THE IMPACT OF THE HELMS-BURTON LEGISLATION ON FOREIGN INVESTMENT IN CUBA

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On March 12, 1996, U.S. President Bill Clinton signed the Cuban Liberty and Democratic Solidarity Act, better known as the Helms-Burton law. At a time when the Cuban government was struggling for survival and opening the island to foreign capital in almost every sector of the economy, the U.S. legislation appeared to be a fatal blow to Cuba's hopes to attract foreign investment during the "special period." In addition, the "extraterritorial" character of the law was decried by the United States' major trade allies such as Canada, Mexico, and the European Union, whose firms were increasingly doing business in Cuba.

The extensive process of nationalization carried out by the Cuban revolution led by Fidel Castro after January 1959 left unresolved the problem of compensation for U.S. nationals. Until 1989, the justification of the U.S. embargo was mainly related to Cuba's potential threat to the security of the United States as well as to that of other countries. During the Cold War, the United States conditioned the lifting of the economic sanctions against the island and the reestablishment of normal relations between the two countries on the end of Cuba's preferential relationship with the Soviet Union as well as the end of Cuba's support for revolutionary governments, wars of national liberation and guerrilla training in Latin America and Africa.[2]

The end of the Cold War and the opening to foreign investment modified the U.S. approach toward the Castro's regime. New conditions were imposed after Cuba drastically reduced its ties with the former Soviet Union and put an end to its support of missions in Africa and Central America. With Cuba's opening to joint ventures and management contracts with foreign firms in the early 1990s, the issue of nationalized U.S. properties gained importance. In fact, this issue, along with human rights violations and the lack of democracy in the island, provided the United States with an alternative pretext for justifying and tightening the economic embargo.

Besides codifying the existing restrictions that collectively formed the U.S. economic embargo against Cuba, the Helms-Burton law aimed to complicate Havana's access to external financing as well as to create a riskier and more uncertain business environment for foreign companies investing in the Caribbean nation. The rationale for the legislation was that it might ultimately lead to the collapse of the Cuban regime or at least seriously undermine the process of

1. This paper is based upon field research conducted in Cuba during the summer 2000 and the summer 2001. The methodological approach was based on interviews with economists, foreign journalists and Cuban officials as well as consultation of documents, press reports and declarations related to the Helms-Burton law and foreign investment in Cuba. The Center for Latin American Studies at the University of Florida and the Tinker Foundation supported the field research trips and the preparation of this paper. The author alone is responsible for the content and interpretations.

2. Smith, Wayne. "Our Cuba Diplomacy: A Critical Reexamination." Center for International Policy, Washington D.C., 1994.

slow but steady economic recovery witnessed by the communist island since its lowest point in 1993. The attempt to complicate Cuba's opening to foreign investment is linked to the possibility of lawsuits and the imposition of travel restrictions against foreign companies or other entities that "traffic" in U.S. properties expropriated during the early days of the Revolution. The right to sue foreign companies is also granted to Cubans who became U.S. citizens after the expropriations occurred, in an attempt to further increase the potential impact of the legislation.

There has been considerable debate regarding the effectiveness of the Helms-Burton legislation in halting the flow of foreign investment into Cuba. This paper begins with an analysis of foreign investment in Cuba and other recent developments such as the promotion of joint production agreements. It also reviews those articles of the Helms-Burton aimed to create disincentives for foreign companies in Cuba along with some discussion of their controversial aspects. It continues with comments on the different ways in which the U.S. law affects foreign companies that intend to invest in Cuba and those companies already operating in the Cuban market. Finally, it analyzes the impact of the Helms-Burton on the Cuban economy and the flow of foreign direct investment (FDI), as well as its effectiveness in inducing overseas firms to pull out of Cuba.

FOREIGN INVESTMENT IN CUBA

The demise of the Soviet Union and the disappearance of the economic system in which Cuba was inserted (the Council of Mutual Economic Assistance, or CMEA) meant for Cuba the loss of 85% of its overseas markets along with an average of $4.3bn a year for the period 1986-90 in Soviet subsidies and aid.[3] Regarding the Soviet subsidies, it should be emphasized that Cubans do not consider them as financial aid, but simply as credits and assistance for development. Whatever the interpretation of the Cuba-Soviet Union preferential relationship, it is clear that because the island lost the external conditions that sustained its economy, it was forced to develop a strategy of reinsertion in the international market.

After 1989, the Cuban economy went into recession, with real GDP decreasing by more than 40% in the period 1990-93. The Cuban government resorted to foreign investment as a way to assure the diversification and promotion of exports, acquisition of raw materials, insertion in new markets, acquisition of technology and capital, and introduction of modern management practices.[4] Other measures were adopted such as the promotion of international tourism (1991) as well as limited capitalist-style reforms such as the legalization of the use of U.S. dollars in the Cuban economy (August 1993), the authorization of self-employment (September 1993), the breakup of the state monopoly on land to establish agricultural cooperatives (September 1993), the restructuring of the state bureaucracy (April 1994), and the creation of free farmers markets (September 1994).

Little used by Cuba until the early 1990s, Decree Law 50 of 1982 on foreign investment was resuscitated in order to encourage joint ventures in economic areas most likely to generate hard currency or to address the basic needs of the Cuban people. Considered at the time of its enactment as a sort of "exploratory law" aimed at slowly beginning a tentative approach to western capitalism and international tourism, Decree Law 50 (along with the changed attitude of the Cuban government toward foreign investment) led to an increasing number of hotel and oil exploration joint ventures in the early 1990s. Up

3. Hernández-Catá, Ernesto. "The Fall and Recovery of the Cuban Economy in the 1990s: Mirage or Reality?" International Monetary Fund Working Paper, April 2001, p.4.

4. Pérez-Villanueva, Omar Everleny. "El papel de la inversión extranjera directa en las economías subdesarrolladas. El caso cubano." Universidad de la Habana. Centro de Estudios de la Economía Cubana (CEEC), April 1998, p.98.

to 1993, the international economic associations[5] were small and medium enterprises with low amount of capital invested. After 1993, new joint ventures were formed in mining, light and food industries, telecommunications, construction, real estate, and services.[6] Some of these associations included large capital investments (especially in nickel and telecommunications) as well as new and more modern operations.

Although several economic associations were formed between 1989 and 1993, Cuba's opening to foreign investment was accompanied by growing complaints from foreign companies. Decree Law 50 restricted foreign participation in joint ventures to 49% of the shares and denied the possibility of 100% wholly foreign-owned investments; it also failed to define a sectoral opening, and it was largely ineffective in speeding up the extremely long process of approval of economic associations.[7] In order to provide foreign companies with additional guarantees and reassure them about its commitment to foreign investment, the Cuban government adopted a new law on September 5, 1995. Law 77 on foreign investment recognized for the first time the possibility of companies with wholly foreign-owned capital and allowed investment in all sectors of the national economy, except public health, education services and the armed forces. It established additional protection against expropriations while reducing, at least in theory, the timeframe for approval of relatively small (less than $10 million) projects. Finally, Law 77 allowed joint ventures or wholly foreign-owned enterprises to export their products directly and to import, also directly, all necessary inputs.[8]

At the end of the year 2000, 392 international economic associations were active in Cuba, most of them joint ventures (Figure 1). This number also includes risk contracts for the prospecting and exploitation of petroleum. Regarding the size of foreign investment in Cuba, it was reported in 1998 that about 75% of these associations were small and medium enterprises with capital investments of less than $5 million dollars.[9] However, the Cuban government has recently shown a clear preference for economic associations that involve large amounts of capital and access to loan financing. In fact, as a result of banking reforms and continued economic recovery, Vice President Carlos Lage announced in 1998 the intention of the government to pursue a strategy of encouraging foreign investment for large development projects, while limiting foreign investment for smaller projects to those that included the introduction of new technologies or new export markets. He also added that Cuba's government-operated banks were now in a position to provide small amounts of capital.[10] In the year 2000, direct foreign investment agreements have mainly been in large projects in the

5. The term *international economic association* (or simply *economic association)* refers to the following: joint action by one or more national investors and one or more foreign investors for the production of goods, the offering of services, or both, for profit, in its two forms, which consist of joint ventures and international economic-associations contracts. *Joint ventures* imply the establishment of a legal status distinct from that of any one of the parties; the proportions of capital stock which should be contributed by the foreign investor and the national investor are agreed upon by both partners and defined as part of the authorization. *International economic associations contracts* do not imply a legal entity separate from those of the contracting parties; each contracting party makes separate contributions, which constitute a cumulative amount which they own at all times, and even though they do not constitute capital stock, it is in their interest to establish a common fund, as long as the portion of ownership belonging to each of the parties is well defined. For further details on international economic associations see Law 77 on foreign investment (1995).

