S. financial institutions to enroll merchants and to process such transactions. Section 515.560 is also amended to eliminate the per diem limitation on spending in Cuba by authorized travelers, and to allow authorized travelers to import no more than $400 worth of goods from Cuba (including up to $100 in alcohol or tobacco products).

### Certain Micro-Finance, Business, and Commercial Import Activities

Section 515.575 is amended to authorize certain micro-financing activities and entrepreneurial and business training, such as for private business and agricultural operations. New Section 515.582 authorizes commercial imports of certain specified goods and services produced by independent Cuban entrepreneurs.

### Certain Financial Transactions

New Section 515.584 provides for a general license authorizing depository institutions to open correspondent accounts at Cuban financial institutions to facilitate the processing of authorized transactions and to allow U.S. financial institutions to reject and process certain funds transfer transactions.

### Regulatory Interpretation of Cash in Advance

Section 515.533 is amended to revise the regulatory definition of “cash in advance” from “cash before shipment” to “cash before transfer of title and control” to permit expanded financing options for authorized exports to Cuba.

### Telecommunications

To better provide efficient and adequate telecommunications services between the U.S. and Cuba, Section 515.542 is amended to generally authorize transactions which establish mechanisms to provide commercial telecommunication services linking third countries with Cuba and in Cuba. For instance, U.S. persons may purchase calling cards for people to use in Cuba and/or may pay the bills of such people directly to a telecommunications operator located in Cuba, such as ETECSA. These steps to facilitate improved access to telecommunications services for Cubans and increased international connections are intended to increase the ability of the Cuban people to communicate widely and freely. Section 515.578 is also amended to authorize persons subject to U.S. jurisdiction to provide additional services incident to internet-based communications and related to certain exportations and re-exportations of communication items.

### Certain Transactions with Cuban Nationals Located Outside of Cuba

New section 515.585 authorizes U.S. owned or controlled entities in third countries to provide, with some limitations, goods and services to Cuban nationals in third countries. Section 515.505 is amended to unblock accounts of Cuban nationals who have permanently relocated outside of Cuba.

Section 515.579 is amended to authorize funds transfers through the U.S. for the personal expenditure of employees, grantees, and contractors, and persons who share a common dwelling as a family member of such persons, of third-country official missions in Cuba or intergovernmental organizations in which the U.S. is a member or holds observer status in Cuba.

### Official Government Business

Section 515.562 is amended to increase an existing authorization to cover all Cuba-related transactions by employees, grantees, and contractors of the U.S. Government, foreign governments, and certain international organizations in their official capacities.

### Cuban Official Missions

To facilitate the reestablishment of diplomatic relations with Cuba, new Section 515.586 authorizes transactions with Cuban official missions and their employees in the U.S.

### Other Transactions

New Section 515.580 authorizes insurance companies to offer global insurance policies that cover third-country nationals traveling to Cuba. Section 515.550 is amended to authorize foreign vessels to enter the U.S. after engaging in certain trade with Cuba.

## BIS Regulations

The U.S. Department of Commerce, rather than Treasury and OFAC, is the principal agency regulating exports to Cuba, since CACR primarily defer to Commerce’s jurisdiction. Commerce has established a General License Exception for the export of agricultural items to Cuba.[[44]](#footnote-44) Commerce’s licensing policy has also generally been to approve applications to export medicine and medical devices to Cuba.[[45]](#footnote-45) With respect to U.S. content, Commerce licensing policy has been to generally deny the export to Cuba of foreign-made products with more than 20% by value of U.S. content.[[46]](#footnote-46) If the U.S. content is 10 percent or less, Commerce generally requires no prior written approval.[[47]](#footnote-47)

Under the Cuban Democracy Act of 1992,[[48]](#footnote-48) Commerce is prohibited from licensing trade with Cuban entities owned or controlled by a U.S. person and located in third countries unless such trade is, subject to certain qualifications in the case of medicine or medical equipment, for medicine, medical equipment, or telecommunications equipment. Moreover, until recently the telecommunications equipment had to be necessary for service between the U.S. and Cuba. [[49]](#footnote-49) On July 26, 2001, a revision to the regulations were clarified to authorize U.S.-owned or controlled foreign firms to re-export U.S.-origin items to Cuba.

### Creation of License Exception Relating to Support for the Cuban People (SCP)

New Section 740.21 of the Export Administration Regulations (EAR) creates a License Exception relating to Support for the Cuban People (SCP). Previously, the export or reexport of items now eligible under this new exception generally required a license from BIS.

To support improved living conditions and independent economic activity in Cuba, License Exception SCP authorizes the export and reexport of commercially sold or donated (i) building materials, equipment, and tools for use by the private sector to construct or renovate privately-owned buildings, including privately-owned residences, businesses, places of worship and buildings for private sector social or recreational use; (ii) tools and equipment for private sector agricultural activity; and (iii) tools, equipment, supplies, and instruments for use by private sector entrepreneurs (e.g., auto mechanics, barbers, hairstylists and restaurateurs).

To strengthen civil society in Cuba, License Exception SCP also authorizes, with some restrictions, the export and re-export to Cuba of certain donated items for use in scientific, archaeological, cultural, ecological, educational, historic preservation, or sporting activities. Similarly, License Exception SCP authorizes the temporary export of certain items by persons departing the U.S. for their use in their professional research relating to such activities.

License Exception SCP also authorizes the export and re-export to Cuba of certain items to human rights organizations, individuals, or non-governmental organizations that promote independent activity intended to strengthen civil society.

To improve the free flow of information to, from, and among the Cuban people, License Exception SCP authorizes the export and re-export of certain items for telecommunications, including access to the Internet, use of Internet services, infrastructure creation and upgrades. Additionally, license Exception SCP authorizes the export and re-export to Cuba of certain items for use by news media personnel and U.S. news bureaus engaged in gathering and dissemination of news to the general public.

### Expansion of License Exception for Consumer Communications Devices (CCD)

Section 740.19 of the EAR containing the License Exception CCD is revised to remove the donation requirement and update the list of eligible items. License Exception CCD was created in 2009 at the direction of President Obama and was intended to increase the free flow of information to and from Cuba (74 FR 45985, Sept. 8, 2009). This license exception authorizes export and re-export of consumer communications devices (commodities such as computers, communications equipment and related items, including mobile phones, televisions, radios and digital cameras) that are widely available for retail purchase and that are commonly used to exchange information and facilitate interpersonal communications, as well as certain telecommunications and information security-related software.

### Expansion of License Exception for Gift Parcels and Humanitarian Donations (GFT)

Section 740.12 of the EAR is revised to remove the note that excludes from eligibility consolidated shipments of multiple parcels for delivery to individuals residing in foreign countries. This note had required parties intending to export multiple gift parcels in a single shipment to obtain individual licenses. Therefore, individuals wanting to send gift parcels to Cuba have had to identify parties that have received consolidation licenses, resulting in an unintended disincentive to donate eligible items to the Cuban people.

### New Licensing Policy for Environmental Protection

Section 746.2 of the EAR is amended to add a general policy of license approval for exports and re-exports of items required for the environmental protection of the U.S. as well as international air quality, waters, and coastline (including items related to renewable energy or energy efficiency).

