

U.S.-Cuba Trade and Economic Council, Inc.

New York, New York

Telephone (917) 453-6726 • E-mail: council@cubatrade.org

Internet: <http://www.cubatrade.org> • Twitter: [@CubaCouncil](https://twitter.com/CubaCouncil) Facebook:

www.facebook.com/uscubatradeandeconomiccouncil

LinkedIn: www.linkedin.com/company/u-s--cuba-trade-and-economic-council-inc-

Title III- Lawsuits May Be Filed

31 Potential Targets

21 Countries

6 U.S. States

913 Plaintiffs?

2018 revenues approximately US\$700 billion

2018 market capitalization approximately US\$1 trillion

Defendants Will Have Resources For Global Legal Defense

Settlement May Be The Most Profitable

Will They Settle?

What Will EU Do? What Can EU Do? Does US Care?

On 17/18 March 2019, the Trump Administration is planning to permit Title III and further implement Title IV of the Cuban Liberty and Democratic Solidarity Act of 1996 (known as "*Libertad Act*").

Title III authorizes lawsuits in United States District Courts against companies and individuals who are using a certified claim where the owner of the certified claim has not received compensation from the Republic of Cuba or from a third-party who is using the asset.

Title IV restricts entry into the United States by individuals who have connectivity to unresolved certified claims. One company is currently subject to this provision.

There is a rationale for companies and individuals who are targets of **Title III** lawsuits to find commercial, economic and political value from negotiating a settlement(s) with a plaintiff(s).

Upon settlement, the companies and individuals may no longer be subject to impediments to their operations relating to the Republic of Cuba and other countries which are a focus of the Office of Foreign Assets Control (**OFAC**) of the United States Department of the Treasury and of the Office of Legal Adviser (**OLA**) of the United States Department of State.

Settlements would reasonably result in an increase to the operational value of an asset located in the Republic of Cuba- the value of the asset increases as governments, financial institutions, investors, partners, and suppliers have increased confidence in long-term market-based viability.

With settlement, there could be commercial, economic and political value to those who were subject to certified claims from having an ongoing presence of companies and individuals subject to United States jurisdiction as a shareholder, partner or leaseholder- meaning that if a company settles with the owner of an asset, and the owner is of Cuban descent residing in the United States or an individual not of Cuban descent, or company located in the United States, there may be an optical and practical benefit- lessening stigma, lessening risk, increasing opportunity and increasing value of the asset.

U.S.-Cuba Trade and Economic Council, Inc.

Potential Lawsuit Targets

The following companies have been mentioned by claimants (certified and non-certified) as potential targets of lawsuits using provisions of Title III. A company could be subject to multiple lawsuits.

If the Trump Administration authorizes the use of Title III by some certified claimants and some non-certified claimants while not authorizing the use of Title III by other certified claimants and other non-certified claimants, there may be legal challenges by those excluded from access to Title III.

The targeted companies will expectedly be those who have meaningful financial exposure within the Republic of Cuba and have meaningful financial exposure within the United States. In some instances, the reputational impact upon a company may, rather than the financial exposure, be a catalyst for agreeing to a settlement.

The combined revenues of the companies in 2018 were approximately **US\$678 billion** and the combined market capitalization of the companies in 2018 was approximately **US\$860 billion**:

Amstelveen, Netherlands-based **KLM**
Atlanta, Georgia-based **Delta Air Lines**
Beijing, China-based **Air China**
Bethesda, Maryland-based **Marriott International**
Chicago, Illinois-based **United Airlines**
Dallas, Fort Worth, Texas-based **American Airlines**
Dallas, Texas-based **Southwest Airlines**
Frankfurt, Germany-based **Lufthansa**
Geneva, Switzerland-based **MSC Cruises**
Istanbul, Turkey-based **Turkish Airlines**
Leuven, Belgium-based **Anheuser-Busch InBev**
London, United Kingdom-based (controlled by Turkey-based interests) **Global Ports Holding**
London, United Kingdom/Rotterdam, Netherlands-based **Unilever**
Long Island City, New York-based **Jet Blue Airways**
Madrid, Spain-based **Iberia Airlines**
Madrid, Spain-based **NH Hotel Group**
Miami, Florida-based **Carnival Corporation & plc**
Miami, Florida-based **Norwegian Cruise Line**
Miami, Florida-based **Royal Caribbean International**
Moscow, Russia-based **Gazprom**
Palma de Mallorca, Spain-based **Iberostar Hotels & Resorts**
Palma de Mallorca, Spain-based **Melia Hotels International**
Paris, France-based **Accor SA**
Paris, France-based **Air France**
Paris, France-based **Pernod Ricard**
Shenzhen, China-based **Huawei Technologies**
Tokyo, Japan-based **Mitsubishi (an entity)**
Toulouse, France-based **Newrest Group Holding**
Toronto, Canada-based **Air Canada**
Toronto, Canada-based **Sherritt International**
Vevey, Switzerland-based **Nestle SA**

U.S.-Cuba Trade and Economic Council, Inc.

