

# **U.S. \* CUBA Policy Report**

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**Institute for U.S. Cuba Relations  
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**Ralph J. Galliano, Editor**

## **ELECTION GAINS BY REPUBLICANS NATIONWIDE BRING SWEEPING CHANGES TO CAPITOL HILL**

**WASHINGTON --** The leadership in both Houses of the incoming 104th Congress will shift dramatically as a result of the November 8th elections. U.S. Cuba relations are expected to be strongly influenced by the new Republican lawmakers. With the GOP in control of the Senate and the House of Representatives for the first time since the 1952 elections, Republicans expected to chair key Congressional committees, which affect the conduct of U.S. foreign policy from foreign aid to trade to troop deployments, are largely conservatives as measured by the American Conservative Union (ACU) ratings.

Senator Robert Dole (93% ACU rating) of Kansas will become the next Majority Leader. The position of Whip held presently by Senator Alan Simpson (89% ACU rating) of Wyoming is not so certain with Senator Trent Lott (100% ACU rating) of Mississippi expected to pose a strong challenge. Representative Newt Gingrich (100% ACU rating) of Georgia will become Speaker of the House and Dick Armey (100% ACU rating) of Texas is expected to become the new House Majority Leader. Vying for Majority Whip in the House are Tom DeLay (100% ACU rating) of Texas, Bill McCollum (92% ACU rating) of Florida, and Bob Walker (96% ACU rating) of Pennsylvania.

**IN THE SENATE,** Jesse Helms (100% ACU rating) is slated to become the next Chairman of the Foreign Relations Committee. Paul Coverdell (100% ACU rating) of Georgia is expected to chair the Western Hemisphere Subcommittee. The venerable Strom Thurmond (89% ACU rating) from South Carolina will become Chairman of the Armed Services Committee. John Warner (74% ACU rating) of Virginia, ranking Republican on the Intelligence Committee, is slated to step down under rules limiting Senate Members to eight years giving way to Arlen Specter (30% ACU rating) of Pennsylvania. Mark Hatfield (23% ACU rating) of Oregon will chair the Senate Appropriations Committee, and Bob Packwood (33% ACU rating) is next in line to become Chairman of the Senate Finance Committee.

**ON THE HOUSE SIDE,** Ben Gilman (32% ACU rating) of New York is next in line to become Chairman of the Foreign Affairs Committee replacing Lee Hamilton (32% ACU rating) from Indiana. Gilman will face serious opposition from conservatives for the chairmanship of this important committee. Chris Smith (68% ACU rating) of New Jersey is expected to chair the Western Hemisphere Subcommittee on this side of the Capitol replacing the influential Bob Torricelli (16% ACU rating) of New Jersey who authored the 1992 Cuban Democracy Act. Incoming House Armed Services Committee Chairman will be Floyd Spence

(92% ACU rating) of South Carolina replacing Ron Dellums (0% ACU rating) of California. Spence is warning that U.S. defense preparedness may be in the first steps of decline due to White House spending cuts over the past two years. Larry Combest (100% ACU rating) from the Texas Panhandle, the ranking Republican on the House Intelligence Committee, is slated to step down under rules limiting House Members to six year terms. That could give the chairmanship to Bill Young (76% ACU rating) of Florida. Bob Livingston (95% ACU rating) of Louisiana although fourth in line to take over the reins of the Appropriations Committee is slated to do so. Bill Archer (100% ACU rating) of Texas will chair the powerful House Ways and Means Committee where Charles Rangel (0% ACU rating) Democrat of New York introduced and held hearings on the "Free Trade with Cuba Act" in the Ways and Means Subcommittees on Trade and Select Revenue Measures during the 103rd Congress to lift the U.S. trade embargo on Cuba. Phil Crane (100% ACU rating) of Illinois is next in line to serve as Chairman of the Trade Subcommittee. All of the above mentioned House Members supported the U.S. trade embargo on Castro's Cuba except for Rangel and Dellums.

#### **HELMS PLEDGES REVIEW OF ALL FOREIGN AID**

Prepared to contest President Clinton's world view, Senator Jesse Helms will become the new Chairman of the Foreign Relations Committee next year replacing Claiborne Pell (8% ACU rating) of Rhode Island. Pell advocated lifting the trade embargo on Cuba at a hearing on U.S. policy toward Cuba held on October 7th. At a press conference, Helms said the Committee "must become more aggressive and comprehensive in its oversight responsibilities...in ensuring [that] the Department of State and the agencies under the jurisdiction of the Foreign Relations Committee are carrying out their responsibilities as required by law." Promising a full review of: existing and proposed treaties, U.N. peacekeeping, as well as funding of the Agency for International Development (AID), the United Nations, NATO, the World Bank, etc., Helms pledged "to reduce foreign aid." Describing Cuba as a future "major foreign policy problem for the United States" Helms recommended a "plan of action in place for the time when Castro departs."

#### **GOVERNORSHIP RACES IMPACT ON IMMIGRATION**

In California, the ballot initiative on illegal immigration, Proposition 187, passed by a 3-to-2 ratio and propelled incumbent Republican Governor Pete Wilson to a re-election victory. Prop 187 bars illegal immigrants from receiving almost all public services at the expense of the California taxpayer.

In a close Florida governor's race, Democrat Lawton Chiles won re-election against a strong challenge from Jeb Bush the son of former President George Bush. In response to Chiles' plea to halt the flow of rafters fleeing Castro's Cuba to Florida earlier in the year, Clinton swiftly changed the course of longstanding U.S. Cuba policy by interdicting Cubans at sea and detaining them indefinitely at the U.S. Naval Base in Guantanamo Bay, Cuba. This action culminated in an unprecedented agreement whereby the United States pledged to accept legally at least 20,000 Cuban immigrants each year from Havana. According to a Washington Post

report, "this marks the first time the U.S. has guaranteed any nation that it would take a minimum number of immigrants even if the applicants did not qualify under standards set by Congress."

Illegal immigration and the issue of unfunded federal mandates will no doubt be debated during the First Session of the 104th Congress next year. It is expected that either ranking Republicans Bill McCollum (92% ACU rating) of Florida or Lamar Smith (88% ACU rating) of Texas will become Chairman of the House Judiciary Immigration Subcommittee.

### **CLINTON TO PUSH GATT/WTO VOTE IN 103RD CONGRESS**

Prior to the November 8th elections, President Clinton vowed to call the 103rd Congress into lame-duck session in order to vote on the passage of the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO). Clinton would like to attend the Americas Summit in Miami from December 9-11 with leaders of 33 Latin American nations having had GATT/WTO passed by Congress. While future Senate Majority Leader Dole and future House Speaker Gingrich both favor bringing GATT/WTO to a vote before the end of the year, Foreign Relations Committee Chairman-to-be Helms prefers to wait until after the newly elected 104th Congress is sworn into office in January.

At issue is the fear GATT/WTO will infringe on U.S. sovereignty. Under the Agreement, the U.S. will have one vote and no veto power within an international bureaucratic structure not unlike the U.N. General Assembly but with enforcement powers. The WTO's rulings would be binding where it is argued, among other actions affecting state laws, a successful challenge to the U.S. trade embargo on Cuba could take place giving the Castro regime another forum in which to attack America's foreign policy. Cuba is not presently a signatory of the 123 nations having signed the Agreement.

Under "fast track" rules that cover trade pacts, the White House Agreement cannot be amended. Fast track is scheduled to expire December 31st. The current legislative package permits the U.S. to quit the WTO giving a six months notice and U.S. membership is renewable every five years. Based on the value of a nation's trade, the U.S. will be required to pay about 20 percent of the GATT/WTO's operational budget without funding coming up again for a vote in Congress.

The House is expected to vote on GATT/WTO on November 29th and the Senate on December 1st. Senator Moynihan, outgoing Chairman of the Finance Committee, described it as an "epic vote" and likened it to past congressional battles over the League of Nations and the Marshall Plan.

### **CLINTON ADMINISTRATION CUBA POLICY**

Passage of the Cuban Democracy Act (CDA) was in large part influenced by presidential campaign politics 1992 style; Clinton supported it while Bush initially opposed it. In the end, the new law carried with it a defining provision permitting telecommunication services to be made available up to the gateway of Cuba. The policy option chosen by the Clinton Administration in 1993 was to permit U.S. telecommunications carriers to negotiate service

agreements with the Castro government allowing a 50/50 split in revenue and for the Cubans to actually receive their share of the revenues. Although split, of the funds accrued from past telephone services provided by AT&T, the portion due Cuba was placed by law in frozen accounts in U.S. banks. Today, those funds amount to \$80 million and remain frozen. Historically, such frozen foreign assets have been used to settle claims resulting from confiscated U.S. properties. Castro's revolutionary government confiscated U.S. owned properties valued at \$1.8 billion which remain unsettled. The CDA/telecommunications policy option chosen by the White House permits the invaluable flow of potentially tens of millions of U.S. dollars to the Cuban government that otherwise would be prohibited by the U.S. trade embargo and placed in frozen accounts.

### NOTABLE QUOTES

"If we're not willing to protect our borders or able, at the federal level, we shouldn't ask the states of Texas, Florida, California and others to pick up all the expense..." Senator Robert Dole, Majority Leader-to-be comments on illegal immigration. (CBS, "Face the Nation", Sunday, 11/13/94).

"The whole structure of AID, we're going to have to look at that. And at countries like Nicaragua, where leftist revolutionaries confiscated the private property of Americans, who still have received no compensation. All the countries in that category--and there are others--can kiss their U.S. aid goodbye." Adm. James W. "Bud" Nance staff director-to-be of the Senate Foreign Relations Committee. (TWP, "The Day After", 11/10/94, p. D2).

"Government-to-government socialism should be abolished." Representative Newt Gingrich Speaker of the House-to-be comments on foreign aid. (CNN, "Newsmaker Saturday", 11/12/94).

"Contrary to his public image as a vicious in-fighter, Dole has evolved during his 34 years on Capitol Hill into a professional legislator who exalts in the art of the deal." Robert D. Novak, syndicated national columnist. (TWP, "Rivals Within the GOP", 11/10/94, p. A25).

The Institute for U.S. Cuba Relations was established in 1993 as a non-partisan, tax-exempt, public policy research and education foundation whose purpose is to study U.S. Cuba relations past, present and future. In addition to its newsletter, the U.S. \* CUBA Policy Report, the Institute publishes under its imprint U.S. CUBA INSTITUTE PRESS The Fourth Floor: An Account of the Castro Communist Revolution by Earl E.T. Smith in hardcover, 262 pages, with maps and index at \$21.95; and, Covering Castro: Rise and Decline of Cuba's Communist Dictator by Jay Mallin Sr. in hardcover, 201 pages, with index at \$30.00. Discounts are available. The Institute is classified as a Section 501(c)(3) organization under the Internal Revenue Code of 1954, and is recognized as a publicly supported organization described in Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. Individuals, corporations, companies, associations, and foundations are eligible to support the work of the Institute for U.S. Cuba Relations through tax-deductible gifts. The Institute's mailing address is 1730 M Street, N.W., Suite 400, Washington, D.C. 20036, USA.

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**Ralph J. Galliano, Editor**

## **THE CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY ACT INTRODUCED IN THE 104TH CONGRESS**

**WASHINGTON** -- Republican Senator Jesse Helms held a press conference at the Capitol Building on February 9th to introduce his first piece of legislation as Chairman of the Foreign Relations Committee called "The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995." In his statement, Senator Helms reflected on the day following the 1994 elections when he discussed with the press his priorities as incoming Chairman. "High on my list of priorities was to do everything possible as Chairman to help bring freedom and democracy to Cuba. Fidel Castro's brutal and cruel communist dictatorship has persecuted the Cuban people for 36 years. He is the world's longest-reigning tyrant." Commenting on the embargo, Senator Helms pointed out, "There are some voices murmuring that the United States should lift the embargo and begin doing business with Castro. I categorically reject such suggestions, because for 36 years, both Republican and Democrat Presidents have maintained a consistent, bi-partisan policy of isolating Castro's dictatorship."

**LIBERTAD** received strong bipartisan support from two key Democrats, Senator Bob Graham of Florida and Congressman Bob Torricelli of New Jersey. Among the co-sponsors in the Senate are Majority Leader Bob Dole (R-KS), Paul Coverdell (R-GA) Chairman of the Western Hemisphere Subcommittee, Fritz Hollings (D-SC), Connie Mack (R-FL), Alfonse D'Amato (R-NY), Phil Gramm (R-TX), Jim Inhofe (R-OK) and Olympia Snowe (R-ME).

At the press conference, Senator Helms acknowledged Senator Coverdell as having worked very hard on LIBERTAD. Coverdell went on to refer to "America's commitment to the integrity of private property" when remarking on the proposed legislation's TITLE III which deals specifically with the protection of American property rights abroad.

Strongly endorsing the bipartisan nature of the legislation, Congressman Ben Gilman (R-NY) Chairman of the International Relations Committee stated, "We want to focus attention on Castro's international business partners by making them pay for trafficking in property stolen from U.S. citizens and companies. We want to discourage those countries that look to us for trade or aid from extending similar benefits to the Castro regime." Calling for human rights monitors, Gilman went on to describe LIBERTAD as "designed to hasten the end of the Castro regime and to help the Cuban people rebuild their own country."

Congressman Torricelli characterized LIBERTAD as "the next logical step to follow the Cuban Democracy Act of 1992" which he authored. Torricelli told the gathered press, "We can pass this bill and the President will sign it." In view of the Republican controlled Congress and the strong bipartisan support exhibited at the press conference, LIBERTAD can be assured of swift passage following hearings expected over the next few months.

## **"LIBERTAD" HIGHLIGHTS AND ANALYSIS**

The tightening of the 33 year-old "Embargo on Trade With Cuba" is encompassed in LIBERTAD'S three titles whose purposes are: (1) to strengthen international sanctions against the Castro regime; (2) further encourage the holding of free and fair elections with a framework for U.S. support to a transition government in Cuba; and, (3) the protection of the rights of U.S. persons who own claims to confiscated property.

### ***TITLE I - Strengthening International Sanctions Against The Castro Government.***

Made up of nine sections, this title in part urges the President to seek an international embargo against the Castro dictatorship. It opposes admission of Cuba as a member of any international financial institution whereby the U.S. would withhold payment to the organization in an amount equal to any loan made to Cuba. This specific provision is considered an especially powerful section of the title since the U.S. (read U.S. taxpayer) is the largest contributor to international financial institutions such as the IMF and the World Bank. Another provision in this title expresses "strong disapproval" by Congress for the \$200 million annual credits by Russia to Cuba in support of the intelligence facility at Lourdes, Cuba used to spy on the United States. This title requires the President to withhold assistance to any state of the former Soviet Union in an equal amount. There is also a provision that instructs the USIA Director to implement the conversion of TV Marti to UHF broadcasting intended to make jamming more difficult and thereby reach more viewers on the communist controlled island. Other provisions of this title require the President to submit an annual report to Congress on third country trade with Cuba and to prohibit the importation of sugar from countries such as Canada that historically import sugar from Cuba. This could lead to the reallocation of U.S. sugar quotas.

***TITLE II - Support For A Free And Independent Cuba.*** This title consists of six sections including provisions authorizing support for Cuba following free and fair elections and a transition to "representative democracy and a free market economy." Although, authorization for such support cannot commence until the President determines that a transition to a democratically elected government has "taken appropriate steps" to return or compensate for property taken from U.S. citizens and entities on or after January 1, 1959. This title also provides for the restoration of diplomatic relations and a lifting of the economic embargo.

***TITLE III - Protection Of American Property Rights Abroad.*** This title contains three sections which include the denial of visas to aliens and related persons trafficking in confiscated properties. Specific provisions waive sovereign immunity whereby property owners having claims certified by the Foreign Claims Settlement Commission may be eligible to receive: money damages in an amount which is the greater of either the value of their certified claims or fair market value; interest at the commercially recognized rate (as opposed to simple interest) and, treble damages. Civil actions shall be brought under the jurisdiction of the U.S. District Courts. Additional Claims may be brought by U.S. citizens "whether or not the United States national qualified as a United States national at the time of the Cuban government action." This provision opens a second phase of the Cuba claims process.

Appropriate Congressional committees for consideration of LIBERTAD include in the House, the Committee on International Relations and the Committee on Appropriations and, in the Senate, the Committee on Foreign Relations and the Committee on Appropriations.



## **"LIBERTAD" BECOMES OMNIBUS BILL**

"The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995" provides an umbrella for key bills reintroduced by Congressmen Lincoln Diaz-Balart (R-FL) and Robert Menendez (D-NJ) in the new First Session of the 104th Congress.

Rep. Diaz-Balart's reintroduction of four bills from the previous 103rd Congress provide for the: (1) withholding by the U.S. of contributions to international financial institutions that also assist Cuba; (2) opposition to Cuban membership in international financial institutions; (3) the denial of visas to aliens involved with the foreign expropriation of property of U.S. persons; and, (4) prohibition of the importation into the U.S. of sugar from countries that import sugar from Cuba. This sugar prohibition may impact heavily on U.S. NAFTA partners Canada and Mexico both long-time supporters of the Castro regime.

Rep. Robert Menendez's reintroduction of his "Free and Independent Cuba Assistance Act" appears in modified form as contained in TITLE II of LIBERTAD.