## Analysis

Notwithstanding the issuance of new regulations intended to move towards normalizing U.S.-Cuban relations, the Cuba embargo remains in place. Most transactions between the U.S., or persons subject to U.S. jurisdiction, and Cuba continue to be prohibited, and OFAC continues to enforce the prohibitions of the CACR. For instance, the provision of most legal services to or on behalf of Cuba or a Cuban national is authorized, but all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed.[[50]](#footnote-50)

Given the comparatively low income of most Cubans, the limited Cuban infrastructure due in part to the long-standing U.S. Embargo, U.S. statutory limitations that continue to be in place, and the political dynamics of continued liberalization, the initial transition to increased trade and economic relations between the U.S. and Cuba resulting from the limited areas in which the U.S. has liberalized the CACR will occur somewhat slowly. Moreover, a constant in U.S.-Cuba relations since 1959 that may again repeat itself has been that small successes do not necessarily lead to big ones[[51]](#footnote-51) and that an incremental approach to normalization has not worked.[[52]](#footnote-52) Two other important constants in the relationship have been domestic politics – consider that Obama’s December 17 announcement was made in the immediate aftermath of the Republican take-over of both houses of Congress[[53]](#footnote-53) - and that neither Cuba nor the U.S. really understands the other’s bureaucracy, so the opportunities for misunderstanding abound.[[54]](#footnote-54)

Nevertheless, the liberalization will produce significant dividends to the U.S. in its foreign policy in general, especially in the Western Hemisphere where the U.S. Embargo has served as an obstacle to U.S. leadership and has facilitated the formation of anti-U.S. organizations and alliances. The liberalization will also further international enforcement cooperation between Cuba and the U.S., both bilaterally and regionally, especially in counter-narcotics enforcement,[[55]](#footnote-55) counter-terrorism efforts[[56]](#footnote-56) and those to counter international trafficking in persons, and environmental enforcement.

# cubaN economy

## Cuban Entrepreneurship

A critical element in the success of future normalization of economic relations with and foreign investment in Cuba will be Cuban entrepreneurship. Perhaps the biggest challenge for entrepreneurs in Cuba is the absence of guarantees for their property and equity rights, without which a business cannot prosper.

Other major obstacles also exist. The tax structure in Cuba is harsh compared to most countries. Entrepreneurs cannot secure reliable access to wholesale goods or rental space. The laws, regulations, and policies are not clear and transparent. Entrepreneurs lack access to credit, and cannot turn to capital markets to raise funds.

For the last sixty years, Cuba’s planned economy has not afforded direct relationships between employers and employees and has not fostered the concept of private enterprise. In fact, the idea of establishing private wealth was deemed to be in violation of the revolution. Basic business education in Cuba, such as finance, accounting, management, computer skills, business management, and entrepreneurship training hardly exist. Even with the recent economic reforms, significant red tape and regulations remain as barriers to opening and operating a business.[[57]](#footnote-57)

Yet, Cuba now has programs such as *Cuba Emprende* and there are efforts underway by universities and professional associations to furnish new entrepreneurs in Cuba with the basics of a business education.[[58]](#footnote-58)

Given the enormous size of the U.S. private sector and market, the proximity of the U.S. and Cuba, and the historic connections between the two countries, the normalization of U.S.-Cuba relations will provide a shot in the arm to Cuban entrepreneurship.

While the size of the private sector in Barbados and the Caribbean Single Market Economy are comparatively smaller than the U.S. economy, small and medium sized enterprises and the culture in the Caribbean also have much to contribute to building entrepreneurship in Cuba, especially given that the Caribbean has continued to have normal relations with Cuba and that the CARICOM and Cuba share cultural similarities.

## Cuba’s Economic Reforms

Since Raúl Castro assumed power in 2006, Cuba has undergone “structural reforms” toward a market economy.[[59]](#footnote-59)

### Updating the Economic Model

In *Lineaminetos*, the 2011 Cuban Community Party Congress’ explanation of these structural reforms, the goal was stated to be limited to updating the existing economic model while preserving the hegemony of state central planning and property over the market and non-state property. Even then, it took another two years for the Cuban government to elaborate on its concept of “updating”.[[60]](#footnote-60)

### Distribution of Idle State Land and other Agricultural Reforms

In 2009, the Cuban government announced a plan under which farmers can cultivate unused land and keep what they produce – either for themselves or to sell. The government retains ownership over this land, but the law permits the building of homes and barns, and the planting of forests and orchards under a 10-year contract. At the end of the contractual period, the state can either reassume control of the land, paying for the farmers’ investment based on its assessment, or renew the contract. In the event the owner of the lease dies, his relatives working the land can inherit the contract. During the term of the lease, farmers have access to state micro-credit, although such credit is inadequate and financing generally remains in short supply. Farmers can also open bank accounts and sell produce to tourism entities, such as hotels and restaurants.[[61]](#footnote-61)

While 2.7 million acres of idle state land has been distributed to 174,275 farmer-leaseholders since 2009, about 77 percent of the leaseholders do not have experience in agriculture. The farmers also face legal restrictions. The government can terminate or not renew a lease if the farmer does not comply with his or her obligations, including *acopio* (see below), or for reasons of public or social interest. Moreover, at present, the farmer must be linked to a state-controlled cooperative or a state farm, which are notoriously inefficient, in order to obtain inputs or services and to market his/her produce. Finally, complex and cumbersome regulations restrict hiring non-family workers, and limit investment to 67 percent of the size of the plot.[[62]](#footnote-62)

In 2013, another reform initiative was to end *acopio* in three out of 15 provinces (Havana, Mayabeque and Artemisa). *Acopio* required that 70 percent of each farmer’s harvest had to be sold to the state at below market prices established by the government.

In 2014, the government created the first wholesale market for agricultural goods.

### Dismissal of Surplus State Employees and Expansion of Non-State Sectors

The Cuban government has deemed approximately 1.8 million workers (about 36% of the work force) as redundant. In 2008, Cuba’s unemployment was 1.6%. Such a low figure was achieved by creating hidden unemployment, with the government and state firms keeping unnecessary employees at the cost of declining labor productivity and wages.

In 2011, the government announced a plan to dismiss redundant state employees and expand the non-state sector, including self-employment and non-agricultural production and service cooperatives, as a means to absorb the discharged workers.[[63]](#footnote-63)

The self-employed, or *cuentapropistas*, own their small businesses. In the cooperatives, the state maintains ownership of the prime and rents it to coop members, who manage the business, sell their products/services at market prices and keep the profits. Self-employed individuals and coops are able to sell, lease and buy to or from state entities, hire non-family employees, open bank accounts, receive state microcredit and buy inputs in the merging wholesale market. Since June 2013, non-state entities manage all restaurant/food service and personal service establishments.

Notwithstanding the government’s plan to expand the non-state sector, private entities face serious challenges. The categories of self-employment permitted under the new rules are quite specific and cover mostly unskilled jobs. Coopers, on the other hand, must overcome four bureaucratic hurdles to obtain approval, ultimately by the Council of State, which Raúl Castro chairs. The state imposes many and heavy taxes, including a labor tax that rises in tandem with the number of employees hired. These taxes make it difficult for private entities to accumulate wealth even if the business is successful. Finally, businesses are at times closed down because of conflict of interest when *cuentaprpistas* compete with state enterprises.

From 2006 to 2012, state employment declined from 82 to 75% of the labor force and non-state employment grew proportionally. By the end of 2012, 365,000 state employees had been dismissed. The number of self-employed tripled from 2006 to 2014. By May 2014, the government had authorized 498 coops, but only half were operating. While some progress has been made in expanding the non-state sector, the Cuban government needs to greatly accelerate the number of self-employed and coops to meet its goals.[[64]](#footnote-64)

### Wages, Social Services and Rationing

In 2008, a salary reform initiative increased the nominal wage and permitted moonlights and payments linked to productivity. The law abolished the prior salary cap and allowed bonuses in hard currency.

