

The Executive Memorandum

The Heritage Foundation

214 Massachusetts Avenue, N.E. Washington, D.C. 20002-4999 (202) 546-4400

RUSH!

12/7/95 Number 441

THE CUBA BILL: PROTECTING THE PROPERTY RIGHTS OF AMERICANS

The Cuban Liberty and Democratic Solidarity Act of 1995, similar versions of which were passed by the House and Senate on September 21 and October 19, respectively, would allow U.S. citizens whose property was confiscated by Fidel Castro to seek compensation in U.S. courts from foreign businesses that now operate on this property. To avoid a threatened Democratic filibuster, the Act's Senate sponsor, Foreign Relations Committee Chairman Jesse Helms (R-NC), agreed to remove Title III, which enables U.S. citizens to use U.S. courts to seek compensation for their confiscated properties. Title III is the backbone of the bill and should be re-inserted during the conference committee process.

When Fidel Castro rose to power in 1959, one of his first acts was to outlaw private property and transfer all private-sector assets to the state. As a result, many U.S. companies with manufacturing plants, offices, and other places of business in Cuba were expelled without being compensated for their lost property. Today, in an effort to save his drowning communist economy, Castro intends to sell these properties to investors from Canada, Mexico, Spain, and other countries. Under Title III, U.S. companies whose properties were stolen by Castro could act to discourage foreigners from operating and buying their property by seeking compensation through the U.S. court system.

The Cuban Liberty and Democratic Solidarity Act

There are three main titles in the Cuba bill:

- ① **Title I** strengthens international sanctions against the Castro regime by urging the President to seek an international embargo in the United Nations Security Council. In addition, this title prohibits indirect financing of Castro by U.S. citizens through loans or lines of credit for business ventures using confiscated U.S. property. It also requires the President to oppose Cuban membership in such international financial institutions as the World Bank and the International Monetary Fund until a transitional government is established with a system in place to hold democratic elections.
- ② **Title II** specifically instructs the President to develop a strategy to support Cuba's transition to a democratically elected government.
- ③ **Title III** seeks to protect the interests of U.S. citizens whose property was seized by the Castro regime without due compensation. American citizens could seek restitution from potential foreign investors through the U.S. legal system.

The House version of the Cuba bill includes all three titles. However, the Senate dropped Title III to prevent a threatened Democratic filibuster and bring the bill to the floor for a vote.

Stolen Property and Ill-Gotten Gains

U.S. companies have registered close to 6,000 claims related to Cuban confiscation of American property with the Foreign Claims Settlement Commission in the Department of Justice. These claims, including 6 percent simple interest, nominally are worth almost \$6 billion. However, in today's dollars, they would be worth some \$10 billion. Some examples:

- ✓ **Colgate-Palmolive Company.** Colgate-Palmolive owned a soap and detergent manufacturing facility in Cuba before the 1959 revolution. When Castro seized power, Colgate's property was confiscated by the state. Foreign investors from the United Kingdom reportedly are trying to buy this property.
- ✓ **Owens-Illinois Incorporated.** This U.S. glass manufacturer owned and operated a glass and bottle production facility in Cuba before Castro's revolution. The property was confiscated by the Cuban state. Foreign investors from Mexico reportedly are trying to buy this property.
- ✓ **Freeport-McMoran Incorporated.** This U.S. company owned a nickel mining facility in Cuba. Today, foreign investors from Canada reportedly are trying to buy this property.
- ✓ **ITT Corporation.** This American company owned a telecommunications facility in Cuba before the revolution. Today, foreign investors from Mexico reportedly are trying to buy this property.

Protecting American Property Rights

Critics argue that Title III is intended to enable exiled Cubans to reclaim their stolen property. In reality, it seeks to guarantee the property rights of Americans regardless of whether they are of Cuban origin. Nearly half of the 6,000 certified property claims filed against Cuba have been registered by some of America's largest companies.

Critics also argue that handling these claims will clog U.S. courts. This is not true. To get a property claim to court under this bill, a claimant must meet a number of stringent conditions: 1) the claimant must be a U.S. citizen; 2) the disputed claim must be valued at over \$50,000; 3) a foreign investor must occupy the disputed property after the bill is enacted (thus, the bill is not retroactive); 4) a foreign investor must be given 180 days to vacate the disputed property; and 5) a foreign investor laying claim to U.S. property must hold assets within the continental U.S. before he can be sued in a U.S. court. Only after all of these conditions are met may a U.S. claimant seek action in U.S. courts. Under these strict conditions, most of the 6,000 claims will not be brought to court.

Conclusion

The Cuban Liberty and Democratic Solidarity Act of 1995 is intended to protect the property rights of U.S. citizens whose property was confiscated by Castro without compensation. Foreign investors operating on these properties have disregarded the rights of U.S. citizens. These rights are recognized by U.S. and international law; they should be recognized by the U.S. Congress as well. It is time not only to end the injustice which Castro started over three decades ago, but to prevent foreign companies from unfairly and undeservedly profiting from Castro's crime.

Bryan T. Johnson
Policy Analyst