6. Confidential report for the Embassy of Japan in Havana. "Investment Opportunities in Cuba." March 31, 1999, p.1.

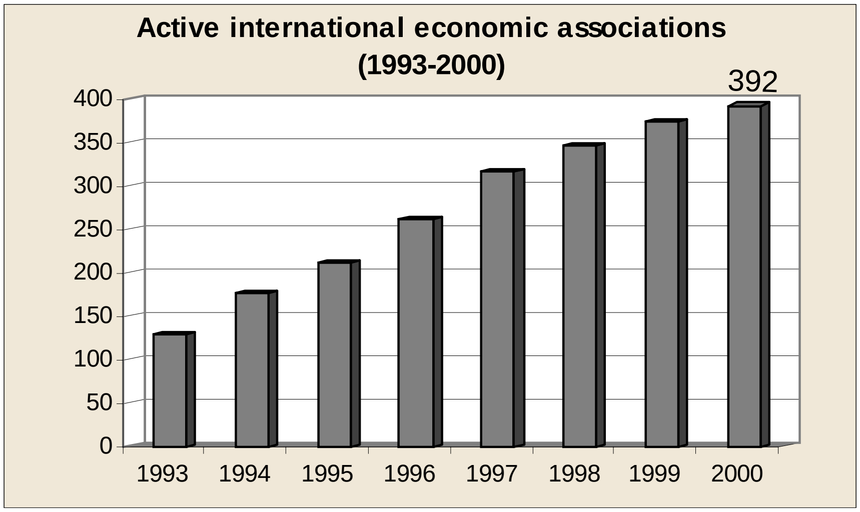
7. *The Economist*. "Castro takes one more step toward capitalism." September 9, 1995, vol. 336, no. 7931, p. 45(2).

8. Pérez-López, Jorge F. and Travieso-Díaz, Matías F. "The Contribution of BITs to Cuba's Foreign Investment Program." *Cuba in Transition—Volume 10*, Washington D.C., 2000.

9. Fabregas i Guillén, Didac. *La ley de la inversión extranjera y la situación económica actual de Cuba*. La Habana, Viena Cincel Ensayo, 1998, p. 98.

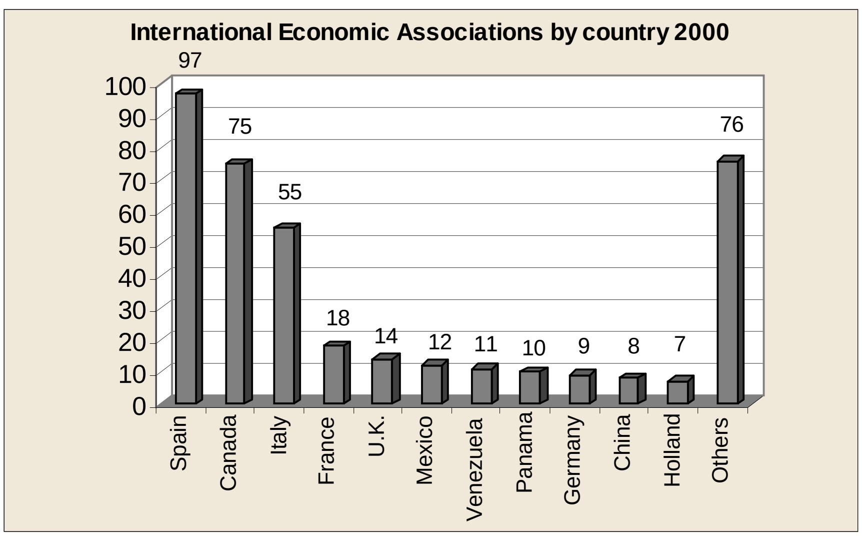
10. U.S.-Cuba Trade and Economic Council. *Economic Eye on Cuba*. 16 February 1998 to 22 February 1998.

Figure 1.



Source: Cuban Ministry of Foreign Investment, February 2001

Figure 2.



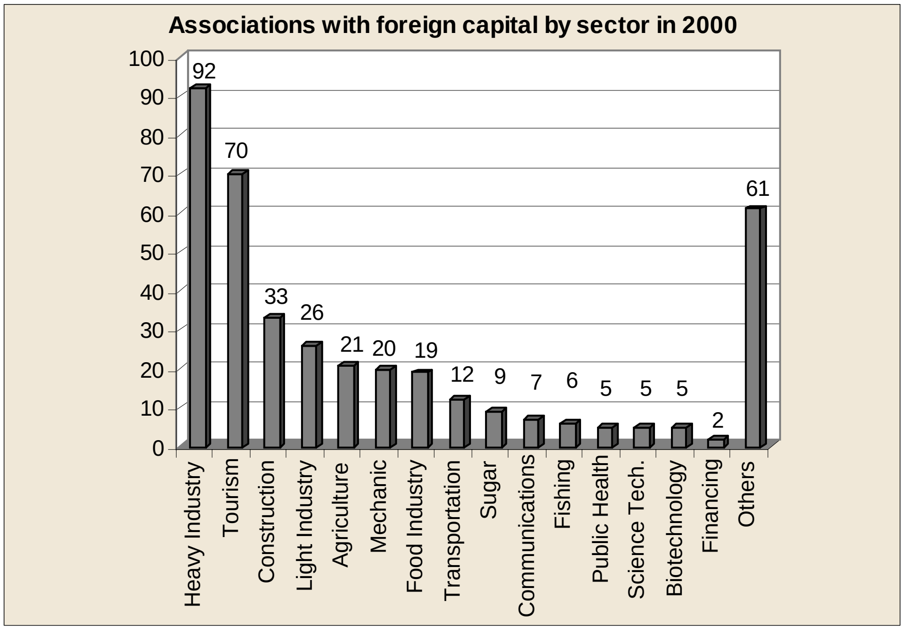
Source: Cuban Ministry of Foreign Investment, February 2001

oil, energy, construction and telecommunications sectors, for which Cuba would be unable to provide financing.[11] In January 2001, Minister of Foreign Investment Marta Lomas reported that in the year 2000, the total number of contracts with foreign partners was 31, as compared to 58 agreements signed in 1999. But she added that the amount of foreign capital committed was twice that for 1999.[12]

11. The Economist Intelligence Unit. *Cuba Country Report*. February 2001, p. 18.

12. Veloz Núñez, Marta. "Inversión extranjera: el justo lugar." Globalización, 2001.

Figure 3.



Source: Cuban Ministry of Foreign Investment, February 2001

In terms of the number of foreign direct investment agreements, Spain has become the first commercial partner for the island (97 agreements signed), followed by Canada (75), Italy (55) and France (18) (Figure 2).

Since the adoption of Law 77, and in spite of the enactment of the Helms-Burton Law in March 1996, the number of joint ventures has been increasing, including in new sectors such as food industry, transportation, agriculture, fishing, financing, and biotechnology (Figure 3). However, the greatest percentage of economic associations with foreign capital is still linked to basic industry (mining, oil, energy), followed by tourism and, to a lesser extent, construction and light industry/manufacturing.[13]

Cuba's increased selectivity on foreign investment and its preference for large projects leaves open, nevertheless, the possibility of smaller businesses. Medium and small projects simply are being provided for through different mechanisms such as joint production agreements (recently regulated by the Executive Committee of the Council of Ministers). Besides, the increasing number of administration and management contracts demonstrate that the search for technology and markets is accompanied by a growing awareness of the value of management expertise. Administration contracts have been largely used in the tourist sector since the early 1990s. Associations for cooperative production have been promoted in the last year and a half in labor-intensive sectors such as light and food industry as well as metal and machinery industry.[14]

Joint production represents a decision by the Cuban government aimed at solving major complaints raised by foreign investors, while committing state property in those activities that do not necessitate significant capital for their development. In spite of Law 77, foreign investors keep complaining about the length of negotiations, excessive bureaucratic

13. Pérez-Villanueva, Omar Everleny. "Foreign Direct Investment in Cuba: Recent Experience and Prospects." Unpublished, 2001.

