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## Cuba's Business Enterprises: How Business is Conducted on the Island

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## I. INTRODUCTION

Since the end of the Cold War, it seems that every four or five years there is a period of intense speculation about the end of the forty year U.S. embargo on Cuba and the opening of the island to American business.<sup>1</sup> It

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1. The U.S. embargo is the result of the economic restrictions imposed in 1962 by the Kennedy Administration based on the trading with the Enemy Act of 1917. Enemy Act of 1917, ch. 106, 40 Stat. 411 (1917). The U.S. embargo has been reinforced by the Cuban Democracy Act

happened at the end of the 1980s when the Soviet bloc was disintegrating, resurfaced in the mid-1990s during the worst moments of economic crises in Cuba, and appeared again in the late 1990s after the visit of Pope John Paul II to Cuba.

We are now facing another period of intense speculation about the end of the U.S. embargo. However, this time things are a little different since there has been a substantial change to the U.S. embargo policy. In 2001, the U.S. Congress passed a law relaxing restrictions on sales of medical and agricultural products to Cuba.<sup>2</sup> Partially as a result of the damage done to the island by Hurricane Michelle, Cuba has already purchased more than \$150 million worth of agricultural and medical products from the United States.<sup>3</sup>

On July 23, 2002, the House of Representatives voted 262-167 to approve an amendment to the appropriations bill of the Treasury Department, which regulates travel to Cuba, eliminating funding for such regulation.<sup>4</sup> This was followed by a 251-177 vote on another bill lifting the cap, presently \$1,200 per year, on what Cuban-Americans can remit to their families in Cuba.<sup>5</sup> Additionally, the House approved another bill by a voice vote allowing U.S. companies to sell food and medicine to Cuba more easily, including allowing private credit.<sup>6</sup> The Senate was scheduled to take up these measures in September 2002. All of these developments prompted House Majority Leader Dick Armey to predict that the U.S. embargo would be over within one year.<sup>7</sup>

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of 1992, also called the Torricelli Law, and the Cuban Liberty and Democratic Solidarity Act of 1996, commonly called the Helms-Burton Law. Cuban Democracy Act of 1992, Pub. Law No. 102-484, 106 Stat. 2575 (1992); Cuban Liberty and Democratic Solidarity Act, Pub. Law No. 104-114, 110 Stat. 785 (1996).

2. See Trade Sanctions Reform and Export Enhancement Act of 2000. Pub. Law No. 106-387 (codified as 22 U.S.C. §§ 7201-7211 (2002)).

3. Mark P. Sullivan, Report for Congress, Cuba: Issues for the 108th Congress, Congressional Research Service, Library of Congress, Apr. 2003.

4. Press Release, Office of Congressman Jeff Flake, Congressman Flake Dismisses Castro Remarks (July 26, 2002).

5. *Id.*

6. Ana Radelat, *House Votes to Weaken Cuba Embargo, But Bush Veto May Derail Legislation*, CUBA NEWS, Aug. 1, 2001, at 1.

7. Americans are allowed to visit Cuba, but they are not allowed to spend any money on their visit unless they meet the requirements of certain categories established by the Department of the Treasury, Office of Foreign Asset Control (OFAC) such as journalist, professional researcher, or Cuban-Americans visiting relatives. OFAC also issues special licenses to Americans wishing to visit the island to attend conferences, participate on other special activities such as religious, charitable, or fact-finding tours. In all cases, time of stay and funds spent on the island are limited. 31 C.F.R. §§ 515.201 & 515.560 (2002). See also Armey Urges End to Cuba Sanctions,

Prior to the law allowing sales of medical and agricultural products, U.S.-Cuba business was limited to telephone communications, charter flights, limited travel agency services, limited money transfers, mailing of letters and documents, and deliveries of packages containing only clothes and medicine sent by courier services. If unrestricted travel by Americans is indeed permitted, then many other types of business activities such as scheduled airline flights, cruise ships, credit cards and other banking transactions, and unrestricted travel agency operations will certainly follow. The opening of Cuba to U.S. business will probably take place within two years of unrestricted travel by Americans.

Because of its location, population, infrastructure, service oriented industry, and history of dealing with Latin America and the Caribbean, the state of Florida will be a major beneficiary of the end of the U.S. embargo and the opening of Cuba to U.S. business. Although a few analysts believe that certain sectors, such as tourism and agriculture, may be negatively affected at some point, the most prevalent opinion is that of a very positive outcome. There have been several studies, seminars, and articles about the impact of the end of the U.S. embargo or economic relations between Cuba and the state of Florida in recent years.<sup>8</sup> These sources indicate that with the travel restrictions lifted, normal diplomatic relations, and an opening to U.S. business, there would be more than fifty flights a day from Florida to Cuba compared to the present twenty-five to thirty flights per week from Florida, New York, and California. Visitors from Florida to Cuba alone could number approximately one to two million per year. This estimate does not include cruise ship passengers or foreign tourists that may visit Florida and Cuba.

