

CUBA'S BUSINESS ENTERPRISES: HOW BUSINESS IS CONDUCTED ON THE ISLAND

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Introduction:

Since the end of the Cold War, it seems that every four or five years there is a period of intensive speculation about the end of the forty year US embargo on Cuba and the opening of the Island to American Business.¹ It happened at the end of the 1980's when the Soviet Bloc was disintegrating. Again in the mid-1990's during the worst moments of Cuba's economic crises and, again, in the late 1990's after Pope John Paul II's visit to Cuba.

We are now facing another period of intense speculation about the end of the Cuban embargo. However, this time things are a little different since there has been a substantial change on the embargo policy. In 2001, Congress passed a law permitting sales of medical and agricultural products to Cuba.² Partially as a result of the damage done to the Island by Hurricane Michelle, Cuba has actually purchased approximately \$100 million dollars worth of medical and agricultural products from the US.

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. 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. Additionally, the House approved by a voice vote another bill allowing US companies to sell food and medicine to Cuba more easily, including allowing private credit. The Senate is scheduled to take up these measures in September of 2002, approval is almost certain. All of this prompted the House Majority Leader Dick Armey to predict that the embargo would be over within one year.³

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Prior to the law allowing sales of medical and agricultural products US-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 indeed unrestricted travel by Americans is permitted, then many other types of business activities such as scheduled airline flights, cruise ships, credit cards and other banking transactions, unrestricted travel agency operations, etc. will certainly follow. The opening of Cuba to US business will probably take place within two years of unrestrictive travel by Americans.

Because of its geographical 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 embargo and Cuba's opening to US 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 effect. There have been several studies, seminars and articles about the impact of the end of the embargo or economic relations between Cuba and the state of Florida in recent years.⁴ These sources indicate that with the travel restrictions lifted, normal diplomatic relations and an opening to US business, there would be more than 50 flights a day from Florida to Cuba compared to the present 25 - 30 flights per week from Florida, New York and California. Visitors from Florida to the Island alone could be approximately 1 to 2 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 \$5 to \$6 billion dollars annually. Florida would export to Cuba construction materials, inexpensive furniture and household goods, fertilizers, products for assembly and services, among other items. Cuba would export to Florida agricultural and assembly products such as, clothing, electronics, seafood, minerals and possibly natural gas.

Direct investments by Floridians in Cuba could be very substantial. For instance, with normal US 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 (B&B) 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.

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

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 a timely idea to examine how business is currently conducted in the Island. This is the objective of this paper, concentrating, however, on Cuba's business enterprises. A business enterprise is defined by Black's Law Dictionary as: *"an investment of capital, labor and management in an undertaking for profit whose principal attributes are centralized management and control."*⁵

Other key elements of business in Cuba such as, direct foreign investment and international trade, are considered in this paper but only as they relate to the business enterprises operating in the Island. Very little has been written about Cuba's business enterprises, on the other hand foreign investment and trade have received substantial attention although certainly not enough.⁶

Cuba is a complicated subject because of the nature of its economic system. Cuba's economic system is really two distinct systems operating side by side. One is the socialist peso economy which applies to most Cubans and provides 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. The other is the free-market dollarized economy that operates in the tourist, international and export sectors and in many ways substantially sustains the socialist economy. Cuba's business enterprises system is one of the most important ways of sustaining the Island's dual economy.⁷

Cuba's business enterprises can be classified in five (5) distinct categories: State enterprises, Cuban commercial companies, mixed or joint venture companies, totally foreign owned companies and branches of foreign companies. This paper will describe the legal basis for the five (5) types of enterprises, their legal organization, structure and regulation and their relative impact on Cuba's economy and potential future importance. It is assumed herein that these business enterprises will continue to be in operation after the end of the US 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.⁸

The main legal foundations for Cuba's business enterprises are found in the Constitution of 1976, as amended in 1992.⁹

Article 15 of the Constitution states:

“Socialist State property is the property of the entire people, comprises: the factories, enterprises and economic facilities fostered or purchased by the State ...”;

Article 17 states:

“The 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:

“The State recognizes the right to legal ownership of joint ventures, companies and economic associations which are created as prescribed by law;”¹⁰ and

Article 18 states:

“The State controls and directs foreign trade [and is] authorized to: create foreign trade enterprises; . . . and regulate export and import transactions.”

