



United States Department of State

Washington, D.C. 20520

March 3, 2023

Case No. FL-2014-06088

Mr. Jason I. Poblete
Poblete Tamargo LLP
Courthouse Square
510 King Street, Suite 350
Alexandria, Virginia 22314

Dear Mr. Poblete:

We refer you to our letter dated February 3, 2023, regarding the release of certain Department of State (“Department”) records under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. The Department has identified one additional responsive record subject to the FOIA. We have determined that record may be released in full. All released material is enclosed.

We will keep you informed as your case progresses. If you have any questions, you may contact Jeremy S. Simon at (202) 252-2528 or Jeremy.Simon@usdoj.gov. Please refer to the case number, F-2014-06088, and the civil action number, 18-cv-02335, in all correspondence regarding this case.

Sincerely,

A handwritten signature in cursive script that reads "Jeanne Miller".

Jeanne Miller
Chief, Programs and Policies Division
Office of Information Programs and Services

Enclosures: As stated

The Freedom of Information Act (5 USC 552)

FOIA Exemptions

(b)(1) Information specifically authorized by an executive order to be kept secret in the interest of national defense or foreign policy. Executive Order 13526 includes the following classification categories:

- 1.4(a) Military plans, systems, or operations
- 1.4(b) Foreign government information
- 1.4(c) Intelligence activities, sources or methods, or cryptology
- 1.4(d) Foreign relations or foreign activities of the US, including confidential sources
- 1.4(e) Scientific, technological, or economic matters relating to national security, including defense against transnational terrorism
- 1.4(f) U.S. Government programs for safeguarding nuclear materials or facilities
- 1.4(g) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to US national security, including defense against transnational terrorism
- 1.4(h) Weapons of mass destruction

(b)(2) Related solely to the internal personnel rules and practices of an agency

(b)(3) Specifically exempted from disclosure by statute (other than 5 USC 552), for example:

ARMSEXP	Arms Export Control Act, 50a USC 2411(c)
CIA PERS/ORG	Central Intelligence Agency Act of 1949, 50 USC 403(g)
EXPORT CONTROL	Export Administration Act of 1979, 50 USC App. Sec. 2411(c)
FS ACT	Foreign Service Act of 1980, 22 USC 4004
INA	Immigration and Nationality Act, 8 USC 1202(f), Sec. 222(f)
IRAN	Iran Claims Settlement Act, Public Law 99-99, Sec. 505

(b)(4) Trade secrets and confidential commercial or financial information

(b)(5) Interagency or intra-agency communications forming part of the deliberative process, attorney-client privilege, or attorney work product

(b)(6) Personal privacy information

(b)(7) Law enforcement information whose disclosure would:

- (A) interfere with enforcement proceedings
- (B) deprive a person of a fair trial
- (C) constitute an unwarranted invasion of personal privacy
- (D) disclose confidential sources
- (E) disclose investigation techniques
- (F) endanger life or physical safety of an individual

(b)(8) Prepared by or for a government agency regulating or supervising financial institutions

(b)(9) Geological and geophysical information and data, including maps, concerning wells

Other Grounds for Withholding

NR Material not responsive to a FOIA request excised with the agreement of the requester



**Testimony of Kurt Tong
Principal Deputy Assistant Secretary,
Bureau of Economic and Business Affairs,
Before the House Judiciary Committee:
Subcommittee on Court, Intellectual Property, and Internet
February 11, 2015**

Good afternoon Chairman Issa, Ranking Member Nadler, and distinguished members of the subcommittee. Thank you for the opportunity to testify today on the topics of confiscated property in Cuba, Havana Club rum, and other property. The protection of intellectual and real property rights is an important issue for American innovators, entrepreneurs, and businesses and deserves the close attention and vigorous efforts of the U.S. government.

In my testimony today, I will first describe the role of the Department of State, and in particular, the Bureau of Economic and Business Affairs, with respect to intellectual property enforcement and protection and international claims and disputes. I will next provide an overview of the recent claims discussions with the Cuban government. Finally, I will discuss the Department's role in the Havana Club matter.

A. The Department's and the Bureau of Economic and Business Affairs' Mission

The Department's overall mission is to shape and sustain a peaceful, prosperous, just, and democratic world and to foster conditions for stability and progress for the benefit of the American people and people everywhere. In support of this mission, the Bureau of Economic and Business Affairs (EB) uses economic diplomacy to advance the prosperity and security of all Americans by working with partners around the world to negotiate and implement agreements which shape the rules of global commerce. We give the Secretary a global perspective on economic, financial, and development issues; lead efforts to expand trade, investment, transportation, and telecommunications links; shape U.S. engagement in global economic discussions including at the G-7, G-20, Organization for Economic Cooperation and Development (OECD), and the Asia-Pacific Economic Cooperation (APEC) forum; craft and implement U.S. sanctions; promote entrepreneurship overseas, especially in unstable societies; and ensure that the success of the U.S. economy and U.S. business is at the heart of our foreign policy.