14. Interview with representative of Consultores Associados, S.A. (Conas). Havana, June 15, 2001.

practices, and expensive dollar payments to Cuban workers recruited by a state-entity (while the government pays them in Cuban pesos). As compared to international economic associations, the approval of cooperative production is much simpler and the documentation required is less rigorous. The Cuban entity alone is responsible for marketing the product in the domestic market and it does not share profits with the foreign company; the latter earns revenues through the supply of raw materials, know how, technological equipment, technical assistance and, possibly, marketing of the product in external markets. The Cuban entity provides the infrastructure, capital equipment, and a qualified work force, which is paid directly by the government in pesos.[15] Sometimes, a cooperative production agreement might represent the first step toward the creation of an international economic association. This is a way for the Cuban government to test the seriousness of a foreign company as well as its capacity to provide new markets and technological assistance.

A comprehensive analysis of foreign investment in Cuba is inevitably complicated by the fact that the Ministry of Foreign Investment and Economic Cooperation (MINVEC) refuses to release detailed information on the activities of foreign enterprises and their contribution in terms of capital. Statistics on the evolution of economic associations by year, by sector, and by country are not integrated with data on the amount of invested capital. Not even a list of approved foreign investments is published. The justification is what Cubans call the "U.S. economic blockade" against the island.

On December 24, 1996, the Cuban National Assembly approved the Reaffirmation of Cuban Dignity and Sovereignty Law (Law 80), better know as the Antidote Law against the Helms-Burton Act. According to Article 5 of Law 80, "The Government of the Republic of Cuba is charged with the responsibility of adopting the decisions and measures and providing the facilities necessary for the total protection of current and potential foreign investments in Cuba and the defense of the legitimate interests of these in the face of actions that might derive from the Helms-Burton law."[16]

Cuban authorities report that, since the authorization of the first joint venture in 1988 and through 2000, the total amount of committed foreign investment is $5 billion. However, according to the Economist Intelligence Unit, unofficial estimates suggest that the capital actually delivered to the island is about half of that amount.[17] In the year 2000, international economic associations generated sales of $1,748.1 million, of which about 43% ($757.5 million) was derived from exports. Cuban economists report that the officially reported government figure for foreign direct investment (FDI) in Cuba between 1991 and 1999 represented 7% of the gross fixed capital formation (capital devoted to the production of goods and services), which is comparable to the world average; however, they recognize that these sums are still insufficient to satisfy the needs of the national economy.[18] Finally, it must be noted that exports through foreign joint ventures represent about 13% of total Cuban exports.[19] Although the promotion of international economic associations has created new jobs in some sectors (mainly tourism, mining, petroleum and communications), the total number of workers employed by these enterprises is only 33,000, under 1% of the work force.

From the latest data of the Cuban Central Bank, the total amount of foreign direct investment in the island between 1988 and 2000 is $1,876.9 million

15. Interview with news correspondent stationed in Havana, June 11, 2001.

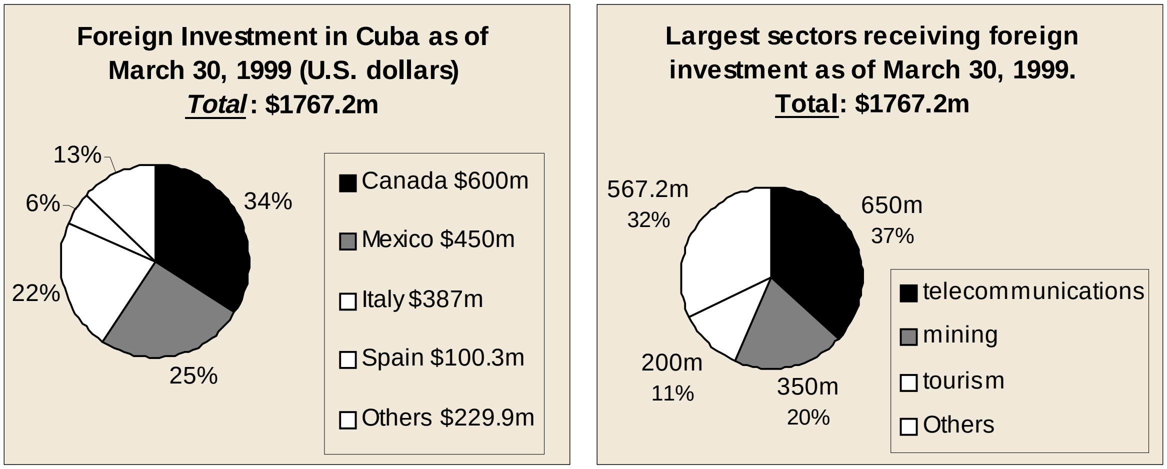
16. Consultores Associados S.A. (Conas). *Law Number 80. The reaffirmation of Cuban dignity and sovereignty law*. Havana, 1997, p.15.

17. The Economist Intelligence Unit. *Cuba Country Report*. May 2001, p. 30.

18. Pérez-Villanueva, 2001.

19. Triana Cordoví, Juan. "La economía cubana en el año 2000." In *La economía cubana en el 2000. Desempeño macroeconómico y transformación empresarial*. Universidad de la Habana. Centro de Estudios de la Economía Cubana (CEEC), April 2001, p. 14.

Figure 4.



Source: U.S.-Cuba Trade and Economic Council

Table 1. Foreign Direct Investment in Cuba in $U.S. million (1993-2000

Year	1993	1994	1995	1996	1997	1998	1999	2000	Total
Direct Investment	54.0	563.4*	4.7	82.1	442.0	206.6	178.2	399.9	1,876.9

Source: Cuban Central Bank, 2001
*1994 data are cumulative to that year

(Table 1). The 2001 economic report has revised the 1999 FDI figure from $205.0 million to $178.2 million, while the 2000 FDI figure is $399.9 million. An analysis of these data in the context of the impact of U.S. sanctions against the island will be presented in the last section.

Regarding the contribution of each country to the total amount of foreign investment, the only data available are those compiled by the U.S.-Cuba Trade and Economic Council (Figure 4). According to this organization, as of March 1999 the total value of foreign capital committed/delivered to Cuba since 1990 is reported to be $1,767.2 million. The leading investing countries are Canada ($600 million), Mexico ($450 million), Italy ($387 million) and Spain ($100 million). The key sectors receiving foreign investment are telecommunications ($650 million), mining ($350 million), and tourism ($200 million).

As of December 2000, it was reported that the total amount of committed foreign investments in Cuba through international economic associations originated from more than 100 companies of 30 different countries.[20] However, in March 1999, four countries—Canada, Mexico, Italy, and Spain—accounted for 87% of the total foreign capital committed/delivered to the island. After two years, the bulk of foreign direct investment (FDI) is still provided by few countries, although some changes must be noted. First of all, Spain has become the third largest investor in Cuba, as a result of recent agreements regarding tobacco and construction.[21] In December 1999, the Spanish/French company Altadis purchased 50% of the shares of Habanos S.A. for marketing Cuban tobacco products internationally; the cost of the entire operation has been estimated around $500 million. A few months later, the company Ibersuiza signed an agreement for the construc-

20. U.S.-Cuba Trade and Economic Council "Realities of Market Cuba." 2001. http://www.cubatrade.org/market.html

21. Vicent, Mauricio. "España se consolida como el primer proveedor de bienes a Cuba." *El País*, July 7, 2001.

tion of a cement plant in Santiago de Cuba, which involves an investment of $150 million.[22] Meanwhile, the Mexican presence in terms of foreign capital committed to Cuba has fallen from $700 million in 1993 to only $200 in the year 2000.[23] Mexico is now in sixth place among the largest investors in Cuba, although it is still the first among Latin American countries.[24]