In addition to the Constitution, business enterprises in Cuba are based and regulated by the “*Código de Comercio*” (Commercial Code), the “*Código Civil*” (Civil Code) and various laws, particularly the Foreign Investment Law of 1995.¹¹ Specific cites to these other sources will be made below as we describe the different types of Cuba’s business enterprises.

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. Cuba’s economic model before the Revolution was substantially influenced by the United States and on purely economic terms had placed the Island nation 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. In late 1960 a number of US businesses and properties were expropriated. In 1961 the US broke diplomatic relations with Cuba and Cuba’s 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.

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 substitute 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-1970’s when a new system of economic planning and management was adopted.¹² The new system emphasized decentralization, material incentives and managerial efficiency.

In the 1970’s and 1980’s Cuban State enterprises faced relatively little challenges. Cuba’s 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 1980’s. Today Cuba’s State enterprises are no longer subsidized, they must operate at a profit or they are dissolved or merged into a successful entity. Since 1998 they are subject to a new intensive effort to improve management, production, profitability and over-all performance.¹³ 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 with the exception of enterprises involved in foreign trade which are approved by the Ministry of Foreign Commerce.¹⁴ Once the State enterprise is formed, incorporation documents are filed in the Registry of State Enterprises and Budgeted Entities. Today there are approximately 3,000 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.¹⁵ The initial capital is provided by the Ministry or other government entity that creates the enterprise. It operates as an autonomous entity responsible for its own finances management and business plan and contractual relations. It must be profitable or it is either dissolved or merged by order of the Ministry of Economy and Planning. Profits are turned over to the Ministry or other entity that created the enterprise. Each State enterprise operates in coordination with the ministry or 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".¹⁶

The State enterprise is supervised by a board of advisors, usually comprised of five (5) members representing:

- The Ministry of Economy and Planning;
- the Ministry of Finance;
- the Central Bank;
- the Ministry or entity that created the enterprises; 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 enterprises is part of a larger group. The Director General is assisted in its functions 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 enterprise 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. In fiscal year 2000 only 608 million were allocated for that purpose, this represents a reduction of almost 90%.¹⁷ 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.¹⁸

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 it is frequently the case in Civil Law countries, the purposes or objectives of the company are quite specific. In Cuba different companies are assigned by the State specific objectives and areas or sectors of operations. When dealing with Cuban enterprises, it is very important to determine early what is the enterprise allowed to do under its charter.

Commercial Companies:

Another type of Cuban business enterprise is conformed 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 25%, foreign trade dropped 75% and gross national product fell 34%. With this situation, Cuba was forced to choose between isolation and retrenchment or reform and insertion into the global economy dominated by free markets and capitalism based on the US dollar. Cuba chose the latter using as one of its main conduits to the world economy, the Cuban commercial company.

The Cuban commercial companies operate almost entirely in the dollarized economy within and without Cuba. They are involved primarily in tourism and foreign trade but they are also the main Cuban partner in many industrial and commercial activities in the Island. A few years ago some of the commercial companies started investing outside of Cuba, 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-1980's, 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 paper 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 Cuba's Commercial Code whose origins date back to Spanish laws and the colonial period.¹⁹ Several types of companies are found in the Commercial Code but in contemporary Cuba only "*compañías anónimas*" are being used.²⁰ This is fortunate for Americans since a "*compañía anónima*" is the closest entity in civil law to a company in common law. 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 company's shares. Shares must be nominative; bearer shares were made illegal in 1959. Commercial companies are filed in the government registry office for commercial entities (*Registro Mercantil*). The document of incorporation must include the following:

- Name of incorporators;
- name of the company;
- name of the manager(s);
- capital of the company;
- number of shares;
- duration of the company;
- purposes of the company;
- how shareholders meetings are conducted; and
- shareholders 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 and/or of the Communist Party. 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 1990's.²¹

Legally, commercial companies are totally independent in contrast with State enterprises which 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 government's economic plan with the final decision by the State and the Communist Party. Commercial companies are less than 300 in number, yet they control directly, or as partners in mixed companies, a much greater piece of Cuba's free-market dollarized economy, than the 3000 State enterprises or any of the other types of business enterprises of the Island.

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: Cuba's foreign investment legislation. Cuba has used foreign investment to counter-balance the disastrous effects of the collapse of the Soviet Bloc and resulting economic crisis in 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.²²

Cuba's first 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 1990's when the Island's economic crisis 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 50.²³

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. 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 company created by the Cuban company and the foreign company is incorporated pursuant to Cuba’s Commercial Code as described above. There are approximately 400 such companies in operation in present day Cuba. Spain is the leading investing country with approximately 23% of the mixed companies, followed by Canada with 20% and Latin American countries with 18%, with Mexico as the principal investor. Other substantial investors are Italy, France, the United Kingdom and the Netherlands.