Certified Claims Background

There are 8,821 claims of which **5,913** awards valued at **US\$1,902,202,284.95** were certified by the USFCSC and have not been resolved for nearing sixty years. The USFCSC permitted interest to be accrued in the amount of 6% per annum; with the current value of the 5,913 certified claims approximately **US\$8,521,866,156.95**.

The first asset to be expropriated by the Republic of Cuba was an oil refinery in 1960 owned by White Plains, New York-based **Texaco, Inc.**, now a subsidiary of San Ramon, California-based Chevron Corporation (USFCSC: CU-1331/CU-1332/CU-1333 valued at **US\$56,196,422.73**).

The largest certified claim (*Cuban Electric Company*) valued at US\$267,568,413.62 is controlled by Boca Raton, Florida-based **Office Depot, Inc.** The second-largest certified claim (*International Telephone and Telegraph Co, ITT as Trustee, Starwood Hotels & Resorts Worldwide, Inc.*) valued at US\$181,808,794.14 is controlled by Bethesda, Maryland-based **Marriott International**. The smallest certified claim is by *Sara W. Fishman* in the amount of US\$1.00 with reference to the Cuban-Venezuelan Oil Voting Trust.

The two (2) largest certified claims total US\$449,377,207.76, representing **24%** of the total value of the certified claims. Thirty (30) certified claimants hold **56%** of the total value of the certified claims. This concentration of value creates an efficient pathway towards a settlement.

Title III of the Cuban Liberty and Democratic Solidarity (**Libertad**) Act of 1996 requires that an asset had a value of US\$50,000.00 when expropriated by the Republic of Cuba without compensation to the original owner. Of the 5,913 certified claims, 913, or **15%**, are valued at US\$50,000.00 or more. Adjusted for inflation, US\$50,000.00 (3.70% per annum) in 1960 has a 2019 value of approximately US\$427,267.01. The USFCSC authorized 6% per annum, meaning the 2019 value of US\$50,000.00 is approximately US\$1,649,384.54.

The ITT Corporation Agreement

In July 1997, then-New York City, New York-based **ITT Corporation** and then-Amsterdam, the Netherlands-based STET International Netherlands N.V. signed an agreement whereby STET International Netherlands N.V. would pay approximately US\$25 million to ITT Corporation for a ten-year right (after which the agreement could be renewed and was renewed) to use assets (telephone facilities and telephone equipment) within the Republic of Cuba upon which ITT Corporation has a certified claim valued at approximately US\$130.8 million. *ETECSA*, which is now wholly-owned by the government of the Republic of Cuba, was a joint venture controlled by the Ministry of Information and Communications of the Republic of Cuba within which Amsterdam, the Netherlands-based Telecom Italia International N.V. (formerly Stet International Netherlands N.V.), a subsidiary of Rome, Italy-based Telecom Italia S.p.A. was a shareholder. Telecom Italia S.p.A., was at one time a subsidiary of Ivrea, Italy-based Olivetti S.p.A. The second-largest certified claim (*International Telephone and Telegraph Co, ITT as Trustee, Starwood Hotels & Resorts Worldwide, Inc.*) valued at US\$181,808,794.14 is controlled by Bethesda, Maryland-based Marriott International.

TITLE III--SEC. 302. LIABILITY FOR TRAFFICKING IN CONFISCATED PROPERTY CLAIMED BY UNITED STATES NATIONALS.

U.S.-Cuba Trade and Economic Council, Inc.