In tandem with salary reform, the government has reduced general public benefits to reduce its fiscal deficit. In Cuba, education and health care are universal and free. Until recently, workers did not contribute to their pensions, and the retirement age was 55 for women and 60 for men. Rationed goods are sold below cost, and until the recent reforms meals in workers’ cafeterias were subsidized.[[65]](#footnote-65)

In 2009, the government acknowledged the financial unsustainability of social services at then current levels and reduced and subordinated them to available fiscal resources. Simultaneously, the government closed thousands of public services that were deemed inefficient. 16 percent of health care personnel were dismissed. Entry to universities was tightened. The retirement age was raised by five years for both sexes. Workers had to start contributing to pensions. The government increased public utility rates, and prices at hard-currency state shops. As a result of these policies, social expenditures decreased from 55 percent of the budget in 2007 to 51 percent in 2013, while relative to GDP, they decreased from 37 percent to 27 percent in the same period.

Future reductions in social services depend on the ability of the government to cope with the rising long-term deficits required to care for the country’s aging population. The neediest people also need a safety net. While rationing quotas are lean and only cover basic food needs for seven to ten days a month, they are critical for lower income individuals who do not receive remittances from abroad. [[66]](#footnote-66)

### Housing Purchases and Sales

In 1960, the government terminated private house sales and mortgages, forbade the construction of private housing, and required that residents pay rent to the government. After 20 years of rent payments, residents become homeowners. Today 95 percent of the population are homeowners. However, the government’s construction of housing did not keep pace with population growth. With the deterioration and destruction of existing houses and buildings due to lack of maintenance and hurricanes, a housing deficit of between 600,000 to one million units exists.[[67]](#footnote-67)

In 2011, the government instituted reforms authorizing the buying and selling of houses at market prices to Cubans and permanent non-Cuban residents, as well as ownership of a second home for certain purposes. The reforms authorized relatives of Cubans who had permanently left the country to inherit their house. Dwellings can now be sold to change residency or to raise capital. About 90 percent of all state microcredit is used to build or repair housing.

Buying a house requires registering the property in the state real estate registry. However, only 17 percent of owners have registered their houses. The permission to build a dwelling requires bureaucratic procedures at or approvals from four state agencies that take about 132 days to complete. Corruption, bribery and tax fraud slow the process and disturb the integrity of the process.

Cuban law prohibits non-resident foreigners, including Cubans who have emigrated, from buying property, limiting the market to local residents for whom a cheap house (approximately $5,000) can cost the equivalent of 21 years of the average Cuban’s annual income of $236. Hence, since the new policies were enacted, sales have resulted in only 3.6 percent of the housing stock of 3.7 million changing hands.[[68]](#footnote-68)

### Unification of the Dual Currency

Since 1995, Cuba has had two currencies in circulation: the national peso (CUP) and the convertible peso (CUC). While neither is traded in the world market, the CUC is considerably overvalued. The official exchange rate for Cubans is 25 CUP for one CUC. However, in the state enterprise sector the CUP is equal to the CUC.

The dual currency has caused substantial distortions. While workers receive their salary in CUP, the Cuban government pays part of its expenses in CUC. Currency duality precludes assessing and comparing business efficiency, export profitability and competitiveness in the global economy.[[69]](#footnote-69)

In March 2013, the Cuban government announced a plan for monetary unification in the enterprise sector. The plan is to devalue and then abolish the CUC, while appreciating the CUP and having it become the future currency. At some point, the government will announce the start of the process and provide an index of reform of wholesale prices to calculate the corresponding retail prices and revalue all accounting prices in CUP, as well as inventories and investments. The law ensures the value of people’s bank savings.

In anticipation of the eventual abolition of the CUC, Cubans have already starting changing CUC for CUP to the point that some exchange agencies exhausted their CUPs and had to temporarily close.[[70]](#footnote-70)

## Foreign Investment in Cuba

### Foreign Investment since the 1995 Reforms

A problem for Cuba’s economy is the low level of investment in the country, which is only half the regional average. In June 2014, the Cuban government issued an update to its 1995 regulations governing foreign investment. The law expands the permissibility of foreign investment in all sectors, except health care, education and armed forces. The law exempts foreign investors from personal income tax, labor tax and taxes on select imports. The law also gives new investors a holiday of eight years before they have to pay the country’s tax on profits and a one-year holiday on sales tax obligations.[[71]](#footnote-71)

The new foreign investment law allows investors to open accounts in convertible currency in foreign banks and directly import and export. The law allows Cuban “legal persons”, which appears to mean Cuban businesses, to be investors. Hence, it allows the Cuban diaspora to invest but precludes investment by Cuban individuals, including the self-employed. The law is intended to attract investment in the Special Development Zone in the Port of Mariel (*Zona Especial de Desarrollo Mariel*).[[72]](#footnote-72)

The law continues the requirement for foreign investors to apply to the government to hire Cuban workers, thereby precluding investors from directly hiring and firing employees. It requires companies to submit labor disputes to a state agency for resolution. Investors must pay salaries in hard currency to the Cuban government, which then pays a fraction of the salary in CUP to the workers.

The law requires the government to make decisions on new investments within 60 days. It allows expropriation for reasons of public utility or social interest, but provides for compensation in case of expropriation. In several cases, dispute resolution is left to local courts instead of the international court of arbitration.[[73]](#footnote-73)

### Critique of 2014 Amendments to Foreign Investment Law

On April 16, 2014, Cuba’s new Foreign Investment Law was published in the Official Gazette. Its goal is to provide an improved legal, fiscal and regulatory framework for foreign enterprises operating in Cuba. As mentioned above in greater detail, the law provides greater security of tenure, greater control over the hiring and compensation of workers and generous tax breaks.

A criticism of the law is that the new tax regime increases the discrimination favoring foreign investors operating in “Mixed Enterprises” (Joint Ventures) or “international economic associations” when compared to the tax regime for small enterprises owned by Cuban citizens.[[74]](#footnote-74)

**Comparison of the Tax Regimes for Cuban Small Enterprises and Foreign Enterprises Operating in Mixed Enterprises after the 2014 Foreign Investment Law[[75]](#footnote-75)**

|  |  |  |
| --- | --- | --- |
|  | **Small Enterprise Sector** | **Foreign Investors in Mixed Enterprises or “Economic Associations”** |
| **Nominal Tax Rates** | Personal Income Tax Rate of 15% rising to 50% of income above CUP 50,000 or $2,000 per year | Profits Tax of 15% of Net Corporate Income [perhaps 50% for resources]; Personal Taxes Exempt for those earning profits |
| **Effective Tax Base** | 60 to 90% of Gross Revenues; [Maximum of 10% to 40 % allowable for input costs, depending on activity] | Net Income after deduction of all production and investment costs from Gross Revenues |
| **Effective Tax Rates** | May approach or even exceed 100% of Net Income | 15% of Net Income; [perhaps 50% for mining and petroleum] |
| **Tax Holiday** | None | Eight Years Profit Tax Exemption |
| **Deductibility of Investment Costs from Gross Revenues** | Deductible only within the 10% to 40% allowable deduction  limits | Fully deductible from Gross Revenues in determining Taxable Income |
| **Deductibility of Input Costs from Gross Revenues** | Deductible only within the 10% to 40% allowable deduction  limits | Fully deductible from Gross Revenues in determining Taxable Income |
| **Employee Hiring Tax** | Tax exemption for first five employees; Tax required on six or more | Complete Tax Exemption |
| **Social Security Payments** | Yes | Yes |
| **Lump-Sum Taxation** | Up-front *Cuota Fija* Tax Payments Necessary | None |
| **Input Importation Rights** | Direct Import Purchases Prohibited | Freedom to Import Directly |
| **Profit Expatriation** | No | Yes |

To exemplify the difference in tax treatment, Cuban small enterprise operators pay a marginal tax rate of 50% of gross revenues (less deductions) of any income exceeding 50,000 pesos (the equivalent of about US$2,000) per year. In contrast, foreign corporations in mixed enterprises pay 15% of profits in taxes – but only after an eight year tax holiday.