Although most mixed companies are the result of a business deal between a foreign company and a Cuban commercial company, State enterprise 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 an aspect of the increasing competitiveness of Cuba’s free-market dollarized economy. On most business deals in Cuba there are options on how to structure the deal, who will be your partner, who will be your professional advisors, who will be your contractors and suppliers and what will be the business deal itself.

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 f/k/a Isla de Pinos, the second largest Island of the Cuban archipelago and an important tourist destination.²⁴ Although totally foreign owned companies are legally possible, they are not expected to become an important option in Cuba’s foreign investment world. This is because the government strategy is to favor participation of Cuban companies and most foreign investors prefer to have a local partner.

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.²⁵ 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 8 agents had been appointed. As of April 15, 2002, there were over 800 branches and some 100 agents.²⁶

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:

- Formal request for registration;
- copy of the articles of incorporation and bylaws of the company;
- designation of the person in charge of the branch;
- resume of the person in charge of the branch;
- type of business and products that will be handled by the branch;
- bank references;
- information of business activities of the last five 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. The country with most branches is, by far, Spain with 155; a distant second are: Canada and Italy, with 28 each; then comes France, with 23; Mexico with 22; and Germany with 19. Panama has 80 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. These companies engage in all kinds of business activities in

Cuba but the most prevalent are tourism, financing, consulting services and export-import transactions.

Frequently branches of foreign companies 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 importation and exportation of goods, outside of customs demarcation, in which industrial, commercial, agricultural, technological and service activities are carried out under special laws. These special laws include: customs, banking, taxes, labor, migration, and public order which are less restrictive than the usual legislation. Four free trade zones were created: Havana, Wajay, Mariel and Cienfuegos.

Import-Export Companies:

The import-export 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 import and/or export goods. Among the enterprises allowed to participate in the export-import activity are: State enterprises, commercial companies, and mixed companies. Therefore, this is 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 on the Island, this is why it is treated in this paper as a separate section.

Import-export companies apply for authorization to either import or export specific types of goods to the Ministry of Foreign Commerce. Once the application has been reviewed and approved, the companies have to 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.²⁷ 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 351.²⁸ Again all three categories are present in a more balanced distribution among enterprise categories.

Taxation of Cuban Business Enterprises:

Another element of Cuba's economic reforms during the decade of the 1990's was the introduction of corporate and individual income taxes. Cuba's basic tax law is Law 73 of August 4, 1994.²⁹ A full discussion of Cuba's tax system is way beyond the scope of this paper. 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 in 1994, apply only to income in foreign currency and convertible Cuban pesos. Of course, foreign currency usually refers to US dollars. Convertible Cuban pesos are special pesos that are convertible to US dollars at a one on one exchange rate. Third, income taxes basically apply only to the dollarized economy. It clearly applies to 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 or family restaurants, known as "*paladares*" and owners and/or operators of private B&B 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, operating expenses, cost of sales, depreciation, etc. are recognized in Cuba's tax code.³⁰

In general terms, individuals, foreigners working in Cuba and Cuban with "dollarized" income pay a minimum of 10% on net income up to US\$ 2,400 and up to 50% on a progressive scale for net income in excess of US\$ 60,000 per year. Business enterprises pay a 30% flat 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 50%. 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 25% of the worker's salary.

Labor System:

In Cuba, approximately 70% of the labor force is employed by the State. The other 30% 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.³¹

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.³²

In the case of regular workers supplied by the employment agency, the employer pays their salaries in foreign currency, usually US dollars, to the employment agency which, in turn, pays the worker in Cuban pesos, according to established pay scales. The government considers this practice as necessary and fair since it serves to maintain a certain degree of parity among all Cuban workers who do the same or similar job. Despite receiving base salaries in Cuban pesos, most Cubans seek employment in foreign investment enterprises and are quite happy once they are employed. This is because most foreign enterprises pay bonuses in US dollars, allow tips in hard currency and provide other important benefits.

Conclusions:

Cuba's business enterprises have been generally quite successful. The following evidence supports this conclusion.

