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## Cuba News in Brief

by LADB Staff

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A ruling by the World Trade Organization (WTO) supports the US position in the long-running trademark dispute between a Cuban-French firm and Bacardi. But the decision also could lead to another round of court battles in the US. Twenty-two Cubans rescued at sea are allowed to stay in the US despite immigration rules that require their return to Cuba. Two of those rescued face charges in the US of criminal smuggling and possibly homicide. The 2000-2001 sugar harvest has resulted in another disappointing yield, close to the projected figure but well below last year's total.

### *World Trade Organization issues ruling in Havana Club case*

On Aug. 6, a WTO dispute panel ruled on the case involving ownership of the Havana Club rum trademark. The ruling supported the US side on most points in the dispute with the European Union (EU), which made the complaint on behalf of the French spirits firm Pernod Ricard. However, the ruling left the door open for the firm to try for another round in US courts. The dispute stems from the claim by Bermuda-based Bacardi that it owns the rights to the Havana Club label, which has been registered in the US to the Cuban company Cubaexport since 1976.

In a joint venture, Cubaexport and Pernod Ricard have been marketing rum around the world under the Havana Club label since 1993. Bacardi claimed ownership of the trade name and cited a 1998 US law known as Section 211 that prohibits use in the US of trademarks that originally belonged to companies confiscated by the Cuban government. The law also prohibits US courts from hearing claims presented by current users of those trademarks. The ruling accepted the US view that the WTO agreement on Trade-Related Intellectual Property Rights (TRIPS) does not require the US to recognize confiscation decrees, and consequently Pernod Ricard's claim that it owns the trademark is nonenforceable in the US. Because the WTO panel agreed with the EU that the US could not deny access to its courts for companies seeking protection for trade names, Pernod Ricard could decide to press its trademark claim again in US courts.

Mark Orr, head of Pernod Ricard's North American sales, said, "We are extremely satisfied that the European Union was able to make its point on this fundamental issue." The company has lost in three attempts to get the courts to stop Bacardi from selling rum under the Havana Club name in the US. After the Supreme Court last year refused to hear an appeal of lower-court rulings against Pernod Ricard, President Fidel Castro said Cuba might ignore Bacardi's trademark protection and begin selling rum under the Bacardi label in Cuba (see NotiCen, 2000-02-17, 2001-04-19).

The WTO decision narrows the scope of international protection of trade names by excluding them from coverage under TRIPS. The European Commission said, "This very narrow interpretation of TRIPS could significantly reduce the level of trademark protection around the world by leaving each WTO member complete freedom on determining who is the owner of a trademark as long as it respects the procedural requirements of TRIPS." A commission official asked, "If you had a

US trademark, how would you feel about this? The international enforceability of trademarks is something that goes beyond just this case about rum." The EU said it would appeal the parts of the WTO decision that deny trademark protection under TRIPS.

## *US to try smugglers after death of six Cubans at sea*

US authorities will try two Cuban-born Miami residents for smuggling and perhaps homicide following the Aug. 1 deaths at sea of three adults and three children heading for Florida in a speedboat. Twenty-two passengers, including the two alleged smugglers, were rescued after the boat capsized in heavy seas near Key West Aug. 1. Border Patrol spokesman Joe Mellia said 20 of the survivors would be allowed to stay in the US because they were needed to testify against the two men who allegedly charged US\$8,000 per person for the trip to the US.

The two men, Osvaldo Fernandez Marrero and Roberto Montero Dominguez, were charged with criminal alien smuggling by the US attorney's office in Miami. They face life imprisonment or the death penalty if convicted. The day after the boat sank, Cuban exile leaders in Miami began to pressure the White House to allow the survivors to remain in the US. Armando Gutierrez, who was prominent in the efforts by the exile community to keep Elian Gonzalez in the US (see NotiCen, 2000-07-13), wrote President George W. Bush asking him to grant asylum. "Those people have been victims of the communist regime of Fidel Castro, of the unmerciful weather on the high seas, and now they run the risk of being returned to Cuba," Gutierrez said.

Under an immigration agreement with Cuba, undocumented Cubans who do not reach dry land (wet feet) are returned to Cuba. The decision to exempt the survivors may represent an intensification of US efforts to crack down on smugglers. The Cuban government has often complained that the wet-feet, dry-feet policy encourages smuggling and that the US does not do enough to prosecute offenders. Mellia said, "We're actively pursuing them. We're prosecuting them. And we're getting convictions." But the exemption also raised the issue of compliance. The immigration agreement has no provision for granting permanent-residence status to undocumented Cubans who testify in US courts.

William LeoGrande, an expert on Cuba policy at American University, said the exemption "sets a precedent that others will point to in terms of bringing to the States people under conditions not really included under the current policy."

Complicating the criminal case against the alleged smugglers are reports that among the missing were Fernandez Marrero's wife and two children. Relatives of the accused smuggler said he did not make the trip for money but to bring his family to Miami. Bush said that, for the time being, the immigration policy would remain unchanged. "We're adhering to that policy while treating emergency cases with compassion," he said during an interview with The Miami Herald and other newspapers.

## *Sugar harvest lower than expected*

Cuba's 2000-2001 sugar harvest failed to meet government projections of 3.7 million metric tons and was well short of the previous harvest. Sugar Minister Gen. Ulises Rosales del Toro said the harvest, which ended in late June, reached 3.532 million MT. The 1999-2000 harvest produced 4.05 million MT. Despite the setback, Sugar Ministry officials say they expect 4 million MT next year and have not abandoned the longer-term goal of returning to harvests averaging 7 million MT. The modest yield was attributed to drought conditions followed by torrential rains, production inefficiencies, and shortages of spare parts. The ministry has pursued a policy of closing inefficient mills and cutting overhead in other ways to produce crops at lower per-ton costs and diversifying into production of sugar derivatives (see CubaSource, 2000-07-10).

The Banco Central de Cuba said last year's sugar exports earned US\$450 million. Despite lower output, the earnings are expected to be higher this year. Of the total crop, Cuba will export about 3 million MT. At the current world price of around US\$250 per MT, Cuba could receive as much as US\$750 million in export earnings. Meanwhile, Cuba is expanding mixed-capital ventures in the industry with six new ones planned for this year. At present, there are 10 joint-venture enterprises in the sugar industry with Mexican and EU investments in alcohol products and equipment for sugar production. New ventures created this year using capital from Ukraine and Belarus will begin work next season refining Cuban sugar in their respective countries.

A Sugar Ministry official said Cuba would be paid with tires, tractor parts, and other production supplies depending on the amount of sugar exported to those countries for refining. A third enterprise, created with Brazilian capital, will supply technical services. A project planned in conjunction with French capital will build a plant for producing construction materials made partly out of cane residue (bagasse).

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