Still another inequity for Cuban small enterprise owners is that taxable income is calculated as an arbitrary percentage of gross revenues – from 60% to 90% - depending on the nature of the economic activity. The input costs of materials, labor, rent, utilities, etc. and all costs of investment are not deductible from gross revenues in determining taxable income, but only the arbitrary amounts of 40 to 10% of gross revenues. In contrast, foreign corporations can deduct all costs of investment and inputs of all types from gross income in calculating taxable income. Hence, the effective tax base is significantly more advantageous for foreign investors than for Cuban small enterprise owners.

Other differences are that, whereas small enterprise owners must pay a proportion of their taxes at the beginning of each month, foreign firms do not have to make such payments. Small enterprise owners are obligated to pay a tax on the hiring of more than five employees whereas foreign firms are exempt from such a tax. Foreign firms can import their inputs, equipment and machinery as well as personnel directly from abroad, while Cuban small enterprises must make their purchases from the state *Tiendas por la Recaudación de Divisas*.[[76]](#footnote-76)

### The Prosecution of Tokmakjian and Other Foreign Investors

One cautionary note for prospective foreign investors in Cuba, especially ones planning to use Barbados as an intermediary jurisdiction, has been the number of prosecutions of foreign investors, including Cy Tokmakjian, by Cuba in 2011.[[77]](#footnote-77)

On February 21, 2015, Cuba released Cy Tokmakjian, a Canadian businessman who was imprisoned in Cuba on corruption and tax evasion charges for more than three years.[[78]](#footnote-78) Earlier in 2014, Cuba arrested Sarkis Yacoubian, another Canadian businessman and expelled him one year into a nine year sentence.[[79]](#footnote-79)

In 2011, Cuba arrested Tokmakjian in an anti-graft initiative that also targeted Cuban officials and foreign business executives from at least five countries. In September 2014, Tokmakjian was sentenced to 15 years in prison, and his firm managers, Marco Puche and Claudio Vetere, received shorter sentences (8 and 12 years respectively). It is not known if the firm managers were also released.[[80]](#footnote-80)

Cuba did not give a reason for Tokmakjian’s release. Before his arrest, Cuba had characterized him as a model business partner for over 20 years who had furnished critical transportation equipment when Cuba was undergoing a serious economic crisis after the collapse of the Soviet Union.[[81]](#footnote-81) Yet, Cuban prosecutors accused Tokmakjian of providing Cuban officials and their families with a series of gifts, thereby aiding the Tokmakjian Group to successfully conduct business in Cuba estimated at $80 million annually.[[82]](#footnote-82)

In connection with Tokmakjian’s prosecution, fourteen Cubans, including the former deputy sugar minister and the former director of the state nickel company, were also convicted and sentenced to prison terms ranging from 6 to 20 years.

The prosecution annoyed Canada, a major trading partner and a constant intermediary in the effort to normalize U.S.-Cuba relations. Foreign investors and diplomats have also expressed concern that the Tokmakjian case could make foreign investors wary of investing in Cuba.[[83]](#footnote-83)

According to the Tokmakjian family, the prosecution was an excuse to seize the Tokmakjian Group’s $100 million in assets in Cuba.[[84]](#footnote-84) The Tokmakjian Group itself has challenged the seizure of these company assets, including bank accounts, inventory and office supplies, in both arbitration before the International Chamber of Commerce and in an Ontario court.[[85]](#footnote-85)

The prosecution of Tokmakjian arose partly from salary top-up payments to Tokmakjian employees in joint venture businesses and a decision to employ the wife of Cuba’s former deputy minister of sugar, Nelson Labrada, in Tokmakjian’s hotel division.

Labrada was one of 14 Cuban defendants in the case. All were convicted, and Labrada received a sentence of 20 years in prison.

In 2007, Cuba legalized the payment of incentives or salary top ups. However, the change did not extend to joint ventures, leaving companies exposed. Lee Hacker, the Tokmakjian Group’s vice-president for finance, said the company did not believe at the time there was anything illegal about the payments.

The charge of economic crimes against the state in the Tokmakjian matter concerned the late delivery of unspecified equipment. Tokmakjian distributed Hyundai vehicles and construction equipment in Cuba, as well as other mining gear.[[86]](#footnote-86) Another allegation against Tokmakjian was that he conducted unauthorized financial transactions and illegally took large amounts of money out of the country.[[87]](#footnote-87)

Tokmakjian International Inc. was incorporated in Barbados in 2001 as an International Business Company (“IBC”), and had entered into various leasing contracts for equipment with different Cuban entities. Among the charges against Cy Tokmakjian and the IBC is tax evasion under articles 343 to 345 of the Cuban criminal code on the grounds that no taxes were paid by the company or its affiliated entities on the income generated by the transactions and commercial operations in Cuba, including the leasing contracts. They are alleged to have carried out activities in Cuba through the different companies of the Tokmakjian Group corresponding to sales and services.

During the trial the prosecutor argued that taxes should be paid on the basis that the IBC operated a “permanent establishment”. He argued that the IBC was only a “paper company” with no real or substantial activity in Barbados, that the company had only one employee and it was not possible for a company with just one employee to carry out commercial activities in the amount of US $350 million.

Tokmakjian’s defense and three expert opinions introduced by them argued that it did not operate a permanent establishment in Cuba. However, even if the court were to find that its operations constituted a permanent establishment under Cuban tax law, the provisions of Article 5 of the double tax agreement between Cuba and Barbados provide for exceptions to the general rule for permanent establishments and apply to the facts of Tokmakjian’s business.

The Cuban prosecutor apparently denied that the DTA applies and concluded that the “IBC” regime should not be respected because Barbados is a tax haven and the IBC is only an instrument to avoid taxes. In so doing, the prosecutor also ignored the provisions of Article 25(1) of the DTA, which require the competent authorities to try to resolve differences over taxation by mutual agreement, irrespective of the remedies provided by the domestic laws of those states (i.e., Cuba).

The Cuban tax authority (*Oficina Nacional de Administración Tributaria – ONAT*) apparently applied the 35% tax rate for profits on gross sales with no deductions rather than the 4% tax on sales, which would have applied if Tokmakjian were deemed to have operated a permanent establishment in Cuba. ONAT’s calculation of the profits tax amounted to an alleged aggregate tax liability, including penalties and interest, of more than $84 million whereas the Tokmakjian Group argued that its tax liability should be no more than $7 million.

As observers try to determine and understand what really occurred in the Tokmakjian case - and it may not be fully known until the ICC arbitration is adjudicated - current and prospective foreign investors are also considering other criminal cases brought in Cuba against foreign investors. For example, in 2011, Cuba raided and closed Coral Capital, a partner in Havana’s Saratoga Hotel, as part of its anti-corruption initiative. Foreign executives of Coral Capital, were convicted and some of them deported. Stephen Purvis, a British architect and former head of development projects at Coral Capital, was initially accused of “revealing state secrets” and “illegal activities.” He was put in Condesa prison for foreigners, and charged with “economic crimes”. He did not see the specific charges against him and said his lawyer was never present during his interviews.[[88]](#footnote-88)

Notwithstanding the prosecution by Cuba of certain foreign investors, until now the biggest enforcement obstacle for foreign investors in Cuba has been the U.S. sanctions. Substantial fines have been imposed on fourteen banks and many non-financial institutions for violating U.S. sanctions.[[89]](#footnote-89)

The Cuban position on foreign investment is likely to evolve, especially if the U.S. continues to normalize relations and foreign investments increase. Still, the Tokmakjian case means that foreign investors, including ones that use third countries such as Barbados, will need to exercise caution in their investment strategy.

