

# WORLD TRADE ORGANIZATION

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**Working Group on the Relationship  
between Trade and Investment**

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## COMMUNICATION FROM CUBA

The following communication, dated 16 June 1998, has been received from the Permanent Mission of the Republic of Cuba with the request that it be circulated to Members.

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At its 47th session, the General Assembly of the United Nations adopted a resolution on the:

"Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba"

under which all members of that organization should refrain from promulgating and applying laws and regulations whose extraterritorial effects affect the sovereignty of other States and the legitimate interests of entities or persons under their jurisdiction, as well as the freedom of trade and navigation.

In conformity with that same Resolution, countries applying that kind of action should take all the necessary steps to eliminate or invalidate the effects of such laws.

Since 1992 the United Nations General Assembly has adopted six resolutions calling on the United States to refrain from enacting extraterritorial laws. At its most recent session, in November 1997, more than 150 nations reiterated this call, with only three votes against (United States, Israel and Uzbekistan), in another similar Resolution.

Thirty three years before, in March 1964, the United States Supreme Court with a vote of eight to one in favour of Cuba, in the so-called Sabbatino case, in a substantive judgement on the Act of State of Cuban nationalizations, ratified the doctrine of the Sovereign Act of State, which was the Gordian knot in the whole dispute.

All the Cuban nationalization laws contained provisions on adequate compensation, both to nationals and to foreigners. Thus, in keeping with international practice, Cuba negotiated and signed several Global Compensation Agreements, paying all the agreed amounts. Governments which submitted claims for their citizens were heeded and, accordingly, compensation agreements were signed with them - France, Switzerland, the United Kingdom, Canada and Spain (although the Agreement with the latter country is over a period of 20 years: 1988-2008). Several small claims submitted by Italy were also paid off through the Exchange of Notes.

The Government of Cuba has always stood ready to negotiate mutual claims, including the compensation process. In December of 1996, when Law No. 80 (the Cuban law in reaction to the Helms-Burton Act) was adopted, it stipulated:

## Article 2

"The arrangement by the Government of the Republic of Cuba, as set out in the nationalization laws implemented more than 35 years ago, in connection with just and adequate compensation for the expropriated assets of persons and corporations that possessed American citizenship or nationality at the time is hereby reaffirmed".

The Cuban Government has repeatedly proposed that the Government of the United States should sit down with it and negotiate the issue of compensation for nationalized property. In reality, the Government of the United States is only interested in overthrowing and doing away with the Cuban Revolution.

The Helms-Burton Act is totally unacceptable, in regard to all the Titles it contains, since it seeks to determine the political, economic and institutional order of a sovereign independent State, an objective that is not in keeping with the Charter of the United Nations and is in breach of the principles of sovereignty and non-interference in the internal affairs of other States.

## And now... a new Understanding

Last May, the European Union and the United States reached a new Understanding whereby Title IV would not apply to European enterprises and all sanctions would be suspended (enterprises from the Old Continent which had made investments in Cuba up to 18 May, the date of the Understanding, will not be subject to sanctions). In the future, European Union Governments will discourage investments by their enterprises in Cuba if they are made in property that was United States-owned and was subsequently nationalized.

A register will be established for claims on property allegedly nationalized in contravention of international law. In accordance with the information provided by the claimants, it will be decided whether investments in such property are to be discouraged by European Governments, thus refusing to grant credits, insurance and commercial assistance to European investors.

Both Parties undertake to convince the other 13 OECD member nations to include the substance of the Understanding in the Multilateral Agreement on Investment when the Negotiating Group resumes its work next October.

During his stay in Geneva, on 16 May, two days before the Understanding, Cuban President Fidel Castro warned:

"The question Cuba is asking itself is whether the differences between the United States and the EU over the extraterritorial Law are going to be resolved at Cuba's expense, since this infamous law essentially maintains the criminal blockade imposed on Cuba for nearly 40 years, and precisely on the eve of the 50th anniversary of the WTO".