(a) Civil Remedy.-- (1) Liability for trafficking.--(A) Except as otherwise provided in this section, any person that, after the end of the 3-month period beginning on the effective date of this title, traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages in an amount equal to the sum of-- (i) the amount which is the greater of-- (I) the amount, if any, certified to the claimant by the Foreign Claims Settlement Commission under the International Claims Settlement Act of 1949, plus interest; (II) the amount determined under section 303(a)(2), plus interest; or (III) the fair market value of that property, calculated as being either the current value of the property, or the value of the property when confiscated plus interest, whichever is greater; and (ii) court costs and reasonable attorneys' fees. (B) Interest under subparagraph (A)(i) shall be at the rate set forth in section 1961 of title 28, United States Code, computed by the court from the date of confiscation of the property involved to the date on which the action is brought under this subsection.

(2) Presumption in favor of the certified claims.--There shall be a presumption that the amount for which a person is liable under clause (i) of paragraph (1)(A) is the amount that is certified as described in subclause (I) of that clause. The presumption shall be rebuttable by clear and convincing evidence that the amount described in subclause (II) or (III) of that clause is the appropriate amount of liability under that clause.

(3) Increased liability.--(A) Any person that traffics in confiscated property for which liability is incurred under paragraph (1) shall, if a United States national owns a claim with respect to that property which was certified by the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949, be liable for damages computed in accordance with subparagraph (C).

(B) If the claimant in an action under this subsection (other than a United States national to whom subparagraph (A) applies) provides, after the end of the 3-month period described in paragraph (1) notice to-- (i) a person against whom the action is to be initiated, or (ii) a person who is to be joined as a defendant in the action, at least 30 days before initiating the action or joining such person as a defendant, as the case may be, and that person, after the end of the 30- day period beginning on the date the notice is provided, traffics in the confiscated property that is the subject of the action, then that person shall be liable to that claimant for damages computed in accordance with subparagraph (C).

(C) Damages for which a person is liable under subparagraph (A) or subparagraph (B) are money damages in an amount equal to the sum of-- (i) the amount determined under paragraph (1)(A)(ii), and (ii) 3 times the amount determined applicable under paragraph (1)(A)(i). (D) Notice to a person under subparagraph (B)-- (i) shall be in writing; (ii) shall be posted by certified mail or personally delivered to the person; and (iii) shall contain-- (I) a statement of intention to commence the action under this section or to join the person as a defendant (as the case may be), together with the reasons therefor; (II) a demand that the unlawful trafficking in the claimant's property cease immediately; and (III) a copy of the summary statement published under paragraph (8). (4) Applicability.--(A) Except as otherwise provided in this paragraph, actions may be brought under paragraph (1) with respect to property confiscated before, on, or after the date of the enactment of this Act.

(B) In the case of property confiscated before the date of the enactment of this Act, a United States national may not bring an action under this section on a claim to the confiscated property unless such national acquires ownership of the claim before such date of enactment. (C) In the case of

U.S.-Cuba Trade and Economic Council, Inc.

property confiscated on or after the date of the enactment of this Act, a United States national who, after the property is confiscated, acquires ownership of a claim to the property by assignment for value, may not bring an action on the claim under this section.

(5) Treatment of certain actions.--(A) In the case of a United States national who was eligible to file a claim with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but did not so file the claim, that United States national may not bring an action on that claim under this section. (B) In the case of any action brought under this section by a United States national whose underlying claim in the action was timely filed with the Foreign Claims Settlement Commission under title V of the International Claims Settlement Act of 1949 but was denied by the Commission, the court shall accept the findings of the Commission on the claim as conclusive in the action under this section.

(C) A United States national, other than a United States national bringing an action under this section on a claim certified under title V of the International Claims Settlement Act of 1949, may not bring an action on a claim under this section before the end of the 2-year period beginning on the date of the enactment of this Act.

(D) An interest in property for which a United States national has a claim certified under title V of the International Claims Settlement Act of 1949 may not be the subject of a claim in an action under this section by any other person. Any person bringing an action under this section whose claim has not been so certified shall have the burden of establishing for the court that the interest in property that is the subject of the claim is not the subject of a claim so certified. (6) Inapplicability of act of state doctrine.--No court of the United States shall decline, based upon the act of state doctrine, to make a determination on the merits in an action brought under paragraph (1) .

(7) Licenses not required.--(A) Notwithstanding any other provision of law, an action under this section may be brought and may be settled, and a judgment rendered in such action may be enforced, without obtaining any license or other permission from any agency of the United States, except that this paragraph shall not apply to the execution of a judgment against, or the settlement of actions involving, property blocked under the authorities of section 5(b) of the Trading with the Enemy Act that were being exercised on July 1, 1977, as a result of a national emergency declared by the President before such date, and are being exercised on the date of the enactment of this Act.