## Analysis

While the lack of reliable statistical information published by the Cuban government make it difficult to precisely assess the impact of the country’s reform policies, they have clearly failed to generate the economic growth Cuba needs. Since 2009, official growth targets have not been met, and economic growth has been among the lowest in the region. Cuba’s annual average growth rate of 1.7% from 2009 to 2014 suggests that the reforms have not helped to significantly boost the country’s economy.[[90]](#footnote-90)

Even the anemic economic growth rates are in large part due to Venezuela’s assistance, which accounts for 43% of Cuban trade, furnishes 60% of its oil requirements and is the leading source of direct foreign investment there. The combined value of Cuba’s economic relations with Venezuela is approximately $13 billion or 21% of the Cuban GDP. Hence, the serious economic and political problems in Venezuela make Cuba especially vulnerable.

Cuba’s agricultural output has in fact fallen since 2009 when economic reforms were initiated.

Efforts to reduce public sector spending have had adverse social consequences. Reductions in health care services have in turn reduced access to social services. Removal of goods from rationing and their sale at much higher market prices, as well as increases in public utility tariffs and hard currency shops’ prices, have negatively affected consumption. [[91]](#footnote-91)

While cooperatives could develop as efficient small to medium sized businesses that are managed for the benefit of all their members, whether that will happen remains to be seen. If the Cuban government regulates cooperatives less strictly than private companies, workers in cooperatives may be more vulnerable than workers in private companies. This problem is already happening in the “self-employed” sector which includes both employers and employees. Since all of them are technically self-employed, employees do not have the same labor regulations protecting them as do state employees.[[92]](#footnote-92)

Efforts to trim redundant public sector employment have raised the open unemployment rate from 1.6% to 3.4% of the labor force from 2007 to 2013. Simultaneously, real wages and real pensions have fallen by 73% and 50% respectively, from 1989 to 2013. The number of homes built fell by 77% from 2006 to 2013. 480,000 elderly Cubans (60 years or older) are deemed to be in need of services, but only 15,285 spaces for the elderly are available in nursing homes and hospitals.[[93]](#footnote-93)

Nonetheless, the 2009 structural reforms are widely viewed to have been generally positive. Yet, overly restrictive state regulations, obstacles, and taxes have created disincentives and hindered the progress required to meet the goals set by Raúl Castro himself. Accelerating and deepening the market-oriented reforms that have already been initiated will improve the economy and the people’s standard of living,[[94]](#footnote-94) and further progress towards the normalization of relations between the U.S. and Cuba should help facilitate that process.

Cuba is attempting to both restore productivity and dynamism to its moribund economy while limiting the power of market forces. Because there will inevitably be some losers in the process and since the prospects for success are not guaranteed, the government is moving at a slow pace with economic reforms.[[95]](#footnote-95) Such reforms have brought about some positive developments, as well as certain setbacks and hardships, but overall the jury is still out. Further easing of U.S. sanctions and the resultant likely increase in trade and investments may prove to be a welcome boost for the Cuban economy and its reform agenda.

# barbados AS A CONDUIT FOR INVESTMENTS IN CUBA

Much of the potential advantage for foreign investors in Cuba using Barbados as a conduit for such investments results from the fact that Barbados has both a double tax agreement and a bilateral investment treaty with Cuba, and that the CARICOM and Cuba have a Trade and Economic Cooperation Agreement.

Before examining these arrangements, some statistics on Cuba and Barbados are worth considering. In 2012, Barbados had a population of 283,221 compared to 11,270,957 in Cuba. In Barbados the GDP per capita is $26,488 whereas in Cuba the GDP per capita, although not officially available, is reported to be approximately $236.

## Double Tax Agreement with Cuba

As of June 1, 2011, Cuba had ten income tax treaties with Austria, Barbados, China, Italy, Lebanon, Portugal, Spain, Ukraine, Venezuela, and Vietnam.[[96]](#footnote-96) The treaties with China, Portugal and Vietnam apply only to income while the others apply to both income and capital. Cuba also has a treaty with Argentina on sea transport, another with Lebanon on air and sea transport, and one with the Netherlands on transport. Of these treaties, the one with Barbados is among those potentially useful for planning purposes.

The 1999 Barbados-Cuba income tax treaty (hereafter, the DTA) applies to personal income tax and tax on profits in Cuba.[[97]](#footnote-97) Significantly, the DTA does not have treaty abuse provisions. On its face it means that significant planning opportunities exist if foreign investors want to engage in tax planning through Barbados entities. However, the above-mentioned *Tokmakjian* case and the Cuban government’s general perspective on private investment and wealth accumulation means that foreign investors may have to somewhat discounted the potential opportunities presented by using Barbados entities.

Article 1(h)(ii) of the DTA (*General Definitions*) defines “national” in the case of Barbados as “any individual who is a citizen of Barbados, and any legal person, partnership and association deriving its status as such from the laws in force in Barbados.”

Article 4(1) states that the term resident of a treaty country means any person who under the laws of that country is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. However this term does not include any person who is liable to tax in that country in respect only of income from sources in that country.

The permanent establishment (PE) article is somewhat standard. It provides in Article 5(2) that a PE includes a place of management; a branch; an office; a factory; a workshop; and a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

Article 5(3) provides that a building site or construction or installation project, or an installation or drilling rig or ship used for the exploration of natural resources constitutes a PE only if it lasts more than six months.

Similarly, Article 5(4) provides that a PE also includes the furnishing of services, including consultancy services, by an enterprise through employees or other personnel where activities of that nature continue (for the same or connected project) within the country for a period or periods aggregating more than six months within any 12-month period.

Under Article 5(6), notwithstanding the provisions of Articles 5(1) and (2), where a person, other than an agent of an independent status to whom paragraph 7 applies, is acting on behalf of an enterprise and has, and habitually exercises, in a treaty country (e.g., Cuba) an authority to conclude contracts in the name of the enterprise, that enterprise will be deemed to have a PE in that State (e.g., Cuba) in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in Article 5(5) which, if exercised through a fixed place of business, would not make this fixed place of business a PE under the provisions of that paragraph.

Article 7 (*Business Profits*) provides that the profits of an enterprise of a treaty country (e.g., Barbados) are taxable only in that State unless the enterprise carries on business in the other treaty country (e.g., Cuba) through a PE situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State (e.g., Cuba) but only so much of them as are attributable to that PE.

Article 8(1) (*Transportation Income*) provides that profits from the operation of ships or aircraft in international traffic will be taxable only in the treaty country in which the place of effective management of the enterprise is situated (e.g., Barbados).

Article 9 (*Associated Enterprises*) is standard. It provides in Article 9(1) that where an enterprise of a treaty country (e.g., Barbados) participates directly or indirectly in the management, control or capital of an enterprise of the other treaty country (e.g., Cuba), or the same persons participate directly or indirectly in the management, control or capital of an enterprise of a treaty country and an enterprise of the other treaty country (e.g., Cuba), and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 10 (*Dividends*) provides that the host country (e.g., Cuba) can impose a tax on dividends not to exceed: (a) 5% of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends; or (b) 15% of the gross amount of the dividends in all other cases.

Article 11 (*Interest*) provides that the host country (e.g., Cuba) can impose a tax of not more than 10% of the gross amount of the interest if the recipient is the beneficial owner and is a resident of the other treaty country (e.g., Barbados).

Article 12 (*Royalties*) provides that the host country can tax royalties arising in the host country (e.g., Cuba) and paid to a resident of the other treaty country (e.g., Barbados) not to exceed 5% of the gross amount of the royalties.