(a) 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. According to the United Nations, Cuba's GDP of 24 billion ranks 60th among the nations of the world and 8th in the Latin American region. Certainly Cuba's business enterprises share a good portion of the credit.

(b) According to various economic indicators, compared to other former socialist countries like Cuba, members of Comecon, Cuba does fairly well. This is remarkable because Cuba has been deprived of its natural business partner by the US embargo. It is reasonable to conclude that Cuba's performance would have

been much better without the embargo. This conclusion is supported by the following rankings found in Ed Canler's work cited in the Endnotes hereof.

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
Kirgyz Republic	-7.3
Turkmenistan	-8.7
Tajikistan	-9.8
Azarbaijan	-11.4
Georgia	-12.8
Moldova	-12.8

(Sources: World Bank, ONE)

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)

(c) Cuban State enterprises taken as a whole began turning a profit in the mid-1990's and in 1997 the taxes paid by State enterprises surpassed the total amount of subsidies received from the government.³³

The two main drawbacks about doing business in Cuba besides the US embargo problem are: First, the control that the government exercises 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, Cuba's 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 Cuba's dual economic system. A perfect example of this is found in the real estate area.³⁴ 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 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. To make matters worse the government imposed a moratorium on condominium development in 1999.

Notwithstanding the embargo and the two situations mentioned above, there are reasons to be optimistic about Cuba's business enterprises. First, the days of the embargo appear to be numbered. The present administration may hold the fort for a few months and may even attempt to strengthen the embargo but in the end, reason, goodwill, American businesses and 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 Cuba's business enterprises. Accounting and law careers are now very popular options. The University now offers advanced degrees in such subjects as: business law, international economics, finance, business administration, management, tax administration, hotel management, information technology and human resource management.³⁵ Most of these subjects were not even offered ten years ago.

Third, the entrepreneurial spirit is alive and well in Cuba's 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.³⁶

Finally, Cuban companies have expanded their business operations outside of Cuba. For several years some of Cuba's most important companies have operated restaurants, travel agencies and cigars shops in Latin America, Europe and the rest of 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. Cuba's business enterprises are now beginning to interrelate with the greatest capitalistic country of the world, the United States. Even in Miami, Cuba's business enterprises are making inroads; many of them advertise their products and services in that bastion of counterrevolutionary culture. The Cuban entrepreneurial spirit is indeed alive and well.

Endnotes

- ¹ The 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 (Ch. 106, 40 Stat. 411, <1917>). The embargo has been reinforced by the Cuban Democracy Act of 1992, also called the Torricelli Law (Pub. Law No. 102-484, 106 Stat. 2575, <1992>) and the Cuban Liberty and Democratic Solidarity Act of 1996, commonly called the Helms-Burton Law (Pub. Law No. 104-114, 110 Stat. 785, (<1996>).
- ² See: Trade Sanctions Reform and Export Enhancement Act of 2000 (Public Law 106-387).
- ³ 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. For Dick Armeý's statement see Associated Press Report by Roxana Hegeman dated August 7, 2002.
- ⁴ See: Miami Business, March 2000, p37; Hispanic Business, April 2000, p. 38 and South Florida Business Journal, March 23-29, 2001 p. 1A. Also, Cuba Summary of Opportunities, Economic Impact and Opportunities Analysis for the State of Florida upon Resumption of Trade between the United States and Cuba, Florida Trade Data Center, 1998.
- ⁵ Black's Law Dictionary, 5th Edition, West Publishing Company, St. Paul, Minn. 1979, pp 179 and 180.
- ⁶ See: Antonio R. Zamora, Foreign Investment in Cuba: A U.S. Perspective, Probate & Property (ABA), November/December, 2000, p.57; Mark M. Miller and Tony L. Henthorne, Investing in the New Cuban Tourist Industry, a Guide to Entrepreneurial Opportunities, Quorum Books, Westport, Conn. 1997; Jaime Suchlichí and Antonio Jorge, editors, Investing in Cuba, Problems and Prospects, Transactions Publishers, New Brunswick, Conn. 1994.
- ⁷ 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. See: Andrew Zimbalist, Whiter the Cuban Economy? in Susan Kaufman Purcell & David Rothkoff, editors, Cuba, the Contours of Change, Lynne Rienner Publishers, Boulder, Co. 2000 and Jorge F. Perez-Lopez, Cuba's Second Economy, from Behind the Scenes to Center Stage, Transaction Publishers, New Brunswick, Conn. 1995.
- ⁸ See for instance: Cuba: The Shape of Things to Come by William M. Leogrande and Castro's Cuba: Continuity Instead of Change by Jaime Suchlichí in Purcell & Rothkoff, editors, Cuba the Contours of Change. Also seminars: Doing Business in Post-Castro Cuba organized by the University of Miami, the Council of the Americas and the US-Cuba Business Council, March 17, 2000 and Cuba after Castro: What to Expect, University of Miami, School of International Studies, August 31, 2001.
- ⁹ 1992 Constitución de la República de Cuba, Official Gazette Extraordinary Ed. No 7, August 1, 1992.
- ¹⁰ Ibid.
- ¹¹ Law 77 of September 5, 1995. Official Gazette Extraordinary Ed. No. 3, September 6, 1995.

