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FEATURED Q&A

How Has Title III Affected Firms With Ties to Cuba?



U.S. activation of Title III of the 1996 Helms-Burton Act has caused uncertainty for companies with ties to Cuba. But recent court rulings may have an impact. The Norwegian Sky cruise ship is pictured in Havana. // File Photo: Chad Sparkes via Creative Commons.

Q A U.S. federal court in Florida recently sided with a cruise company in its bid to end a case brought by a former Havana port owner that accused the firm of trafficking in stolen property while using the port. The decision is the latest in a string of court battles over the Trump administration's decision to allow cases to proceed under the so-called Title III of the Helms-Burton Act, which targets companies that profit from property confiscated during the 1959 Cuban Revolution. What has the activation of Title III meant in practice over the past months? Do recent court rulings suggest Title III will bring lower risks of liability than anticipated for companies, individuals and governments with commercial ties to Cuba? How has activating Title III changed the island's business environment so far, and what should investors be on the lookout for?

A Anya Landau French, senior policy advisor in the Cuba practice group at Akin Gump: "Two recent rulings granting motions to dismiss lawsuits under Title III of the Helms-Burton Act provide little meaningful insight into how such cases may ultimately be decided. This is because the court ruled solely on the basis that the plaintiff's subject property interests (on which its claims rested) ended years before the defendants commenced business activities in Cuba, thus leaving unaddressed more fundamental questions regarding the application of the Helms-Burton law. The threat of Title III lawsuits does appear to have had a chilling effect on private sector interest in new opportunities in Cuba among U.S. and other companies. At the same time, many companies with existing ties have chosen to remain in Cuba

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TODAY'S NEWS

POLITICAL

Mexico Says it Won't Allow New Caravan to Reach U.S.

Mexico's interior minister said the country would not grant transit visas to a group of hundreds of Central American migrants seeking to reach the United States.

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BUSINESS

BNP Paribas Gets License to Operate in Mexico as a Bank

The French banking group has been operating in Mexico as a nonbank lending and finance institution.

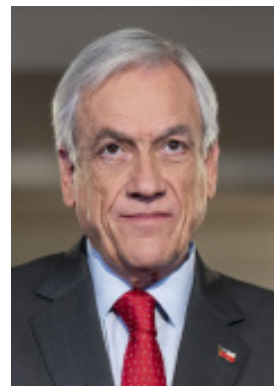
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ECONOMIC

Chile's Piñera to Send Lawmakers Pension Reform

Chilean President Sebastián Piñera said he would send Congress legislation to reform the country's pension system. Protesters have demanded pension reforms in recent massive demonstrations.

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Piñera // Photo: Chilean Government.

POLITICAL NEWS

Mexico Says it Won't Allow Free Passage to New Migrant Caravan

Mexico's government said Wednesday that it will not allow free passage to hundreds of migrants who set off from Honduras earlier this week in an attempt to reach the U.S. border, BBC News reported. Mexico's interior ministry also said it will not grant the migrants transit visas and will check the status of each person in the caravan and give them the option of staying in Mexico legally. The migrants set off from the Honduran city of San Pedro Sula on Tuesday. Honduran police fired tear gas

The group is believed to be comprised of about 600 migrants.

as members of the group attempted to enter Guatemala without going through immigration checks. Many of the migrants have said they are feeling violence and poverty at home. The group is similar to other caravans that have set off from Central America over the past year in hopes of reaching the United States. The groups have angered U.S. President Donald Trump, who has demanded that the countries the migrants transit do more to stop them. Mexican Interior Minister Olga Sánchez Cordero said a task force of immigration agents would welcome migrants who want to stay in Mexico. She estimated that the group is comprised of some 600 migrants. On his first full day in office Wednesday, Guatemalan President Alejandro Giammattei met with Mexican Foreign Minister Marcelo Ebrard and later told reporters that Mexico would stop the caravan from proceeding to the United States, Reuters reported. "The Mexican government told us that they won't let it pass, that they will do everything in their power to stop it from passing" said Giammattei. Ebrard said earlier in a posting on Twitter that Mexico and Guatemala would soon engage in bilateral talks on

migration. Giammattei said that, under a freedom of movement accord between countries in northern Central America, that he would allow the caravan to enter Guatemala as long as its members had needed documents. Giammattei was also scheduled to discuss the situation by phone with Trump. Giammattei has met with other U.S. officials this week to discuss how to spur investment in Guatemala and stimulate economic growth in order to prevent would-be migrants from leaving. On Wednesday, Adam Boehler, the chief executive of the U.S. International Development Finance Corporation, said the United States would pump \$1 billion into Guatemala's private sector in order to help create jobs and boost investment, Reuters reported. "It's a billion dollars of financing from us, which should catalyze about \$4 billion," he told the wire service, referring to expected multiplier effects of the \$1 billion in funding.