At a sectoral level, telecommunications, mining, and tourism attracted 68% of total overseas investments as of March 1999. In 2001, according to Havana's Center for the Promotion of Foreign Investment (CPI), Cuban priorities on FDI remain concentrated in these sectors, along with large projects for oil and energy. Business activities of foreign companies such as the Canadian Sherritt International, the Mexican Domos, the Italian Stet, and the Spanish Sol Meliá have played a major role so far, although data on their investments are fragmentary and unreliable. In December 1994, Canada's Sherritt International Co. agreed to a mining, processing, and refining project with Cuba's General Nickel Co., S.A. The agreement resulted in the creation of three joint ventures for the production of nickel and cobalt and an estimated investment of $500 million. Also in 1994, Mexico's Domos and Italy's Stet International entered in a joint venture (ETECSA) with the Cuban telephone company EMTEL for the modernization and expansion of Cuba's telephone system. Domos withdrew from its investment in 1997, while Stet increased its overall stake in ETECSA. The capital invested by Domos was, according to its president, $510 million.[25] On the other hand, Stet's 29.29% shares in ETECSA are valued at $422.33 million, while its plan of investment is around $800 million.[26] In 1998, Sherritt International bought 37.5% (recently increased to 40%) of what was then Cuba's only national cellular carrier. Finally, the Spanish company Sol Meliá is the leader in the Cuban tourist sector with its activities in constant expansion. Sol Meliá currently manages 20 hotels (with equity interest in four of them), while three more are under construction.[27]

Interestingly, Sherritt, Domos, Stet, and Sol Meliá have all been targeted by the Helms-Burton Law for their activities in Cuba. Whether through applied sanctions or simply "warning letters" for potential violations of the Helms-Burton, the U.S. Department of State has tried to disrupt the flow of foreign capital to Cuba by targeting those companies whose ambitious plans could have a major impact in the process of economic recovery of the island. Even the Spanish/French company Altadis has been the target of a lawsuit filed by a leading U.S. cigar company in November 2000. Although the suit focuses on an alleged jawboning of Altadis with U.S. retailers, U.S. firm General Cigar claims that Cuba's Habanos (partially owned by Altadis) is using its warehouse in Havana that was confiscated by the Castro's government after January 1959.[28]

While continuing to attract capital from abroad, government control of foreign businesses remains strict. We cannot say that Cuba is moving towards the creation of a market economy and the development of a real and substantial private sector. In August 2000, Carlos Lage said: "The government policy is aimed at establishing a state economy, not one in which transnational corporations may arrive and lead to the dis-

22. Vicent, Mauricio. "Los tropezones cubanos del capital extranjero." *El País*, July 24, 2000.

23. AFP. "Mexico firmará acuerdo de protección de inversiones con Cuba." May 7, 2001.

24. Camacho, Ledys. "Buena señal para las inversions mexicanas en Cuba." *Opciones*, June 5, 2001.

25. Confidential report, 1999. Note 6, p. 54.

26. *El Pais*, July 24, 2000.

27. DPA. "Cuban hotels industry thriving with foreign partners." July 5, 2001.

28. The Madrid-based Altadis S.A. and Altadis' U.S. units (which include the former Consolidated Cigar Holdings Inc. of Fort Lauderdale) have been accused by New York-based General Cigar Holdings Inc. of jawboning (to influence by persuasion) U.S. retailers to buy their non-Cuban products now, if the retailers hope to buy Cuban cigars once the embargo is lifted. See Hemlock, Doreen. "Spanish cigar company accused of using Cuban cigars as bait for business." *Sun-Sentinel*, November 2, 2000.

appearance of nationally-owned enterprises, and in which foreign capital makes national wealth emigrate toward rich countries. The economy will be regulated so that the benefits of investment go to society."[29]

Proof of Cuba's perseverance in maintaining the state's ownership of property is that only one 100% wholly foreign-owned investment has been authorized so far: a Panamanian company with Lebanese capital (Genpower S.A.) building a small diesel electric generating plant on Cuba's Isle of Youth. It must be noted that the company signed a so-called BOOT (Build Own Operate Transfer) contract at a cost of around $15 million. The foreign company will supply electricity for hard currency to Cuba's Unión Eléctrica for a four and a half year period necessary to recover the initial costs; then, ownership of the plant will revert to the Cuban company and the investor will earn income from its operations over an additional eight-year period.[30]

Overall, we can say that foreign investment is playing an important role in Cuba's economic development, certainly more than Castro's government is willing to admit. Cuban authorities, for obvious ideological reasons, argue that overseas investments are a complementary measure to the process of economic recovery. However, important sectors such as mining and oil could have not been revived without foreign capital and without the presence of big corporations disposed to accept the risk of exploration activities. Only in the oil sector, Cuban authorities report that as of December 2000, foreign companies have invested a total of $446.6 million.[31]

Moreover, nearly all the basic services of Havana (by far the biggest and most developed city in Cuba) are going to be provided through joint ventures with foreign companies.[32] Besides the aforementioned case of Stet International in the telecommunications sector, foreign capital is making a significant contribution to the production of electricity and cooking gas as well as to the water service. A Cuban-Canadian joint venture, Energas, started operation in October 2000. The Energas plant, constructed with the Canadian company Sherritt (cost of the project around $150 million), uses the natural gas released during oil extraction for producing electricity and naphtha. The Canadian firm intends to finance a further expansion of the plant ($120 million), which is expected to generate around 40% of Cuba's entire electricity supply.[33] The British company Trafigura is working to provide Havana residents with cooking gas as a substitute for the more expensive kerosene. In 1999, a joint venture between the Cuban state and the Spanish company Aguas de Barcelona created the firm Aguas del Oeste, which manages the water service for the capital city.[34]

Finally, Cuban officials argue that they have promoted a greater efficiency and competitiveness among Cuban companies, which increasingly supply food, furniture and other inputs for the tourist sector.[35] This is certainly true, but it would not have been possible without foreign investment. According to a recent declaration by Vice President Carlos Lage, national producers provide 65.4% of the total goods and services for the tourist sector.[36] However, these inputs are mostly produced through joint ventures

29. Caribbean and Central America Report. "No official market economy for Cuba." August 22, 2000.

30. Confidential report, 1999. Note 6, p.52.

31. "El efecto del bloqueo solo en los ingresos azucareros ascienden a más de $6.400 miliones." In Informe de Cuba al Secretario General de la ONU. *Granma Internacional,* July 21, 2001.

32. Interview with news correspondent posted in Havana, May 31, 2001.

33. The Economist Intelligence Unit. "Cuba Country Report." February 2001, p.21.

34. For further details see Marc Frank. "Cuba adopts two-track foreign investment policy." Reuters, August 26, 2001.

35. Monreal, Pedro. "Sea Changes: The New Cuban Economy." *NACLA Report on the Americas*, vol. 32, no. 5, p. 21(9), March-April 1999.

36. *Granma*. "En el sector del turismo, ni satisfacción ni complacencia." June 25, 2001.

with foreign companies and the Cuban government still imports the raw materials for their production.

THE CONTROVERSIAL ASPECTS OF THE HELMS-BURTON LAW

The Helms-Burton Law is composed of 33 sections divided into four titles. The U.S. legislation aims to protect the property rights of United States nationals affected by the extensive process of nationalization undertaken by Fidel Castro after January 1959. It also presents itself as an effective measure for promoting a change of government in Cuba and assisting the Cuban people in regaining democratic institutions.[37]

Titles III and IV are the aspects of the law that might affect Cuba's commercial partners. Title III allows U.S. citizen whose property was expropriated without compensation by the Cuban government—including those who were not citizens when the expropriation occurred—to sue in U.S. courts those foreign companies or individuals that "traffic" in that property. In order to make it difficult for foreign companies to evade the Helms-Burton Law's reach, the authors of the law have consciously left a margin of uncertainty in the interpretation of "trafficking." This is broadly defined and includes selling, leasing, managing, and purchasing expropriated properties.[38] It also includes the use of trademarks or licenses claimed by American companies.