## **"LIBERTAD" INTRODUCED IN THE HOUSE**

LIBERTAD'S companion bill, introduced in the House by Congressman Dan Burton (R-IN) Chairman of the Western Hemisphere Subcommittee, is cosponsored by Reps. Diaz-Balart (R-FL), Ros-Lehtinen (R-FL), Torricelli (D-NJ), Menendez (D-NJ), DeLay (R-TX), Solomon (R-NY), Deutsch (D-FL), Rohrabacher (R-CA) and Funderburk (R-NC) among others.

Significant differences between the Senate and House versions of LIBERTAD arise primarily within TITLE II as reintroduced by Rep. Menendez. In the Senate version (S.381), TITLE II reads "Support For a Free and Independent Cuba." While in the House version (H.R.927), TITLE II reads "Assistance to a Free and Independent Cuba." The Senate version emphasizes "support" of a free and independent post-Castro Cuba. Whereas, in the House version, the emphasis is placed on direct and indirect U.S. "assistance" to both a transition and a freely elected post-Castro government.

Specifically, the major differences in the House version of LIBERTAD call for: (1) the negotiated return of the United States Naval Base at Guantanamo Bay; (2) the extension of NAFTA to Cuba; (3) military adjustment assistance; (4) the designation of a United States-Cuba council; and, (5) assistance to a transition government.

Of particular significance is the combined reference in the Senate version of TITLE II of "representative democracy and a free market economy" in Cuba. The word "free" is omitted from the same phrase contained in the House version allowing for the high probability of assistance being given to a post-Castro Cuba that is seeking to create a "socialist" market economy along the lines of the China and Vietnam economic models. Cuba is closely examining such models at the present time. The omission in the Senate version of the "military adjustment assistance" provision becomes especially important given Castro's move in recent years toward the militarization of the civilian sector of the Cuban economy.

## CLINTON ADMINISTRATION CUBA POLICY

The Cuban Democracy Act (CDA) is clear as to the ineligibility of countries assisting Cuba to receive U.S. assistance and to apply sanctions to any country that provides assistance to Cuba. Mexico's assistance to Cuba pre-dates NAFTA and continues to this day. Worth hundreds of million of dollars, the Mexican government has brokered joint venture deals involving confiscated U.S. property between Mexican companies and state owned Cuban companies. In the process, Cuba has managed to repay its \$310 million debt to Mexico through financial arrangements called debt equity swaps. The policy chosen by the White House permits Mexico to receive U.S. assistance so as to cushion the collapse of the Mexican peso. LIBERTAD addresses this issue directly by urging "the President to take immediate steps to apply the sanctions described in [the CDA] against countries assisting Cuba."

### NOTABLE QUOTES

"By unleashing the wave of refugees, Fidel Castro was seeking to obtain the No. 1 foreign policy objective the Castro Government has which is to lift the U.S. embargo against it." Representative Robert Menendez responds to Q&A. (NYT, Sunday, "A Jersey Voice in International Affairs," 12/04/94, p.NJ3.)

"We hope that the next time we have one of these summits, and the people of all the Western Hemisphere send their leaders here, a leader of a democratic Cuba will take its place at the table of nations." President Clinton speaks before leaders of 34 nations at the Summit of the Americas in Miami. (TWP, "The Americas Open 3-Day Trade Summit," 12/10/94, p.A6.)

"The Cuban people are industrious and innovative. Where they live and work in freedom, they have prospered. Our hope is that this bill will hasten an end to the brutal Castro dictatorship and make Cuba free and prosperous. Libertad Para Cuba!" Press statement by Senator Jesse Helms. (U.S. Capitol Building press conference, "Helms Introduces 'Cuban Liberty And Democratic Solidarity Act.'" 2/09/95.)

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# U.S. \* CUBA Policy Report

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Ralph J. Galliano, Editor

## OPPOSITION TO THE CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY ACT

WASHINGTON -- Organized opposition to "The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995" has formed rapidly since its introduction on February 9th by Senator Helms, chairman of the Foreign Relations Committee, and on February 14th by Representative Burton, chairman of the Subcommittee on Western Hemisphere Affairs. While ardent opponents of the embargo agree LIBERTAD has a good chance of passage, staunch opposition to LIBERTAD has emerged on the academic, legislative, and diplomatic fronts.

ACADEMIC - Among noted academics, Wayne S. Smith, former chief of the U.S. Interest Section in Havana from 1979 to 1982 and visiting professor at Johns Hopkins SAIS in Washington, D.C., leads the opposition by: actively organizing telephone and fax campaigns directed at bolstering "the White House by letting the President's aids at the National Security Council (Morton Halperin, Manuel Rocha, Richard Feinberg or Anthony Lake) know that their Commander in Chief has public support for moving toward a sensible Cuba policy"; making speeches; preparing position papers and newspaper opinion-editorials; and, holding meetings and briefings featuring vociferous opponents to LIBERTAD. One such meeting held on March 21st, a "Cuba Roundtable," was organized by Smith at the headquarters of the American Civil Liberties Union (ACLU) here in Washington on behalf of the Center for International Policy where Smith is a senior fellow. Concern at the meeting focused on several specific provisions of LIBERTAD especially Title III, Section 303, *Determination of Claims to Confiscated Property*, permitting the adjudication of property claims of Cuban nationals who since have become American citizens. One "Roundtable" participant summarily stated, "This law will try to redistribute wealth in Cuba as prior to 1959. The message of the bill is, 'Do you want to go back to how things were before the Revolution?'" Gillian Gunn, Director of the Georgetown University Cuba Project in Washington, D.C., testified on February 23rd before the House Western Hemisphere Subcommittee that both the House and Senate versions of LIBERTAD would "damage U.S. interests regarding Cuba whether they contribute to Castro's overthrow or not." Critical of the legislation, Gunn asserted "the bills will hurt [U.S.] relations with important allies..." and trigger Castro's 'scapegoat strategy' blaming "Cuba's economic woes on U.S. policy." Jorge Dominguez, considered a top Cuban-American scholar from Harvard University, addressed a group of former Canadian ambassadors to Cuba while in Ottawa shortly following introduction of LIBERTAD. He was reported by the Montreal Gazette to have described LIBERTAD as the "Canada-Bashing Act" of 1995 because it was "so contrary to traditional bilateral interests in the hemisphere." Dominguez repeated his contentions at a briefing on behalf of the Inter-American Dialogue's Task Force on Cuba held on March 23rd in the Rayburn House Office Building.

**LEGISLATIVE** - In Congress, the opposition to LIBERTAD is being led by Rep. Charles Rangel (D-NY) who has reintroduced his "Free Trade with Cuba Act" calling for a unilateral lifting of the U.S. embargo. Rangel, second ranking Democrat on the powerful House Ways and Means Committee, one of the several Congressional Committees to which LIBERTAD has been referred, intends to do everything possible to slow down the fast-paced bill in order to help organize and to build even stronger opposition. Rangel will try to call a hearing on LIBERTAD, as he was able to do for his own bill last year when he served in the majority. He is unlikely to succeed in his maneuver under Ways and Means Chairman Bill Archer (R-TX). Rangel's strategy is either to stop the bill completely or to "take the teeth" out of LIBERTAD which is a reference to the claims/visas/sugar sanctions. He wants the White House to threaten a veto and to carry it out if these changes aren't made. In the Senate, opposition is expected to be led by Chris Dodd (D-CT) former chairman of the Subcommittee on Western Hemisphere Affairs and currently general chairman of the Democratic National Committee.

**DIPLOMATIC** - Opposition among America's closest trading partners and allies materialized in less than a month of LIBERTAD's introduction. The issue has been framed, particularly by British government officials here in Washington, in terms of economic rivalry and competition. There is suspicion that use of the financing, visa and litigation sanctions (against foreign companies trafficking in confiscated properties in Cuba and doing business in the United States) by certified American claimants will be used to gain economic advantage over British and other foreign companies. Title I, Section 103, *Prohibition Against Indirect Financing of Cuba*, prohibits "any loan, credit or other financing to a foreign person that traffics in any property confiscated by the Cuban government the claim of which is owned by a United States person." Title III, Section 301, *Exclusion from the United States of Aliens who have Confiscated Property Claimed by United States Persons*, denies entry and excludes any alien who: has confiscated or has directed or overseen the confiscation of property the claim to which is owned by a U.S. person; traffics in; is a corporate officer, principal or shareholder of an entity; and, is a spouse or dependent of such a person. Section 302, *Liability for Trafficking in Confiscated Property Claimed by United States Persons*, provides a civil right of action in federal district court. A March 22nd letter from officials of the European Union (EU) to Speaker of the House Newt Gingrich states, "these provisions offer the possibility to U.S. firms for legal harassment against foreign competitors that choose to do business in Cuba." A particular sore point with NAFTA partner Canada as well as the EU is Title I, Section 109 of the Senate version of LIBERTAD, *Importation Sanction Against Certain Cuban Trading Partners*, (Section 108 of the House version) which "would have an immediate impact on the trade interests of the [EU] by prohibiting the entry of its sugars, syrups and molasses into the U.S., unless the former certifies that it will not import such products from Cuba." The U.S. trade embargo prohibits the importation of identifiable Cuban made products into the United States. In concert with other interested parties, the Canadian government has launched and is appearing to take the lead in an intense lobbying campaign against the tightening of U.S. sanctions as specified in LIBERTAD. Additional diplomatic pressure is building on the Clinton Administration from Cuba directly as reported by The Washington Post in an April 12th article headlined, "Cuba Warns of Refugees If Embargo is Tightened."

The clear message to foreign companies coming from Senator Helms' Foreign Relations Committee is that LIBERTAD is about "choices." According to a key Committee staff member, "They can trade in Cuba or trade in the United States. If they exploit American confiscated property, then there are consequences."

**LIBERTAD IN HOUSE SUBCOMMITTEE MARKUP**

On March 22nd Western Hemisphere Subcommittee Chairman Dan Burton (R-IN) opened the markup session to LIBERTAD's companion bill in the House, H.R.927, with an amendment in the nature of a substitute. Other amendments by Reps. Torricelli (D-NJ) and Menendez (D-NJ) were offered and passed. Rep. Torricelli called for establishing independent trade unions as set forth in conventions 87 and 98 of the International Labor Organization. Rep. Menendez would impose a fine of not more than \$50,000 on unlicensed or unauthorized activities excluded under Section 1710(c) of the Cuban Democracy Act of 1992.

**BURTON SUBSTITUTE** - Among the changes contained in the Burton substitute are two new additions to Title I, *Seeking Sanctions Against the Castro Government*. Added were Sections 105 and 110, *U.S. Opposition to Ending the Suspension of the OAS* and, *Authorization of Support for Democratic and Human Rights Groups and International Observers*, respectively. Section 105 to H.R.927 now mirrors section 105 contained in S.381 its Senate companion. In Title II, Section 201(16), pursuing NAFTA was changed to pursuing the extension of "free trade arrangements" and Section 202(b)(2)(A)(iii) reinstating family remittances and travel without restrictions only when a transition government is in power in Cuba was also added. The value to the Cuban economy of family remittances and travel has been estimated between \$150 to \$400 million annually. Section 206(4), *Requirements for a Transition Government*, has been changed by adding the ceasing of any interference with Radio and TV Marti broadcasts. Section 206(5)(E)(i) requires the organizing of free and fair elections for a new government "in a timely manner with a period not to exceed 2 years." Section 207(7) now specifies that a democratically elected government demonstrate "progress in returning to U.S. citizens property taken by the Government of Cuba" or to provide "full compensation in accordance with international law standards and practice." Title III, *Protection of American Property Rights Abroad*, reflects several significant changes. Among the civil remedies contained within Section 302, *Liability for Trafficking in Property Confiscated from U.S. Nationals*, are added "reasonable attorney's fees" and the sufficiency of the "service of a summons or filing a waiver of service with respect to claims" to establish jurisdiction "if made in any district where a defendant resides or may be found." Cuban nationals who have become American citizens may under newly altered Section 303(a)(2) and newly added Section 303(a)(3) show evidence of ownership in any one of three ways: (1) through The Foreign Claims Settlement Commission process; (2) if their claims are determined to be valid by a court or administrative agency of the country in which the property was confiscated; or, (3) by a court or administrative agency in the United States. Section 304, *Amendment of the Internal Revenue Code of 1986*, makes an exception "in cases of recovery of Cuban expropriation loss" with respect to the adjustment of prior tax benefits.

The Burton substitute and amendments were passed by subcommittee. While expressing "certain reservations," no amendments were offered at markup by the Clinton Administration. The International Relations Committee under the chairmanship of Rep. Ben Gilman (R-NY) is expected to take up H.R.927 and report it out to the full House following the April recess sometime in May.

### **SENATOR MACK WRITES TO BRITISH PM MAJOR**

In an April 3rd letter written to British Prime Minister John Major to coincide with the Prime Minister's visit to Washington, Senator Connie Mack (R-FL) raised the issue of Cuba over which the U.S. and the United Kingdom differ. Citing the 21 U.S. Senators who have joined Senator Helms in cosponsoring LIBERTAD which seeks the internationalization of the Cuba embargo and penalties against those who traffic in illegally confiscated American properties, Sen. Mack stated that it was "not our intention" to alienate our allies. "We want our allies throughout the world to understand that the U.S. attaches the greatest importance to isolating the Castro regime and to liberating the Cuban people from their decades long nightmare of oppression." Mack enclosed a list of more than 1,000 Cuban political prisoners provided by Freedom House.

The United Kingdom imported \$12.9 million worth of Cuban goods in 1993 the bulk of which was fruit, tobacco and molasses. UK exports to Cuba totaled \$22.5 million during the same period. The bulk of Cuba's imports from the UK consist of farm and industrial chemicals, machinery and foodstuffs.

### **REPEAL OF 1966 CUBAN ADJUSTMENT ACT SOUGHT**

Senate Majority Leader Robert Dole (R-KS) has introduced the "Immigration Control and Financial Responsibility Act of 1995" (ICFRA) on behalf of Senator Al Simpson (R-WY) the chairman of the Judiciary Subcommittee on Immigration. ICFRA seeks repeal of the Cuban Adjustment Act of 1966 (CAA) as amended. In his January 25th statement, Simpson who has attempted to repeal the CAA in past congresses said, "The legislation would create a streamlined procedure for excluding aliens who...are apprehended at sea" and "significantly reduce the abuse of several provisions of current immigration policy by reforming asylum procedures and modifying the Attorney General's parole authority."

Congress passed the CAA in an effort to adjust the application process for permanent residency as a response to the tens of thousands of Cuban refugees who had fled Castro's communist revolution to seek freedom in the United States. Unable to return to Cuba, the "adjustment" relieved the burden on both the Cuban refugee and the INS. In the interim, neither has the primary purpose of the CAA nor the concomitant flow of refugees abated. U.S. policy at the time was specified as "opposition to the Communist regime in Cuba" referring to "this special help to Cuban refugees...for purely humanitarian and practical reasons." The CAA found its precedent in similar Hungarian refugee legislation following the 1956 uprising.

Appearing on March 14th before Simpson's Judiciary Subcommittee on Immigration, Florida Governor Lawton Chiles described the Clinton Administration's policy of interdicting rafters and detaining them on the U.S. Naval Base in Guantanamo as having "changed the course of roughly three decades of U.S. immigration policy. Cuban Nationals would no longer receive preferential treatment and be granted unrestricted entry into the United States. Instead, the U.N. concept of safe havens was adopted..." According to Rep. Burton, chairman of the Western Hemisphere Subcommittee, who also held a hearing (LIBERTAD) on March 14th, these safe havens are costing the American taxpayer \$1 million per day. Rep. Chris Smith (R-NJ) in his

comments at the Burton hearing referred to the Clinton Administration's September 9th immigration accord with Cuba to stem the tide of rafters as "a terrible mistake." Smith characterized the agreement as a "victory for the Castro government" saying, "The U.S. can't be anti-Castro by being anti-refugee." Smith opposes repeal of the Cuban Adjustment Act of 1966.

### CLINTON ADMINISTRATION CUBA POLICY

Control over the direction of U.S. Cuba policy has taken a decisive turn toward normalization. Michael Skol, Principal Deputy Assistant Secretary of State for Inter-American Affairs has been caught in a bitter power struggle being waged between the White House National Security Council (NSC) and the State Department's Bureau of Inter-American Affairs. Skol, who has consistently promoted a tough U.S. policy stance against Cuba, has warned of State Department investigations for possible criminal violations of the U.S. embargo against advocates for closer ties frequently visiting Cuba. A 30-year foreign service veteran and former U.S. ambassador to Venezuela, Skol has been a strong advocate for U.S. private property rights in Cuba.

Cause for concern first surfaced on February 23rd when Skol failed to appear before the House Western Hemisphere Subcommittee hearing on LIBERTAD as the Administration's scheduled witness. Subcommittee Chairman Burton expressed his disappointment at the onset of the hearing stating, "Yesterday we were informed by Legislative Affairs that not only was Ambassador Skol unavailable due to an unidentified 'conflict', but that the Administration was not even going to send a replacement." At the March 14th Western Hemisphere Subcommittee hearing on LIBERTAD, Rep. Robert Menendez (D-NJ) pressed Assistant Secretary of State for Inter-American Affairs, Alexander Watson, to describe the inter-agency testimony approval process and queried, "Who makes Cuba policy in the Administration?" This line of questioning followed a week-long flurry of national newspaper reports and editorials including a front-page Washington Post report (3/7/95) proclaiming, "Clinton May Ease Sanctions on Cuba." Congressional fire was returned when Senator Helms threatened an immediate floor vote on LIBERTAD; Senators Dole, Helms and Mack wrote a letter to the President insisting the Administration support LIBERTAD; and, Rep. Menendez in a letter to President Clinton demanded that Morton Halperin, the Administration's point man for Cuba be removed as Special Assistant and Senior Director for Democracy at the NSC.