Article 17(1) (*Artistes and Sportsmen*) permits the host country(e.g., Cuba) to tax the income derived by a resident of a treaty country (e.g., Barbados) as an artiste, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the host country. However, Article 17(3) provides that income derived from activities performed in a treaty country (e.g., Barbados) by artistes or sportsmen if the visit to that treaty country is substantially supported by public funds of the other treaty country (e.g., Cuba) will be taxable only in that other country (e.g., Cuba). Since Cuba heavily subsidizes cultural and sports activities, and has a rich array of cultural performances, it is likely that artistes and sportsmen performing activities in Barbados will be supported by the Cuban government.

Article 23 (*Relief from Taxation*) provides that each country is obligated to eliminate double taxation.

Article 24 (*Non-discrimination*) precludes nationals of a treaty country (e.g., Barbados) from being subjected in the other treaty country (e.g., Cuba) to any taxation or any requirement connected therewith which is different from or more burdensome than the taxation and connected requirements to which nationals of that other treaty country (e.g., Cuba) in the same circumstances are or may be subjected.

Article 25(1) (*Mutual Agreement Procedure*) provides that when a person considers that the actions of one or both of the treaty countries result or will result for him in taxation not in accordance with the provisions of the treaty, he may, irrespective of the remedies provided by the domestic laws of those treaty countries (e.g., Cuba), present his case to the competent authorities of the treaty country of which he is a resident (e.g., Barbados), or if his case comes under Article 24(1), to that of the treaty country to which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the DTA.

Article 25(2) requires the competent authorities to try, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authorities of the other treaty country, with a view to the avoidance of taxation which is not in accordance with the DTA. Any agreement reached will be implemented notwithstanding any time limits in the domestic laws of the treaty countries.

Article 25(3) requires the competent authorities of the treaty countries to try to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the DTA.

Article 26 provides for standard exchange of information between the two countries.

The PE and business profits articles, together with the comparatively low withholding taxes on dividends, interest, and royalties and the absence of treaty shopping/abuse provisions, on their face give Barbados significant opportunities for business planning for foreign investments in Cuba, provided Barbados can overcome and resolve the issues presented by the Tokmakjian case, in which Cuba prosecuted as tax evasion apparent proactive tax avoidance transactions pursuant to the DTA.

## Bilateral Investment Treaty with Cuba[[98]](#footnote-98)

Cuba has signed 60 bilateral investment agreements, and 40 of them remain in force.

On February 19, 1996, Barbados and Cuba concluded a bilateral investment treaty (BIT) which became effective on August 13, 1998.

Article 1(a) of the BIT defines investment broadly to include every kind of asset such as (i) movable and immovable property and any other property rights, such as mortgages, liens or pledges; (ii) shares in and stock and debentures of a company and any other form of participation in a company; (ii) claims to money or to any performance under contract having a financial value; (iv) intellectual property rights, goodwill, technical processes and know-how; and (v) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

Article 1(d)(i) defines nationals in respect of Barbados as physical persons deriving their status as Barbados nationals from the laws in force in Barbados, and defines companies in respect of Barbados as corporations, firms and associations incorporated or constituted under the laws in force in Barbados.

Article 2(2) requires investments of nationals or companies of each treaty country (e.g., Barbados) to be at all times accorded fair and equitable treatment and to enjoy full protection and security in the territory of the other treaty country (e.g., Cuba). Neither treaty country (e.g., Cuba) can in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other treaty country. Each treaty country (e.g., Cuba) must observe any obligation it may have entered into with regard to investments of nationals or companies of the other treaty country (e.g., Barbados).

Article 3(1) (*National Treatment and Most-Favored-Nation Principles*) precludes a treaty country (e.g., Cuba) from subjecting investments or returns in its territory of nationals or companies of the other treaty country (e.g., Barbados) to treatment less favorable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any third state.

Article 3(2) provides that a treaty country (e.g., Cuba) must not in its territory subject nationals or companies of the other treaty country (e.g., Barbados), as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favorable than that which it accords to its own nationals or companies or to nationals or companies of any third state.

Under Article 4(1) (*Compensation for Losses*) nationals or companies of one treaty country (e.g, Barbados) whose investments in the territory of the other treaty country (e.g., Cuba) suffer losses owing to war, other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter treaty country (e.g., Cuba) must be accorded by the latter treaty country treatment, as regards restitution, indemnification, compensation or other settlement, no less favorable than that which the latter treaty country accords to its own nationals or companies or to nationals or companies of any third state. Resulting payments must be freely transferable.

Article 5(1) (*Expropriation*) requires that investments of nationals or companies of either treaty country (e.g., Barbados) must not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation in the territory of the other treaty country (e.g., Cuba), except for a public purpose related to the internal needs of that treaty country on a non-discriminatory basis and subject to prompt, adequate and effective compensation. Such compensation must amount to the real value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, must include interest at a normal commercial rate until the date of payment, must be made without delay, must be effectively realizable and be freely transferable. The national or company affected must have a right, under the laws of the treaty country making the expropriation (e.g., Cuba), to prompt review by a judicial or other independent authority of that treaty country, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

Article 6 (*Repatriation of Investment and Returns*) requires each treaty country (e.g., Cuba) in respect of investments of nationals or companies of the other treaty country (e.g., Barbados) to allow the unrestricted transfer of their investments and returns after the payment of any taxes in the territory of the host country in respect of the investment. Transfers must be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the treaty country concerned. Unless otherwise agreed by the investor, transfers must be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

Article 8(1) (*Settlement of Disputes Between an Investor and a Host State*) requires that disputes between a national or company of one treaty country (e.g., Barbados) and the other treaty country (e.g., Cuba) concerning an obligation of the latter under the BIT in relation to an investment of the former which have not been amicably settled must, after a period of three months from written notification of a claim, be submitted to international arbitration if the national or company concerned so wishes. Under Article 8(2) where the dispute is to be referred to international arbitration, the national or company and the treaty country concerned in the dispute may agree to refer the dispute either to: (a) the Court of Arbitration of the International Chamber of Commerce; or (2) an international arbitrator or ad hoc arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission in International Trade Laws as then in force. The parties to the dispute may agree in writing to modify the applicable rules of any such arbitral body.[[99]](#footnote-99)

Article 9 concerns disputes between the treaty countries. Article 10 allows one treaty country (e.g., Barbados) making a payment under an indemnity obligation against a non-commercial risk given in respect of an investment in the territory of the other treaty country (e.g., Cuba) to have the other treaty country recognize the assignment to the first treaty country (e.g., Barbados) by law or by legal transaction of all the rights and claims of the party indemnified, and the first treaty country (e.g, Barbados) to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

Article 11 (*Application of other Rules*) provides that if the laws of either treaty country or obligations under international law existing at present or established after the conclusion of the treaty between the treaty countries in addition to the present Agreement contain rules, whether general or specific, entitling investments by nationals or companies of the other treaty country to a treatment more favorable than is provided for by the present Agreement, such rules will to the extent that they are more favorable prevail over the present Agreement.