ECONOMIC NEWS

White House Imposes Restrictions on Aid to Puerto Rico

U.S. President Donald Trump's administration on Wednesday imposed conditions on the billions of dollars in emergency aid to Puerto Rico, a move that came just more than a week after a 6.4 magnitude earthquake struck the island, causing severe damage to infrastructure, The New York Times reported. The restrictions include blocking spending on the island's power grid and suspending its \$15-an-hour minimum wage for federally funded relief work. The nearly \$16 billion in funding released is a portion of the \$20 billion that Congress allocated for disaster recovery and preparation more than a year ago, in response to the island being hit by several hurricanes in 2017. The Department of Housing and Urban Development had until now released only \$1.5 billion of the congressional relief, citing concerns about political corruption. Of that amount, only \$5 million has been allocated, The New York Times reported. "The help comes, but it comes one drop at a

NEWS BRIEFS

Pro-Gov't Groups Attack Convoy of Venezuelan Opposition Members

Armed pro-government groups in Venezuela on Wednesday attacked a convoy carrying opposition lawmakers to the National Assembly, blocking their entrance to the building, officials said, UPI reported. A video shared on opposition leader Juan Guaidó's Twitter shows men trailing a vehicle as one man attacked it with a pylon, and a man then smashes the car's back window. Opposition legislator Carlos Eduardo Berrizbeitia said the assailants were "armed paramilitaries and terrorist groups" organized by Venezuelan President Nicolás Maduro.

Chile's Piñera to Send Pension Reform to Congress This Week

Chilean President Sebastián Piñera said Wednesday that he would send lawmakers legislation to reform the country's pension system, Reuters reported. Demands for changes to the system have been among the demands of protesters in recent months in Chile. Piñera is proposing a 6 percent increase in workers' contributions and a 3 percent increase in employers' contributions. Many Chileans live on pensions that are below the minimum wage.

Argentina's Inflation Rate Rose Last Year to Three-Decade High

Argentina's inflation rate rose to 53.8 percent last year, its highest level in almost three decades, the national statistics agency said Wednesday, showcasing the challenges that new President Alberto Fernández is facing, the Financial Times reported. Prices were up 3.7 percent in December following renewed currency volatility ahead of last year's election, the agency said. Argentina is among the top five countries with the highest inflation rates in the world.

time,” Elizabeth Ocasio, deputy mayor of the city of Ponce, told The Washington Post. “We needed to strengthen these structures after the hurricane. Now, we have greater damage.” Congressional Democrats and Puerto Rico officials have slammed the Trump administration for delaying the aid, while Trump and Republican legislators have pointed to corruption scandals last year in Puerto Rico as vindication of their demands for tougher oversight.

BUSINESS NEWS

BNP Paribas Obtains License to Operate in Mexico as a Bank

BNP Paribas has obtained a license from Mexico’s national banking commission, or CNBV, to operate there as a bank, El Economista reported Tuesday. It had been operating in Mexico as a nonbank lending and finance institution, also known as a “sofom,” and its presence in Mexico dates back more than five decades in areas such as corporate and investment banking, consulting, asset management, insurance and personal finance. The Paris-based banking group has more than 700 employees in Mexico. Last year, it asked the CNBV for a local license in an effort to expand the products it offers in Mexico and continue advancing its presence in the country, El Universal reported. With its new license, BNP Paribas will now be able to offer a wider array of local banking services, such as global markets and value and post-trading services, El Economista reported. The move is part of a larger growth strategy in the Americas. BNP Paribas has a presence in eight of the region’s countries, employing nearly 20,000 people. “Mexico is a fundamental piece in the Americas region as a whole and an important bridge between our strong presence both in the United States and in Latin America,” Francisco Hernández, local director of BNP Paribas in Mexico, said. “The license will allow us to provide better services to our clients through the expansion of previous products’ capacities and the incorporation of new services,” he added.

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and build on their first-in advantage. The reality is that any company seriously examining opportunities in the Cuban market would have examined their exposure and weighed the risks under Title III along with other considerations associated with U.S. sanctions before the law was given effect. While these lawsuits may discourage many U.S. firms from pursuing initial market entry into Cuba for now, they may be less of a deterrent to non-U.S. firms that have little or no presence in the United States. It could be another year or more before U.S. courts rule on fundamental questions concerning the validity and enforceability of Title III and other issues in ways that could lead to either quicker dismissal and resolution or an increase in such cases. Such questions include how broadly or narrowly the courts will define ‘trafficking’ in Cuban property and whether U.S. government-granted licenses and provisions for the exemption for travel-related business can be successfully asserted as a defense against such lawsuits. The answers to bigger questions still, including constitutionality of the Title III provisions and how U.S. courts will balance such claims against U.S. obligations under international law, could have implications for states and investors far beyond the Cuban market.”