NSC'S Anthony Lake, Assistant to the President for National Security Affairs, among those in favor of normalization of relations with Cuba, has won an important victory over those at the State Department who favor LIBERTAD's strengthening of the embargo. The NSC appears to have effectively silenced Skol since he has recused himself from all Cuba-related matters in light of employment related discussions with a telecommunications company doing business with Cuba (as permitted under The Cuban Democracy Act of 1992). A likely replacement to fill Skol's position is the NSC's Richard Feinberg, Special Assistant to the President and Senior Director Inter-American Affairs.



**NOTABLE QUOTES**

"Thirty years ago, in order to provide a legal status for the hundreds of thousands of Cubans who fled Cuba after Castro's Communist intentions became clear, Congress passed the Cuban Adjustment Act. This allowed those Cubans who had fled the island in the 1960's to adjust to permanent resident status...The persons for whom this extraordinary legislation was enacted have long since regularized their status in the United States. Yet, the Cuban Adjustment Act remains on the books as an anachronism that is both unfair and unnecessary...This special treatment is no longer justifiable and is not right. This bill will repeal the Cuban Adjustment Act." Senator Al Simpson of Wyoming is the chairman of the Judiciary Subcommittee on Immigration. (Introductory Statement, S.269, 1/24/95, p.2).

"The reality is, when the going gets tough in Cuba the tough go rafting. They don't take up arms against the Government. So the question we really have to ask is, 'Is this [embargo] going to bring about the change we've been saying for 35 years that it would?' It hasn't and I don't think it will." Gary Jarmin, Chairman of the U.S. Cuba Foundation. (Speech at the annual Conservative Political Action Conference, Washington, D.C., Friday, 2/10/95).

"The embargo's very legality is open to question. The U.S. just ratified the General Agreement on Tariffs and Trade and became part of the World Trade Organization. Cuba is also a full member. Thus, the embargo is impermissible." Wayne S. Smith (LA Times, "Washington's Undying Obsession With Castro," 3/19/95).

"The lesson of Mexico, like that of Argentina and other places, is that free-market reform does not, in and of itself, guarantee democracy, human rights or transparency in government." Martin Edwin Anderson is a former professional staff member of the Senate Foreign Relations Committee. (TWT, "Ernesto Zedillo's Fight," 3/24/95, p. A21).

"We ... certainly cannot accept that our Canadian firms legitimately doing business in other countries be restricted by foreign legislation." Andre Ouellet is Canadian Foreign Affairs Minister. (MH - In the Americas, "Canada objects to idea of tighter restrictions," 3/24/95, p.14A).

"Supporters of democracy and human rights in Cuba are unpersuaded that trade with the Castro regime will lead to economic liberalization....The influx of hard currency, and multilateral development bank loans that would follow an end to the embargo, would substitute for, not lead to, reform. Investments and tourism from Europe, Canada and Mexico already provide critical support for the regime. This financial support does not reach the Cuban people. Instead, the regime uses it to continue military, intelligence and nuclear power projects." (Letter from Senator Connie Mack to British Prime Minister John Major, 4/3/95, p. 2).

The Institute for U.S. Cuba Relations was established in 1993 as a non-partisan, tax-exempt, public policy research and education foundation whose purpose is to study U.S. Cuba relations past, present and future. In addition to its newsletter, the U.S. \* CUBA Policy Report, the Institute publishes under its imprint U.S. CUBA INSTITUTE PRESS. The Institute is classified as a Section 501(c)(3) organization under the Internal Revenue Code of 1954, and is recognized as a publicly supported organization described in Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. Individuals, corporations, companies, associations, and foundations are eligible to support the work of the Institute for U.S. Cuba Relations through tax-deductible gifts. The Institute's mailing address is: 1730 M Street, N.W., Suite 400, Washington, D.C. 20036, USA. Telephone: 202/675-6344.

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# **U.S. \* CUBA Policy Report**

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Washington, D.C., USA**

**Ralph J. Galliano, Editor**

## **CHAIRMAN BURTON HOLDS HEARINGS ON PRESIDENT CLINTON'S REVERSAL OF U.S. CUBA IMMIGRATION POLICY**

**WASHINGTON --** Rep. Dan Burton (R-IN), chairman of the House Western Hemisphere Subcommittee, held a day-long hearing on "The Clinton Administration's Reversal of U.S. Immigration Policy Toward Cuba" which had been announced on May 2nd at a White House press briefing by Attorney General Janet Reno. The hearing followed a May 11th letter to the President requesting that he "suspend the implementation of the new policy towards Cuba until Congress is adequately consulted, and until the implications of the policy can be adequately addressed."

The May 18th House hearing featured three panels - one consisting of administration officials and two other panels made up of Cuba experts including Jorge Mas Canosa, chairman of the Cuban American National Foundation, Otto J. Reich, former U.S. ambassador to Venezuela during the Reagan administration and currently president of the U.S. Cuba Business Council, and Elliot Abrams, Assistant Secretary of State for Inter-American Affairs under President Reagan. In an unusual but not unexpected move, Burton swore in all administration witnesses who later testified under oath. He promptly and emphatically swept aside all other administration witnesses including INS Commissioner Doris Meissner, U.S. Coast Guard Admiral Norman T. Saunders and U.S. Marine General John Sheehan, Commander-in-Chief of the U.S. Atlantic Command in charge of the Naval Base at Guantanamo Bay, Cuba, to focus on one witness, Peter Tarnoff, Undersecretary of State for Political Affairs. Tarnoff was responsible for conducting and concluding the unprecedented immigration agreement with the Castro regime that reversed over three decades of U.S. Cuba policy.

**SECRET NEGOTIATIONS** - Described as "wrong" and "belying public trust," Rep. Robert Menendez's (D-NJ) opening statement criticized Clinton administration policy as "moving in the wrong direction when anti-immigrant sentiments determine U.S. Cuba policy." It is a "fundamental transformation of leadership" that is required in Cuba, declared Menendez, as he characterized what he believed to be the real problem in Cuba today. Responding to direct questioning from Subcommittee Chairman Burton as to who was involved in the decision making process and the conversations leading up to the immigration accord announced on May 2nd, Tarnoff was forthcoming and revealed a coterie of administration officials whose orders came directly from President Clinton. Tarnoff testified under oath that the secret meetings for one hour in New York on April 17th and for three hours in Toronto on April 27th took place only between himself and Ricardo Alarcon, president of Cuba's National Assembly. Not since his negotiations to end the Mariel boatlift in 1980 under President Carter have such high-level meetings taken place between the United States and Cuba. Tarnoff revealed that President Clinton was directly involved and fully informed of the process having authorized the negotiations through an interlocutor, Sandy Berger, Deputy Assistant to the President for National Security Affairs. Also surreptitiously aware of the secret negotiations with Cuba were:

Tarnoff's chief-of-staff David Goldwyn, Secretary of State Warren Christopher, Deputy Secretary of State Strobe Talbott, Assistant Secretary of State for Inter-American Affairs Alexander Watson, Attorney General Janet Reno, Assistant to the President for National Security Affairs Anthony Lake and Florida Governor Lawton Chiles.

With regard to the secret negotiations, Elliot Abrams testified that "only the experts were excluded." Watson, an expert on Latin America, although informed, was excluded from the negotiation process. Abrams portrayed it not as a "negotiation" but as "a unilateral concession" to the Castro regime. Referring to Tarnoff, he described him as a "non-Cuba, non-Latin America" expert who negotiated an agreement "driven by ideology." Abrams ruefully pointed out that the Clinton administration's policy shift undercuts a 15 year effort aimed at convincing foreign governments to change their policy against Cuba.

Secret talks took place parallel to public talks periodically scheduled to monitor U.S.-Cuba immigration matters. Office of Cuban Affairs Director, Dennis Hays, considered a hardliner on Cuba and whose job it became to publicly monitor last year's September 9th agreement, was purposely not informed of the secret talks. A career foreign service officer, Hays subsequently asked to be reassigned to another position at the State Department effectively resigning as director overseeing Cuban affairs. When pressed by Rep. Ileana Ros-Lehtinen (R-FL) as to "who initiated the idea of secret talks parallel to public talks," Tarnoff responded by saying he "couldn't trace exactly where that idea came from." Secret talks took place parallel to public talks scheduled to monitor last year's September 9th immigration agreement negotiated by the Clinton administration to halt the Cuban rafter crisis unleashed by Castro after riots broke out in Havana on August 5th. Rep. Ros-Lehtinen presented Tarnoff with a list of 123 questions to be answered in writing and under oath.

Behind the secret and unpublicized negotiations, according to Tarnoff, was an attempt "to avoid a panic of new migrants" that he described as "a potential threat to our borders and thus to our national security." In his initial exchange with Tarnoff, Menendez, aghast at his characterization of Cuban refugees as a national security threat, cited the one million Mexicans crossing the border annually into the United States who are not considered a national security threat. Menendez found Tarnoff's description of thirty thousand Cuban rafters risking their lives across the Florida Straits to escape Fidel Castro's communist tyranny as a national security threat, incomprehensible by comparison.

In defense of the May 2nd agreement with Cuba, Tarnoff indicated in his prepared statement that "the President directed...we build on the September 1994 agreement to further regularize U.S.-Cuban migration relations." Fearing a "new net outflow of Cuban migrants, which might have been stimulated by further economic dislocation in Cuba," the administration still considered it "a potential threat" despite the perceived success of the September 9th accord. The May 2nd agreement has two principal features: (1) parole into the United States of approximately 15,000 refugees from Guantanamo; and, (2) forced repatriation of "Cuban migrants rescued at sea." The agreement is viewed as a betrayal by the vast majority of Cuban-Americans because of the repatriation feature and the fact Cuban refugee status has been changed to that of illegal immigrant status for the first time since the advent of the Castro communist revolution on January 1, 1959. The recent agreement has been highly criticized by Democrats and Republicans alike although one prominent Florida politician, Sen. Bob Graham (D-FL) described it as "a workable solution to what has been an untenable situation at the U.N Naval base at Guantanamo." In the meantime, South Florida is expected to receive substantial federal funds promised by President Clinton to help it to cope with the ongoing resettlement process.

At the hearing, Burton demanded that insofar as any future change in U.S. policy toward Cuba was concerned, the administration should contact the Western Hemisphere Subcommittee "before the fact." Tarnoff's answers to Ros-Lehtinen's 123 questions are eagerly awaited.

## PRESIDENT NAMES SPECIAL ADVISER

In response to fierce opposition and discontent over the secret immigration agreement with Cuba and the forced repatriation of Cuban refugees, President Clinton created a new position where Morton Halperin from NSC and Peter Tarnoff from State report directly to Richard Nuccio regarding Cuba matters. Nuccio, to coordinate overall U.S. Cuba policy for the administration, was named Special Adviser to the President and the Secretary of State for Cuba. In charge of the interagency task force on Cuba, Nuccio reports to the President through Secretary of State Warren Christopher. Although Nuccio and Goldwyn, Tarnoff's chief-of-staff, traveled together to Cuba at the time of the negotiations, Tarnoff testified under oath at the May 18th House hearing that Nuccio was not informed of the secret negotiations although Goldwyn was well aware of the ongoing negotiation process conducted by his boss.

Nuccio, who played a key role in the drafting of the Cuban Democracy Act (CDA) of 1992, worked closely with Rep. Torricelli (D-NJ), author of the bill which has become the centerpiece of Clinton's public policy posture toward Cuba and the basis for the President's staunch opposition to the Cuban Liberty and Democratic Solidarity Act of 1995 introduced by Helms in the Senate and Burton in the House. Prior to his work on the CDA, Nuccio served as a senior associate to the Inter-American Dialogue, a think tank dealing with Latin America.

## SHORT TAKES

**CONGRESSMAN PROPOSES U.N. MONITORS ON U.S.COAST GUARD SHIPS**--Rep. Peter Deutsch (D-FL) questioning Doris Meissner, Commissioner of the Immigration and Naturalization Service, about the political asylum procedures aboard Coast Guard vessels repatriating Cuban refugees, proposed an independent confirmation process consisting of U.N. monitors aboard U.S. ships "to give this [process] more legitimacy." Commissioner Meissner will be looking into the Congressman's request. (House Western Hemisphere Subcommittee Hearing, 5/18/95). **RIGHT MEETS LEFT**--The U.S. Cuba Foundation headed by conservative activist Gary Jarmin along with the Cuban Committee for Democracy (CCD) whose directors include Maria Cristina Herrera, Marifeli Perez-Stable and former Florida Democratic Party Chairman Alfredo Duran, joined forces for a briefing on U.S. policy toward Cuba called "Cuba Policy or Cuba Folly?" The briefing purported to give the "facts about the Helms-Burton legislation to tighten the embargo against Cuba." Both organizations, however, seek a unilateral lifting of the embargo. CCD promotes dialogue with the Castro regime and a peaceful transition to democracy. CCD founder and activist Democrat, Magda Monteil Davis, notorious for the infamous video-taped Castro kiss in Havana at last year's exile conference, opposed Congresswoman Ileana Ross-Lehtinen in 1992 losing badly. Director Perez-Stable stated at a CCD Symposium held in Washington in December 1993 that, "It is important for the future of Cuban Democracy that there be a Cuban Communist Party." (CCD Symposium, 12/3/93; Briefing, Dirksen Senate Office Building, 5/19/95). **HAVANA PLANS CONFERENCE ON NORMALIZATION**--Cuban Foreign Minister Roberto Robaina announced on Monday, May 15th the second annual conference between Cuban government officials and Cuban exiles. The conference called, "The Nation and Emigration" will seek to normalize relations with Cubans abroad. Scheduled for November 3-6 in Havana, attendance is by invitation only. (MH, 5/16/95, p.5A). **RUSSIANS AND EUROPEANS MAKE DEAL WITH CUBA TO COMPLETE CIENFUEGOS NUCLEAR POWER PLANT**--According to Georgy Kaurov of

the Russian Atomic Energy Ministry, a joint-stock company comprised of British, Brazilian, German, Italian and Russian firms has agreed to finish construction on the Juragua I unit now 70 percent complete which is expected to save Cuba up to 1 million metric tons of crude oil a year. The Juragua II unit is said to be 20 to 30 percent complete. Financing will be provided by the joint-stock members with \$800 million said to be required to finish the Juragua I plant. A Russian made reactor and turbine are in Cuba already. Castro announced a halt in construction of the Soviet built units in September 1992 due to Cuba's inability to meet rising costs. Since that time, Russia has provided \$30 million in credits to Cuba to maintain the project. (Interfax News Agency, 5/5/95; Russian Reform Monitor, AFPC, J. Michael Waller, 5/22/95).

### NOTABLE QUOTES

"Castro promotes and encourages the so-called refugee crisis. And he does this when he perceives a weak U.S. response. Don't you ever wonder why there were no refugee crises during the Reagan and Bush administrations? Weren't conditions in Cuba much worse in the late 1980s and early '90s than during the Mariel boatlift of 1980?...let's keep focused on the real issue: a tyrant 90 miles from our shores, denying his people's right to life, liberty, and the pursuit of happiness." Domingo Moreira op-ed. (MH, "The White House's New Cuba Policy Under Scrutiny: It Plays into Castro's Hands," 5/16/95, p.9A).

"With the Cold War over, the interests of the country at large are different. The right wing of the Cuban-American community might find that failure to adjust their program to mesh could lead to their becoming increasingly irrelevant." Gillian Gunn, director of the Cuba Project at Georgetown University. (MH, "Miami protests made few headlines elsewhere," 5/18/95, p.8B).

"The [immigration] agreement is very important in and of itself, because it normalized relations in one area, but that sector was essential in the confrontation between the two countries. The agreement was fair for both sides. Ricardo Alarcon, president of Cuba's National Assembly. (TWP, "Cuban Officials Stress Difficulty of Adding to Immigration Pact," 5/20/95, p.A20).

"Cuban Americans seek freedom for their brothers in Cuba, not unlimited immigration to the United States. Freedom in Cuba will solve the immigration problem in the only permanent and ethical way. The Cuban people were not an emigrating people before Castro. Not once, during all the governments that preceded Castro, was the yearly U.S. immigration quota granted to Cuba ever filled." Rep. Lincoln Diaz-Balart (R-FL) op-ed. (MH, "Debating U.S. Cuba Policy: President's Action Tightens Castro's Tyrannical Grip," 5/21/95, p.1C).

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# **U.S. \* CUBA Policy Report**

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**Ralph J. Galliano, Editor**

## **MARKUP OF LIBERTAD (H.R. 927) STALLED BY HAMILTON IN HOUSE COMMITTEE**

**WASHINGTON --** Rep. Ben Gilman (R-NY), chairman of the International Relations Committee presided over a full committee markup session of "The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995" on Friday, June 30th. Following weeks of delay, markup had been rescheduled from the previous day's committee activities for 11:00 A.M. Friday morning. Chairman Gilman, in apparent hopes of dispensing with markup and bringing LIBERTAD up for a committee vote just prior to the week-long Fourth of July recess, found himself victimized by time and ultimately succumbed to an onslaught of Democrat opposition led by ranking member and former committee chairman, Lee H. Hamilton (D-IN).