To summarize, the Barbados-Cuba BIT clearly encompasses Barbados companies, including IBCs, SRLs, and other entities benefiting from international financial service provisions. It clearly encompasses a wide variety of investments. Under the BIT, Barbados nationals and entities have a right to national treatment, most-favored nation treatment, “fair and equitable treatment,” and the application of other rules that may be more favorable. The BIT has no provisions concerning limitation on benefits or treaty abuse. Finally, under the BIT, the purposes for which a country can expropriate an investment is rather limited and even then, the investor must be afforded “prompt, adequate and effective compensation.”[[100]](#footnote-100)

## CARICOM and Cuba Trade and Economic Cooperation Agreement

In 2000, Cuba and a number of Caribbean countries, including Barbados, entered into the CARICOM-Cuba Trade and Economic Cooperation Agreement (the CARICOM-Cuba ETCA). The objectives of this Agreement are stated under Article 2 to be strengthening the commercial and economic relations between the signatory countries through (i) promoting and expanding trade in goods and services by means of, *inter alia*, free access to their markets and elimination of non-tariff barriers to trade, (ii) the establishment of financial arrangements to facilitate progressive development of two way trade, (iii) providing facilities for establishing and operating joint ventures and other forms of economic cooperation activities, (iv) developing mechanisms that promote and protect the investments made by their nationals, and (v) discouraging anti-competitive business practices.

Article 10 provides for promoting mutual economic and social cooperation in support of each country’s economic and social development and their economic integration. Under Article 12, the parties agreed to establish trade promotion programs. Article 15 underscores the importance of trade in services for economic development and contemplates the establishment of a regime for such trade between the signatory countries, in particular with respect to tourism and travel-related services, financial services, construction and engineering services, computer and telecommunication services and transport services, all sectors in which Cuba needs to develop its economy. Under Article 15(3), each country is required to accord services and service suppliers of other countries with treatment no less favorable than that accorded to like services and service suppliers of its own country.

Article 16 concerns tourism and provides for (i) the preparation and promotion of tourism products and programs designed to encourage multi-destination travel and to diversify and develop the tourism product in their countries, (ii) cooperation in the area of passenger transport, (iii) undertaking cultural exchanges and the exchange of entertainers on a commercial basis, and (iv) encouraging business participation in their tourism and entertainment sectors.

The CARICOM-Cuba ETCA can be particularly useful in increasing trade and investment between Barbados and Cuba and providing rich opportunities for economic cooperation. An example of such opportunities may arise as a result of the exchange of information on investment opportunities in the two countries’ respective tourism sectors, and the promotion of tourism. This agreement will not only help the two governments, but also each country’s non-profit and business organizations in participating more actively in trade and commerce between the two countries.

## Types of Potential Investors Who May Want to Access Cuba from Barbados

The potential investors who may want to access Cuba from Barbados will include, especially in the near term, hotels and other businesses engaged in tourism and related activities, including transportation, as well as enterprises involved in telecommunications, building and construction, financial services, and agriculture. These activities are all liberalized under the revised OFAC and BIS regulations.

In addition to potential U.S. investments and as the economic liberalization in Cuba continues, the traditional investors, including Canadians, Europeans, and Latin Americans, are likely to deepen their own investments as the income of Cuban people increases and as more non-Cubans start spending time in Cuba for second homes and extended visits.

However, given the comparatively low levels of Cuban income, the market for Cuban purchasers of services and products will increase rather slowly. That said, the entry of U.S. banks and credit cards as well as the increased amounts of remittances by the Cuban diaspora and the increased activities of Americans in Cuba is bound to have some multiplier effect.

The ceiling will depend on the Cuban government’s attitude, policies, and laws with respect to the Cuban economy and foreign investment as well as wealth accumulation.

## Potential Activities through the CARICOM-Cuba Summits

Barbados may want to consider exploring closer collaboration with Cuba pursuant to the CARICOM-Cuba cooperation, much of which occurs through the CARICOM-Cuba Summits. The potential for such greater collaboration is underscored by the Declaration of Havana on the occasion of the Fifth CARICOM-Cuba Summit, which took place in Havana on December 8, 2014, and provided for the following:

* 1. Recognizing cooperation between Cuba and the countries of the Caribbean Community in areas such as health, the development of human resources, construction and sports. The Declaration further expressed further appreciation for the increase in undergraduate scholarships as well as post-graduate scholarships for specialization in medicine, the increase in patient intake from CARICOM States for free medical care, as well as training in disaster risk reduction and response to natural disasters;
  2. Welcoming the progress in the negotiations to expand market access and improve economic cooperation under our Trade and Economic Cooperation Agreement and encouraging our officials to continue to work in the spirit of solidarity and goodwill that has characterized their efforts to date, in order to conclude the negotiations by the end of the second quarter of 2015;
  3. Emphasizing that the updating of the Cuban economic model, its Foreign Investment Law and the Special Mariel Development Economic Zone provide additional opportunities, on a much broader scale, to accelerate and strengthen CARICOM-Cuba economic ties;
  4. Recognizing the importance to the Caribbean countries of taking advantage of the potential offered by the regional and sub-regional mechanisms such as CELAC, ACS, ALBA-TCP, and PETROCARIBE, as well as international mechanisms such as BRICS;
  5. Committing to strengthen cooperation for the protection of the environment and the sustainable use of our resources, in particular those in the Caribbean Sea. In this regard, we support the efforts made by the Association of Caribbean States (ACS) to declare the Caribbean Sea a Special Area in the Context of Sustainable Development within the UN Framework; and
  6. Emphasizing our commitment to combat trafficking in persons, illicit drugs trafficking and illicit trafficking of small arms, bearing in mind the characteristics, scope and magnitude of these programs in each individual state.[[101]](#footnote-101)

## Helping Cuban Entrepreneurship

One potential contribution Barbados can make to Cuba’s efforts to reform its economy and develop entrepreneurship is to share with Cuba activities promoted by the Barbados Entrepreneurship Foundation (BEF). Formed in 2010, the BEF was born from a vision to make Barbados “The #1 Entrepreneurial Hub in The World.” Led by Peter Boos, Chairman Emeritus of Ernst & Young Caribbean, and a group of local and international entrepreneurs called the "E-Team," the goal of the Foundation is to support the critical foundations of developing businesses. The focus of the Foundation is Growing Sustainable Entrepreneurship through advancing the key Foundation Pillars of Finance, Government Policy, Education and Skills, Mentorship and Business Facilitation.[[102]](#footnote-102)

The BEF is a private sector led non-profit organization with the mission of creating an Entrepreneurial Ecosystem that attracts and supports entrepreneurial activity both locally and internationally.[[103]](#footnote-103) The Foundation has implemented several projects that are pivotal to the promotion of entrepreneurship.

For example, in 2011 the BEF started the Free Wi-Fi project which undertook the then “unthinkable task” of increasing free Wi-Fi coverage around the island. In large part as a result of this project, today free Wi-Fi coverage stands at 74.1% around Barbados. The public widely supported the project because free internet connectivity is the new gateway to education, productivity, business development and communication in the global community. It creates a level playing field and gives access to everyone with an internet enabled device.

Another important project undertaken by the BEF is the $20 Challenge, an entrepreneurial competition for 4th and 5th form students designed to trigger the interest of young people in becoming entrepreneurs. The students have four weeks to develop a project concept and make it operational, and are assisted by Ambassadors (entrepreneurs who actually run their own businesses) who go into the schools and offer the students coaching and advice on their projects. The BEF has been able to expand its reach because of the support from Columbus FLOW, with 19 schools and 497 students participating in the competition in 2013.

In 2014, the BEF also established a Barbados Angel Investors Network to invest in worthy Barbados based start-ups.[[104]](#footnote-104)

BEF’s selection of the areas for development has been based on the belief that Barbados must develop a highly favorable business environment in which domestic and foreign entrepreneurs can prosper. This supportive environment will only occur when the population at large believes that entrepreneurship is an important driver of the economy and deserves their support. This change in mindset will only be achieved by education and dialogue on the importance of entrepreneurship.[[105]](#footnote-105)

If the BEF can find resources, perhaps foreign resources through grant making, it may be able to expand its projects to include Cuba. What a fantastic way to enrich young Barbadian would-be entrepreneurs by making them think and learn about development problems in Cuba and try to develop solutions and ways whereby the two countries and economies can cooperate.

