

EDITORIAL

THE US BLOCKADE, AND THE “1 CENT 4 CUBA” CAMPAIGN TO CHALLENGE IT

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Following the devastating oil tanker fire in Matanzas in August 2022, many groups and individuals around the world were frustrated to find financial institutions blocking humanitarian donations for Cuba, even when recipient accounts were not on the island. These obstacles had previously arisen during the COVID-19 pandemic. While the United States is the only country in the world to sanction Cuba, most international banks and payment systems include Cuba on their list of sanctioned countries, even though this violates national laws where they are based. The scale of the problem has increased since January 2021 when, just days before leaving office, US President Trump vindictively returned Cuba to the US list of state sponsors of terrorism. Fearing hefty fines imposed by the US Treasury’s Office of Foreign Asset Controls (OFAC) for transacting with Cuba, banks, companies and investors categorise Cuba as “high risk” and avoid interaction. At this point, the word CUBA is being blocked, not just the country. For example, transactions from the UK to Europe are investigated and blocked if the word “Cuba” is used in the reference or the account name, even though no money is sent to the island.

This practice is now being challenged through a new initiative, the “1 cent 4 Cuba” or “1c4Cuba” campaign, set up by three solidarity groups in Britain, Ireland and Belgium, which aims to “make the US blockade of Cuba unenforceable”

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(<https://1c4cuba.eu>). It does so through four simple steps that are low cost to participants but high cost to the banks. The idea is to change bank calculations so that the risk (or cost) of imposing sanctions on Cuba is higher than the fines threatened by the US Treasury. By involving participants worldwide, the campaign illustrates the extraterritorial impact of US sanctions on Cuba.

When is an embargo more than an embargo?

An embargo is when one nation establishes a policy not to trade with another nation and not to allow its ports or territory to be used for commerce with that nation; it is a country's prerogative. A blockade is when a country uses a military threat or force to close the borders of another entity to international commerce, preventing normal commercial activity with third parties. A blockade is an act of war. While a military blockade is more associated with the colonial era, we can update the concept to mean “economic warfare”, a policy of imposing economic isolation. The cumulative result of severe and wide-ranging US sanctions is to impede the island's commerce with third parties through financial, legal, and political mechanisms. Arguably then, the United States imposes a blockade on Cuba.

A history of incremental sanctions

The US blockade of Cuba, officially imposed since 1962, constitutes the longest and most extensive system of unilateral sanctions applied against any country in modern history. It has been enforced through six main statutes: section 5(b) of the 1917 Trading with the Enemy Act; section 620(a) of the 1961 Foreign Assistance Act; the 1963 Cuban Assets Control Regulations; the 1992 Cuban Democracy Act, known as the Torricelli Act; the 1996 Cuban Liberty and Democratic Solidarity (Libertad) Act, known as the Helms-Burton Act; and the 2000 Trade Sanctions Reform and Export Enhancement Act. In addition to those six statutes other regulations have been applied.² The result is a complex web of overlapping legislation. Sanctions have targeted key economic and strategic areas of development in Cuba; sugar and nickel exports, tourism, biotechnology and medical services, and projects that could improve the island's economic prospects, such as oil drilling and major infrastructural improvements.

From the outset, US sanctions have had extraterritorial reach. The 1962 amendment to the 1961 Foreign Assistance Act was used to authorise a “total embargo” of Cuba, to prohibit assistance to Cuba and “any Communist country”, or to

2 Including the 1979 Export Administration Act and Section 211 of the Supplementary and Emergency Allocations Act for fiscal year 1999.

“any country which furnishes assistance to the present government of Cuba”, unless deemed to be in US national interests.³ Political pressure was also put on allies to cease trade with Cuba. The impact was intended to be devastating, given the almost total dependence of the Cuban economy on the United States. The USSR offered Cuba a lifeline.

The extraterritorial character of US sanctions was multiplied after the collapse of the Soviet Bloc when, almost overnight, Cuba lost most of its trade and investment and became dependent on an international capitalist market dominated by a hostile superpower. In 1992 the Torricelli Act prohibited foreign-based subsidiaries of US companies in third countries from trading with Cuba or with Cuban nationals, banned foreign ships docking in Cuba from entering US ports for six months, and reaffirmed that foreign countries engaging with Cuba would be ineligible for foreign assistance and debt reduction or relief.