Introduced by Jesse Helms (R-NC) chairman of the Senate Foreign Relations Committee on February 9th and (S. 381, H.R. 927) by Dan Burton (R-IN) chairman of the Western Hemisphere Subcommittee on February 14th, LIBERTAD, reported out of House subcommittee on April 5th, awaited full committee markup with supporters poised to vote down the opposition's amendments and to pass the Burton substitute. Eventually faced with 9 opening statements and 14 amendments, Gilman, up against the clock, was still expected to bring the key Hamilton amendment up for a committee vote prior to holiday recess leading supporters of LIBERTAD, particularly his Republican majority, to a vital victory over the opposition.

Although Burton submitted his "Amendment in the Nature of a Substitute to H.R. 927," it was not before Hamilton voiced his strong opposition essentially reflecting the Clinton administration view (see USCPR Vol. 2, No.3, pp.1-2, 5/15/95). Hamilton rapidly struck a severe blow against the Burton substitute stating at the very outset that the legislation had been referred to the House Banking, Judiciary, and Ways and Means Committees because certain provisions fall "outside the jurisdiction of this committee" and "violate Rule 10 of the House."

**SPEAKER NEWT GINGRICH** rallied the faithful by making an unusual closed-door appearance before Republican members of the committee urging full support of LIBERTAD thereby placing added pressure on Gilman. Addressing the press prior to his caucus, the Speaker said that Castro is in our hemisphere and there is no reason he should remain. Directing his remarks also to a young Cuban attending the markup who is posted to the Cuban Interest Section here in Washington, Gingrich told him to take a message back to Fidel Castro. "He has to go!" Voicing a willingness to work with younger Cubans but not until Castro goes, Gingrich encouraged the younger Cubans to bring about change on the island.

**STATEMENTS FOR AND AGAINST THE BURTON SUBSTITUTE.** Rep. Burton quoted former Costa Rican president Oscar Arias' reference to Castro during his recent trip to Cuba, "There is no will to change." Rep. Torricelli (D-NJ), author of the Cuban Democracy Act of 1992, echoed a similar theme saying, "There will be no voluntary changes in Cuba." Rep. Chris Smith (R-NJ) referred to Cuba as one of the few countries that is still totalitarian. Rep. Bob Menendez (D-NJ) cited the pollution created by Sherritt, the Canadian mining



company, resulting from one of Cuba's confiscated nickel mines. Rep. Harry Johnston (D-FL) charged LIBERTAD violated NAFTA and GATT and was extraterritorial, a reference to both the trafficking and visa provisions in the bill. Rep. David Funderburk (R-NC), declaring his support for LIBERTAD, compared Castro to Ceausescu, the late communist dictator of Romania. He had served there as U.S. ambassador during the Reagan administration. Alluding to the need to tighten the U.S. trade embargo on Cuba, he stated he had opposed Most Favored Nation (MFN) trading status for Romania saying it only prolonged communism. Rep. Eliot Engel (D-NY), who expressed his support for LIBERTAD even though he did not have many Cubans in his congressional district, described how his district office had been picketed by opponents. Engel went on to say LIBERTAD sends a message to foreign companies that they will be penalized for trafficking in confiscated U.S. owned properties. Rep. Jay Kim (R-CA) submitted his statement for the record. Rep. Jim Moran (D-VA) opposed LIBERTAD in his statement before the committee and associated himself with the remarks made by Reps. Johnston and Hamilton. Raising the specter of the past, he asserted that the bill would bring Cuba back to the Batista days, a reference to the Cuban dictator overthrown by the Castro revolution.

**THE HAMILTON AMENDMENT** embodied the views of the opposition to LIBERTAD especially those emanating from the White House which reflected international concerns and objections. The "Amendment to the [Burton] Amendment in the Nature of a Substitute Offered by Mr. Hamilton" struck down Titles III, Section 302--*Liability for Trafficking In Property Confiscated From United States Nationals*; Section 303--*Determination of Claims to Confiscated Property*; Section 304--*Exclusivity of Foreign Claims Settlement Commission Certification Procedure*; and, Title IV, Section 401--*Exclusion From the United States of Aliens Who have Confiscated Property of United States Nationals or Who Traffic in Such Property*.

In its place, Hamilton submitted his version of Section 302 -- *Requirement for Settlement of Outstanding Claims to Confiscated Property*. This new section would have eliminated penalties against trafficking in confiscated properties of U.S. nationals including a federal court's ability to determine "the amount and validity of claims to ownership of confiscated property" for the purpose of "evaluation of ownership." The Hamilton amendment gave "a democratically elected government in Cuba" three years to settle claims before qualifying to receive U.S. aid or international aid unless the "President determines and so notifies the appropriate congressional committees that it is in the national interest to do so." This Hamilton amendment especially with the presidential "waiver" provision, would have had the effect of "taking the teeth" out of LIBERTAD as planned by Rep. Charles Rangel (D-NY) in earlier strategy sessions (see USCPR, Vol.2, No.2, p.2, 4/17/95) opposing LIBERTAD.

In his opening statement, Hamilton said, "the Cuba bill we take up today marks a major shift in American foreign policy...I believe that a policy that increases the isolation of Cuba is the wrong policy." Hamilton said he wanted to protect property claimants but that the Burton substitute was not the way to do it fearing the bill would seriously undermine existing claimants. He expressed his concern that the cause of action provision would create an explosion of default judgements which would clog the already overwhelmed federal bench in south Florida. Making extensive use of administration arguments previously expressed by Morton Halperin through his National Security Council (NSC) letter sent by the State Department to Gilman on April 28th, Hamilton suggested through the cause of action permitted by the Burton substitute in Section 302, that U.S. property owners would assert jurisdiction over two non-U.S. parties. In this case, the first party is the "trafficker," a foreign company doing business in the United States, while the second party is the Cuban government which had confiscated U.S. citizen owned property without prompt and adequate compensation as required by international law.



**THE STATE DEPARTMENT'S POSITION** was represented by Ann Patterson, Deputy Assistant Secretary of State for Central America and the Caribbean, and Allen Weiner, State's legal consultant responsible for the Helms-Burton legislation. Patterson assumed Michael Skol's Cuba portfolio following the NSC's assault on Skol's hardline position regarding the embargo and the confiscated property issue (see USCPR Vol.2, No.2, p.3, 4/17/95). Weiner is a former staff lawyer and negotiator of the claims settlement agreement concluded in 1992 with Germany involving American properties in East Germany. Although Weiner has been reassigned to political and military affairs at State, he retains the Helms-Burton portfolio over LIBERTAD.

State's position reflected an understanding contrary to the provisions contained in the Burton substitute. In expressing "serious concerns" over severely prejudicing existing claimants, Weiner may have overlooked Section 304 which specifically protects the rights of U.S. nationals owning certified claims. Their arguments against the Burton substitute blatantly asserted that: the U.S. would be prevented from entering into lump-sum claims settlements with countries in the future; it would create difficulties with respect to Cuba's ability to privatize; and, it would encourage U.S. citizens with a grievance against their home state to become citizens of a foreign country in order to sue the state of their former residence. Relying on this testimony by State, Hamilton was able to create confusion in committee.

Rep. Howard Berman (D-CA) who either unwittingly or intentionally attempted to draw out the proceedings with admittedly cogent questions about property and citizenship issues, attacked the State Department's stand as hostile to citizens' rights. Berman declared, "The State Department opposes anything that involves the U.S. courts. They want diplomacy, espousal, and government-to-government contacts. This property claim is a legitimate one!"

**REBUTTAL OF HAMILTON AMENDMENT.** In committee debate on the Hamilton amendment, Rep. Ileana Ros-Lehtinen (R-FL) eloquently and forcefully responded to Hamilton's evisceration of Title III's Section 302 et seq. which she charged forestalled even the settlement of existing certified claims. The Congresswoman pointed out that the legal counsel of the House Judiciary Committee had said the right of action provision is "legally sound" and that the State Department was so advised. The administration's changes had been incorporated into the bill and now the administration was saying it wasn't enough. Welcoming any court challenges to the property provisions and alien exclusion provisions, Rep. Ros-Lehtinen firmly closed her remarks. Picking up the gauntlet was Rep. Torricelli who described the process of negotiating with the administration after weeks of accommodation over its legal concerns as an attempt to disassemble the legislation. The committee narrowly defined "trafficking" to accommodate the administration and "met the administration more than half-way," according to Torricelli. He concluded his rebuttal to the State Department's testimony saying, "These Americans didn't come to this country voluntarily to get new property rights," a clear reference to LIBERTAD's provisions protecting Cuban-Americans who had become U.S. citizens and whose property had also been confiscated during the Castro communist revolution.

In a reference to the comments made by the State Department's legal adviser, Allen Weiner, Rep. Menendez said speaking both as an attorney and a congressman he would try "to deobfuscate the legal mumbo-jumbo" he had heard. He proceeded to clarify Weiner's remarks.

With precious little time remaining, hearing repetitive statements made both by Hamilton and Weiner, it appeared the chair had lost its resolve as well as control of both the debate and the hour. Stumbling over parliamentary procedure and facing near revolt from his own majority clamoring for a "vote," the chair acceded to Hamilton's request to withdraw his amendment for resubmission when the committee would reconvene on Tuesday, July 11th at 10:00 A.M. Refusing a vote of unanimous consent to resubmit his amendment and having delayed a vote on his amendment which would have assured certain defeat, the ranking Democrat and former committee chairman clearly won the day.

<b>CRANE HOLDS POST-CASTRO HEARING</b>
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Rep. Phil Crane (R-IL), chairman of the powerful House Ways and Means Trade Subcommittee held a hearing on June 30th on "The Economic Relationship Between the United States and Cuba After Castro." In his announcement, Crane described Cuba as "a natural market for U.S. trade and investment after the fall of the Castro government." The ranking subcommittee Democrat is Rep. Charles Rangel (D-NY), a veteran opponent of the U.S. embargo as well as a vociferous opponent of LIBERTAD.

Among congressional witnesses were Robert Torricelli (D-NJ), Ileana Ros-Lehtinen (R-FL), Bob Menendez (D-NJ) and Lincoln Diaz-Balart (R-FL) who described Cuba's prosperous economy before Castro. Referring to Castro's 1960 UN speech called "The Case of Cuba is the Case of All Underdeveloped Countries," Diaz-Balart told how Castro created the myth that Cuba was an underdeveloped country in 1959. Subcommittee member, Rep. Clay Shaw (R-FL) stated how Cuba had the lowest rate of inflation in all of Latin America and the third highest per capita income. Emphatic, Shaw stressed that "To lessen the pressure on Castro would be a mistake."

Other witnesses included: Wayne Smith, Senior Fellow at the Center for International Policy; John Sweeney, Policy Analyst for Trade and Inter-American Affairs at the Heritage Foundation; Ignacio Sanchez representing the Cuban American National Foundation; Nicholas Gutierrez, Jr., Secretary of the National Association of Sugar Mill Owners of Cuba; Otto Reich, former U.S. ambassador to Venezuela and president of the U.S. Cuba Business Council; Keith Broussard, vice president of the USA Rice Federation; and, John Kavulich II, president of the U.S. Cuba Trade and Economic Council.

In addition to the National Association of Sugar Mill Owners of Cuba, Gutierrez represented the National Association of Sugar Cane Growers of Cuba and the National Federation of Sugar Workers of Cuba at the hearing. Gutierrez pointed out in his testimony that "Cuba's sugar industry accounted for 75% of the country's hard currency revenues and employed well over a half million workers before it was nationalized by Fidel Castro. Today, Cuba is even more heavily dependant on sugar than before;" although, "Cuban sugar production is currently at its lowest level in several decades." Broussard of the USA Rice Federation testified that "At one time Cuba was the largest single importer of U.S. rice...the U.S. rice industry views the Cuban market as one of great potential. Once the embargo is no longer in place, the U.S. rice industry will expect to re-enter the Cuban market..." Testifying on the economic relationship between the U.S. and Cuba after Castro, Reich exclaimed, "Make no mistake, when a stable democratic and market-oriented Cuba opens the door to genuine economic development and commercial opportunity, U.S. companies will be second to none in gaining access to a market of 11 million people only 90 miles from our shores eager to obtain familiar U.S. brand goods and services." Kavulich's statement before the subcommittee touted his organization, the U.S. Cuba Trade and Economic Council as "the largest nonpartisan, not-for-profit, membership-based organization within the United States which focuses upon the Republic of Cuba." Asked to reveal his organization's membership, however, Kavulich preferred continued secrecy to public openness despite the 501(c)(6) tax status of the group. Paraphrasing Dwayne Andreas, CEO of ADM, Kavulich said, "the current...market could be a several hundred million dollar per year export and import opportunity." With repeated references made to congressmen's districts and which major corporation was based there, Kavulich didn't hesitate to point out that ADM's headquarters is located in the district of Phil Crane, chairman of the Ways and Means Trade subcommittee, who was holding the hearing. Kavulich aligns himself with Rep. Rangel the subcommittee's ranking Democrat.

<b>SHORT TAKES</b>
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**REPORT ON PRESS FREEDOM IN THE AMERICAS CITES CUBA** -- Based on its midyear meeting in St. Petersburg, Florida, on March 28th, the Inter-American Press Association (IAPA) acknowledges that "only one classic dictatorship remains in the Western Hemisphere." Referring to Cuba as, "The most oppressive regime in the hemisphere," its country-by-country summary describes a country where "information once again has been converted into exclusive state property." IAPA reports of ongoing jamming of foreign broadcasts, declaring satellite dishes illegal and intimidation by arrests for "disseminating enemy propaganda." In the meantime, the Clinton administration is considering the opening of reciprocal press bureaus in Washington and Havana. (IAPA NEWS, No.368, May 1995; Conclusions and Country-by-Country Report, 3/28/95).

**CUBA IMPOSES 100% TAX ON NON-COMMERCIAL GOODS** -- In an awkward attempt to raise additional revenue, the cash-starved Castro regime has announced a series of customs duties that would impact U.S. humanitarian aid donated to the Cuban people. Since the passage of the Cuban Democracy Act of 1992, an estimated \$65 million of humanitarian assistance legally has flowed to Cuba. (MH, In the Americas, "New taxes are unveiled on travelers, goods, 6/2/95, p.20A).

**CASTRO DANGLES VESCO TO U.S. AUTHORITIES** -- Placed on the FBI list of 77 fugitives known to be living in Cuba, Robert Vesco is under federal indictment for cocaine trafficking and has been charged with stealing \$224 million from Investment Overseas Services a Geneva based mutual fund. Arrested and under investigation by Cuban authorities for "suspicion of being a provocateur and agent of the foreign special services," Clinton administration officials negotiated with Cuba for his release to U.S. authorities. Dining with CNN executives in Havana, Castro announced it would be "immoral" to send Vesco to the United States for prosecution. It is believed Vesco knows too much about Cuban government drug trafficking to be sent to the U.S. (FBI letter to Anita Winsor, House Western Hemisphere Subcommittee, 5/3/95; WP, "Cuba Confirms Arrest, Probe of "Agent" Vesco, 6/11/95, p.A31; MH, "Meetings to return Vesco start," 6/13/95, p.12A; WP, "U.S. waits for Cuba to Decide on Vesco, 6/20/95).

**TREASURY BLOCKS CANADIAN COMPANY'S CUBAN JOINT VENTURES** -- Following a 10-month study of Canadian company Sherritt, Inc. a fertilizer, mining and petroleum combine based in Fort Saskatchewan, Alberta and doing business in the United States, the Treasury's Office of Foreign Assets Control (OFAC) overseer of the U.S. embargo named four of Sherritt's joint ventures "Blocked Persons and Specially Designated Nationals" effectively preventing U.S. companies from doing business with them. The four companies are: Cobalt Refinery Co. Inc., International Cobalt Co. Inc., Moa Nickel S.A. and La Compania General de Niquel. American claimants whose properties Sherritt is exploiting include Freeport McMoRan of New Orleans and Consolidated Development Corporation of Miami. Largely responsible for pursuing Sherritt is Consolidated executive Alberto Diaz-Masvidal who has notified Sherritt, Inc. that it is trafficking in U.S. owned property. Diaz-Masvidal testified before the Senate Western Hemisphere Subcommittee in Washington calling for passage of the Helms-Burton legislation. (TFP, Bloomberg, "US. firm challenges Sherritt Cuban project," 3/11/95, p.17; WSJ, "Canadian Firm is Facing U.S. Sanctions, " 6/3/95, p. A15; BW, "Meet Fidel's Favorite Capitalist, 6/26/95, p.58; BNA, International Trade Report, "Cuba-Canada Joint Ventures are Added to Treasury's Blacklist, 6/28/95, Vol. 12, p.1094).

<b>NOTABLE QUOTES</b>
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"This is the only country in the world that doesn't trade with Cuba. So the embargo is against us, against the United States. It's an act of our government against its own people because Cuba can buy anything it wants anywhere else in the world." Dwayne Andreas, chairman and CEO of Archer Daniels Midland (ADM) Company a multinational agricultural commodities company based in Decatur, Illinois. (CNN, "Moneyline in Cuba," 5/30/95).

"While American businesses are standing on the sidelines, America's closest trading partners are taking advantage of a big head start here. Mexico and Canada, the United States' largest partners and partners in the North American Free Trade Agreement [NAFTA] have found a new partner in the Cuban government." (CNN, "Moneyline in Cuba," Lou Dobbs reporting, 5/30/95).