With normalization of travel and business, foreign trade between Cuba and Florida could reach five to six billion dollars annually.<sup>9</sup> Florida could export to Cuba construction materials, inexpensive furniture and household goods, fertilizers, products for assembly and services, among other items. Cuba could export to Florida agricultural and assembly products such as clothing, electronics, seafood, minerals, and possibly natural gas.

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L.A. TIMES, Aug. 9, 2002, at 1 (for the statement of Representative Dick Armey regarding the fate of the U.S. embargo).

8. See, e.g., Oscar Musibay, *After the Fall*, MIAMI BUS., Mar. 2000, at 37; Christopher Lancette, *Cuba's Prosperous Future*, HISP. BUS., Apr. 2000, at 38; David Wilkening, *Business Eyes a Non-Embargoed Cuba*, S. FLA. BUS. J., Mar. 23-29, 2001, at 1A; see also, FLORIDA TRADE DATA CENTER, CUBA SUMMARY OF OPPORTUNITIES, ECONOMIC IMPACT AND OPPORTUNITIES ANALYSIS FOR THE STATE OF FLORIDA UPON RESUMPTION OF TRADE BETWEEN THE UNITED STATES AND CUBA (1998).

9. See Musibay, *supra* note 8, at 40.

Direct investments by Floridians in Cuba could be very substantial. For instance, with normal U.S. travel and business, Cuba would need, in the short term, as much as 300,000 housing units, including second homes, vacation homes, business suites or apartments, retirement homes, and of course, hotels, motels, and bed and board rooms. All of the above would be for foreign visitors and temporary residents. The housing needs for local Cubans is presently estimated at 500,000 units and growing.<sup>10</sup>

With increased travel and business, Cuba will require extensive maintenance and repair of existing infrastructure such as water and sewer, power plants, and roads, as well as the expansion and development of cruise ship terminals, airports, ports, and marinas. Given the many years of relatively little maintenance to Cuban infrastructure, potential increase in travel and business, infrastructure repair and development would certainly be a major source of economic activity between Cuba and Florida.

## II. CUBA'S BUSINESS ENTERPRISES

Given the first concrete signs of the end of travel and business restrictions imposed by the United States on Cuba and the importance that this change will have on the economy of the state of Florida, it seems timely to examine how business is currently conducted in Cuba. This is the objective of this Article concentrating on Cuban business enterprises. A business enterprise is defined by Black's Law Dictionary as an "[i]nvestment of capital, labor and management in an undertaking for profit [whose] recognized attributes [are] centralized management and control."<sup>11</sup> Other key elements of business in Cuba such as direct foreign investment and international trade are considered in this Article, but only as they relate to the business enterprises operating in Cuba. Very little has been written about Cuban business enterprises; on the other hand foreign investment and trade have received substantial attention.<sup>12</sup>

Cuba is a complicated subject because of the nature of its economic system, which is really two distinct systems operating side by side. One is the socialist peso economy which applies to most Cubans and provides

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10. *La Apertura de Cuba, Gran Negocio para la Florida*, EL NUEVO HERALD, Jan. 7, 1999, at 1A.

11. BLACK'S LAW DICTIONARY 180 (5th ed. 1979).

12. See, e.g., Antonio R. Zamora, *Foreign Investment in Cuba: A U.S. Perspective*, 2000 A.B.A. SEC. PROB. & PROP. 57; MARK M. MILLER & TONY L. HENTHORNE, INVESTMENT IN THE NEW CUBAN TOURIST INDUSTRY: A GUIDE TO ENTREPRENEURIAL OPPORTUNITIES (1997); INVESTING IN CUBA: PROBLEMS AND PROSPECTS (Jaime Suchlicki & Antonio Jorge eds., 1994).

them with free education, free health care, universal employment, unemployment compensation, disability and retirement benefits, and the basic necessities of life: food, housing, utilities and some entertainment at very low cost.<sup>13</sup> The other is the free-market dollarized economy that operates in the tourist, international, and export sectors and in many ways sustains the socialist economy.<sup>14</sup> The Cuban business enterprise system is one of the most important ways of sustaining this dual economy on the island.<sup>15</sup>

Cuban business enterprises can be classified in five distinct categories: state enterprises, Cuban commercial companies, mixed or joint venture companies, totally foreign-owned companies, and branches of foreign companies. This Article will describe the legal basis for the five types of enterprises, their legal organization, structure and regulation, and their relative impact on the Cuban economy and potential future importance. It is assumed herein that these business enterprises will continue to be in operation after the end of the U.S. embargo since most analysts predict that there will be few substantial changes in Cuba until at least a decade after the death of Fidel Castro.<sup>16</sup>

The main legal foundations for Cuban business enterprises are found in Cuba's Constitution of 1976, as amended in 1992.<sup>17</sup> Article 15 of the Cuban Constitution states that "socialist State property is the property of the entire people, comprising: the factories, enterprises and economic facilities fostered or purchased by the State . . ."; Article 17 states that "[t]he State directly administers the goods that make up the socialist property of the entire people; or may create and organize enterprises and entities to administer them, whose structure, powers, functions . . . are prescribed by law"; Article 23 states that "[t]he State recognizes the right

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13. Andrew Zimbalist, *Whither the Cuban Economy?*, in CUBA: THE CONTOURS OF CHANGE 13 (Susan Kaufman Purcell & David Rothkopf eds., 2000).

