

U.S. Government Targets “Three Stooges of Socialism” with New Measures Against Cuba, Venezuela, and Nicaragua

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In separate statements on April 17, 2019 coinciding with the anniversary of the Bay of Pigs invasion, U.S. Secretary of State Mike Pompeo and National Security Adviser John Bolton announced several measures intended to increase pressure on Cuba, Venezuela, and Nicaragua, in response to corruption, human rights abuses, and political repression in those countries.

Most significantly, Secretary Pompeo **announced** that the U.S. government would permit Title III of the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 (the “**Libertad Act**”) to take full effect beginning on May 2, 2019, permitting U.S. nationals with claims to property confiscated by the Cuban government to sue for damages any person that traffics in such property. This decision, which departs from over two decades of consistent practice by administrations of both parties, may potentially expose many non-U.S. companies doing business in Cuba to lawsuits in U.S. courts. Ambassador Bolton announced additional measures targeting Cuba, including the forthcoming rollback of steps taken in the prior administration to broadly authorize remittances, travel, and certain financial transactions involving Cuba. He also highlighted new sanctions designations by the Treasury Department’s Office of Foreign Assets Control (“**OFAC**”) targeting the **Maduro regime in Venezuela** (including sanctioning Venezuela’s central bank) as well as the **Ortega regime in Nicaragua**. Each of these actions is summarized below.

Title III of the Libertad Act

As explained in our prior **blog post** concerning Secretary Pompeo’s decision last month to allow claims under Title III against entities named on the State Department’s **Cuba Restricted List**, Title III of the Libertad Act creates a civil remedy for U.S. nationals with claims to property confiscated by the Cuban government after January 1, 1959. It authorizes such U.S. nationals to file suit in

U.S. district court against any person that “traffics” in such property, defined broadly to include, among other things, any knowing or intentional transfer or commercial use of such property, with limited exceptions. The broad definition of trafficking includes “profiting” from trafficking by another person, suggesting that it is possible that engaging in commercial activity with a person who traffics in confiscated property may be covered by the statute. Moreover, the trafficking provision specifies that treble damages shall be imposed in certain situations. This provision was intended to discourage non-U.S. companies from doing business in Cuba by exposing them to damages in the United States if their business in Cuba involves confiscated properties. However, it has not previously been permitted to take effect. Rather, for more than two decades, administrations of both parties consistently determined that suspending the effective date of Title III was necessary to the national interests of the United States and would expedite a transition to democracy in Cuba, and routinely extended that suspension for 6-month intervals as provided for under the Libertad Act. While it initially continued this practice, the Trump administration has now abruptly departed from it.

Unlike the March 2019 decision to allow suits against Cuba Restricted List entities, which was largely symbolic, this week’s announcement has the potential to have a significant impact on non-U.S. companies doing business in Cuba, as they will now face the prospect of substantial liability in U.S. courts if they are found to have trafficked in confiscated property. Unsurprisingly, Secretary Pompeo’s announcement prompted strong protests from the European Union and Canada, which issued a [joint statement](#) condemning the action and threatening countermeasures both at the World Trade Organization and under their domestic legal systems.

Other Cuba-Related Measures

Ambassador Bolton announced additional Cuba-related measures, including that the U.S. government would more aggressively enforce Title IV of the Libertad Act, which provides for the denial of visas for individuals who traffic in confiscated property (including directors, principals, and controlling shareholders of companies who traffic in such property), as well as spouses, minor children, and agents of excluded individuals. He also announced that the State Department would be adding additional entities to the Cuba Restricted List, and that OFAC would take steps to impose dollar limits on remittances to Cuba, restore limitations on non-family travel to Cuba, and to revoke the authorization for “U-turn” transactions

involving Cuba, which permits U.S. financial institutions to process funds transfers originating and terminating outside of the United States where neither the sender nor the beneficiary is a person subject to U.S. jurisdiction. While the White House published a [general overview](#) of the steps laid out by Ambassador Bolton, the State Department and OFAC did not immediately publish further details concerning these actions, which are not yet effective and many of which will require regulatory changes on OFAC's part to implement.

New Venezuela Sanctions

As part of its continuing efforts to impose pressure on the Maduro regime and encourage a political transition in Venezuela, OFAC designated the Central Bank of Venezuela ("**CBV**") pursuant to Executive Order ("**E.O.**") 13850 for operating in the financial sector of Venezuela. As a result of the designation, all property and interests in property of the CBV that are subject to U.S. jurisdiction are blocked, and U.S. persons are generally prohibited from engaging in transactions or dealings with the CBV except as authorized by OFAC or exempt. Foreign persons providing financial, material, or technological support to, or goods and services in support of, the CBV are potentially subject to designation pursuant to E.O. 13850. OFAC also designated the director of the CBV pursuant to E.O. 13692 as a current official of the Venezuelan government. Identifying information associated with the designated persons is available [here](#).

To mitigate the impact of the designation of the CBV, OFAC issued two new general licenses ("**GLs**"):

- [GL 19](#), which authorizes transactions ordinarily incident and necessary to the wind down of operations, contracts, or other agreements involving the CBV that were in effect prior to April 17, 2019. The authorization is valid until 12:01 a.m. eastern daylight time on May 17, 2019, and does not authorize any debits to accounts of the CBV on the books of a U.S. financial institution; and
- [GL 20](#), which authorizes transactions involving the CBV that are for the official business of several identified international organizations.

OFAC also amended five other GLs to make technical and conforming changes to ensure the continued effectiveness of existing authorizations for transactions involving certain Venezuelan government bonds and other securities ([GL 3E](#) and [GL 9D](#)), transactions related to humanitarian exports ([GL 4B](#)), and transactions

related to use of credit cards and personal remittances ([GL 15A](#) and [GL 16A](#)). OFAC also published one new answer to a Frequently Asked Question (“[FAQ](#)”), [FAQ 665](#), highlighting that the CBV’s designation is not intended to prevent humanitarian transactions or personal remittances, and emphasizing the availability of the general licenses described above.

Nicaragua Sanctions

Finally, OFAC designated Nicaraguan bank Banco Corporativo SA (“**Bancorp**”) and President Ortega’s son, Laureano Ortega Murillo, pursuant to E.O. 13851, which targets corrupt financial operations and Ortega regime support networks. Bancorp, which is indirectly majority owned by Petroleos de Venezuela, S.A. (“**PdVSA**”), was previously blocked by operation of law as a result of PdVSA’s [designation](#) in January 2019 pursuant to E.O. 13850. Identifying information associated with the designated persons is available [here](#).