"But I would say to those businessmen, before you sign a deal, visit a Cuban prison, talk to the prisoners, learn what a police-state dictatorship is like, and ask yourself, do you need the money bad enough to get it off the backs of the people who are imprisoned because all they seek is the freedoms that you enjoy? And I would beg every American business leader, be patient, let us get rid of the Castro brothers, let us get rid of a handful of presidential advisors, let us free the Cuban people." Speaker of the House Newt Gingrich. (Rally of the Cuban American National Foundation, Miami, Florida, 6/3/95).

"We consider this [LIBERTAD] to be an unwarranted extension of U.S. law against a Canadian company. We aren't about to shy away from doing business with Cuba because it doesn't suit U.S. foreign policy." Charles Larabie, spokesman for the Canadian Department of Foreign Affairs and International Trade. (WSJ, "Canadian Firm Is Facing U.S. Sanctions - Sherritt Ventures May Be Penalized Due to Cuba Ties." 6/13/95, p.A15).

"Lifting the embargo would lift this pressure on the Castro regime by unleashing a flood of hard currency into Cuba -- hard currency that would go directly into Cuban government coffers and allow it to put off the day of reckoning." Senator Jesse Helms, Chairman Foreign Relations Committee. (USA TODAY, "Press harder on Castro," 6/14/95, op-ed section).

"I've found a Cuban people who live in fear, with frustration and with an enormous uncertainty about their future, badly informed about what goes on in the world and disillusioned about a revolution that generated a lot of hopes." Oscar Arias, former president of Costa Rica and recipient of the Nobel Peace Prize. (MH, Reuters News Service, "Visitors have harsh words for Havana," 6/19/95, p.7A).

"Sherritt does business all over the world, but Cuba is my favorite." Ian W. Delaney, chairman of Sherritt, Inc. a Canadian company doing business in the United States. (BW, "Meet Fidel's Favorite Capitalist," 6/26/95, p.58).

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Note: Nothing written here is to be construed as necessarily reflecting the view of the Institute for U.S. Cuba Relations or as an attempt to aid or hinder the passage of any bill before Congress.

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## LIBERTAD (H.R.927) REPORTED OUT OF HOUSE INTERNATIONAL RELATIONS COMMITTEE

WASHINGTON -- Delayed by obstructionist Democrats led by Rep. Hamilton (D-NJ), former chairman of the then House Foreign Affairs Committee, opponents of LIBERTAD managed to prolong the July 11th markup following a continuation of the June 30th session but were able to accomplish little else. Prior to the Fourth of July recess, those who supported the emasculatation of the bill in the form of the original Hamilton amendment (see USCPR Vol.2, No.5, p.2, 7/7/95), having achieved the momentum necessary to derail a fast moving train, lost all steam by the time markup got into full swing. Their arguments and last minute parliamentary maneuvers, having caused disarray and confusion before, lacked the crucial element of surprise the second time around with no new arguments being put forward. Although it differed, chairman Gilman even allowed Hamilton to reintroduce his amendment because the chair considered it a germane modification. Asserting control of the markup, Gilman permitted only one hour of debate on the Hamilton amendment -- a half hour for Hamilton and a half hour for Rep. Burton (R-IN). In closing statements following the 26-to-6 vote for final passage of the Burton substitute as amended, Rep. Hamilton admitted that he "never had any doubt on the votes and how they were going to break."

THE FOCUS OF DEBATE in full committee markup involving not only the Hamilton amendment pertaining to Titles III (*Protection of Property Rights of U.S. Nationals Against Confiscatory Takings By the Castro Regime*) and IV (*Exclusion of Certain Aliens*) but also to two subsequent amendments introduced by Reps. Moran (D-VA) and Wynn (D-MD) dealing with Title II (*Assistance To A Free And Democratic Cuba*) generally argued why the Burton substitute was the wrong approach to the Cuban property issue. In summary, Hamilton's argument essentially centered on what he described as three "domestic policy issues." According to Hamilton, those issues included: (1) the protection of rights of Americans with claims in Cuba; (2) protection of the rights of American investors worldwide; and, (3) helping a post-Castro Cuba. Hamilton's arguments with respect to Title IV reflected those provided by NAFTA partners Canada and Mexico saying the visa provision of the bill violates both NAFTA and the Uruguay Round of GATT prohibiting free travel in order to conduct business around the world. Hamilton stated flatly that the countries will initiate dispute settlement proceedings if the bill becomes law. In defense of his bill, the "Free and Independent Cuba Assistance Act" which was incorporated into both House and Senate versions of LIBERTAD with slight modifications (see USCPR Vol.2, No.1, p.3, 2/17/95) as Title II, Rep. Menendez's (D-NJ), response to Rep. Moran's praise upon introduction of his amendment was appreciative. Paraphrasing, it brought to mind Shakespeare's Julius Caesar, "I didn't come to praise Caesar, I came to bury him," a reference to the effect of Moran's amendment on Title II.



Burton was highly critical of Hamilton's arguments that the bill would: be a litigation magnet; jeopardize American investors worldwide; and, cloud title to confiscated property, saying it wouldn't stand scrutiny. Burton pointed out that the bill was country specific and that the so-called chain-of-title to the property question as it involved traffickers was easy enough to determine by just looking to the original owner at the time of confiscation. In the end, all three amendments (Hamilton, Moran and Wynn) were soundly defeated.

**THE THREE ROTH AMENDMENTS** which were considered en bloc also were aimed at Title II, *Assistance To A Free And Independent Cuba*. Submitted by Rep. Toby Roth (R-WI), a staunch fiscal conservative and overall supporter of LIBERTAD, the Wisconsin Republican charged Menendez's Title II with mandating "vast new foreign aid" for a post-Castro Cuba. Roth only objected to the use of the word "shall" repeatedly contained within Title II and requested by amendments that it be changed to read "to authorize" instead.

Roth's objection appeared to have merit. Section 203(c)(1), for example, states in part, "the President shall transmit that determination to the appropriate congressional committees and shall, subject to the availability of appropriations, commence the delivery and distribution of assistance to such transition government under the plan developed under section 202(b)." In addition, Section 204 -- *Authorization of Appropriation*, reads, "There are authorized to be appropriated to the President such sums as may be necessary to carry out this title."

Roth recited a litany of aid commitments that Title II would authorize if passed into law. They include: to negotiate either the return of the U.S. Naval Base at Guantanamo to Cuba or to renegotiate the present agreement; to provide development assistance; to provide financial guarantees under the Export-Import Bank of the United States and support under the Overseas Private Investment Corporation (OPIC) for investments in Cuba; relief of Cuba's external debt; military adjustment assistance; to provide assistance from international financial institutions and multilateral organizations comparable to U.S. assistance; to negotiate the Caribbean Basin Initiative (CBI); to negotiate Most Favored Nation (MFN) trade status; and, to negotiate accession to NAFTA directly with Cuba. Roth argued persuasively that the Guantanamo, MFN and NAFTA issues required further debate given the long drawn out legislative battles that the Panama Canal Treaties, MFN and NAFTA generated in and of themselves. Cuba's external debt according to Roth would require \$6.8 billion from both the U.S. and U.S. supported international institutions. "Let's authorize it, not mandate it," Roth pleaded with his colleagues.

Menendez defended his Title II by saying, "honestly, we have safeguards." But although Menendez appeared willing to make some of the changes requested by Roth in his amendments, the committee vote was a close one barely rejecting the Roth amendments 19 to 16. A telling split in the leadership's position did not go unnoticed. Gilman voted with Roth and Burton voted against in roll call. A shift of just two votes would have provided a dramatically different outcome. Roth's final statement expressed the committee's dilemma, "What do you do when you have dear friends on one side and your country on the other side? What this is doing to taxpayers is truly unconscionable." Roth warned that unless changes were made, LIBERTAD would suffer in a vote on the floor of the House.

Final passage of the Burton substitute included six amendments and was passed by a roll call vote of 26-to-6. The bill was reported out of committee on a roll call vote of 28-to-9.

Even prior to amendment in the House International Relations Committee, the Burton substitute differed from its predecessor introduced in the Western Hemisphere Subcommittee. As reported out of the full committee, along with other significant changes, the Burton substitute as amended also contains four titles where section 301, formerly *Exclusion from the United States of Aliens Who Have Confiscated Property of U.S. Nationals*, becomes a *Statement of Policy* and the previous section 301 becomes section 401 in Title IV - *Exclusion of Certain Aliens*.



## AMENDMENTS TO BURTON SUBSTITUTE

A full day of markup on LIBERTAD in the International Relations Committee witnessed intense debate resulting in the passage of six amendments with four other amendments voted down. Passed were the: (1) Torricelli-Lourdes amendment; (2) Meyers-embargo amendment; (3) Berman-civil penalties amendment; (4) Funderburk-one year transition amendment; (5) Menendez-nuclear plant amendment; and, (6) Torricelli-extradition amendment.

**TORRICELLI-LOURDES AMENDMENT**--introduced by Rep. Torricelli (D-NJ), amends section 106, *Assistance By The Independent States of Former Soviet Union For The Cuban Government*. Where aid would otherwise be cut in an amount equal to Russia's payment to Cuba for use of the Lourdes facility, the amendment contains a waiver permitting the president to certify to Congress that the assistance to the former Soviet Union "is important to the national security of the United States." As long as the president certifies: "that the Russian government is "not sharing intelligence data collected at the Lourdes facility with officials or agents" of Cuba; and the extent to which the Russian government is providing payment or government credits to the Cubans "for the continued use of the Lourdes facility." These reports may be "classified." The language in an earlier version of the amendment required the president to certify that "the Lourdes facility is used by Russia for arms control verification purposes only. According to Torricelli, Peter Tarnoff, Under Secretary of State for Political Affairs, approved the amendment. Tarnoff was responsible for the secret immigration accord with Cuba (see USCPR, Vol.2, No.4, pp.1-2, 6/2/95). The broad brush affect of this amendment is to legitimize Russia's continued use of the Lourdes facility. The amendment passed by voice vote.

**MEYERS-EMBARGO AMENDMENT**--introduced by Jan Meyers (R-KS), amends section 205, *Termination of The Economic Embargo of Cuba* to allow the president to lift the embargo during a transition government "to the extent that such action contributes to a stable foundation for a democratically elected government in Cuba." By joint resolution, Congress may reject the President's decision. The amendment passed by voice vote. **BERMAN-CIVIL PENALTIES**

**AMENDMENT**--introduced by Rep. Berman (D-CA), passed by voice vote. It rejected the civil penalties adopted against unauthorized travel to Cuba in subcommittee markup on April 5th in an amendment introduced by Rep. Torricelli (D-NJ). Section 102(d)(1) imposed a civil penalty of up to \$50,000 on any person who violates the licensing provision of the Trading With The Enemy Act. Criminal penalties are not being enforced by the Clinton administration. Berman who made specific reference to his favorable vote for the Cuban Democracy Act of 1992 implied that unless his amendment was passed his vote would be lost on the House floor. However, Berman was absent and did not vote for either final passage or to report the Burton substitute as amended out of committee.

**FUNDERBURK-TRANSITION AMENDMENT**-- introduced by Rep. Funderburk (R-NC), requires a transition government to hold elections within one year as opposed to the Cuban Democracy Act which requires six months and section 206(5)(E)(i) of LIBERTAD which requires two years. Passed by voice vote. **MENENDEZ-NUCLEAR**

**PLANT AMENDMENT** -- introduced by Rep. Menendez (D-NJ), amends Title I by adding section 111, *Withholding Of Foreign Assistance To Countries Supporting Nuclear Plant In Cuba*.

It requires the president to withhold assistance from any country or entity in that country which supports "the completion of the Cuban nuclear facility at Juragua, near Cienfuegos, Cuba."

Passage was by voice vote. **TORRICELLI-EXTRADITION AMENDMENT**--these two considered en bloc amend Title I by adding *Extradition Of Criminals From Cuba* and amends Title II, section 206, *Requirements For A Transition Government* requiring the "extradition to the United States of all persons sought...for crimes committed in the United States." Passed by voice vote.

### WAYS AND MEANS MARKUP EXPECTED

The markup of LIBERTAD (H.R.927), as reported out of the House International Relations Committee on July 11th, before the House Ways and Means Committee prior to the August recess is considered quite probable particularly now that the congressional leadership is talking seriously about extending the start of the recess by one week to begin on August 11th instead of the originally scheduled August 4th date. Although Ways and Means has referral of the bill, it is an open-ended referral with no time line and no date has been set. The committee leadership, consisting of Rep. Bill Archer (R-TX) chairman of the powerful Ways and Means Committee and Rep. Phil Crane (R-IL) chairman of the Trade subcommittee, would have to notify committee members of the impending markup session and to date they have not done so.

The full committee will want to formally act so as to exercise its jurisdiction over the bill. Its purpose, the US CPR was assured, is "not to be obstructionist" but rather to make certain that existing trade regulations are being enforced without violating America's international obligations. It is likely Ways and Means will take a close look at Titles I and II. Specifically, sections 109, *Importation Safeguard Against Certain Cuban Products*, as it pertains to the rules of origin of certain products particularly sugar including the certification of origin of such sugar products. This section cites the NAFTA rules of origin and the Food Security Act of 1985 which requires the president "not to allocate any of the sugar import quota to a country that is a net sugar importer unless the country can verify to the president that any imports of sugar produced in Cuba are not reexported to the United States." Section 202, *Authorization Of Assistance For The Cuban People* also will be of interest to the Ways and Means Committee in its expected markup of LIBERTAD as it pertains to the inclusion of a free and independent Cuba into the Caribbean Basin Initiative (CBI) and to Cuba's accession into the North American Free Trade Agreement (NAFTA).

### PRESS DISTORTS PENTAGON REPORT

A recently completed 300 page report commissioned by the Pentagon entitled, "The Military and Transition in Cuba: Reference Guide for Policy and Crisis Management" depicts what will happen to the Cuban military given certain scenarios. The report was presented by Nestor Sanchez former Assistant Deputy Secretary of Defense and Inter-American Affairs during the Reagan administration. It is a study of Cuban military attitudes co-written by American and Soviet experts on Cuba. Nowhere in the report, however, does it recommend changing the course of U.S. policy toward Cuba as Peter Kornbluh encourages President Clinton to do in his op-ed appearing on May 17th in the New York Times a piece widely distributed by staunch opponents of LIBERTAD. The report makes no recommendation on the subject. In fact, one of the authors, Andrei V. Kortunov, of the Institute of the USA and Canada Studies at the Russian Academy of Sciences states, "Only a strong and forceful President with an unquestionable conservative record could reverse longstanding U.S. policy toward Cuba. Bill Clinton does not qualify." Misquoting Kortunov's observation, Kornbluh writes, "'only a strong and forceful President,' he concludes, 'could reverse longstanding U.S. policy toward Cuba.'" Kornbluh is described as directing "the Cuba Documentation Project at the National Security Archive" in Washington, D.C. (Herbert Romerstein, an author and former professional staff member of the U.S. House of Representatives, reviewed the Pentagon study for the Institute).

**NSC'S ROCHA ASSIGNED TO HAVANA**

The National Security Council's (NSC) Manuel Rocha will be transferred to the U.S. Interest Section in Havana as deputy chief of press and public relations. Rocha, who worked for Richard Feinberg while at NSC, was born in Bogota, Colombia. While at the NSC, Rocha became a point man for Wayne Smith's campaign to help defeat LIBERTAD, the Helms-Burton legislation to protect private property rights of U.S. citizens and to tighten the embargo (see USCPR, Vol.2, No.2, 4/17/95, p.1). Smith is the former chief of mission in Havana from 1979 to 1982 who resigned in protest to President Reagan's policies toward Cuba. Rocha will be joined by Merry Blocker from USIA. Blocker also served in Argentina and Romania. (ENH, "U.S. office in Cuba will replace two officials," 6/19/95, p.12A; El Nuevo Herald article translated by Jose Roig for the Institute).

**SHORT TAKES**

**CASTRO REQUESTS VISA** -- The UN's upcoming 50th anniversary celebration in October is expected to attract heads of state from around the world. The State Department has, however, already denied visas to Libya's Moammar Gadhafi and Iraq's Saddam Hussein although Castro's is still pending. UN Secretary-General Boutros-Ghali protested their denial of visas. Not since 1979 has the Cuban dictator set foot on U.S. soil. (TWT, "Keep Castro out, 25 in Congress urge State Dept.," 7/13/95, p.A13) **ROS-LEHTINEN LEADS BIPARTISAN GROUP AGAINST CASTRO VISIT TO U.S.** - Florida Congresswoman Ileana Ros-Lehtinen and 24 other members of Congress signed a July 11th letter to Secretary of State Warren Christopher urging him to deny Fidel Castro a visa to enter the United States to visit the UN in October. In closing, the letter stated, "We urge in the strongest manner to deny a visa to the Cuban dictator. Any other decision would place the United States on the side of tyranny over freedom." **CUBA IS RUSSIA'S STRATEGIC PARTNER IN LATIN AMERICA** -- The Jamestown Foundation picking up a dispatch from the Russian newspaper Segodnya reported in a recent issue of its publication MONITOR that "Senior officials at the Russian foreign economic relations ministry want to expand the number of joint Russian-Cuban enterprises." Quoting Russian officials, the MONITOR writes, "'Cuba is still Russia's most important strategic partner in the Latin American region' and through her, 'Russia can gain a foothold in other countries there.'" (MONITOR, "Moscow: Cuba is Russia's Strategic Partner in Latin America," 6/16/95, Vol.I, No.34, p.2). **WHITE HOUSE OFFICIALS PRAISE CUBA'S RESTRAINT** -- Unnamed White House officials were reported to have praised Cuba's restraint over a Cuban exile flotilla that entered Cuban territorial waters on July 13th in memory of 41 men, women and children drowned by Cuban government vessels last year when their tugboat was rammed while trying to flee Castro's tyranny. Cuban gunboats rammed the lead boat of the flotilla named the Democracia. Exile planes briefly flew over Havana as well dropping bumper stickers reading "Not Comrades, Brothers." The Clinton administration has asked the Coast Guard and the FAA to investigate the actions of these Cuban exiles. (MH, "For exiles, a thrill; for U.S., chill," 7/15/95, p.1A; MH, "Thirteen minutes over Havana," 7/15/95, p.12A).