14. *Id.* at 18-19.

15. Some analysts have suggested that there is a third economy which is informal and market oriented. This third economy is formed by the self-employed, the farmers' markets, the crafts markets, the black and gray markets, etc. *Id.* at 19; see also JORGE F. PEREZ-LOPEZ, CUBA'S SECOND ECONOMY, FROM BEHIND THE SCENES TO CENTER STAGE 1-3 (1995).

16. See William M. Leogrande, *Cuba: The Shape of Things to Come*, in CUBA: THE CONTOURS OF CHANGE, *supra* note 13, at 3-10; Jaime Suchlicki, *Castro's Cuba: Continuity Instead of Change*, in CUBA: THE CONTOURS OF CHANGE, *supra* note 13, at 57-59, 73-78; see also Brendon Farrington, *Opening Cuba to Business Not As Simple As "No Castro, No Problem,"* CUBANET NEWS, Mar. 20, 2000, available at <http://64.21.33.164/CNews/y00/mar00/20e16.htm> (last visited Mar. 4, 2003); Cuba after Castro: What to Expect, Seminar organized by the University of Miami School of International Studies, Aug. 31, 2001.

17. 1992 CONSTITUCIÓN DE LA REPÚBLICA DE CUBA. The translations are those of the author.

to legal ownership of joint ventures, companies and economic associations which are created as prescribed by law"; and Article 18 states that "[t]he State controls and directs foreign trade [and is] authorized to: create foreign trade enterprises; . . . and regulate export and import transactions."<sup>18</sup>

In addition to the Cuban Constitution, business enterprises in Cuba are based on and regulated by the *Código de Comercio* (Commercial Code), the *Código Civil* (Civil Code), and various laws, particularly the Foreign Investment Law of 1995.<sup>19</sup> Specific cites to these other sources will be made below as we describe the different types of Cuban business enterprises.

### III. STATE ENTERPRISES

Before the triumph of the Revolution in 1959, Cuba had a well-developed economic system based on the principles of capitalism and free enterprise. The Cuban economic model before the Revolution was substantially influenced by the United States, and on purely economic terms had placed Cuba among the most developed countries of Latin America. All of this began to change in the early sixties. In 1959 and 1960 several laws were adopted, such as the Agrarian Reform Law and the Urban Reform Law that clearly indicated a new economic approach.<sup>20</sup> In late 1960 a number of U.S. businesses and properties were expropriated.<sup>21</sup> In 1961 the United States broke diplomatic relations with Cuba, and Cuban leader Fidel Castro proclaimed the socialist nature of the Revolution. Soon thereafter there were mass expropriation of businesses and properties of Cuban citizens as the country changed to socialism.<sup>22</sup>

The economic model established in Cuba after the adoption of socialism followed the example and practices of the Soviet Union and the countries of Eastern Europe. Cuba developed state enterprises to replace the old economic system that was terminated by expropriation and change. Originally state enterprises were based on state planning, centralization, and moral principles and incentives. This first phase lasted until the mid-1970s when a new system of economic planning and management was

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18. *Id.*

19. Ley No. 77, Sept. 5, 1995, Gaceta Oficial Ext. No. 3, Sept. 6, 1995.

20. See PEREZ-LOPEZ, *supra* note 15, at 34-35.

21. *Id.* at 35.

22. *Id.* at 36-38.

adopted.<sup>23</sup> The new system emphasized decentralization, material incentives, and managerial efficiency.<sup>24</sup>

In the 1970s and 1980s Cuban state enterprises faced relatively few challenges. The Cuban socialist economy was integrated to the economy of the Soviet bloc and it was heavily subsidized both externally and internally. All of this began to change with the collapse of the Soviet Union and the Eastern European socialist nations in the late 1980s. Today Cuban state enterprises are no longer subsidized, they must operate at a profit or they are dissolved or merged into a successful entity. In 1998 they became subject to a new, intensive effort to improve management, production, profitability, and over-all performance.<sup>25</sup> Moreover, they must compete with foreign companies, mixed enterprises, and even commercial companies created by the Cuban government.

Cuban state enterprises are created by a government entity, usually a ministry, after receiving approval for the project from the Ministry of Economy and Planning. The sole exception is for enterprises involved in foreign trade, which are approved by the Ministry of Foreign Commerce.<sup>26</sup> Once the state enterprise is formed, incorporation documents are filed in the Registry of State Enterprises and Budgeted Entities. Today, there are approximately three thousand state enterprises in operation on the island.