For the first two years after the enactment of the law, only claims that had been certified by the U.S. Foreign Claims Settlement Commission (FCSC) could provide the basis for an action under Title III. There are already 5,911 certified claims listed by the Commission for a total value of approximately $6 billion. After two years, uncertified claims could serve as the basis for action. The claim must exceed $50,000 in 1996 dollars, excluding interests, costs, and attorney fees. Regarding the impact of this specific provision, there are contrasting versions. Patrick J. Kiger, of the Center for Public Integrity in Washington D.C. argues that it would exclude all but 75 of the certified claimants and probably most of Cuban-Americans.[39] On the other hand, a declaration of the former U.S. Secretary of State Warren Christopher implies a different scenario. Christopher affirmed that the implementation of Title III "would exponentially increase the number and value of U.S. property claims against Cuba from their current total of about $6 billion to as much as $100 billion."[40] If this were true, properties that were worth few thousand dollars in the 1960s might be easily worth over $50,000 dollars today. Therefore, the Helms-Burton law would actually expand the process of settlement of property claims.

Under Title III, a foreign company with investment in the United States might be victim of retaliation by U.S. claimants (backed by a Court order) on its properties in the latter country, which can be obtained legally as compensation.[41] However, the mere condition of "trafficking" in expropriated properties is by no means sufficient for the application of sanctions. In order to be subject to the jurisdiction of U.S. courts in case of a controversy based on this title, a foreign company must have "systematic and continuous" business links with the United States whose amplitude makes reasonable a process of reclamation. This provision is not applicable to foreign companies that simply export to as well as buy products and obtain financing from the United States. Besides, Title III can be applied only in a U.S. court of the state where the foreign company has business

37. Groombridge, Mark A. "Missing the Target. The Failure of the Helms-Burton Act." Cato Institute, June 5, 2001, p. 2.

38. Jatar-Hausmann, Ana Julia. *The Cuban Way. Capitalism, Communism and Confrontation*. West Hartford, Kumarian Press, 1999, p. 136.

39. Kiger, Patrick J. *Squeeze Play. The United States, Cuba, and the Helms-Burton Act.* The Center for Public Integrity, Washington D.C., 1998, pp. 57-58.

40. Groombridge, 2001, p. 4.

41. McKenna, Peter and Kirk, John M. "Canada and Helms-Burton: The Politics of Extraterritoriality." Paper presented at the XXI International Congress of LASA, Chicago, September 24-26, 1998, p. 6.

activities. For instance, if a foreign enterprise has investment activities in New York, it is not subject to the jurisdiction of a court in another U.S. state.[42]

We can fairly assume that claims against foreign companies with no U.S. exposure (mainly no assets in the United States) and a request of compensation for violation of Title III are probably going to be ignored by foreign investors. Without operations in the United States, a firm is not obligated to defend an action. This assumption seems correct, but a question should be raised. Can the subsequent default judgment (in case the executives of the firm do not appear before the U.S. court) be enforced in courts of other countries? For instance, in January 1997, Canada amended the 1985 Foreign Extraterritorial Measures Act (FEMA) by establishing that any court judgments linked to the Helms-Burton legislation would not be recognized in Canada. However, a few months before, a Canadian lawyer commented: "With amendments to FEMA we could have a stronger case, but I am not going to give Canadians a guarantee that their assets would be protected."[43]

Title III of the Helms-Burton Act was due to come into effect on August 1, 1996. However, it has not been so far implemented because former President Bill Clinton used his discretionary power to waive it for periods of six months (the last in January 2001). In fact, a clause included in the final draft of the law permits the U.S. President to delay it for national security reasons or to promote Cuban democracy.[44] In July 2001, the new U.S. President George W. Bush also suspended for six months the application of the controversial Title III. Although the postponement can still be lifted in the future, the decision of President Bush raises the likelihood that the full force of the Helms-Burton Act may not take effect during his administration.

Title IV of the Helms-Burton law allows the U.S. government to deny entry into the United States to senior executives of companies that are "trafficking" in properties subject to a U.S. claim. This provision also applies to close relatives of the executives such as their spouses and any dependent children. Unlike Title III, Title IV cannot be suspended.[45] Determination of "traffickers" and application of sanctions are responsibilities of the U.S. Department of State.

Title IV seems deprived of a retroactive character because it focuses on trafficking activities initiated after March 12, 1996. Section 401(B)(2)(A)(i)(III) suggests that the exclusion from the United States would not be applicable if a company in possession of a confiscated property avoids making any change to the way it was conducting business activities in Cuba prior to the enactment of the Helms-Burton law. Improvements and investments in a confiscated property are permitted only if they are for routine maintenance.[46]

However, a question arises. How can it be established for sure that renovations, upgrades, or other forms of construction have been undertaken just for routine maintenance? In the final analysis, the extreme vagueness of the provision makes it very difficult for foreign executives to avoid Title IV's reach. If you do business in a confiscated property, you might be easily identified as a "trafficker." A few months after March 1996, the U.S. Department of State sanctioned the executives of two foreign companies (a third one was sanctioned in 1997) for trafficking in expropriated properties in Cuba. In addition, it has

42. Krinsky, Michael. "La Ley Helms-Burton: Su alcance y limitaciones." In Seminario Internacional, "La Ley Helms-Burton, implicaciones para Cuba y la comunidad internacional." Ciudad Habana, Palacio de las Convenciones, September 17, 1996, p. 29.

43. Lacy, Allison J. "Damage control by Canadian Business." In "Helms-Burton and International Business: Legal and Commercial Implications." Proceedings of a Conference Organized on May 16 and 17, 1996, by the Canadian Foundation for the Americas (FOCAL) and the Center for International Policy (CIP), 1996, p. 30.

44. Azicri, Max. *Cuba Today and Tomorrow. Reinventing Socialism.* University Press of Florida, 2000.

45. Auge, Craig R. "Title IV of the Helms-Burton Act: A questionable secondary boycott." *Law and Policy in International Business*, vol. 28, no. 2, pp. 575-591, Winter 1997.

46. Lacy, 1996, p. 29.

maintained the pressure on several other firms by sending them "warning" letters regarding potential violations of the Helms-Burton law and threatening to deny them visa entry in the United States. In such a short period, it seems at least improbable that those firms made enough changes to their activities to justify the application of sanctions under Title IV.

THE EFFECTS ON POTENTIAL AND EXISTING INVESTORS

In gauging the impact of the Helms-Burton law on foreign investment in Cuba, a number of adverse effects must be emphasized. Among them are:

- The U.S. legislation compels foreign firms to maintain a low profile in carrying out their activities in Cuba. Basic industry (oil, mining), tourism, telecommunications, and construction are the sectors where large (in terms of capital involved) expropriations have taken place, and where the pressure of the law should allegedly be stronger. The U.S. legislation has affected Cuba by discouraging some potential investors and deferring the investment plans of others. Nevertheless, it has been less effective in forcing foreign companies already operating in the Cuban market to withdraw from their investments.

- Business activities in the tourist sector demonstrate how the broad definition of "trafficking" creates confusion and can affect foreign companies. In May 1996 Julia Sagebien (Senior Fellow at the Canadian Foundation for the Americas (FOCAL) stated: "Canadian concerns in Cuba are mostly management contracts, except for some equity positions in Canadian hotels. So I would imagine that the risk is lower than if they had direct ownership. Nevertheless, there are some vexing property questions based on broad definitions of trafficking, as well as some of the U.S. exposure of Canadian hotel concerns."[47] Since March 1996, several European and Canadian companies operating in the Cuban tourist sector have been targeted by the Helms-Burton law not only for equity positions in confiscated properties, but also for managing activities. The U.S. Department of State has sent "warning letters" to Leisure Canada and Air Transat (Canada), Club Med (France), LTE (Germany), SuperClubs (Jamaica), and Sol Meliá (Spain) advising them that their current or announced activities could constitute "dealing in expropriated goods," and they could face penalties under Title IV of the Helms-Burton Act.[48] Up to now no formal sanctions have been applied to them. However, these companies have become extremely cautious in developing new projects in Cuba. Besides, threatened sanctions might have discouraged other companies' plans for investment. This is the case of two Spanish hotel chains (Occidental Hotels and Paradores Nacionales), that did not pursue their planned investments in 1996 because of the Helms-Burton law.[49] Finally, a possible lift of the waiver on Title III would grant Cuban-Americans the right to

47. Sagebien, Julia. "Foreign trade and investment in Cuba after February 24, 1996: Life between a rock and a hard place." In "Helms-Burton and International Business: Legal and Commercial Implications." Proceedings of a Conference Organized on May 16 and 17, 1996, by the Canadian Foundation for the Americas (FOCAL) and the Center for International Policy (CIP), 1996, p. 43.