**NOTABLE QUOTES**

"Cubans are political refugees, not economic immigrants. They are fleeing a communist dictatorship with a communist constitution. What economic reasons that exist are the result of the policies of a failed regime." Retired U.S. Army Col. Armando Montes of Miami. (MH, "Cuban Americans take protest on rafters policy to Washington," 7/5/95, p.8A).

"I don't for one minute believe that Rick Nuccio is writing Cuban policy. They're playing a shell game, thinking Cuban Americans will be fooled. [Nuccio] is just the front man for Lake, Halperin and other Castro appeasers in the administration." Rep. Ileana Ros-Lehtinen (R-FL). (MH, "Point man on Cuba has title but does he have clout?" 7/5/95, p.9A).

"Cuba's official economic plan bears a remarkable resemblance to an International Monetary Fund structural adjustment plan, with one major exception: The Cuban government has made clear its unwavering opposition to implementing a devaluation plan, even if that devaluation is a condition of eventual IMF membership." Pamela S. Falk was staff director for the Western Hemisphere Subcommittee in the 103rd Congress. (WSJ, "Cuban Growth: The Sound of One Hand Clapping," 7/7/95, p.A11).

"Cuban officials have expressed to me their willingness to expand [civil] liberties to the extent that the 'climate of pressure' from...the so-called 'Cuban Democracy Act' or the Torricelli Bill are attenuated or disappear." Eloy Gutierrez Menoyo is a former political prisoner in Cuba and a founder of a pro-dialogue organization called Cambio Cubano. (TWT, "Cuban dissident opposes embargo," 7/12/95, p.A17).

"The first case would be dismissed immediately... It's in total contradiction of international law in practice." Wayne Smith commenting on the anticipated litigation resulting from the passage of LIBERTAD. Smith is the former chief of mission in Havana. (MH, "Reclaiming the past: Cuban exiles seek property, assets seized by Castro," 7/16/95, p.1B).

"It's not going to be the ultimate resolution of our problem. But, it's certainly a vindication of our position. When we started this struggle, people said 'You're crazy; forget about getting your property.' We demonstrated that is no longer a selfish or private wish on our part. It's a requirement for the economic welfare of Cuba after Castro." Nicolas J. Gutierrez, Jr. comments on LIBERTAD. Gutierrez serves as the secretary of the National Association of Sugar Mill Owners of Cuba and he is an attorney in Miami. (MH, "Reclaiming the past: Cuban exiles seek property, assets seized by Castro," 7/16/95, p.1B).

The Institute for U.S. Cuba Relations was established in 1993 as a non-partisan, tax-exempt, public policy research and education foundation whose purpose is to study U.S. Cuba relations past, present and future. In addition to its newsletter, the U.S. \* CUBA Policy Report, the Institute publishes books under its imprint U.S. \* CUBA INSTITUTE PRESS. The Institute is classified as a Section 501(c)(3) organization under the Internal Revenue Code of 1954, and is recognized as a publicly supported organization described in Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. Individuals, corporations, companies, associations, and foundations are eligible to support the work of the Institute for U.S. Cuba Relations through tax-deductible gifts. The Institute's mailing address is: 1730 M Street, N.W., Suite 400, Washington, D.C. 20036, USA. Telephone #: 202/675-6344.

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# U.S. \* CUBA Policy Report

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Ralph J. Galliano, Editor

## HELMS REFINES CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY (LIBERTAD) ACT OF 1995 FOR PASSAGE AS AN AMENDMENT

WASHINGTON -- Containing significant refinements from the bill as introduced (S.381) in February, Senate Foreign Relations Committee Chairman, Jesse Helms, filed LIBERTAD as an amendment to the *Foreign Relations Revitalization Act of 1995* (S.908) before the Senate voted twice failing to close debate. Five votes short (55-to-45) of the 60 votes required for cloture, Senate Majority Leader Dole returned the bill (S.908) to the Senate calendar for consideration following the August recess. As a procedural vote, it did not address the substance of the State Department authorization bill nor any of the over 140 other amendments that were also filed. No vote was taken on the Helms (LIBERTAD) amendment.

Generally, major revisions and additions to LIBERTAD include new findings, purposes and definitions along with significant refinements and additions to the bill's three titles ranging from: a certificate of origin requirement for "sugar" and "sugar products" entering the United States to reinstating family remittances, travel, and establishing reciprocal news bureaus in Title I; requiring presidential consultations with Congress on trade issues to conditioning assistance to a post-Castro government upon compensation or return of confiscated property to U.S. nationals with presidential waiver in Title II; and, requiring a proof of ownership in civil actions whether or not the U.S. national qualified as a national at the time property was confiscated to affording exclusive protection to certified U.S. claimants in Title III.

**FINDINGS, PURPOSES AND DEFINITIONS --** Three new *findings* specify that "[o]ver the past 36 years the Cuban government has posed a national security problem to the United States" describing the completion and operation of a nuclear-power plant in Cuba as "an unacceptable threat" and the "unleashing on the United States shores of thousands of Cuban refugees fleeing Cuban oppression" as "an act of aggression." The *purposes* of LIBERTAD are expanded by adding assistance to "the Cuban people in regaining their freedom" and providing for the "continued national security of the United States...from the Castro government of terrorism, theft of property...and the political manipulation of the desire of Cubans to escape that results in mass migration to the United States." Five new *definitions* add to the meaning of LIBERTAD as it pertains to the issue of confiscated property. They include: (1) *Agency or Instrumentality of a Foreign State*, (2) *Commercial Activity*, (3) *Foreign National*, (4) *Knowingly*, and (5) *Official of the Cuban Government or Ruling Political Party in Cuba*. Definitions for *Confiscated*, *Property* and *Traffics* are all refined whereby *confiscated* property claims must be settled in a "mutually accepted settlement procedure;" *property* shall not include residential property unless the claim "is held by a United States national and the claim has been certified" or if the residential property "is occupied by an official of the Cuban government or the ruling political party;and," *traffics* is qualified inasmuch as a person or entity who "knowingly and



intentionally sells, transfers, distributes, dispenses, brokers, manages, or otherwise disposes of confiscated property" becomes liable in U.S. district court for damages to the U.S. national whether or not the U.S. national qualified as a national at the time property was confiscated. The definition excludes "the delivery of international telecommunications signals to Cuba," the "trading or holding of securities," transactions incident to "lawful travel" and "residential property" the claim to which is not held by a certified U.S. claimant unless occupied by "an official of the Cuban government or the ruling political party in Cuba." While new sections have been added to LIBERTAD, certain refinements, changes and additions bear more scrutiny than others.

**TITLE I - *Strengthens International Sanctions Against the Castro Regime.*** Although Section 103, *Enforcement of the Economic Embargo of Cuba*, is not one of the three new sections added to this title, its revision is important because it "reaffirms section 1704(a) of the Cuban Democracy Act of 1992" (CDA). As a matter of policy, it states that "the President should encourage foreign countries to restrict trade and credit relations with Cuba in a manner consistent with the purposes of that Act." Specifically, Section 103(e), *Coverage of Debt-for-Equity Swaps Under the Economic Embargo of Cuba*, amends the CDA by adding the following new language: "(B) includes an exchange, reduction, or forgiveness of Cuban debt owed to a foreign country in return for a grant of an equity interest in property investment, or operation of the Government of Cuba or of a Cuban national; and." Section 107, *Assistance by the Independent States of the Former Soviet Union for the Government of Cuba* (formerly section 106), is revised to adopt the language of the Torricelli-Lourdes amendment as reported out of the International Relations Committee on July 11th (see US CPR, Vol.2, No.6, p.3, 7/19/95) which cuts aid in an amount equal to Russia's payment to Cuba for use of the signals intelligence facility at Lourdes. Section 110, *Importation Safeguard Against Certain Cuban Products* (formerly section 109), incorporates the House changes reflected in H.R.927, Section 109, before it was agreed that these sugar provisions were to be stricken from the House bill (see p.5 of this issue of US CPR).

**TITLE II - *Support for a Free and Independent Cuba.*** Section 204, *Termination of the Economic Embargo of Cuba*, is revised to permit the president "after consulting with the Congress," to suspend both the embargo and the civil right of action created by Section 302 "to the extent that such action contributes to a stable foundation for a democratically elected government in Cuba." Congress, however, has the power to review the suspension of the embargo and "upon the enactment of a joint resolution" overturn the president's suspension. Added to this title is Section 207, *Settlement of Outstanding U.S. Claims to Confiscated Property in Cuba*. This section conditions assistance to a transition or democratically elected post-Castro government on its establishing "a procedure under its law or through international arbitration to provide for the return of, or prompt, adequate and effective compensation" for confiscated property of certified U.S. claimants. This section may be waived if the president determines and certifies to Congress that it is vital to U.S. interests to do so. A report to Congress is required to review and assess issues regarding the resolution of "property claims in Cuba."

**TITLE III - *Protection of Property Rights of United States Nationals Against Confiscatory Takings By the Castro Regime.*** Unlike the House version of LIBERTAD (H.R.927), the Senate bill (S.381) deletes Section 301, *Exclusion from the United States of Aliens who have Confiscated Property Claimed by United States Persons*, and substitutes a *Statement of Policy* incorporating the definitions referenced earlier. Of note, is the revision to



Section 302, *Liability for Trafficking in Confiscated Property Claimed by United States Nationals*, making it Cuba specific. Further, Section 302(a) provides a *Civil Remedy* whereby "any person or entity, excluding any agency or instrumentality of a foreign state" engaged "in the conduct of commercial activity" commencing 6 months after the enactment of this provision "shall be held liable to the United States national who owns the claim" to such property for money damages "plus interest" and "reasonable court costs and attorneys' fees." For purposes of this title, there is a *Presumption in Favor of the Certified Claimants* as specified in Section 302(a)(2). Section 302(a)(3) also provides a *Requirement for Prior Notice and Increased Liability for Subsequent Additional Notice* in which treble damages may be received. Section 302(a)(6) holds the Act of State Doctrine inapplicable "in the conduct of commercial activity" requiring U.S. district courts "to make a determination on the merits" of the claim. Section 302(b), *Amount in Controversy*, minimizes the impact of Title III on the federal courts by placing a floor of \$50,000 on the sum or value of the controversy exclusive of costs. A question of constitutionality may be raised against Section 302(e), *Election of Remedies*, whereby a United States national "may not bring an action under this section" for a claim if any previous action has been brought "on that claim" prior to enactment. Section 302(e)(2), *Treatment of Certified Claimants*, requires that any recovery obtained through a cause of action for trafficking be calculated against any recovery obtained in negotiations between the United States and Cuba thereby "discharg[ing] the United States from any further responsibility to represent the United States national with respect to that claim." Section 303, *Proof of Ownership* by a non-U.S. citizen at the time of confiscation may be determined by a court appointed "Special Master, including the Foreign Claims Settlement Commission, to make determinations regarding the amount and ownership of claims to ownership of confiscated property by the Government of Cuba." However, nothing in this process shall require the government of the United States to "espouse" such claims "with a friendly government in Cuba when diplomatic relations are restored." The addition of Section 304, *Exclusivity of Foreign Claims Settlement Commission Certification Procedure* clarifies the exclusive protection afforded to certified U.S. claimants. Language amending Title V of the *International Claims Settlement Act of 1949* states, "(b)Nothing in subsection (a) shall be construed to detract from or otherwise affect any rights in the shares of capital stock of nationals of the United States owning claims certified by the Commission under section 507."

For passage as an amendment following the August recess, Senator Helms may file LIBERTAD with various pieces of pending legislation including the *Foreign Relations Revitalization Act of 1995* (S.908) or the *National Defense Authorization Act of Fiscal Year 1996* (S.1026).

<b>CBO REVIEW OF LIBERTAD</b>
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According to the Congressional Budget Office (CBO) in a letter sent to Senator Helms, regarding its review of LIBERTAD (S.381) as an amendment to S.908, the *Foreign Relations Revitalization Act of 1995*, the CBO estimated "that implementing the amendment would cost about \$7 million over the next five years, assuming appropriations of authorized funds. It would also affect government receipts; therefore pay-as-you-go procedures would apply." CBO states

that although Title I "would impose upon the Administration new certification and reporting requirements," it "would not add appreciably to the administrative burden imposed by existing sanctions." Title II, which requires the president to develop a plan to assist a transitional or democratically elected government in Cuba, would require additional "authorizing legislation and appropriations." This addresses the potentially divisive issue among the otherwise solid coalition of supporters of LIBERTAD of "mandatory vast new foreign aid for a post-Castro Cuba" which Rep. Toby Roth (R-WI) brought to the fore during full committee markup. (see USCPR, Vol.2, No.6, p.2, 7/19/95). Insofar as Title III is concerned, the CBO in its July 31st letter to Helms stated, "we estimate that the federal court system would incur about \$2 million in additional costs to address cases that actually go to trial." Each additional case filed is expected to cost \$4,500 to process. The CBO letter continues, "[h]owever, because this amendment would restrict claims to those cases where the amount in controversy exceeds \$50,000, CBO expects that the number of additional claims would be quite small and that additional costs to process those claims would not be significant." Additional lawyers for the Foreign Claims Settlement Commission to assist the courts in reviewing cases would cost "up to about \$1 million each year." (Letter from CBO Director, June E. O'Neill, 7/31/95, pp.1-3).

#### WAYS AND MEANS MARKUP AVERTED

An agreement was reached on the Monday prior to the scheduled July 26th Trade Subcommittee markup of LIBERTAD (H.R.927) between Western Hemisphere Subcommittee chairman Dan Burton (R-IN) and Rep. Bill Archer (R-TX), the chairman of the powerful House Ways and Means Committee, to amend sections: 109, Importation Safeguard Against Certain Cuban Products; 201, Policy Toward A Transition Government And A Democratically Elected Government In Cuba; and, 202, Authorization of Assistance For The Cuban People. Respectively, these sections pertain to rules of origin, particularly sugar and sugar products; the inclusion of a free and independent Cuba into the Caribbean Basin Initiative (CBI); and, to Cuba's accession into the North American Free Trade Agreement (NAFTA).

In an exchange of letters, Archer, writing to Rep. Ben Gilman (R-NY), chairman of the International Relations Committee, confirmed their understanding of the agreement saying that your amendment "will drop all provision relating to trade in sugar (section 109) from the bill and change the text of the remaining minor trade-related provisions to language drafted by my staff." In response, Gilman assured Archer that the "Committee intends to offer an amendment during floor consideration of this measure which addresses the specific concerns raised by you and your staff" without prejudicing "in any way this Committee's jurisdiction over international economic issues." While canceling the markup sessions, the Ways and Means Committee did not agree to waive jurisdiction but reserved the right to intervene and reassert jurisdiction over trade and tariff provisions of this legislation along with the naming of conferees. The agreement avoided a contentious confrontation and debate between supporters of the bill's trade provisions and the ranking trade subcommittee Democrat Rep. Charles Rangel of New York, a veteran opponent of the U.S. embargo and vociferous adversary of LIBERTAD. (See USCPR Vol.2, No.2, 5/17/95, p.2)

## **SUGAR PROVISIONS TO BE STRICKEN**

The agreement to strike Section 109, Importation Safeguard Against Certain Cuban Products, deletes from LIBERTAD (H.R.927) a key section of the bill the purpose of which is to prevent the importation into the United States of growth produce, products or merchandise of Cuban origin, especially sugar, Cuba's main cash crop. For the purpose of this section, 'sugar' and 'sugar product' "mean sugars, syrups, molasses, or products with sugar content in excess of 35 percent."

In a statement of policy, this section cites Article 309(3) of NAFTA which "permits the United States to ensure Cuban products or goods made from Cuban materials are not imported into the United States from Mexico or Canada and that the United States products are not exported to Cuba through those countries." In general, Section 109 requires "a certification of the origin of the sugar or sugar product by its producer, that is voluntarily provided to the exporter by the producer." Penalties call for forfeiture of imported goods and a publication of lists of violators in the Federal Register. Section 109 is of greater concern to Canada than to Mexico, since based on available statistics, Canada imported 165,823 metric tons of sugar from Cuba in 1993 valued at \$31.6 million while for 1992 Mexico imported no Cuban sugar. Canada is Cuba's biggest trading partner with \$132.6 million of imports in 1993.

The Senate version (S.381) of the bill retains the sugar certification provision.

## **SOCIALISM: PAST, PRESENT AND FUTURE**

Harking back to the socialist principles of his past and the need for the so-called "special period" presently being experienced by Cubans after the collapse of the Soviet Union and the cut-off of close to \$100 billion in aid over 30 years, Castro in his annual 26th of July speech looked to the future and praised the economic examples set by Vietnam and China.