The state enterprise is an independent legal entity created according to the Constitution of 1976 and various decrees that regulate its formation and operations.<sup>27</sup> The initial capital is provided by the Ministry of Economy and Planning or other government entity that creates the enterprise. It operates as an autonomous entity responsible for its own financial management, business plan, and contractual relations. It must be profitable or it is either dissolved or merged with a more successful enterprise by order of the Ministry of Economy and Planning. Profits are turned over to the Ministry of Economy and Planning or other entity that created the enterprise. Each state enterprise operates in coordination with the Ministry of Economy and Planning or other entity that created it or as part of a group or conglomerate of state enterprises called a Superior Organization of Enterprise Direction (OSDE) formerly a "Union."<sup>28</sup>

23. See Sergio G. Roca, *State Enterprises in Cuba under the New System of Planning and Management*, in CUBAN COMMUNISM 298-99 (Irving Louis Horowitz ed., 7th ed. 1989).

24. *Id.*

25. Ley No. 187, Aug. 18, 1998, Gaceta Oficial Ord. No. 45, Aug. 25, 1998. This law is commonly referred to as "Perfeccionamiento Empresarial."

26. BUFETE DE SERVICIOS ESPECIALIZADOS, LA EMPRESA Y EL EMPRESARIO EN CUBA, (2000), at 3.

27. *Id.* at 5.

28. *Id.* at 6.



The state enterprise is supervised by a board of advisors, usually comprised of five members representing the Ministry of Economy and Planning, the Ministry of Finance, the Central Bank, the ministry or entity that created the enterprise, and the Director General of the enterprise. Day-to-day operations of the enterprise are handled by the Director General. The Director General is usually appointed by the ministry or other government entity that created the enterprise or the OSDE if the enterprise is part of a larger group. The Director General is assisted by a board of counselors composed of department directors, assistant directors, and others involved in the operation of the enterprise. To some extent the board of advisors represents the shareholders (the state), and the board of counselors is similar to a board of directors.

State enterprises have modernized and improved their performance over the last two decades. In 1993, state enterprises received 5.4 billion pesos in subsidies to cover losses.<sup>29</sup> In fiscal year 2000, only 608 million were allocated for that purpose; this represents a reduction of almost 90%.<sup>30</sup> State enterprises are now more autonomous, more transparent, and in some cases they actually compete with other business enterprises in the free-market dollarized economy.<sup>31</sup>

State enterprises, commercial companies, and mixed companies are incorporated under the traditional guidelines common to civil law countries. In the case of Cuba, the controlling document is the Commercial Code which is based on the Spanish Commercial Code. As is frequently the case in civil law countries, the purposes or objectives of the company are quite specific. In Cuba, different companies are assigned specific objectives and areas or sectors of operations by the state. When dealing with Cuban state enterprises, it is very important to determine early what the enterprise is allowed to do under its charter.

#### IV. COMMERCIAL COMPANIES

Another type of Cuban business enterprise is comprised of entities that operate as private companies although they were constituted by the state with government funds just like the state enterprises. The collapse of the Soviet Union and the Soviet bloc had a devastating effect on Cuba's economy. For instance, national income dropped twenty-five percent,

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29. PHILIP PETERS, THE LEXINGTON INSTITUTE, STATE ENTERPRISES REFORM: AN EARLY SNAPSHOT 2 (July 2001).

30. *Id.*

31. *Id.*

foreign trade dropped seventy-five percent, and gross national product fell thirty-four percent.<sup>32</sup> With this situation, Cuba was forced to choose between isolation and retrenchment or reform and insertion into a global economy dominated by free markets and capitalism based on the U.S. dollar. Cuba chose the latter, using the Cuban commercial company as one of its main conduits to the world economy.<sup>33</sup>

The Cuban commercial companies operate almost entirely in the dollarized economy within and outside of Cuba. They are involved primarily in tourism and foreign trade, but they are also the main Cuban partner in many industrial and commercial activities on the island. A few years ago some of the commercial companies started investing outside of Cuba in Spain and Mexico, for example. At the beginning, their investments were in restaurants, cigar stores and travel agencies. Now they are moving into other types of investment, such as the construction sector and even real estate development.

The first commercial companies were formed in the mid-1980s, even before the fall of the Soviet bloc. Some of them were formed outside of Cuba, in Latin America and Europe. As the commercial companies moved into the area of foreign investment, naturally more foreign companies were formed. However, their parent companies and headquarters remain in Cuba. Therefore, in this Article we will only examine the Cuban commercial companies; nevertheless, it is important to understand that most major companies have affiliates outside of Cuba.

The legal base for commercial companies is found in the Cuban Commercial Code whose origins date back to Spanish laws and the colonial period.<sup>34</sup> Several types of companies are found in the Commercial Code, but in contemporary Cuba only "*compañías anónimas*" are being used.<sup>35</sup> This is fortunate for Americans since a "*compañía anónima*" is the closest entity in civil law to a common law company. Moreover, "*compañía anónima*" in Spanish translates to "company" in English and vice versa.

The Cuban commercial company is a typical capitalistic entity of limited liability, centralized management, unlimited capital divided in shares according to the contributions of the shareholders, and open to anybody who is able to purchase the shares of the company. Shares must

32. *Id.*

33. *Id.* at 3, 8.

