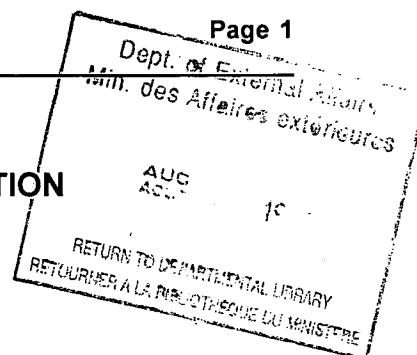


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HELMS/BURTON CUBAN EMBARGO LEGISLATION

ANALYSIS

Title I: Strengthening International Sanctions Against the Castro Government

This title contains a number of provisions that are intended to send a political and diplomatic message to Cuba. It calls for a UN embargo, prohibits indirect financing of Cuba by U.S. nationals, continues U.S. opposition to Cuban membership in international financial institutions (IFIs), directs the Secretary of the Treasury to reduce payments to IFIs by the amount of any loan to Cuba, increases support for non-governmental organizations to support democracy-building efforts for Cuba, and opposes support for the Cuban nuclear power plant.

A new provision under Section 102 puts into law all existing Cuban embargo regulations and Executive Orders.

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Title I provides, under Section 104, for the withholding of U.S. contributions to International Financial Institutions (IFI's) in an amount equivalent to any loans or other assistance approved by those institutions for payment to Cuba over the opposition of the U.S. The IFI's targeted are the International Monetary Fund, International Bank for Reconstruction and Development, International Development Association, International Finance Corporation, Multilateral Investment Guaranty Agency and the Inter-American Development Bank.

Section 108 of the bill requires the President to report each year to Congress on commerce with, and assistance to, Cuba from other countries during the preceding 12 months.

Section 110 "Importation Safeguard Against Certain Cuban Products" (Title I) simply restates existing U.S. law and regulations. There are no new restrictions or conditions on imports of sugar into the United States. Requirements for certification of origin of sugar and sugar products imported to the U.S. that were in the version of the bill passed by the Senate have been removed. This section is not expected to affect Canadian companies, as they have had long standing programmes with regard to the destination of Cuban sugar.



Title II: Assistance to a Free and Independent Cuba

Title II reiterates existing U.S. policy to support democratic change in Cuba. It sets out parameters for the U.S. government to provide limited humanitarian and military assistance to a transition government in Cuba, and subsequently, more substantial economic and financial support when a democratically elected government is in place. This title also defines the requirements for the termination of the economic embargo. The President is required to submit to appropriate Congressional committees a determination that a transition government is in power, and after consultation with Congress, he is authorized to take steps to lift the embargo. However, the embargo can be reinstated by a joint resolution of both houses of Congress.

There are specific requirements and factors for determining what constitutes a transition and a democratically elected government, including the exclusion of Fidel Castro or Raul Castro and that appropriate steps be taken to return to U.S. citizens their expropriated property or provide them with equitable compensation. Determination of a democratically elected government requires that "demonstrable progress" be made toward this same end. Section 207 of Title II deals with "Settlement of Outstanding United States Claims to Confiscated Property in Cuba". It requires reporting to Congress on the number and amount of outstanding claims and also provides for an assessment of how the U.S. might assist with resolution of claims. A "satisfactory resolution of property claims by a Cuban government recognized by the United States" is a prerequisite for the full resumption of diplomatic and economic relations between the United States and Cuba.

Title III: Protection of Property Rights of United States Nationals

Title III provides a mechanism for former owners of property expropriated by the Government of Cuba to bring action against current investors in such property, characterized as "traffickers in confiscated property" in the bill. Investors in property in Cuba could have U.S. assets at risk of being seized to satisfy a court judgment by a former owner of the property.

"Trafficking" is very broadly defined: it includes selling, transferring, distributing, dispensing, brokering, managing or otherwise disposing of expropriated property, or purchasing, leasing, receiving, possessing, obtaining control of, managing, using or otherwise acquiring or holding an interest in confiscated property, engaging in commercial activity or otherwise benefiting from expropriated property, or causing,



directing, participating in or profiting from such "trafficking" by or through another person. This broad definition would cover not just an investment in a joint venture, but also entering a contract to manage property, renting space in a building that was expropriated and perhaps even the purchase of goods derived from or produced with expropriated property. As defined in this title, "trafficking" does not include: a) the delivery of international telecommunication signals to Cuba; b) trading or holding securities publicly traded or held, unless the trading is with or by a person determined by the U.S. Secretary of Treasury to be a specially designated national of Cuba; or c) transactions and uses of property by a person who is both a citizen and resident of Cuba and who is not an official of the Cuban government or the ruling political party in Cuba. With regard to b), this means that Canadians who own shares in mutual funds that might in some way be linked with Cuban property, should not be affected.

As used in Titles I and III, "confiscation" refers to the nationalization or expropriation or other seizure by the government of Cuba without that property having been returned or adequate compensation provided, or without the claim to that property having been settled. It also includes the failure of the Cuban government to pay any debt pertaining to the nationalized property when it was expropriated.