48. The Spanish hotel chain Sol Meliá has repeatedly been threatened by Title IV of the Helms-Burton Act. In July 1996, Sol Meliá received a "warning" letter from the U.S. Department of State. The company was under inquiry for one of the hotel it managed in the Cuban beach of Varadero (Meliá Las Américas). The hotel, in which Sol Meliá had also equity interest, had been expropriated from the U.S. millionaire Ireene Dupont. Although the Dupont family never claimed the expropriated property, the U.S. State Department carried out an investigation on the Spanish company, but it concluded that there was not enough proof of an alleged violation of the Helms-Burton law. See Vicent, Mauricio. "La Helms-Burton amenaza otra vez a Sol Meliá." *El País*, November 8, 1999. In 1999, Sol Meliá received a second "warning" letter. This time, the controversy was related to a parcel of land in the province of Holguín on which the hotel Sol Río de Oro (only managed by Sol Meliá) had been built. In 1959, the property belonged to the Sánchez Hill family. Again, the U.S. pressures against Sol Meliá did not produce any concrete result. See *Opciones*. "Sol Meliá: Nada va a cambiar respecto a Cuba." August 22, 1999; Reuters. "Spain's Sol Melia said unworried by Cuban inquiry." August 23, 1999; Vincent, Mauricio. "La Helms-Burton amenaza otra vez a Sol Meliá." *El País*, November 8, 1999; *Opciones*. "Insiste EE.UU. en sancionar a Sol Meliá." October 31, 1999.

claim their lands and industries. In this case, most of the deals would fall under the reach of the Helms-Burton law, including the construction of new hotels. As underlined by Julia Sagebien, the lack of U.S. exposure of foreign companies would become fundamental in avoiding possible retaliations.

- In order to avoid problems with the Helms-Burton Act, potential investors spend considerable time and money carrying out prior due diligence to verify that a project does not involve a confiscated property.[50] Official records are consulted both in Cuba and the United States. Often, new investors announce publicly that their projects are linked to "clean" assets. An official of the Cuban Ministry of Foreign Investment admitted that, for a couple of years after the enactment of the Helms-Burton law, foreign investors were obsessive in their inquiries on expropriated properties. However, he claimed that things have changed after five years and companies feel more secure in Cuba. According to him, potential investors focus on the U.S. legislation when more important issues have already been addressed.[51] Although some doubts remain on this declaration, it seems reasonable to believe that the Cuban perception of the Helms-Burton law's threat has evolved over time. After all, Title IV was applied for the last time almost four years ago and Title III has never been an issue. A legal consultant in Havana noted: "The first thing we do is to check the official record of the claims certified by the U.S. Foreign Settlement Commission. We do not check if the property was owned by some Cuban-Americans because Title III has always been waived."[52]

- The Helms-Burton law has disrupted the flow of foreign financing into Cuba for strategic sectors such as sugar and, to a lesser extent, tobacco.[53] Sugar is a sector with many expropriations. Charges of trafficking have mostly been made against companies that finance or trade sugar originating in expropriated lands, because direct foreign investments are not permitted in raw sugar production (only in the production of sugar cane derivatives). Overseas banks and financial institutions that have been targeted by the Helms-Burton law are the ING Bank (Netherlands), E.D. & F. Man (United Kingdom), Tabacalera and Bank Bilbao Vizcaya (Spain), and Redpath Sugar (Canada). As a response to the U.S. legislation, some foreign firms (this is not the case of Redpath, who ceased to do business in Cuba) have decided to reorganize their sugar operations in Cuba. "Territorial financing" directed to specific provinces has been abandoned for a more generic scheme of "national financing," in some cases through fiduciary mechanisms. In this way, it is more difficult to establish a connection between foreign credits

49. Paradores Nacionales pulled out of a provisional framework agreement to operate eight hotels on the island. Confidental Report, 1999. Note 6, p. 25. See also Ing, David. "Spanish chain nixes Cuba deal." *Hotel & Motel Management*, July 22, 1996. Occidental Hotels pulled out of a contract to manage four hotels at the leading resort of Varadero. See *ABC*. "Occidental Hoteles, primera empresa Española que abandona Cuba por la ley Helms-Burton." June 14, 1996.

50. Lapper, Richard. "Ambiguous stance towards attracting big guns." *Financial Time* (Cuba survey), March 24, 1999. For instance, the U.K.'s largest tour operator, Thomson Travel Group, has reportedly communicated with the U.S. State Department to make certain that its business activities do not violate the Helms-Burton Act. It is also reported that a Canadian company specialized in hotel constructions, Leisure Canada, has investigated 443 properties in Cuba in order to find a place with no links with U.S. claims. See De Palma, Anthony. "Buscando vías para invertir en la isla." *The New York Times*, published in *El Nuevo Herald*, March 6, 2000. Finally, the Canadian firm FirstKey Project Technologies (a joint venture involved in an electricity-generating project in Santa Cruz del Norte, outside Havana) spent more than $200,000 in legal fees just to make sure it was not running afoul of Helms-Burton Act. See Foster, Peter. "One company's Cuban nightmare." *National Post*, Canada, March 17, 1999.

51. Interview with official of the Cuban Ministry of Foreign Investment (MINVEC). Havana, May 29, 2001.

52. Interview with representative of Consultores Associados, S.A. (Conas). Havana, June 15, 2001.

53. SELA. "Follow-up report on the application of the Helms-Burton Act." October 1997.

and expropriated properties.[54] The Law of Reaffirmation of Cuban Dignity and Sovereignty (Law 80) enables the creation of "fiduciary companies" or investment funds to hold disputed properties. According to Article 6, "The Government of the Republic of Cuba is empowered to apply or authorize the necessary formulas to protect foreign investors against the application of the Helms-Burton law, including the transfer of the foreign investor's interests to fiduciary enterprises, financial entities or investment funds." The creation, in August 1996, of the Compañía Fiduciaria, S.A. seems directed at solving some of the problems related to the external financing. The Cuban company participates in operations such as financial solutions for investment contracts, administration of external funds that are directed to specific activities, and deposits of guarantees. In 1997, Compañía Fiduciaria received its first $5.3 million for the acquisition of supplies necessary for the development of sugar production. At the end of 1999, the company had received $367.8 million from banks and financial entities.[55] Besides sugar production, these funds contribute to financing important sector such as textile, metal and machinery, and construction, among others.

- Besides the use of fiduciary mechanisms, a number of foreign banks have developed circuitous routes using off-the-shelf companies in the Caribbean and Central America (Panama, Curacao, Cayman Islands) to disguise their financial assistance to firms with outstanding U.S. claims. As acknowledged by Peter Scott, chairman of British Beta Gran Caribe Ltd., "It is easy enough to buy companies off-the-shelf in countries with closed ownership registers and create a trail of money transfers which is extremely difficult to track."[56] However, some foreign banks with substantial interests in the United States have been less inclined to engage in the procedures aimed to bypass the U.S. legislation. For instance, the Canadian Bank of Nova Scotia backed away from providing loans to Canadians wishing to invest in Cuba largely out of fear of running afoul of Helms-Burton and possibly jeopardizing its investments in the United States.[57] Finally, it must be noted that not only banks but also many other foreign firms have created "shell" companies to disguise their real identities. This is the case, for instance, of the British sugar trader E.D. & F Man. Before March 1996, Man occupied an office, clearly marked with a company sign, in Havana's Miramar district. After the enactment of the law, this sign was taken down but Man continued its sugar operations in Cuba using a different identity, that of Pacol S.A., registered in Paris.[58]

- The Helms-Burton law has created a more uncertain and riskier business environment, resulting in foreign lenders providing credits to the island at higher rates. Interest rates for bank loans and other financing for investment projects have been driven to as high as 20% or more.[59] The final cost of foreign credits is therefore particularly burdensome for Cuba, which was already obtaining short-term loans at high interest rates. In fact, even before March 1996, Cuba ranked among the most risky countries for investment due to its economic indicators (especially trade deficits), high foreign debt, government intervention in the economy, and the U.S. embargo.

- Perhaps, the Helms-Burton law has given some foreign companies an increased power in negotiating their projects with the Cuban authorities.