34. ROSA MARIA YÁNEZ GARCÍA & JUSTA AURELIA AGUIRRE ECHEVARRIA, CÓDIGO DE COMERCIO (*Actualizado*) (1998) (the Commercial Code has been in effect in Cuba since May 1, 1886).

35. See Commercial Code, arts. 116-172.

be nominative; bearer shares were made illegal in 1959. Documents of incorporation for commercial companies are filed in the government registry office for commercial entities (*Registro Mercantil*). The document must include the following: the name of the incorporator(s), the name of the company, the name(s) of the manager(s), capital of the company, number of shares, duration of the company, purposes of the company, how shareholder meetings are conducted, and shareholder agreements, if any.

Commercial companies are managed by administrators appointed by the shareholders. The general meeting of shareholders is the supreme organ of the commercial company. Cuban commercial companies are formed by a decision of the state or of the Communist Party or both. The incorporators and shareholders are selected from those most loyal to the system. Administrators are selected for their loyalty as well as for their business ability. Many of the administrators of the commercial companies came from the downsizing of the armed forces and the government that took place during the early 1990s.<sup>36</sup>

Legally, commercial companies are totally independent. In contrast, state enterprises are merely autonomous. Theoretically, it is up to the shareholders to expand, increase capital, issue new shares, merge, declare bankruptcy, and liquidate. In reality, all of these are collective decisions according to the economic plan of the government with the final decision by the state and the Communist Party. There are currently fewer than three hundred commercial companies, yet they control directly, or as partners in mixed companies, a much greater piece of the Cuban free-market dollarized economy than the three thousand state enterprises or any of the other types of business enterprises on the island.

## V. MIXED COMPANIES AND TOTALLY FOREIGN-OWNED COMPANIES

These two types of Cuban business enterprises can be considered together because they have the same origins and legal basis: the Cuban foreign investment legislation. Cuba has used foreign investment to counterbalance the disastrous effects of the collapse of the Soviet bloc and resulting economic crisis on the island. The goals of this effort have been to attract capital, technology, and new markets. The results have been fairly good, although not spectacular.<sup>37</sup>

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36. Cf. PETERS, *supra* note 29, at 3 (for reductions of ministries).

37. See Ed Canler, *The Miracle of the Cuban Economy in the 1990s*, paper presented at the 2001 meeting of the Association for the Study of the Cuban Economy (ASCE), available at <http://lanic.utexas.edu/project/asce/pdfs/volume11/canler.pdf> (last visited Mar. 3, 2003).

The first Cuban effort at foreign investment legislation dates back to 1982 when Law 50 entitled "About Economic Associations Between Cuban and Foreign Entities" was enacted. This law allowed two forms of foreign investment in Cuba, an international association contract and a mixed enterprise or joint venture. Law 50 was, for all practical purposes, almost dormant until the early 1990s when the economic crisis of Cuba peaked and foreign investment became a survival strategy. Foreign investment grew rapidly after 1990 and a new foreign investment law was enacted in 1995 expanding the scope of Law 50.<sup>38</sup>

The new law, Law 77, was adopted on September 5, 1995 and is entitled "The Foreign Investment Act." Law 77 allows three forms of foreign investment: international association contracts, joint ventures or mixed companies, and totally foreign-owned companies. Law 50 limited foreign ownership in joint ventures or mixed companies to 49%, Law 77 does not limit foreign ownership and, in fact, allows 100% foreign ownership.<sup>39</sup> Investments under Law 77 usually take the form of a mixed company incorporated in Cuba with two principal shareholders; one, a Cuban commercial company and the other, a foreign company.

The mixed company thus created is incorporated pursuant to the Cuban Commercial Code as described above. There are approximately four hundred such companies in operation in present day Cuba.<sup>40</sup> Spain is the leading investing country with approximately twenty-three percent of the mixed companies, followed by Canada with twenty percent, and Latin American countries with eighteen percent, with Mexico as the principal investor.<sup>41</sup> Other substantial investors are Italy, France, the United Kingdom, and the Netherlands.<sup>42</sup>

Although most mixed companies are the result of a business deal between a foreign company and a Cuban commercial company, state enterprises are increasingly participating in mixed companies with foreign investors. Another recent trend is for Cuban commercial companies and state enterprises to form the mixed company in a foreign jurisdiction such as Panama or the Netherlands. This reflects flexibility and imagination on the part of the Cubans. It also reflects the increasing competitiveness of the Cuban free-market dollarized economy.

38. See Antonio R. Zamora, *Cuba's New Foreign Investment Law: Better, Worse or the same as Before?*, 4 FOCUS AMERICAS 3 (1996).

39. *Id.* at 4.

40. Philip Peters, *Survival Story: Cuba's Economy in the Post-Soviet Decade*, LEXINGTON INST., May 2002, at 6.

41. *Id.*; Interview with Rodolfo Davalos Fernandez (Aug. 28, 2002).