The 1996 Helms-Burton Act overtly extended the extraterritorial character of US sanctions. Title I, “Strengthening international sanctions against the Castro government”, restates measures obstructing Cuba’s trade with, or assistance from, third countries, with the threat of fines, and bars Cuba’s membership of, or loans from, international financial institutions. Title II, “Assistance to a free and independent Cuba”, establishes that transition to a capitalist democracy is required before sanctions will be lifted or suspended. Title III, “Protection of property rights of United States Nationals” authorises US nationals with claims to nationalised property in Cuba to file suit in US courts against persons “trafficking” in that property. Title IV, “Exclusion of certain aliens” states that foreigners, and their families, who are “involved in the confiscation of property, or the trafficking in confiscated property, owned by a U.S. national” can be denied entry into the United States.

International repudiation

Repudiating the extraterritorial reach of the Helms Burton Act, Canada and the European Union (EU) threatened legal action within the North American Free Trade Agreement and the World Trade Organisation (WTO) respectively. They adopted blocking and “claw-back” legislation making it illegal for EU and UK entities to comply with US law. As a concession, Title III was suspended and in April 1997 a deal was made: the United States would limit the impact of certain provisions on European entities and the EU would freeze legal action in the WTO. The United States would continue suspending Title III every six months, “so long as the EU and other allies continue their stepped up efforts to promote democracy

3 S. 2996 (87th): An Act to amend further the Foreign Assistance Act of 1961, as amended, and for other purposes, 1 August 1962. <https://www.govtrack.us/congress/bills/87/s2996/text>

in Cuba”.⁴ In 1996, the EU adopted the hostile Common Position on Cuba, “to encourage a process of transition to a pluralist democracy and respect for human rights and fundamental freedoms”. Meanwhile, the UN advised states to legislate against the US blockade’s extraterritorial imposition and since 1994 the UN General Assembly has overwhelmingly supported the Cuban resolution against the US blockade of Cuba. The only steadfast opponents have been the United States and Israel and in 2016 even they abstained as the other 191 countries voted in favour of ending the US blockade. But despite this no legal action has been taken so international trade with Cuba remains severely restricted.

The United States uses its leverage over the international financial system to force global entities to toe the line. In 2019, 88 percent of international transactions involved US dollars. The *Wall Street Journal* noted that this “gives the US extraordinary power over nearly anyone who imports or exports anything anywhere”.⁵ OFAC has issued million- and billion-dollar fines on banks and companies in third countries as punishment for dealing with Cuba, while Canadian, EU and UK anti-US blockade legislation has not been enforced. During the first six years of Obama’s presidency, a record-breaking 56 fines were imposed on foreign entities engaging with Cuba, including banks, amounting to nearly \$14.3 billion. A further \$2.8 billion in fines was imposed even after rapprochement with Cuba was announced in December 2014.

In 2018, Federica Mogherini, EU High Representative for Foreign Affairs and Security Policy, publicly described the US blockade as “illegal”. That year, when I interviewed Alberto Navarro, then EU Ambassador to Cuba, in Havana, he acknowledged that the EU “should be more assertive about the US embargo” recognising it as “the biggest burden on development in Cuba”. However, he pointed out, Cuba represents some 0.1 percent of the EU’s external trade; miniscule compared to the trade carried out by EU members with the United States. “So, you understand that member states are very cautious sometimes.”⁶ In 2019 after 23 years, the Trump administration lifted the suspension on Title III. Canada and the EU complained but took no legal action. That was just one of the 243 new coercive actions, sanctions and measures taken by the Trump administration to tighten the blockade of Cuba, over 50 of them during the COVID-19 pandemic. Blocking bank payments prevents trade in goods and services, remittances, and even humanitarian donations. Reneging on his campaign

4 1997 Understanding, *supra* note 12, 36 ILM at 529, cited by Stefaan Smis and Kim van der Borgh, “The EU–US compromise on the Helms-Burton and D’Amato Acts”, *American Journal of International Law*, 93(1) (January 1999), 228.

5 *Wall Street Journal*, “How global trade runs on US dollars”, YouTube, 22 January 2020, www.youtube.com/watch?v=jsDwMGH5E8U

6 Alberto Navarro, Interview in Havana, March 2018.

promise to reverse Trump's Cuba policy, President Biden has added sanctions of his own.

