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Helms Burton

STATEMENT BY THE DEPARTMENT OF COMMERCE AND  
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE  
CONCERNING THE EU'S WTO CHALLENGE TO THE LIBERTAD ACT

As Delivered by Stuart E. Eizenstat, Undersecretary of Commerce  
and the President's Special Envoy for the Promotion  
of Democracy in Cuba

The United States views with disappointment the action today in Geneva by the Director General of the WTO, at the request of the European Union and its Member States, to appoint a WTO trade panel to examine United States policy regarding Cuba. The EU has challenged key aspects of this country's Cuba policy, from the embargo imposed during the Kennedy Administration in the early 1960s to the Libertad Act of 1996. Thus, key elements of our policy, laws and regulations go back years or even decades.

The WTO is not an appropriate forum for resolving differences over what is essentially a disagreement over foreign policy. We have made this very clear from the time the EU first introduced this issue into the WTO. The measures challenged by the EU reflect abiding U.S. foreign policy and security concerns with respect to Cuba. These policies have been pursued by eight U.S. presidents from both parties over more than three decades. For almost 40 years our relations with Cuba have reflected important U.S. national security and foreign policy concerns, and those concerns remain today. As we have repeatedly stated, the WTO was not created to decide foreign policy and national security issues.

The United States wishes to provide every opportunity to settle our differences with the EU in this dispute. Ambassador Eizenstat and the Administration will be making every effort with the EU to achieve such a mutually satisfactory resolution. However, if we fail to reach a prompt settlement, the United States will formally advise the Director General of World Trade Organization of the views we have just expressed and we will make clear that the panel established today has no competence to proceed because this is a matter of U. S. national security and foreign policy.

One year ago, Cuba MIG fighters shot down two unarmed civilian planes killing several U.S. citizens without justification and in broad daylight. The Congress and the President responded in a firm and measured manner through the enactment of the LIBERTAD Act, which is among the measures that the EU is challenging. The Act was signed by the President in response to the Castro regimes' willful actions. Castro remains isolated today as the only dictator in an otherwise democratic hemisphere.

Promoting a peaceful transition to democracy in Cuba remains a key element of U.S. foreign policy, pursued on a bipartisan basis by President Clinton mid the Congress. Our actions are not motivated by protectionism, nor have they ever been for commercial gain for the United States at the expense of other countries. Indeed, the

opposite is true. We have been willing to pay the economic price for our principles even while firms from other countries have willingly stepped in to do business in Cuba

No nation is more committed to the success of the WTO than the United States. The United States led the world in both the creation of the WTO and its predecessor, the GATT. It was at the forefront of the recent successful efforts to eliminate all tariffs on information technology products and to lower trade barriers in the vital telecommunications sector, both of which demonstrate the continued vibrancy of the WTO. By bringing noncommercial matters into the WTO, the EU may well jeopardize what we and others have worked so hard to achieve.

Over the past month, this Administration has worked hard to resolve our differences with the EU over Cuba policy. We applaud the actions the EU has recently taken to promote democracy in Cuba, particularly the EU's Common Position on Cuba. The U.S. has also acted in a spirit of cooperation. Only last month, President Clinton, taking into account the cooperative efforts of our partners, suspended for a second time the right to bring suit under Title III of the Libertad Act. It is in this spirit of cooperation that we should proceed.

Question: Is the United States invoking Article XXI, the national security exception under the WTO?

Answer: Our position is as follows: If this dispute cannot be resolved promptly we will issue a formal statement to the WTO that the United States considers the dispute settlement panel is not competent to resolve this dispute, based on our obvious national security and foreign policy interests. We think that the WTO agreements make clear that panels are not competent to address disputes like this one. At this point, however, we are serving notice that the case the EU has brought against our Cuba policy is a dispute over foreign policy and security and therefore does not belong in the WTO and cannot be resolved there. Our objective at this point is provide an opportunity to reach a settlement of this matter with our European friends.

Question: But does that mean will invoke national security if this dispute does not settle?

Answer: As I said, we consider that our Cuba policy reflects the foreign policy and national security interests of the United States. As such, if there is no settlement, we will not recognize the competence of this panel to judge our national security and will not participate in the process.

Question: If the dispute cannot be settled, are you saying that the United States would not participate in the panel proceedings?

Answer: That is correct.

Question: What will you do if the panel rules against you?

Answer: We are very hopeful that this dispute will be resolved well before then.

Question: Would the panel proceed in your absence?

Answer: We believe it would be wisest for everyone concerned to avoid that path.

Question: If a panel were to proceed without the United States would that destroy the WTO's dispute settlement system?

Answer: As we have said, the WTO dispute settlement system is designed to address commercial disputes. We believe it serves very well in that capacity and will continue to do so.

Question: Could the action you are proposing result in calls for the United States to withdraw from the WTO?

Answer: We consider that would not be an appropriate response. We would strongly resist any such suggestions.

Question: What has the EC been asking in terms of a settlement?

Answer: We have had a number of exchanges with the Europeans and it is better not to negotiate through the press.

Question: If you lose in the WTO, will the Administration ask Congress to change Helms-Burton?

Answer: Nothing a WTO panel does or says can force the United States to change its laws. Only the Congress can change or enact laws in this country. I do not anticipate any support in the Administration for changes in our Cuba policy as a result of the EC's case.

Question: You say that the dispute must be settled promptly. Exactly what is your deadline.

Answer: We are talking about a very short period of time.

Question: Aren't you undermining the very institution you helped to create?

Answer: It is clear that our Cuba policies were put in place for national security and foreign policy reasons. There is no suggestion that the United States has acted to protect its trade interests. This is not a commercial dispute. The only reason that we are in this position is because the EC has injected a foreign policy disagreement into the world's trade forum. We think that is what is causing the problem here and we

would urge the EC to reconsider the wisdom of this course.

Question: The United States is filing its brief today in its case against Japan in the film dispute. Isn't it hypocritical to bring the cases you like and say you won't participate in those you don't?

Answer: The film case is a commercial dispute -- just the kind of disagreement the WTO was meant to resolve. By contrast, by challenging our Cuba policy the EU is bringing a political dispute into a trade forum.