42. Peters, *supra* note 40; Fernandez, *supra* note 41.

Totally foreign-owned companies are allowed under Law 77. However, at present only one totally foreign-owned investment has been realized in Cuba. This involves a Panamanian company which is financing the construction of a power plant on *Isla de la Juventud*, the second largest island of the Cuban archipelago and an important tourist destination.<sup>43</sup> Although totally foreign-owned companies are legally possible, they are not expected to become an important option in the Cuban foreign investment world. This is because the government strategy is to favor participation of Cuban companies, and because most foreign investors prefer to have a local partner.

## VI. BRANCHES OF FOREIGN COMPANIES

The Cuban government through Decree No. 206 of April 10, 1996, entitled "Regulation for the National Registry of Branches and Agents of Foreign Companies," authorized foreign companies to establish branches and appoint agents to engage in business in Cuba.<sup>44</sup> As of December 2000, there were over 525 foreign companies represented in Cuba. All but a handful were branches. In fact, at the end of 1999 only eight agents had been appointed. As of April 15, 2002, there were over 800 branches and some 100 agents.<sup>45</sup>

The process of establishing a branch in Cuba is fairly straightforward. First, an application is filed with the Cuban Chamber of Commerce. Second, the application is sent to the Ministry of Foreign Commerce with the recommendations of the Chamber. Third, if the Ministry approves the application, the application is then filed in the National Registry of Branches and Agents of Foreign Companies maintained by the Chamber of Commerce. The registration is good for five years and may be extended for periods of three years.

The application must contain the following information: a formal request for registration, a copy of the articles of incorporation and the bylaws of the company, designation of the person in charge of the branch and their resume, type of business and products that will be handled by the branch, bank references, information of business activities of the last five

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43. Dalia Acosta, *Cuba: First 100 Percent Foreign Investment*, WORLD NEWS, Feb. 10, 1999, available at [http://www.oneworld.net/ips2/feb99/14\\_59\\_046.html](http://www.oneworld.net/ips2/feb99/14_59_046.html) (last visited Mar. 4, 2003).

44. Ley No. 206, Apr. 10, 1996, Gaceta Oficial Ord. No. 17, May 24, 1996.

45. CUBA: CONSULTOR DE NEGOCIOS (Albur S.A. CD/Rom, 2000 ed.); Interview with Sara Marta Diaz Rodriguez, Secretary, Cuban Chamber of Commerce.

years, and information about the business conducted in Cuba in the last three years.

There are 286 European companies in Cuba, 218 from the Western Hemisphere, and the balance from the rest of the world.<sup>46</sup> The country with the most branches by far is Spain with 155; a distant second is Canada and Italy, with 28 each followed by France with 23, Mexico with 22, and Germany with 19.<sup>47</sup> Panama has eighty branches; however, this is a misleading figure since it is known that many of the companies involved are actually owned by entities and individuals who are not from Panama.<sup>48</sup> These companies engage in all kinds of business activities in Cuba but the most prevalent are tourism, financing, consulting services, and export-import transactions.

Branches of foreign companies frequently operate in "free trade zones." Free trade zones were created in Cuba by Decree Law 165 of June 3, 1996. This legislation defines a free trade zone as a space within Cuba, duly delimited, without a residential population, for the free exportation and importation of goods, outside of customs demarcation in which industrial, commercial, agricultural, technological, and service activities are carried out under special laws. These special laws deal with customs, banking, taxes, labor, migration, and public order, all of which are less restrictive than the usual legislation. Four free trade zones were created: Havana, Wajay, Mariel, and Cienfuegos.

## VII. EXPORT-IMPORT COMPANIES

The export-import activity is regulated in Cuba by the Ministry of Foreign Commerce (*Ministerio de Comercio Exterior*). This Ministry establishes which Cuban business enterprises are allowed to export and import goods. Among the enterprises allowed to participate in the export-import activity are state enterprises, commercial companies, and mixed companies. Therefore, export-import companies are not a new category of business enterprise; it is, however, a very important category of business activity and a very important part of how business is conducted in Cuba, this is why it is treated in this Article as a separate section.

Export-import companies apply for authorization to either export or import specific types of goods to the Ministry of Foreign Commerce. Once the application has been reviewed and approved, the companies have to

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46. Cuba: Consultor de Negocios, Albur S.A. CD/Rom, 2000 ed.

47. *Id.*

48. *Id.*

register with the Chamber of Commerce of the Republic of Cuba. For this purpose, the Chamber operates a National Registry of Export & Import Companies. At the end of 2001, there were 227 export companies registered.<sup>49</sup> Most of these companies were state enterprises but there were also a good number of commercial and mixed companies. The number of import companies that appeared at the registry as of September 15, 2000 was 351.<sup>50</sup> Again, all types of enterprise were present in a fairly balanced distribution.

### VIII. TAXATION OF CUBAN BUSINESS ENTERPRISES

Another element of Cuban economic reforms during the 1990s was the introduction of corporate and individual income taxes. The basic Cuban tax law is Law 73 of August 4, 1994.<sup>51</sup> A full discussion of the Cuban tax system is well beyond the scope of this Article. However, some observations are necessary.

