

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

New York, New York

Telephone (917) 453-6726 • E-mail: council@cubatrade.org

Internet: <http://www.cubatrade.org> • Twitter: @CubaCouncil

Facebook: www.facebook.com/uscubatradeandeconomiccouncil

LinkedIn: www.linkedin.com/company/u-s--cuba-trade-and-economic-council-inc-

The Negotiator-in-Chief

We're Grown-Ups; Let's Make A Deal

A Get-Tough & Get-Results Team Led By Mr. Kenneth Feinberg

President Trump Can Create The Legacy That President Obama Didn't

The unclaimed legacy: President Trump can claim title to the “*legacy*” that President Obama failed to achieve by focusing on the difficult issues in a timely manner rather than the easy issues at a leisurely pace.

What we know: President-Elect Trump has shared what President Trump will and will not do relating to the Republic of Cuba.

There is justifiable confusion for the United States business community in appreciating the varietal nuances of statements (spoken and written) by Mr. Donald Trump, the business executive; Mr. Donald Trump, the candidate for the presidential nomination of the Republican Party; Mr. Donald Trump, the presidential nominee of the Republican Party; and Mr. Donald Trump, the President-Elect of the United States. This lack of clarity is not unusual for a candidate for public office or for a soon-to-be holder or a holder of public office.

President-Elect Trump has shared he does not want to expand the commercial, economic or political bilateral relationship with the Republic of Cuba unless there is a “*better deal*” than obtained and implemented by the Obama Administration.

He wants something to give something; he wants to negotiate (and re-negotiate) rather than continue what he believes to have been a unilateral surrender of interests by the Obama Administration. *So, what might he do?*

The soil upon which United States policy, regulations and laws sprouted since 1961 was created by the seizure of assets by the government of the Republic of Cuba.

There were 8,821 claims of which 5,913 awards have been certified by the United States Foreign Claims Settlement Commission (USFCSC- <https://www.justice.gov/fcsc>) at the United States Department of Justice which are valued at US\$1,902,202,284.95.

Of these claims, thirty (30) United States-based companies hold 56.85% of the total value. The USFCSC permitted interest to be accrued in the amount of 6% per annum; with the current value ranging from US\$6 billion to US\$9 billion.

Members of the President-Elect's transition teams and individuals who encompass his increasing array of advisors and policy creators are focused upon results- and the narrative of presenting the government of the Republic of Cuba with a fixed timetable, perhaps 180-days, during which a team designated by The White House would be tasked with obtaining an agreement to satisfy the interests of the 5,913 certified claimants.

The goal is to have an agreement in place before 24 January 2018, the retirement of H.E. Raul Castro Ruz (85 years old), President of the Republic of Cuba, and the inauguration of current Vice President Miguel Diaz-Canel Bermudez, 56 years old.

The first action would be for The White House to remove the United States Department of State as lead negotiator and replace it with a team reporting directly to the National Security Council (NSC) at The White House.

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

During the last twenty-three (23) months, the United States Department of State has failed to either create a viable foundation for a settlement of the certified claims or moved significantly forward the process from discussion to negotiation. They have had a chance. Now is a moment for a renewed dynamic.

The Obama Administration has professed that a settlement of the certified claims is a priority- a high priority. There were two meetings in twenty-three months. The date for a second meeting was not agreed to after the first meeting. The date for a third meeting was not agreed to after the second meeting. So much for the issue of the certified claims being a “*high priority*” for the Obama Administration.

State Department Meeting Timeline

17 December 2014 to 8 December 2015- 356 days between President Barack Obama’s 2,283-word statement (that did not mention certified claimants) and the first meeting of representatives from the government of the Republic of Cuba and the United States Department of State to discuss the issue of certified claims.

8 December 2015 and 28 July 2016- 233 days between the first meeting and second meeting of representatives from the government of the Republic of Cuba and the United States Department of State to discuss the issue of certified claims.

28 July 2016 to 20 January 2017- 176 days between the second meeting of representatives from the government of the Republic of Cuba and the United States Department of State to discuss the issue of certified claims and the end of the Obama Administration.

Based upon the results, the Obama Administration would had no intention of negotiating a settlement, but remained content with the imagery of dialogue. The questions that the United States Department of State never answered:

- Why haven’t Certified Claimants Sector Working Groups been established?
- Why haven’t certified claimants been summoned to meetings at the United States Department of State to create a negotiating platform?
- Is there a Certified Claimants Committee? Thirty (30) of the certified claimants account for 56% of the principal value of the certified claims.
- Have Agendas been created- and followed?
- Have Modalities of Settlements been established?
- Where is the Guidance?

The Art Of The Deal

The White House team would be directed by **Mr. Kenneth Feinberg**, who, as a designated Special Master, compensated by the USFCSC, would be responsible for negotiating and then implementing a settlement. As Mr. Feinberg has adjudicated other cases of United States national interest, his settlement agreement would provide for immediate value to those claimants who choose to abide by the settlement offering.

