

**Testimony of Kurt Tong  
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Bureau of Economic and Business Affairs,  
Before the House Judiciary Committee:  
Subcommittee on Court, Intellectual Property, and Internet  
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Good afternoon Chairman Issa, Ranking Member Nadler, and distinguished members of the subcommittee. Thank you for the opportunity to testify today on the topics of confiscated property in Cuba, Havana Club rum, and other property. The protection of intellectual and real property rights is an important issue for American innovators, entrepreneurs, and businesses and deserves the close attention and vigorous efforts of the U.S. government.

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

***The Department and the Bureau of Economic and Business Affairs' Mission***

The Department of State's overall mission is to shape and sustain a peaceful, prosperous, just, and democratic world and to foster conditions for stability and progress for the benefit of the American people and people everywhere. In support of this mission, the Bureau of Economic and Business Affairs (EB) uses economic diplomacy to advance the prosperity and security of all Americans, working hand-in-hand with other U.S. government agencies and partners around the world to negotiate and implement international agreements which shape the rules of global commerce. Specifically, EB gives the Secretary of State a global perspective on economic, financial, and development issues; leads efforts within State that expand trade, investment, transportation, and telecommunications links; shapes State's engagement in global economic discussions; crafts and implements U.S. sanctions; and promotes entrepreneurship overseas. The overall success of the U.S. economy and U.S. business is at the heart of our foreign policy.

One of the foremost priorities of the State Department and our bureau is the promotion of innovation in the United States and around the world and we actively

advocate for the effective protection and enforcement of intellectual property rights in all countries. Our bureau deploys economic and commercial diplomacy and utilizes bilateral and multilateral negotiations to ensure the interests of American rights holders and showcase the critical role of intellectual property rights protections in supporting economic growth and stability. Each year our bureau contributes to the congressionally-mandated Special 301 Report prepared by the Office of the U.S. Trade Representative on intellectual property rights, as well as to its Notorious Markets Report identifying physical and online markets worldwide that engage in and facilitate copyright piracy and trademark counterfeiting that harms U.S. businesses. We also prepare relevant sections of the State Department's annual Investment Climate Statement and contribute to U.S. negotiating policy for Free Trade Agreements and Trade and Investment Framework Agreement meetings.

The State Department is committed to supporting U.S. investors and business overseas, and this is a core function of our overseas posts. EB devotes resources to supporting the development of a satisfactory climate for U.S. investment overseas. The bureau engages in dialogues with foreign governments to promote open, transparent, and nondiscriminatory investment climates; provides U.S. companies with investment climate information; supports the negotiation of bilateral and regional investment agreements; and assists U.S. investors involved in investment disputes with foreign governments. In this regard, the bureau works closely with the State Department's Office of the Legal Adviser, which represents the United States and coordinates activities within and outside the United States with respect to all aspects of international claims and investment disputes. At the multilateral level, the State Department works to improve norms on investor treatment and the resolution of investment disputes through organizations such as the Organization for Economic Cooperation and Development (OECD), the UN Conference on Trade and Development (UNCTAD), the United Nations Commission on International Trade Law (UNCITRAL), and the International Center for the Settlement of Investment Disputes (ICSID).

### *U.S.-Cuba Claims Talks*

The Department of State is continuing to advocate for the resolution of all outstanding U.S. claims and disputes in our bilateral relations with Cuba. On December 8, 2015, we launched government-to-government claims talks with Cuba in Havana. The purpose of these claims talks is to seek compensation or some other form of appropriate redress from the Cuban government for these longstanding U.S. claims. The United States delegation at the talks, which was led

by the Department of State's Principal Deputy Legal Adviser, provided an overview of the U.S. claims against the Government of Cuba. These include the almost 6,000 claims of U.S. nationals related to confiscated property that were certified by the Foreign Claims Settlement Commission (FCSC), as well as claims related to unsatisfied U.S. court judgments against Cuba, and claims of the U.S. government.

Re-establishment of diplomatic relations and the policy of engagement pursued by this Administration allows for more effective discussion of complex issues with the Cuban government and strengthens the ability to advocate on behalf of U.S. citizens. The meeting in Havana was the first step in what is expected to be a complex process which may take time, but the United States views the resolution of outstanding claims as a top priority.

### ***The Havana Club Matter***

Claims that were certified by the FCSC featured prominently in the bilateral claims talks with the Government of Cuba. To receive certified awards from the FCSC, claimants had to demonstrate, among other things, that they were U.S. nationals at the time of the taking of their property. Havana Club is a different kind of matter and was not able to be raised before the FCSC. It concerns a dispute between foreign actors: on one side, a Cuban-state owned enterprise, commonly known as Cubaexport, which is in a joint venture with a French company, Pernod Ricard S.A. (Pernod Ricard); and, on the other side, Bacardi & Company Limited, a company headquartered in Bermuda. The underlying property in their dispute over ownership of trademark rights in the United State was held by a non-U.S. national at the time of the taking.

The Department of State responded to a request from the Treasury Department's Office of Foreign Assets Control (OFAC) for foreign policy guidance concerning Cubaexport's application for a specific license from OFAC. The Department of State's role in the Havana Club matter was not to adjudicate the ownership of the disputed trademark rights, and the Department took no position on that issue. Let me explain further:

In the interest of ensuring that its actions are consistent with the national security and foreign policy goals of the United States, OFAC regularly consults with the Department of State on foreign policy, referring to the Department for its review, among other matters, specific license applications in certain cases. This

consultation process occurs across the range of economic sanctions programs that OFAC implements.

In November 2015, OFAC requested foreign policy guidance from the Department of State with respect to an application from Cubaexport for a specific license authorizing all transactions with the U.S. Patent and Trademark Office (USPTO) related to Cubaexport's renewal and maintenance of the Havana Club trademark registration. The Department of State evaluated this referral in light of a number of factors, including the particular facts of the case, the landmark shift in the United States' policy toward bilateral relations with Cuba, United States foreign policy with respect to key allies in Europe, and the U.S. policy with regard to trademark rights associated with confiscated property. Based on its evaluation, the Department of State recommended that OFAC issue the requested license.

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

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

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