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- 12 See: State Enterprises in Cuba under the New System of Planning and Management by Sergio G. Roca in Irving Louis Horowitz, editor, Cuban Communism 7th ed. Transaction Publishers, New Brunswick, Conn. 1989.
- 13 Law 187 of August 18, 1998. Official Gazette Ordinary Ed. No. 45, August 25, 1998. This law is commonly referred to as “Perfeccionamiento Empresarial.”
- 14 Bufete de Servicios Especializados, La Empresa y el Empresario en Cuba, Ediciones ONBC, Habana, Cuba, 2000, p.3.
- 15 Ibid, p.5. See Normas sobre la Unión y la Empresa Estatal, Acuerdo del Comité Ejecutivo; del Consejo de Ministros, abril 1988.
- 16 Ibid, p.6.
- 17 Phil Peters, State Enterprises Reform: An Early Snapshot, The Lexington Institute, July 2001.
- 18 Ibid.
- 19 Rosa María Yáñez García and Justa Aurelia Aguirre Echevarria, Código de Comercio (actualizado), Editorial Félix Varela, La Habana, Cuba, 1998. Note: the Commercial Code has been in effect in Cuba since May 1, 1886.
- 20 See Commercial Code, Articles 116 to 172.
- 21 See: Phil Peters, op. cit, for reductions of ministries and armed forces.
- 22 See: Ed Canler, The Miracle of the Cuban Economy in the 1990's, Paper presented at the 2001 meeting of the Association for the Study of the Cuban Economy (ASCE).
- 23 See: Antonio R. Zamora, Cuba's New Foreign Investment Law: Better, Worse or the same as Before? Focus Americas, February 1996.
- 24 Dalia Acosta, Cuba: First 100 Percent Foreign Investment, World News, Havana, February 10, 1999.
- 25 Law No. 206 of April 10, 1996, Reglamento de Registro de Sucursales y Agentes de Sociedades Mercantiles Extranjeras, Official Gazette, Ordinary Ed. No. 17, May 24 1996.
- 26 Albur S.A., Cuba, Consultor de Negocios, ALBUR CD Rom, Ed. 2000 and interview with the Secretary of the Cuban Chamber of Commerce.
- 27 Ministerio del Comercio Exterior, Directorio de Exportadores de la República de Cuba, Premium Publicity, S.A. Habana, Cuba, 2002.
- 28 Cámara de Comercio de la República de Cuba, Directorio de Importadores de la República de Cuba, Percosi Imaginari Editorial, Habana, Cuba, 2001.
- 29 Ley No. 73 de 4 de agosto de 1994, Ley del Sistema Tributario, Official Gazette Extraordinary Ed. No. 8, August 5, 2994.
- 30 Ibid. 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 the island.

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- ³¹ See Debra Evenson, Workers in Cuba, Unions & Labor Relations, the NLG/Maurice and Jane Sugar Law Center for Economics and Social Justice, 2001 and Francisco León Delgado, Foreign Investment and Labor Relations in Cuba Today: Challenges of an Upgrading Strategy, Institute for European-Latin American Relations, 2001.
- ³² Ibid.
- ³³ Max Azicri, Cuba Today and Tomorrow, Reinventing Socialism, University Press of Florida, 2000, page 152.
- ³⁴ See Antonio Zamora, Real Estate in Cuba: Back to the Future, Florida Journal of International Law, University of Florida College of Law, Vol. XI No. 3, Fall, 1997, and Antonio Zamora, Foreign Investment in Cuba, a US Perspective, op. cit.
- ³⁵ Philip Peters, State Enterprise Reform in Cuba. An Early Snapshot, Lexington Institute, 2001.
- ³⁶ 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).