Mr. Feinberg, is a New York, New York-based attorney specializing in mediation and alternative dispute resolution, who served as Special Master for the September 11th Victim Compensation Fund and TARP Executive Compensation; Administrator of the BP Deepwater Horizon Disaster Victim Compensation Fund; and was retained to assist in the General Motors recall response and compensation for Volkswagen owners. *Mr. Feinberg appreciates the singular importance of deadlines.*

Important that the negotiations with the government of the Republic of Cuba to reach a settlement for the certified claimants not be a component of any other unilateral or bilateral or multilateral issue(s). For the relationship with the United States to expand, a settlement of the certified claims needs to be reached without the inclusion of extraneous issues.

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That United States-based companies with certified claims have discussed a return with the government of the Republic of Cuba or have re-engaged with the government of the Republic of Cuba provides a foundation for which negotiations may be initiated by the Trump Administration.

The Libertad Act of 1996 authorizes individuals and companies subject to United States law to engage in direct negotiations with the government of the Republic of Cuba to settle claims registered with the USFCSC.

The Trump Administration (or government of the Republic of Cuba) may consider hosting a Certified Claimant Settlement Forum- and any certified claimant who desires to return to the Republic of Cuba marketplace and has a proposal would be welcomed; and all proposals would be subject to a thirty (30) day yes-or-no response.

In 2016, Stamford, Connecticut-based **Starwood Hotels & Resorts Worldwide** (2015 revenues exceeded US\$5.7 billion), which is a subsidiary of Bethesda, Maryland-based Marriott International (2015 revenues exceeded US\$14 billion), was granted a license by the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury to manage properties in the city of Havana owned by Republic of Cuba government-operated entities.

The properties are Gran Caribe-owned Hotel Inglaterra; Habaguanex-owned Hotel Santa Isabel and Hotel Quinta Avenida (re-branded as Four Points by Sheraton Havana on 27 June 2016). The Hotel Quinta Avenida is owned by Republic of Cuba government-operated Gaviota SA, which is controlled by the Revolutionary Armed Forces of the Republic of Cuba (FAR).

As a result of a series of mergers and acquisitions during the last fifty-seven years, a US\$51,128,927.00 claim initially made by New York-based International Telephone & Telegraph Corporation (ITT) is now controlled by Starwood Hotels and Resorts Worldwide, which can use this value as a means to secure opportunities within the Republic of Cuba.

Starwood Hotels & Resorts Worldwide controls a certified claim representing approximately 2.68% of the total principal value of the certified claims.

What Can The Trump Administration Do?

The Trump Administration could use funds obtained during the last eight years from global financial institution settlements and not redirected by the United States Congress for other purposes to offset some or all of the principal/interest amount of the certified claims.

“The Foreign Claims Settlement Commission of the United States (FCSC) is a quasi-judicial, independent agency within the Department of Justice which adjudicates claims of U.S. nationals against foreign governments, under specific jurisdiction conferred by Congress, pursuant to international claims settlement agreements, or at the request of the Secretary of State. Funds for payment of the Commission's awards are derived from congressional appropriations, international claims settlements, or liquidation of foreign assets in the United States by the Departments of Justice and the Treasury.”

If the Trump Administration makes a payment to the certified claimants essentially on behalf of the government of the Republic of Cuba, might those who have civil judgements in the United States against the government of the Republic of Cuba seek to seize the funds? Someone may try. That does not mean don't do it.

A certified claims settlement should be based upon the payment of 100% of the value of each certified claim. Even with a full settlement based upon principal and interest, the annual rate of inflation has substantially diminished the value of each certified claim.

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

Opportunities for settlement include, but are not limited to, debt-for-equity swaps and substitution investments (one structure for another; one piece of land for another, etc.). In combination with or separately from compensation formats, the government of the Republic of Cuba could provide transferable values to the certified claimants including:

- **Income tax holidays**
- **Import duty exemptions**
- **Reduced energy rates**
- **Property tax credits**
- **Earned income tax credits**

The OFAC should issue a general license for certified claimants, their representatives and agents to visit the Republic of Cuba for the purpose of negotiating a settlement.

The resolution of the certified claims will provide the legislative foundation to revise and rescind the Cuban Assets Control Regulations (CACR), the **Cuban Democracy Act** (CDA) of 1992, the **Libertad Act** (“Helms-Burton”) of 1996, and the **Trade Sanctions Reform and Export Enhancement Act** (TSREEA) of 2000.

Advocacy groups need to be re-tasked, similar to a satellite, from a pathway of mythology focused upon creating new statutes to a non-fiction, and potential best-seller, application towards supporting a settlement of the certified claims.

The Trump Administration is focused upon connecting any further expansion of bilateral commercial opportunities, meaning exports of products and services and imports of products and services, to a settlement of the certified claims.

<http://www.cubatrade.org/blog/2016/7/29/transcript-of-state-department-briefing-about-us-cuba-claims-discussion?rq=department%20of%20state%2C%20cuba>

<http://www.cubatrade.org/blog/2016/7/24/28-29-july-2016-may-be-near-last-opportunity-for-us-claimants-to-advocate-face-to-face-for-settlement-before-the-end-of-the-obama-administration?rq=department%20of%20state%2C%20cuba>

<http://www.cubatrade.org/blog/2016/7/28/us-department-of-state-reports-on-claims-discussion?rq=department%20of%20state%2C%20cuba>