A **Angela Mariana Freyre, principal at Squire Patton Boggs and former special advisor for Cuba Policy at the National Security Council:** “Many of us are surprised at the limited number of lawsuits which have been brought under Title III, although other potential Title III plaintiffs are likely waiting for rulings in suits already filed before proceeding with theirs. We have seen the Europeans trigger their blocking statutes in response to the U.S. lawsuits. Although not yet litigated in U.S. or European courts, these blocking statutes have a chilling effect on people considering Title III lawsuits involving European defendants. In addition, European governments are reportedly

considering more forceful responses to Title III suits. The recent court rulings in Title III cases are very specific to the facts involved in each case and, although informative, will not affect a decision to bring a lawsuit that does not involve issues addressed in recent rulings. Although the Title III cases have cast a chilling effect on investment in Cuba, Europeans, Asians and others continue investing in Cuba with greater scrutiny of Cuban assets involved in the investment. There are other, more significant, challenges to Cuba’s business environment than Title III lawsuits. Finally, in any future U.S. administration that seeks to re-engage with Cuba, Title III and Helms-Burton will need to be addressed as key aspects of U.S.-Cuba commercial relations.”

A **Phil Peters, president of the Cuba Research Center and principal at FocusCuba Consulting:** “The dismissal of two Title III lawsuits was based on facts specific to a plaintiff who failed to demonstrate that he had an actual interest in the port property at the time the alleged ‘trafficking’ occurred. These rulings have no broader implication, except that plaintiffs who cannot clearly demonstrate ownership risk wasting their time and money. Of far greater interest are future rulings on other defendants’ arguments—that cases should be dismissed on jurisdictional or constitutional grounds, or that travel companies (such as hotels and airlines) are shielded by Title III’s exclusion of businesses providing services for authorized travelers. The approximately 20 Title III cases now in court are much fewer than the hundreds or thousands predicted. This surely reflects the cost and difficulty of litigation and the fact that defendants, so far, are fighting back vigorously. Cuba continues to attract investment, far short of its goals, hampered by its own selectivity and also, most surely, by Helms-Burton risk. The Title III experience is a lesson to future U.S. administrations: a true and complete

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resolution of claims and any effort to return to normalization will depend on suspending Title III again, and indeed repealing Helms-Burton itself."

A **Andrew J. Markus, chair of the international practice at Carlton Fields:** "It is obvious that the activation of Title III has meant that there are a number of lawsuits pending and, I am sure, threatened. There are a number of families whose property was expropriated by the Cuban government and they are, rightfully, seeking redress as a result of their new ability to sue 'traffickers.' While this activation provides hope for many families, it is a very difficult thing to translate into reality. Blocking statutes and jurisdictional difficulties make it exceedingly difficult for plaintiffs to reach assets other than those found in the United States. Moreover, a very recent court ruling held that uses that are permitted under the Helms-Burton statute are not exceptions to the ability of plaintiffs to sue, but rather are affirmative defenses that must be pled and proved in answers. Most of the defendants in these cases so far are institutions that can afford

the costs. Finally, I believe that it will be difficult for potential investors to consider investing in companies that do business in Cuba because the statute is tremendously broad, and some cases are being brought that may seem tenuous. For instance, the Société Générale (SocGen) case is a good example of this. The complaint alleges that SocGen has been 'trafficking' because it has dealt with Banco Nacional de Cuba (BNC), the Cuban government's bank. The complaining family alleges that it owned Banco Núñez and that it was expropriated in 1960 and consolidated into BNC at that time. The complaint alleges that SocGen was 'trafficking' as a result of doing business 40 years later with BNC. That seems to be tremendously stretching the definition of trafficking, and if companies that are doing business with 'legitimate' Cuban entities need to vet the origins of the Cuban entity, it will be an impediment that may not be palatable to investors."

The Advisor welcomes comments on its Q&A section. Readers can write editor Gene Kuleta at gkuleta@thedialogue.org.

JOB POSTINGS

EDITOR'S NOTE: We are pleased to share Latin America-related job postings that companies reading the Advisor and others have posted recently.

Mitsubishi Corporation (Americas): Manager, Washington, D.C.

Amazon Web Services: Program Manager, Latin America

Apple: Latin America Geo Enterprise Sales Director, Miami

Makaia: Business Manager, Colombia

Blackrock: VP and Head of Client Solutions for Latin America, New York

DAI: Fintech Adoption Leader, Mexico

Bridgestone: HR Director for Latin America, Tennessee

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