54. Interview with news correspondent posted in Havana, June 11, 2001.
55. Compañía Fiduciaria, S.A. Annual Report, 1997 and 1999.
56. Eade, Philip. "Bypassing Helms-Burton." *Euromoney*, November 1996.
57. McKenna and Kirk, 1998, p. 6.
58. Fletcher, Pascal. "UK company looks to Cuban Trade." *Financial Times,* June 16, 2000.
59. Confidential report, 1999. Note 6, p. 24.

The acceptance of the "risk" of investing or expanding in Cuba might have been conditioned to important concessions in the contract. This seems the case of big companies that have been targeted by the Helms-Burton Act, such as the Canadian Sherritt, the Spanish Sol Meliá, and the Israeli BM Group.[60]

- Some foreign investors with assets or operations in the United States have decided to spin off their Cuban interests in order to prevent possible attacks under Title III of the Helms-Burton Act. This strategy consists in creating a legally distinct and completely unrelated company, which is responsible for all the benefits and potential risks associated with the Cuban assets. No cross-ownership must exist between the original company and the spun-off entity. Thus, a possible lawsuit against the spun-off firm cannot lead to retaliation on the U.S. assets of the original company.[61] One company that opted for splitting itself in two is the Canadian Sherritt. A few months before the enactment of the Helms-Burton law, Sherritt spun off Cuban operations by creating a new and legally separate company, Sherritt International Corporation. Although Title III has never been implemented, executives of the company are quite confident that Sherritt International is safe from this title.[62] However, a case could be made against it because the two companies still maintain links (many executives and shareholders are the same). Another company that opted for spinning off its Cuban operations is the Jamaican hotel operator SuperClubs, which manages and markets four hotels in Cuba, with two additional under construction.

- The application of the Helms-Burton Law against a foreign firm investing in Cuba could affect U.S. nationals that hold publicly traded shares of that firm. In fact, according to the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury, Americans can invest in a foreign company that does business in Cuba, as long as they do not acquire a controlling interest. For instance, individuals subject to United States law held approximately 16% of the shares of Sol Meliá in 1999.[63] A curious case that involves U.S. capital is that of the Brazilian company Souza Cruz, a subsidiary of British American Tobacco (BAT). In April 1995, Souza Cruz entered into a joint venture (BrasCuba S.A.) with Cuba's Unión del Tabaco. With an initial investment of $7 million, BrasCuba renovated an existing cigarette factory in Havana and started producing and selling several brands of cigarettes for the domestic market as well as for external markets (in the year 2001, BrasCuba exported its products to 30 different countries). The Havana factory had been nationalized in 1960 and it belonged to the American Tobacco Company. Executives of Souza Cruz said they are not worried for the expropriation because in 1994 American Tobacco Company was bought by Brown Williamson, another subsidiary of BAT.[64]

THE HELMS-BURTON ACT: FAILURE OR SUCCESS?

The impact of the Helms-Burton legislation on foreign investment has been the object of contrasting interpretations provided by Cuban and U.S. officials. Since March 1996, Cuban authorities proudly have insisted that economic associations with overseas companies as well as the flow of foreign direct investment were continuing to grow. However, in a somewhat ambiguous and contradictory way, they recog-

60. Interview with news correspondent posted in Havana, May 31, 2001.
61. Lacy, 1996, p. 30.
62. Kiger, 1998, pp. 63-64.
63. U.S.-Cuba Trade and Economic Council. "1999 Commercial Highlights." http://www.cubatraade.org/1999hlights.html
64. AP. "Capitales extranjeros en Cuba, pero todavía manda el socialismo." July 10, 2001.

nized that the codification of the embargo had done significant damage to the Cuban economy.[65] In particular, they acknowledged the problems related to external financing and the "inhibitive" or "psychological" effect of the Helms-Burton law on potential foreign investors. On the other hand, some U.S. officials have argued that the law was having a significant impact on foreign investment in Cuba.

In March 1999, then-Cuban Minister for Foreign Investment and Economic Cooperation Ferradaz declared that the Helms-Burton law had been unable to stop the foreign investment process. He said that out of more than 360 joint ventures with foreign capital operating in Cuba at that time, more than 50 percent had been established after the passage of the U.S. legislation.[66] On February 2, 2001, the new Minister, Marta Lomas, maintained that foreign investment in Cuba's economy is on the increase, as demonstrated by 392 active international associations at the end of the year 2000. She also claimed that 61% of these associations received approval after passage of the Helms-Burton law.[67]

In spite of these declarations about the ineffectiveness of the U.S. law, on April 2000 a delegation of the Cuban Ministry of Foreign Investment submitted to the Ministry of Justice the results of a study that attempted to quantify the damages of the Helms-Burton Act to the Cuban economy. The study reports that the U.S. law has caused damages to Cuba of $208 million. It also presents six specific cases of projects affected by the Helms-Burton law, and the corresponding amount of capital lost by Cuba. The names of the firms are omitted, but the cases are all quite known. Regarding the projects that involve larger amounts of capital, Cuban authorities argue that U.S. pressures disrupted the export plan of a joint venture in the construction industry (clearly referring to the withdrawal of Mexican cement company Cemex), which resulted in a loss of sales of $138.1 million. Moreover, decisions of U.S. courts and the measure adopted by a foreign firm in the telecommunications sector (the Italian Stet, which paid compensation to the former U.S. owner, ITT, for the use of confiscated properties) resulted in damages of $37.6 million.[68] Finally, the acquisition of a foreign firm in the transportation sector by a U.S. company (the Italian cruise line Costa Crociere that was bought in 1997 by the U.S.-based Carnival Corporation) prevented the completion of a project estimated at $19 million.[69]

On the U.S. side, Senator Jesse Helms asserted in March 1997 that the Helms-Burton Act was having a devastating effect on Castro's Marxist-Leninist economy by forcing many foreign investors to abandon their operations in Cuba. Also in the same period, Congresswoman Ileana Ros-Lehtinen reported that dozens of companies had suspended operations in Cuba while others were postponing their investment plans. She offered a list of companies (mainly Mexican, Canadian and European) that had left Cuba because of the uncertainty generated by the Helms-Burton as well as the names of firms whose projects had been put in hold.[70] In March 1999, Michael Rannenberg, the director of the U.S. State Department's Office of Cuban Affairs, claimed that U.S. pressures had forced at least nineteen foreign firms to either pull out of Cuba or alter their investment plans.

The Helms-Burton law has affected foreign investors' behavior, forcing them to reorganize their business activities, double-check new properties, or eventually renounce further expansion. It has also discouraged

65. Roy, Joaquín. *Cuba, the United States, and the Helms-Burton Doctrine. International Reactions.* University Press of Florida, 2000, p. 170.

66. *Opciones*. "La inversion extranjera no se ha detenido." April 18, 1999.

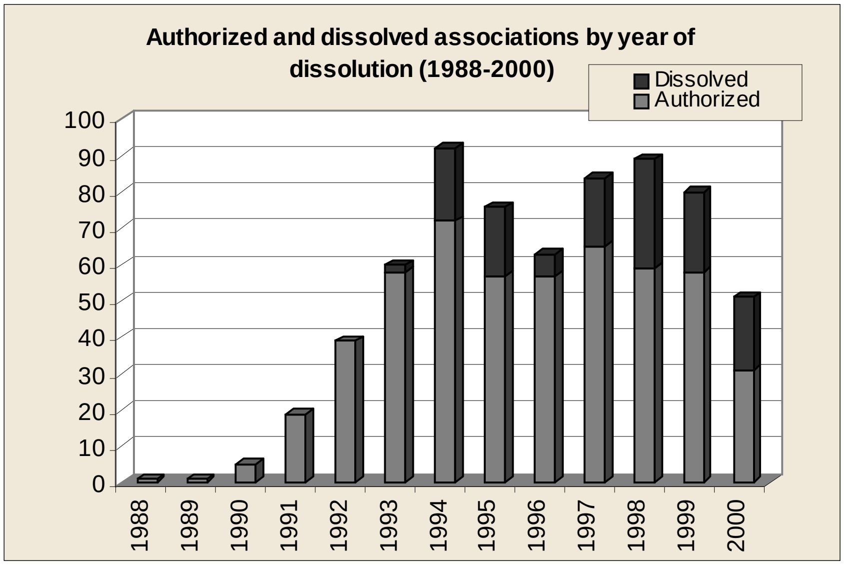
67. *Prensa Latina*. February 2, 2001.

