

COLUMN:

EFFECTUATION OF TITLE III OF THE HELMS-BARTON ACT

1. Outline of Title III of the Helms-Barton Act

The United States has adopted trade restrictions against Cuba since the Cuban Revolution in 1959, and after an incident involving small US private aircraft being shot down by the Cuban military in February 1996, the Helms-Burton Act (the “**Act**”), a law strengthening sanctions on Cuba, was passed by the US House of Representatives and the US Senate and became effective when signed by President Clinton on March 12, 1996.

Stated purposes of the Act include “assisting the Cuban people,” “strengthening sanctions against the Castro government,” “ensuring US national security against threats of terrorism, mass migration, etc.,” “encouraging democratic elections in Cuba,” and “protecting US nationals from confiscatory takings and wrongful trafficking of confiscated property,” and the Act provides for prohibition of indirect loans, restrictions on importing of Cuban products, and the like as specific sanctions against Cuba (refer to pp. 298-303 of the 1997 edition of “Report on Compliance by Major Trading Partners with Trade Agreements” for details regarding the contents of the Act other than Title III and regarding developments immediately after the enactment of the bill).

Title III of the Act stipulates that if a person engages in trafficking property that belongs to any US national and that was confiscated by the Cuban government in or after 1959, the trafficker will be liable to that US national for damages with respect to that property; however, since the Act came into effect, Title III specifically had been suspended every six months from coming into force. However, the US Department of State reduced the period of suspension on January 16, 2019 to 45 days starting from February 1, 2019, then on March 4, 2019 to 30 days starting from the 19th of the same month, and then further on April 3, 2019 to two weeks starting from the 18th of the same month, and the provisions of Title III ultimately became fully applicable from May 2, 2019.

Any person (including any individual or corporation) who knowingly and intentionally traffics property confiscated by the Cuban government in or after 1959 (which broadly includes (i) the sale, transfer, distribution, dispensation, brokerage, management, etc. of confiscated property or acquisition or possession of an interest in confiscated property through purchase, lease, receipt, ownership, control, management, use, etc. and (ii) use of confiscated property or engagement in commercial activities to acquire benefit from confiscated property) falls under the scope of being liable for damages, and any US national who holds the right to claim damages with respect to such property may bring an action at a court within the United States.

2. REACTION FROM OTHER COUNTRIES

Application of Title III of the Act may constitute the extraterritorial application of a domestic law that would not be permitted under international law, and Japan has, for some time, requested the US to apply the law with caution.

Other countries have also expressed reservations regarding the aforementioned actions by the United States. In response to the decision by the US government, the European Union has released a statement strongly opposing the extraterritorial application of unilateral Cuba-related

measures that are contrary to international law.¹ In addition, Canada has expressed opposition to the Act based on the principles of international law,² while Mexico has released a statement to the effect that the country rejects application of Title III of the Act and that it will determine appropriate measures for protecting Mexican interests in relation to violations of international law caused by the Act.³

Further, these countries have established counteracting laws that reject the enforcement of judgments reached by US courts in this regard since the time the Act was enacted. For example, it has been made clear that under EU regulations, judgments reached by any court, and determinations reached by any administrative body, outside the European Union based on the Act will not be accepted or enforced within the European Union and that any natural person or corporation in the EU that incurs damage as a result of the application of the Act will be entitled to make against the person causing damage a claim in order to recover damages.

¹ Joint Statement by Federica Mogherini and Cecilia Malmström on the decision of the United States to further activate Title III of the Helms Burton (Libertad) Act
(https://eeas.europa.eu/headquarters/headquarters-homepage/61183/joint-statement-federica-mogherini-and-cecilia-malmstr%C3%B6m-decision-united-states-further_en)

² Statement from Government of Canada for Canadians doing business in Cuba
(<https://www.canada.ca/en/global-affairs/news/2019/05/statement-from-government-of-canada-for-canadians-doing-business-in-cuba.html>)

³ Position of the Mexican Government on Ending Suspension of Title III of the Helms-Burton Act
(<https://www.gob.mx/sre/prensa/position-of-the-mexican-government-on-endingsuspension-of-title-iii-of-the-helms-burton-act>)