## Cuba’s Potential Contribution to Barbados’ Tourism and Cultural Interaction

In terms of the potential interaction with Cuba, the Barbados government and private sector should consider some of the unique aspects of the Cuban economy. It has a large number of health care providers, educators, sports players, and visual and performing artists. Cuba has attained much success in these fields. Their sports participants have excelled in the Olympics and in all kinds of amateur competitions. Their baseball players regularly stand out in Major League baseball.

In terms of Barbados’ efforts to increase tourism, Cuba offers unparalleled opportunities to diversify and expand the cultural landscape in Barbados. By having the possibility to regularly offer Cuban musicians, theatre, and dance, the Barbados tourism product will appeal to a broader audience. Similarly, Cuban visual artists would add to Barbados’ offering. The interaction between Cuban and Barbadian artists is likely to stimulate artists on both sides.

Already Cuba has offered higher education to a number of CARICOM students. Studying in Cuba and having more Cuban teachers and students in Barbados will strengthen Barbados’ education offering. In particular, as Barbados wants to diversify its tourism and business with Latin America, interacting with Cubans will help. In addition, exposure to Cuban history, culture, and economy will benefit Barbadian academics at various levels.

Cuban culinary arts are well known throughout the Western Hemisphere and Europe. The potential of having Cuban cooks and restaurants would deepen the culinary experience for both Barbadians and tourists in Barbados.

## Fostering Interactions in the Non-Profit Sector

Because of the limited opportunities in the Cuban private sector, Barbados may want to explore developing activities in Cuba within the non-profit sector. In this regard, the activities of a small number of U.S. nonprofits that have long been active in Cuba could be instructive.

Among the U.S. philanthropies active in Cuba are The Christopher Reynolds Foundation, which has focused primarily on building relations between U.S. and Cuban citizens and institutions. Most of its largest advocacy grants have been made to the Center for International Policy, a politically progressive institution committed to peace and human rights in the Americas, and to the Washington Office on Latin America (WOLA). WOLA’s Cuba program has focused on advocating normalized diplomatic relations and improving human rights in Cuba itself.[[106]](#footnote-106)

Chuck Feeney’s Atlantic Philanthropies has supported various 501(c)(4) social welfare organizations and other pro-Cuba groups, including Cuba Now, a political advocacy group working to support entrepreneurs in Cuba, and the Cuba Study Group, headed by a former staff member in the administration of President George W. Bush.

An example of technical exchanges between the U.S. and Cuba is the work of Medical Education Cooperation with Cuba (MEDICC). MEDICC has helped connect U.S. health workers to the techniques and lessons of the Cuban public health system, and has involved over 2,000 Americans learning about Cuba’s approaches to healthcare. MEDICC has through example shown the practical benefits that can arise from technical cooperation, especially in health policies. The Robert Wood Johnson Foundation has made a $350,000 grant to MEDICC to further explore the Cuban public health model’s applicability to four U.S. communities – South Los Angeles, Oakland, Albuquerque, and the Bronx. Through the Ford Foundation and the Rockefeller Foundation, MEDICC has published the MEDICC Review: The International Journal of Cuban Health & Medicine.[[107]](#footnote-107) In January 2015, MEDICC’s trip to Cuba included members of Grantmakers in Health, who focused on the Cuban system of neighborhood *consultorios*, local teams of doctors and nurses focused on community outreach.[[108]](#footnote-108)

The Fundación Amistad, founded in 1998 by Luly Duke to foster “better mutual understanding and appreciation between the peoples of the united States and Cuba,” has supported 140 projects in Cuba, including research and books, visits by U.S. architects and planners to witness the historic preservation programs in old Havana, and academic projects.[[109]](#footnote-109)

Eric Leenson, president of SOL2 Economics, is focusing on building connections for and among social enterprises within Cuba and between Cuba and other countries. Last year, he made a study trip to Cuba with the representatives of the National Cooperative Business Association and other proponents of “new economy” forms of business endeavor.[[110]](#footnote-110)

Importantly, the non-profits involved in efforts to normalize U.S.-Cuba relations and fostering greater understanding between the two countries and peoples are not only left-wing activists, but bipartisan, including many business-oriented groups.[[111]](#footnote-111)

Barbados non-profits, such as BEF, its Chamber of Commerce, its academic institutions, and its professional organizations, such as the bar association, and BIBA, may want to consider exploring expanded relations with and activities in Cuba. In some cases, given Cuba’s comparatively larger size and its success in areas such as health, education, sports, music, performing arts, and food, Barbados may learn and benefit as much if not more from Cuba. Cubans and Cuban entities may also want to engage in activities in Barbados aimed at exporting products and services to, *inter alia*, the EU, North and South America, and CARICOM. By serving as incubators of new cooperatives and activities with Cuba, Barbados non-profits may even be able to attract funds from foundations outside the region, e.g., Canada, the U.S., Brazil, and Venezuela.

# SUMMARY AND CONCLUSion

# As normalization of relations between Cuba and the United States continues, Barbados has some potential opportunities. Some of these opportunities, as mentioned above, arise from the potential for Barbados to serve as an intermediary for investment into Cuba. In this regard, the DTA and BIT with Cuba offer advantages, especially if Cuba will respect the provisions of these treaties.

Barbados can take advantage of the fact that it is one of a few countries that has a double tax and bilateral investment treaty with Cuba, under which foreign investors can invest on an advantageous basis. However, unless Barbados can successfully assert competent authority provisions for Canadians and others using the tax treaty when Cuba does not comply with the treaty provisions, the advantage will be one on paper only. To that end, the Barbados government and its private sector will need to work with civil society advocates to educate the Cuban government about the benefits of adhering to the provisions of its treaty network, especially with a longtime friend such as Barbados.

Given Cuba’s size and its success in education, health care, and culture, Barbados can strengthen its offerings in all these spheres by embarking on exchanges and joint ventures. Barbados can do this in the context of the Cuba-CARICOM Trade and Economic Cooperation Agreement and the Cuba-CARICOM summit, and by proposing initiatives bilaterally. Because of the control exercised by the Cuban government of its economy, the Barbados government is a critical actor.

Moreover, the Barbados government and private sector, including its academic institutions, professional organizations and non-profits, in collaboration with other CARICOM organizations, will want to develop connections with the parts of the U.S. community which will look to expand their presence in Cuba, as well as with the Cuban government and private sector, so it can help develop meaningful relationships. Some civil society groups in the U.S. have been active in Cuba. These tend to be small and medium-size philanthropies. In addition, U.S. firms investing and/or exporting to Cuba are likely to be exporting construction and telecommunications equipment, as well as agricultural products and financial services. It should be noted that Barbados is not the only CARICOM country or even the main one that will try to serve as an intermediary conduit for U.S. investors to Cuba. Already Jamaica is making a push to do this work.

The Barbados government and Barbados non-profits and academic community should propose and pursue projects that address the mutual interests of both countries and others, such as the U.S., Canada, Brazil, Venezuela, Nicaragua, Bolivia, Russia, China, and international organizations. Such projects should include environmental protection programs, artistic and cultural exchanges, programs to combat drug trafficking and human trafficking, humanitarian relief in Haiti, responding to the Ebola plague, new ways to generate energy, supporting cooperatives and other structures to achieve economic development, and fostering education and understanding among peoples.

Already, the slow opening of the Cuban economy has resulted in internal calls, both from state enterprises and private businesses, to expand international exchange, liberalize domestic regulations, and reform the currency regime. These forces for internal change will multiply as trade, investment and tourism expand, business and civil society organizations become active, and ideas flow more freely. They will also change the dynamics of Cuba and inter-American relations.[[112]](#footnote-112)

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