Commemorating his revolution, Castro reaffirmed the principles of his socialist past declaring, "We, the main leaders, had socialist ideas and convictions -- Marxist-Leninist, to be more precise..." Excoriating the necessity of Cuba's present-day cooperation with capitalism, Castro praised Cuba's adherence to socialism saying "that only our socialism...made it possible for us to brave our problems and to pave the way to the miracle of our resistance. The unquestionable elements of capitalism introduced into our country, have also brought along that system's harmful and alienating problems...gradually taking place and growing in our economic relations with capitalism."

Economic liberalization such as dollarization, limited self-employment and joint-ventures intended to attract foreign investment have proven to be reluctant, incremental measures necessitated by the post-Soviet collapse of the Cuban economy. Making it quite clear Cuba has no intention of forsaking socialism, Castro asked, "...does this mean that we should abandon our socialist principles or our Marxist-Leninist convictions? On the contrary, we should continue to conduct ourselves as genuine Marxist-Leninists with all the courage and realism which circumstances may demand. At any rate, this does not imply - as some would seem to believe - that this is a return to capitalism..." (BBC Summary of World Broadcasts, Castro speech from Cuban radio and television stations in Havana and translated from Spanish, 7/28/95, pp.4,5,7).

## CASTRO REJECTS CDA TRACK II

In an uncharacteristically short speech, Castro celebrated the 42nd anniversary of the start of his communist revolution on the 26th of July marking his failed assault on the Moncada Army Barracks in Santiago de Cuba in 1953. Singling out those determined "to destroy us," the Cuban dictator cited the so-called Track II aspects of *The Cuban Democracy Act of 1992* introduced by Rep. Torricelli (D-NJ) and supported by then Democrat presidential candidate Bill Clinton. While Track I of the CDA tightened the embargo, Track II, devised by Richard Nuccio then an adviser to Torricelli's Western Hemisphere Subcommittee, was intended to help the Cuban people directly by providing for telecommunications services and humanitarian donations.

According to Nuccio, who presently serves as Special Adviser to the President and the Secretary of State for Cuba, telecommunications "allows us to monitor what's going on inside Cuba" and humanitarian aid to the tune of "more than \$70 million has been licensed in the last two years." These donations have "contributed to the development of some independent non-governmental organizations [NGO's] inside Cuba." It appears to be the support of these NGO's within Cuba that disturbs Castro. CDA Section 1705(g), Assistance To Support Democracy in Cuba, permits the U.S. government to "provide assistance, through appropriate non-governmental organizations to promote non-violent democratic change in Cuba." Castro, however, praised the results of recent local one-party elections and exhorted fellow Cubans to "continue to conduct ourselves as genuine Marxist-Leninists."

Referring to "those who want to infiltrate us, weaken us, to create all types of counterrevolutionary organizations and to destabilize the country," Castro railed against the CDA's Track II in his 26th of July speech. Describing Track II as an entire "programme designed for this purpose," Castro ridiculed the concept carried on by the people who "want to extend their influence through broad exchanges with diverse sectors that they consider to be vulnerable, to grant dubious scholarships and to dazzle us with their billion-dollar institutions, their technology and their social research centers...the so-called second track of the Torricelli Law. These are the ones who want to destroy us from within."

Expressing his opposition of LIBERTAD to CNN (see USCPR Vol.2, No.3, p.1, 5/15/95) earlier this year, President Clinton stated his unequivocal support for the CDA. Considered the pro-active centerpiece of the Clinton administration's three prong Cuba policy, the CDA embodies the embargo; provides for Track II (telecommunications and humanitarian donations of food, medicines and medical supplies); and, according to Nuccio, "[t]he third piece of the policy is a phrase from the Cuban Democracy Act that the United States should be prepared to respond in positive and carefully calibrated ways to positive developments inside Cuba."

Without the Castro regime's cooperation or the Clinton administration's accommodation on the so-called Track II, the effectiveness of the CDA could be derailed with serious consequences for this administration in the approaching 1996 presidential election campaign. The embargo, considered the cornerstone of U.S. Cuba policy over the last three decades, could become the last full-standing prong holding up this administration's Cuba policy, rapidly being retooled in Congress into a sleek bullet train -- otherwise known as LIBERTAD or the Helms-Burton bill. (BBC Summary of World Broadcasts, Castro speech from Cuban radio and television stations in Havana and translated from Spanish, 7/28/95, pp.7,8; TWT, "Aide sees embargo over if Cuba reforms," 7/30/95, p.A10).

**SHORT TAKES**

**PRETORIA SEEKS CLOSER TIES WITH HAVANA** -- South Africa's plans to establish full diplomatic relations with Cuba by sending a resident ambassador to Havana and inviting Fidel Castro to address its parliament has raised the ire of key leaders of the House International Relations Committee including chairman Ben Gilman (R-NY). South Africa established ties with Cuba the day after the accession to the presidency of Nelson Mandela in talks between Cuban Foreign Minister Roberto Robaina and his counterpart Alfred Nzo at the inauguration ceremonies. Since then, Manuel A. Trevor, Minister of Trade and Industry, attended the Havana Trade Fair and announced a trade mission. South African mining and fertilizer companies are reported doing business in Cuba. Of particular concern on Capitol Hill is the agreement between South Africa and Iran to store 15 million barrels of embargoed Iranian oil at South Africa's underground storage facility at Saldonha Bay on the Atlantic coast since Cuba and Iran confirmed an agreement to swap sugar for oil in March of this year. (TWT, 8/6/95, p.A9; WP, 8/9/95, p.F1).

**ARGENTINE DEBT-INVESTMENT SWAP TO AVOID U.S. CONFISCATED PROPERTY** -- Cuba's \$1.28 billion debt to Argentina which dates back to 1973 is expected to be paid off in a debt-investment swap arrangement that unlike previous Mexican debt-equity swaps steers clear of U.S. confiscated property in Cuba. Awareness of LIBERTAD is credited with this line of thinking on the part of the Argentine government. Strengthening economic relations between the two countries, an investment promotion and protection agreement was recently initialed in Havana. A final agreement is set to be signed in Argentina later in the year by which time a new Cuban foreign investment law may be completed to replace existing Decree Law 50. Cuba's liquidation of its foreign debt is expected to help lay the groundwork for negotiations with Western creditors. (MH, 4/27/95, p.14A; MH, 8/27/95, p.14A; JOC, 8/29/95, p.7A).

**STATE DEPARTMENT TO MONITOR CUBAN-EXILE FLOTILLA** -- Originally organized to commemorate the one-year anniversary (July 13, 1994) of the sinking of the "13 de Marzo" tugboat by the Cuban government off its coast which took the lives of over 40 would-be refugees -- men, women and children -- flotilla organizers have scheduled another flotilla for September 2nd. In anticipation of what Havana calls a "dangerous provocation," the White House approved for the State Department to set up a command post in Washington along with U.S. Coast Guard ships deployed nearby in international waters to monitor events. (MH, 8/11/95, p.16A; MH, 8/29/95, p.1B).

**NEW TRADE BLOC FORMED INCLUDES CUBA** -- The agreement signed in Colombia on July 24, 1994, during the presidency of Cesar Gavaria now Secretary General of the OAS which created the Association of Caribbean States (ACS), had its first summit meeting nearly two years later in Port of Spain, Trinidad. Originally the idea of the English speaking CARICOM states, the formation of the new "Caribbean basin alliance" launches the 4th largest trade bloc having 200 million people and an aggregate gross domestic product of \$500 billion. Included are Caribbean rim states Mexico, Colombia and Venezuela along with 22 other countries including Cuba. Two years ago, Cuban Foreign Minister, Roberto Robaina, described the ACS as a forum for economic and social change. Puerto Rico and the U.S. Virgin Islands will not become associated with the ACS. (MH, 6/29/94, p.11A; JOC, 7/26/94, p.3A; FT, 8/17/95, p.8; TWT, 8/21/95, p.A9).



### NOTABLE QUOTES

"My individual approach to Helms-Burton [LIBERTAD] is that it has a cost benefit problem. It's clear that some of the things the bill is trying to do on property, on discouraging investment in Cuba are good things to do...I'm not sure we should sacrifice every other principle that we have -- from helping the democratic transition in Russia to promoting a worldwide free-trade system -- to the idea of exacting an extra ounce of punishment on the Castro Regime." Tom Carter interview of Richard Nuccio, Special Adviser to the President and the Secretary of State for Cuba. (TWT, "Aide sees embargo over if Cuba reforms," 7/30/95, p.A10).

"Providing a remedy to U.S. citizens against those who traffic in property that has been stolen from them, when such traffickers simultaneously benefit from strong property rights protection laws in the U.S., can hardly be undesirable, and, indeed, is consistent with fundamental fairness...How could international legal principles be violated by providing such a remedy?" Comment on LIBERTAD by Eric A. Rodriguez and George R. Harper who are attorneys with Steel Hector & Davis in Miami. (IFLR, "Commentary," 8/95, p.11).

"The U.S. feels that Cuba should first make political reforms and improve human rights before it is allowed into the ACS. We are maintaining that while these are valid concerns, they should not hamper trade and economic ties among countries in the Caribbean Basin. The U.S. had no such concerns in establishing NAFTA with Canada and Mexico, two countries which have been Cuba's main trading partners in this part of the world." Comments by unnamed member of the Jamaican delegation to the inaugural summit of the Association of Caribbean States (ACS). (JOC, "Caribbean Leaders Meet to Forge Trade Bloc," 8/17/95, p.3A).

"The United States has a bilateral problem with Cuba that they have to solve. That is a bilateral problem in which we can not intervene." Simon Molina, Venezuelan economist and first ACS secretary general comments on the U.S. embargo to the Trinidad Express. (TWT, "New Caribbean alliance is first to include Cuba," 8/21/95, p.A).

"There are always a few people who are willing to make a buck - and the moral ramifications be damned. But most people know that stable business conditions will not exist in Cuba as long as Fidel Castro is in power." Jose Cardenas, Washington director for the Cuban American National Foundation. (NYT, "Companies Press Clinton to Lift Embargo on Cuba," 8/27/95, p.1).

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# **U.S. \* CUBA Policy Report**

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Washington, D.C., USA**

**Ralph J. Galliano, Editor**

## **INTERVIEW WITH RICHARD A. NUCCIO SPECIAL ADVISER TO THE PRESIDENT AND THE SECRETARY OF STATE FOR CUBA**

**WASHINGTON --** The following interview was conducted with Mr. Richard A. Nuccio in the Old Executive Office Building of the White House on Thursday, September 14th. Mr. Nuccio spoke about: the annual renewal of the embargo; his role in the passage of the Cuban Democracy Act (CDA) of 1992; various key provisions of the CDA such as Cuban trading partners, sanctions against countries assisting Cuba, and telecommunications services; his role with regard to the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995; and the new Foreign Investment Law passed by the Cuban National Assembly on September 5th.

**Q: Today is the date for the President to sign the documents continuing the U.S. embargo against Cuba for another year. Is this considered to be a pro-forma matter?**

**A:** In fact, he already signed them earlier this week. It takes effect today. I hope this year it's not going to be pro-forma. I think we may find a way to highlight and underline that by signing this renewal of the Trading with the Enemy Act the President is reaffirming that the embargo is in effect the tool for promoting a change inside Cuba.

**Q: What is the position of the Clinton Administration concerning the Cuban Liberty and Democratic Solidarity Act otherwise known as the Helms-Burton Bill?**

**A:** Well, the position we have is that we announced in a letter to Congressman Gilman back on April 28th, which went in a couple of different directions. On the one hand, the Administration indicated that it believed that it had all the authority necessary under the Cuban Democracy Act to conduct Cuban policy. On the other hand, if Congress believed additional legislation was necessary, we were prepared to work with the Congress on that particular bill and we listed a series of objections that we had. They were of several different kinds. A number of them were kind of generic objections to the ways in which the bill intruded on presidential authority. It placed, what we felt to be, excessive restrictions on the President's authority to carry out Cuba policy particularly in a period of transition when it might be difficult to know now exactly what would need to be done. There are also the specific provisions of the law particularly those dealing with property that we felt conflicted with other interests of the United States that were quite significant and important - our commitments on international trade agreements, some of our relations with important allies and our ability to conduct support for the democratic transition in Russia. And, that while Cuba is an important U.S. interest, it is not more important than every other interest the United States has in the world. In any foreign policy, you're trying to achieve a balance of interests especially when they conflict.

We've tried to work and cooperate with the Congress. We haven't been very successful, frankly. In fact, the Congress, at least in the House, changed some aspects of the legislation we strongly supported which was very tough, reimposing some penalties, for example, on certain kinds of traveling. And, one explanation for why they might have changed it is so that they can say there is nothing in the legislation that the Administration supports even though this particular aspect was tougher than the amendment that they accepted. The bill has changed. I think it's changed in response to some extent from our pressure. It's changed due to the result of a lot of objections from the number of Republicans who are also concerned about this sweeping nature of the bill and its impact on other aspects of U.S. foreign and trade policy. We're now entering a period where we will sort of insist more strongly on trying to work with the Congress to improve the legislation. It's said often in the newspapers that the Administration has threatened a veto for Helms-Burton. I can tell you categorically that the Administration has never threatened a veto and has not to this day of September 14th threatened a veto on the Helms-Burton legislation. We still find the House version of the bill significantly flawed and we think we will be able to work on the Senate side where there is a more interesting equation of support for the bill to try to improve those aspects of the bill that we still find objectionable.

**Q: What role did you play in the passage of the Cuban Democracy Act of 1992?**

A: Well, I was a staffer for Congressman Robert Torricelli who was the author of the legislation. He and Senator Graham on the Senate side, it's sometimes forgotten, including by me, that it's the Graham-Torricelli bill. We worked very closely with Senator Graham's office, Al Cummings, Senator Graham's lead staffer over there. I, together with other members of Torricelli's staff, was responsible for initially collecting all of the ideas about Cuba policy, sifting and sorting through them, trying to develop an approach that was showcased first by Congressman Torricelli in an op-ed that he wrote that was published in Los Angeles and in Miami about the way to approach Cuba policy that melded what became the critical aspects of the bill - tightening the embargo in certain areas but also loosening up in areas of the embargo that would help us to communicate with the Cuban people and provide direct support to them. I was very pleased as a newly minted Congressional staffer to be involved in a process that went from the original conception of the idea of the bill through the mobilization of its political support, both Democrat and Republican, to the negotiations with the Bush Administration to achieve their support and then the floor work that was required to achieve final passage in the House and the Senate. So, it was a terrific learning experience for me.

**Q: What role are you playing with regard to the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act?**

A: Well, this new job that I have is designed to coordinate and implement all aspects of U.S.-Cuba policy. We have created a new task force structure that I chair under which virtually all aspects of Cuba policy are included. For example, under the task force we have a working group specifically tasked with dealing with Helms-Burton. It's run and directed by the State Department, by Anne Patterson, the Deputy Assistant Secretary for Cuba and by Dean Curry who is the Principal Deputy Assistant Secretary for Legislative Affairs. They have a team that works for them and they represent us to the Congress at least up through this stage.

**Q: Have any of the task force members met with the Congressional staff directors?**

A: Well, we've offered meeting with all of the people in the House and in the Senate relevant to the bill. We haven't been taken up by everyone. There's a little bit of a game being

played in which some people on the Hill want to choose with whom they will meet from the Administration and our position has been that we have a team approach. We have people in that team that are both technically competent and have the political judgement that we want involved in any negotiations. So, our position has been that while we are happy to talk, we talk as a team and as an Administration. We will not allow the Congress to pick the particular individuals with whom they would like to conduct conversations about the bill. I think that's the reasonable approach. It's the approach every Administration has ever used about this. As we get into later stages of processing the bill, it is more possible that I will enter into it. As an adviser to the President, not confirmable by the Senate, I really have a role that should be preserved of giving private advice to the President. My appearance on the Hill, while I don't avoid going to the Hill, is not the same thing as some of us charged with formal relations with the legislation.

**Q: In his 26th of July speech, Fidel Castro criticized the so-called Track II of the Cuban Democracy Act. What is your response to that criticism? And, how can Track II succeed without the cooperation of the Castro regime?**

A: Those are both good questions. I think anyone would be disappointed about President Castro's comments in the July 26th speech, not because I or anyone else who worked on Cuba policy would have expected him to embrace support for the Cuban people, which is what Track II sometimes represents, but because it demonstrates once again the kind of society he has in mind for Cuba. One that's at complete variance with Western traditions, with the kind of systems we have in the Western Hemisphere with democracy and respect for human rights. What Track II talks about is the great tradition of Western democracies and respect for individuals regarding people as in their private lives free to express themselves, to organize with other individuals, to represent their interests. Many issues, not necessarily having to do with politics, whether it's religion or boy scouts or an association of economists or students, these are things that are the bedrock of democratic society in Western Europe, the Western Hemisphere and anywhere else around the world where democracies have grown and flourished. In what President Castro indicated in his comments on July 26th is that he literally fears teachers of English as a second language, people who will come to Cuba to study its culture and history, because these people might bring foreign ideas that will contaminate and undermine a revolution that supposedly has triumphed, has been in power in Cuba for 35 years, that claims to have created a "new man" in Cuba, that supposedly represents the masses of the Cuban people. Yet, he demonstrated in that speech that he's more afraid in some ways of teachers and cultural exchanges than he is of weapons.