First, Cuba has the usual taxes, such as custom duties, documentary taxes, and inheritance taxes, found all over Latin America. Second, income taxes, introduced by Law 73 in 1994, apply only to income in foreign currency and convertible Cuban pesos. Of course, foreign currency usually refers to U.S. dollars. Convertible Cuban pesos are special pesos that are convertible to U.S. dollars at an exchange rate of one-to-one. Third, income taxes basically apply only to the dollarized economy. This includes all foreign investments, including Cuban companies that are in joint ventures, mixed companies, or in contractual relationships with foreign companies. It also applies to export-import companies and companies doing business outside of Cuba. Fourth, income tax laws also apply to Cuban citizens with income in foreign currency or convertible Cuban pesos. Two examples are: the owners of family restaurants, known as "*paladares*," and owners and operators of private bed and board establishments. Foreign family remittances are exempt from taxation. Fifth, Cuban income taxes are paid on net income. Many of the usual deductions allowed in capitalistic economies such as operating expenses, cost of sales, and depreciation are recognized in Cuba's tax code.<sup>52</sup>

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49. See MINISTERIO DEL COMERCIO EXTERIOR, DIRECTORIO DE EXPORTADORES DE LA REPÚBLICA DE CUBA (2002).

50. See CÁMARA DE COMERCIO DE LA REPÚBLICA DE CUBA, DIRECTORIO DE IMPORTADORES DE LA REPÚBLICA DE CUBA (2001).

51. Ley No. 73, Aug. 4, 1994, Gaceta Oficial Ext. No. 8, Aug. 5, 1994.

52. *Id.* It is interesting to note that since the introduction of the income tax in Cuba, the accounting profession has soared. Both foreign and national accounting firms are active in Cuba.

In general terms, individuals, foreigners working in Cuba, and Cubans with dollarized income pay a minimum of 10% on net income up to U.S. \$ 2,400 and up to 50% on a progressive scale for net income in excess of U.S. \$ 60,000 per year. Business enterprises pay a flat thirty percent tax rate on net income per calendar or fiscal year. Business enterprises involved in mining operations or activities related to environmentally sensitive areas may be required to pay higher taxes, up to fifty percent. Income tax exemptions of up to ten years are possible for foreign investments in areas of particular interest to the Cuban government. Finally, business enterprises are required to pay payroll taxes equivalent to twenty-five percent of the salary of a worker.

### IX. LABOR SYSTEM

In Cuba, approximately seventy percent of the labor force is employed by the state. The other thirty percent is employed by foreign investment enterprises or are self-employed. The state provides basic food, social services, housing, and social security for all workers at no cost or at a very reduced cost. The highest paid worker earns only about five times more than the lowest paid.<sup>53</sup>

Workers in foreign business enterprises and in mixed business enterprises are hired through a state employment agency which selects the applicants it refers to the enterprise. In most cases, the business enterprise makes the final hiring decision, and can reject candidates supplied by the employment agency. Usually, the more senior the employee the more discretion is given to the business enterprise. Foreign companies can also bring foreign executives, managers, and professionals to work in Cuba as part of their operations.<sup>54</sup>

In the case of regular workers supplied by the employment agency, the employer pays their salaries in foreign currency, usually U.S. dollars, to the employment agency which, in turn, pays the worker in Cuban pesos, according to established pay scales.<sup>55</sup> The government considers this practice as necessary and fair since it "serves to maintain a degree of parity among all Cuban workers who do the same or similar jobs."<sup>56</sup> Despite receiving their salaries in pesos, many Cubans seek employment in foreign

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53. DEBRA EVENSON, NLG/MAURICE AND JANE SUGAR LAW CENTER FOR ECONOMICS AND SOCIAL JUSTICE, *WORKERS IN CUBA: UNIONS & LABOR RELATIONS* 47 (2001).

54. *See id.* at 82.

55. *Id.* at 84.

56. *Id.* at 85.



investment enterprises and are quite happy once they are employed. This is because most foreign enterprises pay bonuses in U.S. dollars, allow tips in hard currency, and provide other important benefits.

## X. CONCLUSION

Cuban business enterprises have been generally quite successful. Cuba survived the economic crisis caused by the collapse of the Soviet Union and the socialist camp in 1989/1990 with very little outside help. Certainly Cuban business enterprises share a good portion of the credit. According to various economic indicators, compared to other former socialist countries such as the members of COMECON, Cuba does fairly well. This is remarkable because Cuba has been deprived of its geographically closest, and perhaps most natural business partner by the U.S. embargo. It is reasonable to conclude that Cuban performance would have been much better without the U.S. embargo.<sup>57</sup> Cuban state enterprises taken