68. The payment of compensation to the former U.S. owner is very important because it highlights a possible way for foreign companies to circumvent (or perhaps to succumb to) the provisions of the Helms-Burton law.

69. MINVEC. "Resúmen del Informe Pericial del MINVEC." Havana, April 2000.

70. Roy, 2000, pp. 160-161.

Figure 5.



Source: Cuban Ministry of Foreign Investment, February 2001

some potential investors from pursuing their plans in Cuba. But how effective has the U.S. law been in forcing foreign companies already operating in the Cuban market to pull out of the island? Between 1988 and 2000, 530 economic associations were formed in Cuba, most of them joint ventures; at the end of 2000, 392 associations remained in place. The number of dissolved enterprises is 138, approximately 26% of the total enterprises created. Around 70% of dissolutions occurred after the enactment of the Helms-Burton legislation.

Generally, dissolutions of economic associations occurred as a result of the termination of the regular contract between the Cuban state and the overseas investor; less frequently, they were the result of an anticipated withdrawal of the foreign partner. However, except for very few cases, there is no evidence that the Helms-Burton law played a major role in forcing existing investors to pull out of Cuba or, eventually, to refuse the renewal of a contract.[71] More important factors seem to have been the inability of the Cuban government to meet its obligations as well as the existing restrictions on the operation of enterprises.

Clear cases of companies that have ceased to do business in Cuba because of the Helms-Burton Act are those of the Mexican company Cemex and the Canadian company Redpath. Cemex withdrew in 1996 from a cement production venture in Cuba after learning that it was going to receive a notification letter from the U.S. Department of State for violation of Title IV. The company did not renew an administration contract for the plant Cemento Curazao N.V. in Mariel (total investment of $40 million), which had been expropriated from the U.S. company Lone Star Industries.[72] Also in 1996, the Canadian sugar refiner Redpath halted its operations in Cuba for apparent fear of the Helms-Burton Act. The company is part of the North American division of the U.K.-based sugar producer Tale & Lyle PLC, which has extensive interests in the United States. In a clear reference to Redpath, Cuban authorities have recently reported that the Helms-Burton Act provoked the termination of a sugar contract with a Canadian re-

71. See Sagebien, 1996, p. 43; McKenna and Kirk, 1998, p. 8; Kiger, 1998, p. 62; *El País,* November 8, 1999.

72. Marquis, Christopher. "Cemex se va de Cuba." *El Nuevo Herald*, May 29, 1996.

finer, which resulted in annual losses of about $30 million since 1996.[73] Until its withdrawal, the Canadian company had been buying 100,000 tons of sugar a year from Cuba.[74]

Not even applied sanctions have been able to force existing foreign investors to pull out of Cuba. Up to now, the executives and senior officers of three companies have been barred from entering the U.S. territory. In 1996, Sherritt International Corporation of Canada and Grupo Domos of Mexico were sanctioned under Title IV of the Helms-Burton for their activities in expropriated properties. In November 1997, similar sanctions were applied against the Israeli firm B.M. Group, which manages one-third of all citrus products exported by Cuba. Whereas Sherritt International and B.M. Group continued their activities in Cuba despite the U.S. pressure, Grupo Domos withdrew from its investment in 1997. In the case of Domos, the Helms-Burton Act seems to have played a role, along with alleged financing problems. However, the company is still performing minor activities in the island, in an attempt to recover the capital invested or, perhaps, maintain a foothold in the Cuban economy for the time when the U.S. embargo is lifted.

Although it is virtually impossible to gauge the psychological impact of the Helms-Burton law on foreign enterprises, overall data on foreign investment highlight an important conclusion. Data from the Cuban Central Bank on FDI to the island show a significant increase after March 1996. Around $1,300 million of foreign investments were delivered in the period 1996-2000, as compared with $568 million for the period 1990-95. Even if the alleged inaccuracy of these numbers is considered, the Cuban claim that the foreign investment process has not been detained, and has actually increased after the enactment of the Helms-Burton Act, appears correct. However, a clarification should be made. In July 2000, Minister of Foreign Investment Marta Lomas acknowledged that only 40% of the total amount of capital pledged since 1990 ($4.3 billion) had been approved after March 1996.[75] This might suggest that the increased amount of FDI during the period 1996-2000 is partially due to agreements signed before the enactment of the Helms-Burton law, in particular those of Canadian Sherrritt International in the nickel sector and Italian Stet in telecommunications.

The Helms-Burton law seems also to have failed in complicating the process of economic recovery of the Cuban regime. Cuban authorities were able to achieve what they had hoped in the early 1990s: using foreign capital in selected economic activities in order to stimulate the development of the country, while maintaining state control wherever possible over investment, areas of business and strategic sectors. Since 1993, the lowest point in the economic recession, Cuba's real GDP has constantly grown and it is projected to increase at more than 5% in the next three years as a result of increases in agricultural and oil production, acceleration in industrial recovery, improved terms of trade, and tourism growth.[76] The strengthening of the economy will allow the Cuban authorities to be even more selective toward foreign investment and more committed to maintain socialist principles.

CONCLUSION

From the analysis presented in this paper, there seems no question that the Helms-Burton Act has complicated the business operations of foreign investors in Cuba. Possible links with expropriated properties and the extreme vagueness of the concept of "trafficking" have forced foreign companies to keep a low profile, resort to expensive legal assistance, and disguise or eventually reorganize their operations in

73. AFP. "Embargo de EEUU deja perdidas en Cuba de mas de US$1.900 millones en 2000." July 17, 2001.

74. Kiger, 1998, p. 62.

75. EFE. "Cuba-EEUU: Ministra afirma ley Helms-Burton no ha detenido inversiones." July 10, 2000. Also see *Granma*. "Decreto yanki para la recolonización de Cuba." July 11, 2000.

76. The Economist Intelligence Unit. "Cuba Country Report." February 2001, pp. 8-9.

the island. In addition, financing for investments in Cuba has become much more expensive and difficult to obtain.

The confusion and the higher risk introduced by the Helms-Burton Act might have convinced some potential investors to withhold their projects or look elsewhere for less problematic business environments. It is also conceivable that certain foreign firms with operations in the United States have stayed out of Cuba because of the U.S. policy toward the island, reinforced by the Helms-Burton legislation.[77] However, the overall investment process clearly has not been halted. First, U.S. pressures have been largely ineffective against foreign companies with little or no U.S. exposure. Second, those firms that have verified that their projects do not involve confiscated properties have moved forward with their investments in the island.[78] Third, several small enterprises entered the Cuban market with the conviction that, because of their size, they can avoid scrutiny of the Helms-Burton law's restrictions.[79] Since 1996, foreign capital delivered to the island has constantly grown. Many foreign companies are engaging in profitable operations as well as taking advantage of the lack of U.S. competition. The flow of foreign direct investment remains low, if compared to other Latin American and Caribbean countries, but this seems more a consequence of Cuba's limited and sometimes ambiguous commitment to FDI rather than of the Helms-Burton.

In conclusion, the Helms-Burton legislation has met with some success, but missed its main targets. In fact, the law has been moderately effective in dissuading some foreign companies from entering the Cuban market, but it largely failed to force foreign firms already operating in the island to withdraw from their investment. It has also failed to hinder the process of economic recovery of the Castro's regime and detain the flow of foreign capital delivered to the island.

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77. In January 2001, asked to comment on the poor presence of Great Britain in the Cuban market, a British officer gave one of the rare admissions of this particular problem for foreign companies. He reported that Great Britain is the second largest investor in the world and most of its investments are in the United States; he added that U.S. threats for possible sanctions have put a brake on the British participation in economic activities in the island. See *Opciones*. "Gran Bretaña: Funcionario considera factible incremento de relaciones bilaterales." January 28, 2001.

78. McKenna and Kirk, 1998, p. 9.

79. Campbell, Beverly L. "Helms-Burton: Checkmate or Challenge for Canadian Firms Doing Business in Cuba?" In *Cuba in Transition—Volume 6*. Association for the Study of the Cuban Economy (ASCE), 1996.