One of the foremost priorities of the Department and our bureau is the promotion of innovation in the United States and around the world. We do this by advocating for the effective protection and enforcement of intellectual property rights in all countries. Our bureau relies on economic and commercial diplomacy and bilateral and multilateral negotiations to ensure the interests of American rights holders and highlight the critical role of intellectual property rights protections in supporting economic growth and stability. Each year our bureau contributes to congressionally-mandated Special 301 Report on intellectual property rights, as well as to its Notorious Markets Report identifying physical and online markets worldwide that engage in and facilitate copyright piracy and trademark counterfeiting that harms U.S. businesses. We also prepare relevant sections of the Department's annual Investment Climate Statement – broad assessments of the IP climate, local lists of lawyers, and Embassy POCs that serve as a handy “IP Toolkit” for U.S. companies doing business all over the world – and inform U.S. negotiating policy for Free Trade Agreements (FTAs) and Trade and Investment Framework Agreement (TIFA) meetings.

EB also devotes substantial resources to supporting the development of a satisfactory climate for U.S. investment overseas through bilateral and multilateral investment agreements and assisting U.S. investors involved in investment disputes with foreign governments. In this regard, we work closely with the Department's Office of the Legal Adviser, which represents the United States and coordinates activities within and outside the United States with respect to all aspects of international claims and disputes.

B. U.S.-Cuba Claims Talks

The Department has consistently advocated for the fair resolution of U.S. claims and disputes in our bilateral relations with Cuba. The first government-to-government claims talks with Cuba took place in Havana on December 8, 2015. The purpose of the talks is to seek just compensation from the Cuban government for U.S. claims. These include the almost 6,000 claims of U.S. nationals related to confiscated property that were certified by the Foreign Claims Settlement Commission, as well as claims related to unsatisfied U.S. court judgments against Cuba, and claims of the U.S. government. The United States delegation at the talks, which was led by the Department of State's Principal Deputy Legal Adviser, presented in general terms U.S. claims against the Government of Cuba.

That these discussions are finally under way, demonstrates that the re-establishment of diplomatic relations and the policy of engagement pursued by this Administration allows us to more effectively discuss complex issues with the Cuban government and strengthens our ability to effectively advocate on behalf of U.S. citizens. The meeting in Havana was the first step in what we expect to be a complex process which may take time, but the United States views the resolution of outstanding claims as a top priority.

C. The Havana Club Matter

Moving now to the topic of Havana Club, I would first note that claims that were certified by the Foreign Claims Settlement Commission featured prominently in the bilateral claims talks with the Government of Cuba. The holders of these claims all had to demonstrate that they were U.S. nationals at the time of the taking. The Havana Club matter, by contrast, concerns foreign actors: on one side, a Cuban-state owned enterprise, commonly known as Cubaexport, which is in a joint venture with a French company, Pernod Ricard S.A. (Pernod Ricard); and, on the other side, Bacardi & Company Limited, a company headquartered in a Bermuda. The underlying property in their dispute over ownership of trademark rights in the United States was held by a Cuban national at the time of taking.

The Department of State's role in the Havana Club matter was not to adjudicate the ownership of the disputed trademark rights, and the Department took no position on that issue. The Department's role was rather to respond to a request from the Department of the Treasury's Office of Foreign Assets Control (OFAC) for foreign policy guidance concerning Cubaexport's application for a specific license from OFAC. OFAC is the office within the Department of the Treasury that is responsible for administering U.S. economic sanctions programs, including the Cuban Assets Control Regulations (CACR). As a general practice, in the interest of ensuring that its actions are consistent with the national security and foreign policy goals of the United States, OFAC consults with the Department of State on foreign policy, referring to the Department for its review, among other matters, specific license applications in certain cases. [Interagency coordination is a critical part of the process of administering sanctions, including the sanctions against Cuba, helping to ensure that OFAC's actions are consistent with the operational and policy interests of other agencies, as well as with the national security and foreign policy goals of the United States.]

In December 2015, OFAC requested foreign policy guidance from the Department with respect to an application from Cubaexport for a specific license

authorizing all transactions with the U.S. Patent and Trademark Office (USPTO) related to Cubaexport's renewal and maintenance of the Havana Club trademark registration. The Department evaluated this referral in light of a number of factors, including the particular facts of the case, the landmark shift in the United States' policy toward and bilateral relations with Cuba, United States foreign policy with respect to key allies in Europe, and the U.S. policy with regard to trademark rights associated with confiscated property. Based on these factors, the Department recommended issuance of the requested license.

I would note that there are pending federal court proceedings in which Bacardi & Company Limited has filed suit against Cubaexport to contest the Havana Club trademark ownership in the United States. The denial of a license and the resulting expiration of the trademark registration may have rendered those proceedings moot, whereas granting the license may allow the parties to proceed toward adjudication of their respective legal claims to the trademark. Given the important and complex foreign policy considerations at issue in this matter, it is in the foreign policy interest of the United States that the relevant parties be able to reach a resolution in this long-standing dispute.

In closing, I wish to reaffirm that the Department of State will continue to tirelessly advocate for the effective protection and enforcement of intellectual property rights around the world, including in Cuba. This effort is squarely in line with our enduring objective of the emergence of a peaceful, prosperous, and democratic Cuba. The Administration's approach to Cuba allows us to effectively engage with Cuba on U.S. claims, intellectual property rights, and a number of other matters in the U.S. national interest.

We appreciate your engagement on these important issues. I welcome your questions.

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