The definition of property is also broad: it includes not just real and personal property, but intellectual property (including patents, copyrights and trademarks), and any future interests and leasehold interests in that property. In Title III, the definition of "property" does not include real property used for residential purposes unless, as of the date of enactment of the legislation, the claim is held by a U.S. national and the claim has been certified under Title V of the International Claims Settlement Act of 1949, or the property is occupied by an official of the Cuban Government or the ruling party in Cuba.

Claims can be brought against "traffickers" by U.S. nationals who own the claim to expropriated property. These owners of claims do not have to have been the owners of the property at the time of expropriations. Unlike the usual practice in international law for a state espousal of a claim, the claimants need not have been U.S. nationals at the time of the expropriation. This broadens the potential claimants from some 5-8,000 U.S. citizens and companies who had property expropriated after the revolution to hundreds of thousands of Cubans who left the country and subsequently became U.S. citizens.

Jurisdiction for the hearing of claims is in the U.S. District Court. A claimant who had a claim certified by the U.S. Foreign Claims Settlement Commission can claim

damages equal to the amount of the claim, plus interest. Otherwise, a claimant could ask the court to assess the amount of damages. If a claimant serves prior notice upon a "trafficker", that person could be liable for treble damages if he or she continues to "traffic" in the property 30 days after receipt of the notice. To take action under this Title, the amount claimed must exceed U.S. \$50,000, exclusive of interest and costs.

Title III does not become effective until August 1, 1996 (at the earliest) and claims can only be brought for "trafficking" after three months following the effective date for this Title. This grace period before liability for trafficking attaches is intended to give "traffickers" time to wind down their activities or divest themselves of their interests in expropriated property in Cuba in order to avoid liability.

Those U.S. nationals who already have claims certified by the U.S. Foreign Claims Settlement Commission (and there are some 6000 certified claims) can take action on their claims after three months from the date Title III comes into effect. Claims that are not already certified, that is, those owned by Cubans who have become U.S. nationals since their property was expropriated, can be brought only after two years from the date of enactment of the Act, that is, from March 12 1998. However, liability for trafficking kicks in from March 12 1996.

The President may suspend the effective date for the implementation of Title III for six months, upon determination in writing to the appropriate congressional committees at least 15 days prior to the effective date, that the suspension is in the national interests of the U.S. and will expedite the transition to democracy in Cuba. On the basis of a similar determination, the President can continue the suspension for further six month periods. All rights to bring an action under Title III may also be suspended if the President determines that a "transition government in Cuba" (defined elsewhere in the bill) is in power and shall cease after a Presidential determination that a "democratically elected government in Cuba" (also defined in the bill) is in power. Actions started before such suspension or termination would continue.

Title III does not address the issue of the right to seize assets from a defendant to satisfy a court judgment. Evidently this would be subject to the usual rules of the U.S. District Court. "Traffickers" with assets in the U.S. would find those assets at risk of seizure.

The definition of "persons" for the purposes of the "trafficking" provisions includes any agency or instrumentality of a foreign state, but not a foreign state itself. Therefore,



properties acquired by a foreign state for diplomatic or consular missions or trade offices would not be subject to Title III claims. However, dealings in property by agencies of a foreign state (e.g., a Crown corporation) could come within the scope of Title III.

TITLE IV: "Exclusion of Certain Aliens"

Provisions provide for the denial of a visa, and exclusion from the U.S., of an "alien" who has confiscated or "traffics" in property "confiscated" by the government of Cuba to which a U.S. national has a claim. (Most visiting Canadians do not require visas to enter the U.S., but the U.S. could take other steps to bar their entry.) Persons captured by these provisions include corporate officers, principal and controlling shareholders of an entity involved in confiscated property, as well as their spouses, minor children, and agents. Title IV applies only with respect to acts of trafficking that occur on or after the date of enactment of the legislation.

A wide range of business activity appears to be captured under the "confiscation" and "trafficking" provisions. However, for the purposes of Title IV, the definition of "trafficking" is slightly narrower than the definition used in Title III. Title IV defines "trafficking" to include improvements to "confiscated" property" (other than routine maintenance) after the date of enactment of the legislation. The provisions would appear to cover companies with ongoing activities, as well as those undertaking new investment. This section does not target existing acts of trafficking, but is designed to reach new and different acts of trafficking beginning after the date of enactment. So as not to deter investors in Cuba from divesting their holdings, the sale or abandonment of confiscated property in Cuba for purposes of disengaging from Cuba is excluded from the definition of trafficking.

The same exclusions from the definition of "trafficking" in Title III apply to Title IV. Exemption from Title IV provisions will only apply where the Secretary of State finds, on a case by case basis, that entry to the U.S. is necessary for medical reasons or for purposes of litigation of an action under Title III.

Unlike the Title III provisions, Title IV measures would become effective upon the date of enactment (i.e. as soon as the President signs the bill).

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