

The U.S. Market for Cuban Rum: What's at Stake in the "Havana Club" Dispute?

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Would Cuba export rum to the United States if U.S. sanctions on Cuba—which currently prevent U.S. commercial imports of Cuban rum—are modified or lifted? This Executive Briefing on Trade (EBOT) looks anew at the question previously addressed by media and major rum makers after 2014 policy changes that eased U.S. travel and business restrictions on Cuba.¹ We find that Cuba could export significant volumes of rum to the United States, but would have trouble competing with brands produced in Puerto Rico and the U.S. Virgin Islands (USVI). Potential exports also depend in part on how a longstanding trademark dispute about "Havana Club" rum is resolved. Two companies market rum under the Havana Club name: Bermuda-headquartered Bacardi Limited, which makes its Havana Club rum in Puerto Rico, and Cubaexport, a Cuban state-owned entity that markets Cuban-made Havana Club in many countries (excluding the United States) through a joint venture with French spirits firm Pernod Ricard (Pernod).

Potential for Sales of Cuban Rum in the U.S. Market

If U.S. sanctions on Cuba were lifted, two factors could contribute to Cuba's competitiveness as a rum supplier. First, over the past 20 years, the joint venture with Pernod has dramatically increased the global competitiveness of Cuban-made Havana Club rum, making it the third-largest rum brand in the world even without the U.S. market. The brand's experience exporting to developed countries (and serving the U.S. market with its other spirits brands) would be an asset. Second, Bacardi and Pernod agree that U.S. consumers are interested in products that reflect Cuban culture; the Havana Club name represents that culture to both parties and is one reason the trademark is important to them.²

It is difficult to estimate how much Cuban rum the United States might import, given that such imports have been prohibited for many years. However, Cuba's large capacity for rum production, combined with a sizable U.S. market, support the potential for significant exports absent U.S. sanctions. The United States is the world's second-largest rum consumer, accounting for 40 percent of global consumption.³ Pernod has estimated that if it were able to export to the United States, its current Cuban export level of 50 million bottles would rise by 20 million bottles. In addition, 2001 USITC modeling found that, absent sanctions, U.S. imports of rum from Cuba would have been \$15 to \$25 million in 1996–98. The U.S. rum market has grown rapidly since that estimate was produced—by about 56 percent (by volume) between 2000 and 2014.

U.S. imports from Cuba, however, would likely still represent only a fraction of the U.S. market compared to rum produced in Puerto Rico and the USVI. Two brands, Bacardi (Puerto Rico) and Captain Morgan (USVI), account for the majority of the U.S. market. Also, rum imports from Cuba could face duties in the United States, unlike rum from U.S. territories.⁴ Perhaps more important, the governments of Puerto Rico and the USVI receive rebates of U.S. federal excise taxes on rum shipped to the U.S. mainland. In recent years, they have given some of that rebate to rum producers in their territories. Such cost advantages contribute to the competitiveness of rum produced in Puerto Rico and the USVI.

¹ Some of these restrictions were reinstated in 2017.

² The amount of rum brought back from Cuba by American travelers increased rapidly after value limits were removed in 2016, and some U.S. distributors have expressed interest in carrying Cuban rum.

³ India is the largest consumer, but it largely consumes rum produced in-country.

⁴ In 2016, however, about 90 percent of U.S. rum imports entered under duty-free HTS subheadings.

Timeline: Major milestones in the Havana Club trademark dispute		
Cubaexport/ Pernod Ricard	Government and administrative actions	Bacardi
	1959 –Archebala ownership of Havana Club distillery is subsumed by Cuban government.	
	1973 – Archebala family’s U.S. trademark on the “Havana Club” name lapses.	
1976 – Cubaexport obtains U.S. trademark on “Havana Club.” It will continue to renew this trademark despite the embargo.		
1993 – The Cuban government enters into a joint venture with French spirits multinational Pernod Ricard to market Havana Club internationally.		
	1995 – Bacardi purchases the Havana Club recipe and any remaining rights to the name from the Archebala family; starts selling rum under this name in the United States.	
1996 – Cubaexport sues Bacardi in U.S. federal court for trademark infringement.		
	1998 – U.S. Congress passes Section 211, prohibiting renewal of trademark rights in property confiscated by the Cuban government.	
	1999 – Bacardi prevails in federal court, with a ruling that Section 211 bars Cubaexport from asserting any U.S. trademark infringement claims.	
	2004 – After its appeal to the U.S. Patent and Trademark Office (USPTO) seeking cancellation of Cubaexport’s registration is denied, Bacardi files suit in D.C. federal court, again seeking cancellation of the trademark license.	
	2006 – The USPTO revokes Cubaexport’s trademark registration.	
2006 –Cubaexport appeals the trademark revocation to the USPTO and federal courts. Bacardi agrees to suspend its lawsuit pending resolution of these appeals.		
2009 – Cubaexport’s appeal fails in federal court.		
	2016 - The USPTO, in consultation with the State Department, grants Cubaexport’s appeal and renews its trademark registration.	
	2016 – Bacardi reopens its lawsuit seeking cancellation of the trademark license. Parties file new briefs in light of the recent developments.	

Recent Developments

The current round of the trademark dispute is awaiting decision in U.S. federal court. Meanwhile, Pernod officials continue to express optimism about U.S. consumers’ interest in the Cuban product. Pernod has registered a second rum name in the United States, Havanista, suggesting that it intends to sell in the U.S. market absent sanctions, even if the current trademark dispute is not decided in its favor. As for Bacardi, its Puerto Rican-made Havana Club brand has historically been sold only in Florida. But in 2016 Bacardi began to expand the brand nationwide in response to what it called “Cuba’s cultural resurgence.”

Sources: Bacardi, “Havana Club Puerto Rican Rum Rolls Out National Market Expansion,” June 1, 2016; *Bacardi & Co. Ltd. v. Empresa Cubana Exportadora de Alimentos y Productos Varios*, Court No. 04-519 (D.C. Cir.), Compl. at 3, Docket No. 1, Mem. Op. at 1-2, Docket No. 72, and Motion to Stay at Attachment A, Docket No. 61-2; *Empresa Cubana Exportadora de Alimentos y Productos Varios v. U.S. Dept. of Treasury*, 606 F. Supp. 2d 59 (D.C. Cir. 2009); *Havana Club Holding, S.A. v. Galleon S.A.*, 62 F.Supp.2d (S.D.N.Y., 1999) *aff’d* 203 F.3d 116 (2000); IHS Markit, Global Trade Atlas database (accessed August 17, 2017); Levy, “Pennsylvania Aims to Smash U.S. Embargo,” *Denver Post*, April 30, 2017; Montgomery, “Havana Club vs. Havana Club,” *Washington Post*, July 23, 2016; *Resolving Issues with Confiscated Property in Cuba, Havana Club Rum and Other Property: Hearing Before the H. Subcomm. on Courts, Intellectual Property, and the Internet of the H. Comm. on the Judiciary H.R.*, 114th Cong. 19–21 (2016) (statement of Ramón Arechabala); Reuters, “Pernod Ricard Welcomes U.S. Move,” October 17, 2016; Suárez, “Puerto Rico’s Unlimited Generosity,” CPI, February 1, 2017; USITC, *The Economic Impact of U.S. Sanctions With Respect to Cuba*, 2001, 5-40 to 5-42.