After the Matanzas fire, the US State Department claimed their Buzón Humanitario would help facilitate donations and exports of humanitarian goods to Cuba.⁷ It was a hollow claim, as a community association Cubanos en UK (Cubans in the UK) found out. Three different crowd funding platforms (GoFundMe, JustGiving and Crowdfunder UK) refused to allow them to collect humanitarian aid for Cuba because their payment gateway, Stripe, is a US company. Stripe lists Cuba as a prohibited jurisdiction. When Cubanos en UK complained directly to Stripe, however, the company agreed that they could set up an account. After collecting nearly £1,000, Stripe shut down their account, stating their intention to refund the cardholders. Weeks later that money had not been repaid, but Stripe had updated their Terms of Services and Restricted Business List to specifically include entities sanctioned by OFAC.⁸ The Buzon Humanitario told Cubanos en UK that: "private companies must make their own decisions regarding whether to serve Cuba, and we understand that out of an abundance of caution, many crowdfunding sites have chosen to decline to serve any Cuba-related campaign".⁹ No wonder, given OFAC fines!

The human and financial cost of the US blockade on Cuba

2022 marked the 60th anniversary of the full US "embargo" of Cuba. For decades, international bodies have documented the high cost in terms of human suffering, which, along with their extraterritorial character, puts US sanctions of Cuba in violation of international treaties and conventions. US and UK sanctions on Iraq killed half a million children in the 1990s, more than 150 a day. That this level of devastation has not been evident in Cuba has enabled some commentators to downplay the significance of US sanctions. But, as the American Association for World Health pointed out in 1997, "A humanitarian catastrophe has been averted only because the Cuban government has maintained a high level of budgetary support for a health care system designed to deliver primary and preventative health care to all of its citizens."¹⁰ In other words, the socialist

7 Embajada de los Estados Unidos en Cuba, Twitter, @USEmbCuba, 9 August 2022. <https://twitter.com/USEmbCuba/status/1556818298058194946>

8 Stripe, "Prohibited and restricted businesses", August 2022. <https://stripe.com/gb/legal/restricted-businesses>

9 Cubanos en UK, "Stripe blocks humanitarian aid for Cuba." <https://cubanos.org.uk/news/513-stripe-blocks-humanitarian-aid-for-cuba>

10 American Association for World Health (AAWH), *Denial of Food and Medicine: The Impact of the US Embargo on Health and Nutrition in Cuba* (New York, 1997), 6.

state has used its welfare-based, centrally planned economy to protect the population. Doing so requires resources which are shrinking.

Every sector in Cuba suffers shortages, including in food, fuel, medicine, equipment, technology and finance. Often an established overseas supplier is bought up by a US company and immediately cuts off exports. The cost of finding unplanned, unbudgeted replacements puts terrible strain on the Cuban economy. Sanctions also block Cuban export earnings. In 2018, the National Association of Cuban Economists calculated the cost of the US blockade at \$4.4 billion annually, \$12 million every day. The cost subsequently rose due to the Trump measures. In 2022, Cuba estimated the cumulative total cost at over \$154 billion over six decades and the daily cost at \$15 million.

Make the US blockade of Cuba unenforceable

The 1 cent 4 Cuba campaign has been launched with two premises: first that national legislation in many countries makes the extraterritorial application of US sanctions illegal; and second, that politicians and legislative systems have failed to uphold these laws. This makes them complicit in the suffering of Cuba and Cubans. The campaign offers a way for people and organisations around the world to take simple, coordinated action to challenge the illegal imposition of unilateral US sanctions. On the 17th day of each month people are asked to make 1p or 1c bank transfers following four simple steps. Step 1, make an overseas payment to one of the accounts listed on the website, putting “CUBA” in the reference. Step 2, if the payment is subject to review or investigation, blocked or returned, complain to the bank. Template letters are provided on the website. Step 3, tell the campaign what happened so they can keep a record. Step 4, escalate the complaint to your national financial regulator, for example the Financial Ombudsman Service in Britain. Since the campaign was launched, banks have blocked payments, as expected, and offered compensation in response to complaints.¹¹ Compensation should be accepted and contributed to a participating campaign, or directly to material aid for Cuba (although transactions will likely be blocked). Any requests related to the attempted transfer which increase the cost to banks advance the campaign aims, for example requesting phone transcripts or postal letters.

Additional groups and associations have joined the campaign, from Canada, Germany, Spain and Switzerland, and its reach is growing. With thousands of

11 After my bank held up three transactions, I complained and they gave me £50 for each one in compensation for “inconvenience”, even though the money had not reached the destination account. This money went to the campaign in Britain.

regular, coordinated transactions, and bank costs rising, this campaign could have the potential to “make the US blockade of Cuba unenforceable” outside the United States. The advantage of this approach is its simplicity, the lack of barriers to participation, and the fact that it gives those of us outside US jurisdiction the ability to take low cost, direct action to challenge the US blockade of Cuba which affects us all.

See the website for more information: <https://1c4cuba.eu/>