Three days later, in his statement at the WTO Plenary Session, he referred to the Understanding, which had already been approved:

"The world has many reasons to feel humiliated and concerned, and the WTO must halt the genocide. Any difference between the United States and the EU in connection with the Helms-Burton Act should not be resolved at Cuba's expense. It would be an unthinkable dishonour for Europe. The agreements announced yesterday in London are confusing, contradictory, threatening to many countries and in no sense ethical".

The Cuban Government has compensated all foreign investors whose property was nationalized in 1960s, except for American property, and in this case it is because the various Administrations have never been ready to sit down and discuss the way to do it.

The Compensation Agreements signed by the Cuban Government specified that the nationalization problems and related compensations were deemed to be solved once they were signed. These included Lump Sum Agreements with three European Union nations – France, the United Kingdom and Spain, whose citizens and enterprises have been compensated for the losses suffered. It must be really embarrassing for these three major EU member nations that from now on, in line with the Understanding, they have to act against their own enterprises because of the alleged American claims, whose validity has not been thoroughly checked by anyone and absolutely no one can take a decision about their validity without Cuba's participation.

To date, Cuba has signed Bilateral Investment Treaties (BITs) with 33 countries, eight of them members of the European Union. These BITs have two main tasks: investment protection, and mutual promotion and facilities for foreign investment flowing from one country to the other. But under the Understanding of 18 May, those same eight European Union countries must hold back, not promote, investment in Cuba.

The new Understanding is really very confusing. Two days after the Understanding was adopted, the German newspaper *Handelsblatt* said the following:

"From a second look it is clear that the EU has surrendered. Never again will it enjoy any credibility in facing up to Washington's sanctions laws. It has stopped being the accuser. Two weeks ago, it withdrew the complaint to the WTO Dispute Settlement Body, so as to send Washington a signal of good will on the eve of the US-EU Summit. The fact is that the Libya-Iran Sanctions Acts, as well as the law against Cuba, are still there."

On 28 May the Madrid newspaper *El País*, said that the Understanding is very contradictory from the European standpoint, since several EU nations had signed BITs with Cuba but now an agreement was being reached with the United States to discourage certain investments in the island.

But a more absurd situation is the fact that the legitimate claimants are not interested in submitting claims. On 12 March 1998 Michael Ranneberger, the State Department Coordinator for Cuban Affairs, made a presentation to the United States House of Representatives Sub-Committee for International and Commercial Policy:

"We have publicized our efforts with US claimants, including in the Cuban-American community, through the radio, newspapers, US mail and the Internet, and have vigorously sought information about foreign business involvement in US-claimed properties in Cuba. However, in the past two years (since March 1996) we have received only one inquiry from a certified claimant. We have received more than 150 inquiries from potential non-certified claimants, but when asked, only two provided documentation to support their claims, and these involved the same case of possible trafficking."

The Understanding is confusing and creates uncertainty and fears. Therefore, it discourages some short-term investments, even though it cannot be fully implemented. It is altogether absurd:

- The European countries which have signed international agreements in the past five years to promote the flow of investments to Cuba now have to try to discourage or inhibit their own companies;
- The American claimants of old properties do not want to claim, even though their own Government is pressing them to do so.

In a previous submission in December 1997, the Cuban delegation said to this Working Group:

"It is Cuba's duty to warn and to insist that any arrangement or understanding reached to the detriment of Cuba within the overall framework of the OECD MAI may become a dangerous legal precedent that can be applied to any other country in the future. Cuba has endured almost four decades of blockade and acts of aggression. Other countries could now fall prey to such actions."

Probably, in the future the 18 May Understanding – and its intention to internationalize the Helms-Burton Act – could well be a new boomerang, as has happened in the last 40 years. History shows that activities to encourage the hijacking of Cuban aircraft became an increasingly dangerous practice and ended up by turning against American airlines. The United States Government's promotion of massive illegal emigration brought about a serious and unmanageable situation which, in 1994, compelled that same Administration to seek urgent assistance from the Cuban Government.

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