57. See Canler, *supra* note 37, at 67. Canler presents the following tables:

### OUTPUT GROWTH OF FORMER COMECON MEMBERS, 1990-1998

Country	1990-1998 avg. yearly GDP% change
Poland	4.8
Slovak Republic	1.5
Czech Republic	0.9
Hungary	0.5
Romania	-0.7
Uzbekistán	-2.0
Estonia	-2.2
Cuba	-2.4
Bulgaria	-3.1
Armenia	-4.7
Lithuania	-5.0
Latvia	-6.3
Kazakhstan	-6.9
Russian Federation	-7.0
Kirgыз Republic	-7.3
Turkmenistan	-8.7
Tajikistan	-9.8
Azarbaijan	-11.4
Georgia	-12.8
Moldova	-12.8

(Sources: World Bank, ONE)

as a whole began turning a profit in the mid-1990s and in 1997 "the taxes paid by state enterprises surpassed the total amount of the subsidies these enterprises receive from the government."<sup>58</sup>

There are two main drawbacks to doing business in Cuba besides the U.S. embargo. First, the government exercises great control over who does business in Cuba and what kind of business is actually allowed. Practically all foreign investments have to be approved by the highest levels of the government and even something as simple as opening a branch office in Cuba requires approval. Second, Cuban legal infrastructure lacks sophistication and depends too much on political considerations. There are all types of laws in Cuba but many of them are totally outdated. Other laws are not applied because of the impact that they may have on the Cuban dual economic system. A perfect example of this is found in the real estate area.<sup>59</sup> After Law 77 was adopted in 1995, the government authorized the development of condominium projects in Havana. About a dozen mixed companies moved forward and actually constructed several condominium buildings. Many of the units in these buildings were sold without a

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**WORLD RANKINGS OF FORMER COMECON MEMBERS IN THE DEVELOPMENT INDEX, 1996-2000**

Country	1996	1997	1998	1999	2000
Czech Republic	37	39	39	36	34
Slovakia	41	42	42	42	40
Hungary	46	48	47	47	43
Poland	56	58	52	44	44
Estonia	68	71	77	54	46
Lithuania	81	76	79	62	52
Cuba	79	86	85	58	56
Belarus	61	62	68	60	57
Bulgaria	62	69	67	63	60
Russian Fed.	57	67	72	71	62
Latvia	55	92	92	74	63
Romania	74	79	74	68	64
Ukraine	80	95	102	91	78
Moldova	98	110	113	104	102

(Source: UNDP)

Cuba's moderate success is apparent, but it is easy to imagine how quickly the country might have grown with the United States as a trading partner.

58. MAX AZICRI, *CUBA TODAY AND TOMORROW: REINVENTING SOCIALISM* 152 (2000).

59. See Antonio Zamora, *Real Estate in Cuba: Back to the Future*, 11 FLA. J. INT'L L. 539, 542 (1997).

controlling condominium law and without financing. Cuba has a condominium law and a mortgage law dating back to pre-revolutionary times but they have never been updated.<sup>60</sup> To make matters worse, the government imposed a moratorium on condominium development in 2000.<sup>61</sup>

Notwithstanding the U.S. embargo and the two situations mentioned above, there are reasons to be optimistic about Cuban business enterprises. First, the days of the U.S. embargo appear to be numbered. The present administration may hold the fort for a few months and may even attempt to strengthen the U.S. embargo but in the end reason, goodwill, American businesses, and the U.S. Congress will do away with this relic of the Cold War.

Second, there is a revolution of sorts taking place at the University of Havana, which will greatly benefit Cuban business enterprises. Accounting and law careers are now very popular options. The University of Havana now offers a degree in business law, as well as "advanced degree programs in economics, international economics, finance, business administration, management . . . tax administration . . . hotel management, information technology, and human resource management."<sup>62</sup> Most of these subjects were not even offered ten years ago.

Third, the entrepreneurial spirit is alive and well in Cuban business enterprises. According to a recent survey of managers of state enterprises and Cuban commercial companies, most managers favored free market competition and wanted more autonomy to run their enterprises.<sup>63</sup> Finally, Cuban companies have expanded their business operations outside of Cuba. For several years some of the most important Cuban companies have operated restaurants, travel agencies, and cigars shops in Latin America, Europe, and the rest in the world, except the United States. Now these same companies have expanded to construction and real estate development. There are projects underway in several countries including China, the Dominican Republic, and Spain. Cuban business enterprises are now beginning to interrelate with the greatest capitalistic country of the world, the United States. Even in Miami, Cuban business enterprises are making inroads; many of them advertise their products and services in that

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60. *Id.* at 545.

61. Zamora, *supra* note 12, at 60.

62. PETERS, *supra* note 29, at 8.

63. See Gerardo González Núñez, *Los Llamados Empresarios Cubanos y la Transición en la Isla*, paper presented at the 2000 meeting of the Association for the Study of the Cuban Economy (ASCE), available at <http://lanic.utexas.edu/la/cb/cuba/asce/cuba9/gonzalez.pdf> (last visited Mar. 3, 2002).

bastion of counterrevolutionary culture. The Cuban entrepreneurial spirit is indeed alive and well.

