



International Trade & Regulatory ADVISORY ■

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The Revival of Title III of the Helms–Burton Act and the Increased Risk of U.S. Lawsuits Against Companies Doing Business in Cuba

Companies that engage in business in Cuba—and their U.S. affiliates and subsidiaries—are now at risk of lawsuits by U.S. persons whose property was seized without compensation by the Castro regime. Title III of the Helms–Burton Act of 1996 (also known as LIBERTAD) provides for a private right of action in U.S. federal courts against any person that knowingly traffics in property confiscated by the Cuban government. Since LIBERTAD was signed into law, every past presidential Administration has waived Title III. President Trump’s Administration declined to extend that waiver, however, and private lawsuits under the statute are now possible. In fact, a cruise line company has already been sued in federal court as a result of this change due to its alleged use of certain docks and buildings in the Port of Havana. Also, a U.S. oil and gas company [has sued two Cuban oil companies](#) in federal court, claiming use and profit from property that its predecessor company previously owned.

Specifically, U.S. persons can now sue “any person” that “traffics in property which was confiscated by the Cuban Government on or after January 1, 1959” if such property, at the time of seizure, was valued at \$50,000 or more. “Person” under Title III includes corporations and individuals. “Traffic” is defined to include any person that knowingly and intentionally sells, transfers, distributes, or disposes in any other manner or conducts financial operations using confiscated property; purchases, receives, holds, controls, manages, or holds an interest in confiscated property; engages in a commercial activity using, or otherwise benefits from, confiscated property; or causes, directs, participates in, or profits from trafficking, or otherwise engages in trafficking through another person.

The full impact of the Trump Administration’s decision to permit lawsuits under the Helms–Burton Act remains to be seen, but early indications are that the impact may be significant. According to the Foreign Claims Settlement Commission of the United States (FCSC), a quasi-judicial, independent agency within the Department of Justice that adjudicates claims of U.S. nationals against foreign governments, there have been a total of 5,913 recognized claims against Cuba for confiscated property worth approximately \$8 billion since the 1960s.¹

¹ A summary of the claims made to and reviewed by the FCSC is available at <https://www.justice.gov/fcsc/page/file/1015696/>.

Companies involved in or profiting from business in Cuba should be aware of the potential liability in the United States under the statute and should consider evaluating the extent of any relationship between their activities and contemplated activities and Cuban property of concern. The extent of personal jurisdiction over foreign companies in U.S. courts will depend in part on the extent such companies have had contacts with the United States.

Although over 20 years old, Title III is controversial with many U.S. trading partners. For instance, the [European Union \(EU\) challenged the Helms–Burton Act at the WTO](#) when it was signed in 1996, but the panel ended up being suspended due to an agreement between the EU and the United States and the potential sensitivity of claiming the GATT Article XXI national security exception. EU representatives have already stressed [their strong opposition](#) to the reactivation of Title III: “The EU will consider all options at its disposal to protect its legitimate interests.”

We expect additional lawsuits to be brought as a result of the Trump Administration’s decision to fully implement Title III. We also expect that U.S. trading partners will object to the full activation of Title III, including through a potential renewal of the EU’s WTO complaint regarding the extraterritorial application of Helms–Burton.

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