**Q: How do you think that Track II can succeed though without the cooperation of the Castro regime, if in fact they reject it outright?**

A: Well, first it's important to correct a misimpression that a lot of people have, including in a recent Miami Herald editorial last week about Cuba, which is that Track II is somehow related to the behavior of the Cuban government, that we do things along Track II as a reward or a reaction to Cuban government behavior. That's not true now and it never was true. The idea of Track II comes from the Cuban Democracy Act where there's a section called "Support for the Cuban People" that talks about humanitarian assistance, support for on-island activities, telecommunications provision and other kinds of things that would open up contact and communication with the Cuban people. That is something we always intended to do unilaterally. It is the case that is made more complicated and difficult when the Cuban government goes after those people in civil society whether they are churches or lodges or unions and sees them as an enemy and tries to restrict or suppress their activities. It certainly

limits what we or the outside world can do.

And again I want to underline when I say "we" I don't necessarily or in this case primarily mean the U.S. government. When I talk about support for the Cuban people, I'm referring to the need for the international community, our own civil society, our own non-governmental organizations, to work with Cuba. In part because the U.S. government involvement in Cuba is so controversial, but in part because I think our civil society has advantages that no government has. They know best how to judge whether the people they are working with are really independent people trying to develop their own ideas and their own future. They know best how to deliver whatever assistance they have and make sure that it gets to the people for whom it's intended. I think that there are reasons why, in our relations with Cuba, particularly in the area of "Support for the Cuban People," the role of the U.S. government should be to stand out of the way, facilitate the work of our own civil society including, as will obviously be the case, parts of our society that completely disagree with U.S. policy. I would wager that most of the groups that are involved actively in programs of humanitarian support in Cuba oppose the U.S. embargo. But they are willing to abide by U.S. law and work with the Administration because they do support the goal of providing assistance to the Cuban people, even though they don't like other aspects of our policy. So, I think the U.S. government's principle role in this area of "Support for the Cuban People" is to stand back and help our own non-governmental organizations do work that they do very effectively in Cuba and in many other parts of the world.

Let me go a little bit further though. The model that we're talking about for Cuba is a model that was developed originally in Eastern Europe where Western European governments negotiated with Eastern European governments during the time of the Soviet Bloc arrangements to try to open up contact with Eastern Europe. They did indeed do that by trying to negotiate directly with those governments. That obviously made their work a little easier in some ways than what we will face in Cuba. I've also been impressed with the fact that in the aftermath of the fall of the Berlin Wall and the coming to power of many of the dissidents in Eastern Europe who, in fact, were supposed to have been helped by these programs about openness to the East conducted by Western European governments, they have been some of the biggest critics of that policy because they felt, whether it was Vaslav Havel in Czechoslovakia or Solidarity in Poland, they felt betrayed in some ways by the fact that Western European democracies, whom they saw as their natural allies, conducted negotiations, as they saw it behind their back, with governments that were at that very moment literally taking away their jobs, denying educational and employment benefits to their families, and in some cases imprisoning, torturing and murdering. I think it is very important for the United States government to recognize all of the experience of Eastern Europe and to be very careful in distinguishing our support for the Cuban people from our opposition to the behavior and the practices of the Cuban government.

**Q: You're certainly familiar with the language contained in the Cuban Democracy Act - Section 1703 - that states: "It should be the policy of the United States to be prepared to reduce sanctions in carefully calibrated ways in response to positive developments in Cuba." Please give three examples of positive developments in Cuba that would elicit a reduction in sanctions and what would the appropriate U.S. response be to each?**

**A:** I'm going to frustrate you by not answering that question the way you would like it answered. Let me explain why. We would like to see change inside Cuba. We would like to be able to adjust our policy with Cuba because we see progress being made towards democracy and respect for human rights and the kind of economic policies that would create greater well-being for the Cuban people. We are, in fact, eager in searching for positive developments inside Cuba that would merit a response from the United States. We don't enjoy having an embargo



against Cuba. We would love to welcome Cuba back into the family of Western Hemisphere nations as a full partner but to have a kind of respectful relationship with Cuba that perhaps we always haven't had in our bilateral relationship but which we now have much more with other countries in the Western Hemisphere because we have a kind of neurosis between our two countries. Were I to explicitly say what are the things we would like to see happening in Cuba and how we would respond to them, it would be a *prima facie* reason for the Cuban government not to do precisely those things that I have just enunciated. And so, because this is not a game, because I really want to see change in Cuba, because I hope the change comes more quickly, I don't think it's useful for us to be very specific.

However, let me say a little bit more. When I wrote that phrase what I had in mind was that it would offer to the Cuban government a way of making decisions for itself, for its own interests, and hopefully for the interests of the majority of the Cuban people without regard to what the United States wanted or insisted Cuba do. Many people thought that the Cuban Democracy Act, and still today, accuse it of being another Platt Amendment but it's not at all. The Platt Amendment dictated to Cuba a right of the United States to intervene in Cuban affairs. The Cuban Democracy Act says that the United States will condition its relationship with Cuba on Cuban behavior but it doesn't say that we have a right to determine Cuban behavior. It just says we have a right not to like Cuban behavior and to not develop a full relationship with Cuba until we see full respect for democracy and human rights inside Cuba. Were Cuba to make meaningful steps in the area of political or economic reform, those are things but short of the kinds of things that are in other sections of the Cuban Democracy Act - elections under international supervision, freeing of all political prisoners - those things are important. Those things have to happen before the U.S. will drop its embargo.

But certainly, if the Cuban government were showing that it was heading in the direction of a political opening, that it was heading in the direction of creating a meaningful market inside Cuba, we would want to indicate with our reaction that we notice, that we found it a positive development and to encourage anyone inside the Cuban government who was responsible for taking those initiatives to try to keep doing them by demonstrating the change inside Cuba would produce change in the relationship with the United States.

We haven't seen the kind of positive developments inside Cuba yet that we think merit the calibrated response. I've indicated to you that there are places in the Cuban Democracy Act that say what would be the sort of very hard and very difficult things for Cuba to do that would touch on the core of the embargo, such as free elections, freeing of political prisoners, respect for freedom of assembly and speech and so on. So, its more than we've seen so far and less than what is indicated in later sections of the Cuban Democracy Act as triggering the dropping of the embargo or at least the beginning of the dropping of the embargo. That's about the most I want to say. I think the Cuban government should do what it needs to do to develop a sound economy and it's not doing that right now. It should do what it needs to do to gain the support and confidence of the Cuban people by allowing them to choose their own system of government and their own leaders. It is clearly not doing anything in that area.

**Q: Some have described the Helms-Burton Bill as picking up where the Cuban Democracy Act left off in so far as the issue of confiscated U.S. properties is concerned. How important do you think the property issue is in our relationship with Cuba?**

**A:** Well, it's noteworthy that the Cuban Democracy Act was completely neutral on the issue of property. When I said earlier that we examined every idea about Cuban policy, we certainly looked carefully at the issue of property. What we concluded in that examination was that it was an extremely difficult and controversial area that any attempt by the Congress to legislate changes in what had been a relatively settled and accepted area - the claims settlement

procedure that was developed in the early 1960s - had the potential to unleash a huge political battle inside the United States and to be profoundly misunderstood inside Cuba. Unfortunately, I think that the Cuban Liberty and Democratic Solidarity bill by focusing as heavily as it does, and as the bill was changed, it's become clearer and clearer that the property provisions are actually the core provisions of the Helms-Burton bill.

I think that the reaction inside Cuba and here in the United States has demonstrated the wisdom of the conclusion we reached when we went through the process of the Cuban Democracy Act. You now have the Cuban government, unfairly of course, taking advantage of language in the Helms-Burton bill to sell the idea to the Cuban people that their homes, their hospitals, their schools are threatened directly by Helms-Burton. That the sons and daughters of Batista will be riding back into Cuba on the shoulders of Senator Helms and Congressman Burton. This is completely unfair. But, the language of the bill allows this interpretation and the Cuban government's control of its own population makes it difficult for a different point of view, an outside point of view to compensate or balance for that. You also have divisions for the first time within the property owners themselves here in the United States. You have Cuban-Americans, now to some extent, pitted against American citizens who are registered claimants where some of the most significant registered claimants have now come out in open opposition to the Helms-Burton bill. So, I think that property is a very important issue for the future of Cuba. Property needs to be resolved early in any transition process to attract foreign investment and to ensure stability for a future Cuban government. I think that the way we have had this debate develop, as a result of the Helms-Burton bill, about property confirms the wisdom of the Cuban Democracy Act leaving the property issue as it was.

**Q: Section 1704(a) of the Cuban Democracy Act relates to international cooperation and the Cuban trading partners whereby: "The President should encourage the governments of countries that conduct trade with Cuba to restrict their trade and credit relations with Cuba in a manner consistent with the purposes of this title." Could you give one example when the Clinton Administration has encouraged governments such as Canada, Mexico, Spain or Russia to restrict their trade and credit relations with Cuba?**

**A:** Well, I think we've done less in that area over the last two years than we should have. But, obviously the decision to name three Canadian subsidiary companies as "Specially Designated Nationals," that is to treat them as if they were organs of the Cuban government for purposes of the embargo, barring trade with them, is exactly the kind of thing that was envisioned in that provision of the Cuban Democracy Act. I again thought that that aspect of the Cuban Democracy Act should have been used as a way to open up conversations with other governments about their relations with Cuba, conversations that not only focused on the trade side but focused on the need for greater political changes on Cuba. I think that international area of Cuba policy was neglected over the past couple of years. Frankly, it was one of my priorities.

I have already made two trips to Spain this year and one to the European Union. My conversations I hope are viewed as respectful by our allies and these countries are our allies. We share completely the ultimate goal of Cuba policy which would be a peaceful and democratic transition. They have very different approaches to Cuba. To some extent we are conducting different experiments to see who can produce more change inside Cuba, us with pressure and a policy of support for the Cuban people or the European governments that are trying, some are not sincere, but some are, and the ones that are sincere are trying to produce change through a policy of engagement in support for the Cuban government.

I think that there are interesting developments to show that perhaps the Europeans are not producing as much change as they would have hoped. I was very intrigued by this recent

report by PAX Christi, a Dutch NGO, who had visited Cuba many times before and recommended foreign investment as a way to produce a political opening inside Cuba, returned from a recent trip and sent a report to the European Community urging the European Community to not invest in Cuba unless it imposed strict political conditionality on its investments. The report then went through a number of criticisms of the way in which the Cuban government is warping, distorting foreign investment to its own purposes that, frankly, sound very much like the kind of criticisms that our mission writes all the time in its cables about what is happening inside Cuba. Namely, that the partnerships being formed between foreign companies and Cuban companies are staffed by people drawn from the [Communist] Party and from the Military, judged by their loyalty not by their professional, business or managerial skills. The fact that companies are not allowed to pay their own workers, have to pay the government, who then exploit the Cuban workers by paying them in pesos when they have received the dollars at completely unfair exchange rates, that this removes the likelihood that the Cuban workers will either receive the benefits of employment or that they will have transferred the kinds of skills and mentality of entrepreneurship and labor organizations that PAX Christi hoped would flow in foreign investment and so on. There is a series of criticisms. They argued essentially what I argued when I met with members of the European Union that while we certainly don't approve of foreign investment in Cuba, we will continue to oppose U.S. foreign investment in Cuba. If European governments and companies decide to invest in Cuba, we would hope that they would place very strong political conditionality on their investments to make sure that workers were treated fairly, that they were free to organize, that there are environmental standards respected. In short, that European companies operate in Cuba the way they would expect to operate in their own countries. And, if they were to do so, they might have some benefit for Cuba. But, the way that European investment is occurring now, it provides little if any help for the long run goal of achieving a peaceful and democratic transition.

**Q:** Section 1704(b) of the Cuban Democracy Act relates to sanctions against countries assisting Cuba and permits the President to apply sanctions to any country that provides assistance to Cuba - Mexico springs to mind - where the government is known to have brokered joint venture deals between Mexican companies and state controlled Cuban companies involving confiscated property belonging to U.S. nationals. In the process, Cuba has managed to repay its \$310 million debt to Mexico through financial arrangements known as debt-equity swaps. Could you explain why the Clinton Administration never applied sanctions, let alone threatened to apply sanctions, against Mexico in accordance with the Cuban Democracy Act?

**A:** Well, it's true that we have never applied sanctions. And, I'm not sure I would describe the relationship we have with other governments as one of threats. But, I think were you to talk to those governments, I think you would find that we have repeatedly stressed this aspect of the Cuban Democracy Act and repeatedly asked for information and confirmation by other governments that their debt-equity relationships with Cuba did not provide subsidies. We have made similar strong approaches to governments that engage in trade with Cuba to be sure that there are not subsidies contained in the relationship. Obviously, the Russian oil-sugar swaps are something that has been examined. We're prisoners to some extent and rely to some extent on the information that other governments give us. We have some ability to monitor and collect our own information. But, we also have to rely to some extent on what we are told by other governments. I think I'll just leave it by saying that this is not a neglected area of U.S. policy. If you were a Russian government official or a Mexican government official or a Colombian government official, I don't think that you would feel that you had never heard from the United States about this issue.

**Q: Contained in Section 1705 of the Cuban Democracy Act in "Support for the Cuban People" there is a provision permitting telecommunications services. The Clinton Administration chose a policy of sharing dollar revenues with the Castro government for the first time since the embargo was placed on Cuba in 1962. Since this policy was implemented, do you know how much dollar revenue has flowed to Cuba on a monthly basis? When can we expect public reports on the cash flow to the Castro government?**

**A:** We're just at the beginning of the review of telecommunications policy towards Cuba. That review was mandated in the original regulations that were issued early in the Clinton Administration and we're actually slightly overdue on that review. One of the first things we're doing as the basis for that review is collecting from the long distance carriers figures about exactly what's happening in telecommunications policy and the revenues are part of that. We will have at some point a better idea than we do now of exactly what flows we are talking about. But, we are certainly talking about many millions of dollars flowing to Cuba as well as many millions of dollars flowing to the U.S. companies that are engaged in the long distance trade.

**Q: And finally, would you comment on the passage of the new Foreign Investment Law that recently occurred in Cuba?**

**A:** Yes, I think it's interesting that this foreign investment law was delayed as long as it was. It is noteworthy that it was passed without a single dissenting vote in this organ of people's power the National Assembly. And yet, it falls far short of what the Cuban government had raised expectations it would be in many foreign capitals, particularly those that are concerned about investing in Cuba. It is noteworthy for creating the concept of private property for the first time in Cuba and then it undercuts that positive step by limiting private property only to foreigners. No Cubans are allowed to hold private property. It gives assertions about respect for foreign investment. But, I think it would be taken with a large grain of salt by anyone who has watched the behavior of the Cuban government even just over the last ten years with respect to foreign investment and in trade with Cuba. It's certainly not anything that the United States considers worth responding to on our part. We're still examining it closely and its implementation to some extent will make a difference. But, we don't see a lot in the foreign investment law that would advance U.S. interests in seeing a freer economy or that this would lead in some way to political changes.

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**Ralph J. Galliano, Editor**

## **DOLE RESPONDS TO CLINTON POLICY SHIFT BY BRINGING CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY (LIBERTAD) ACT OF 1995 TO SENATE FLOOR**

**WASHINGTON --** Passed overwhelmingly in the House by a bipartisan vote of 294 to 130 on September 21st, LIBERTAD introduced by Rep. Dan Burton (R-IN) was brought to the floor on October 11th by Majority Leader Robert Dole (R-KS) for a Senate vote that is expected to lead to its passage. In a strategic political and legislative maneuver that responds to President Clinton's further normalization of U.S. relations with Castro's Cuba announced in a major foreign policy speech on October 6th, (See this issue of USCPR, "President Clinton Eases Embargo," p.4) Dole decided to move sooner rather than later on a key piece of embargo tightening legislation. In accordance with the provisions of rule XIV of the Standing Rules of the Senate, Dole brought the House passed Burton bill over to the Senate. Dole quickly substituted the Helms bill (See USCPR, Vol.2, No.7, "Helms Refines Cuban Liberty And Democratic Solidarity (LIBERTAD) Act of 1995 for Passage as an Amendment," 8/31/95, p.1-4) for the House passed Burton bill (See USCPR, Vol.2, No.6, "Libertad (HR 927) Reported Out of House International Relations Committee," 7/19/95, p.1-4) avoiding a lengthy and contentious markup in the Foreign Relations Committee. Immediately invoking cloture in accordance with the provisions of rule XXII of the Standing Rules of the Senate, Dole moved to cut off debate on the Dole-Helms substitute amendment.

In his opening remarks, Dole stated, "The choice in this legislation is simple: Do you want to increase pressure on the last dictatorship in the hemisphere, or let Castro off the hook. Many in the United States actually want to end the embargo, and in the coming debate, they will argue about property rights, legal interpretations, free trade, about many things. But let there be no mistake, passing this bill is about supporting democratic change in Cuba and sending Fidel Castro the way of all other dictators of Latin America." (CR, Vol.141, No.157, 10/11/95, p.S 14994).

Senator Helms followed by describing the Cuban economy as a "shambles" and that Castro's "new foreign investment law that has been trumpeted all around in big business circles" as continuing to "place economic decision making in the hands not of free enterprise but in the hands of the Cuban Communist Government. It has nothing to do with economic freedom for the Cuban people. The Cuban Communists, Mr. Castro's crowd, do you not know, will still dictate which Cubans get jobs and which Cubans will not. They will determine how much Cubans will be paid, and it is a pitiful sum that they intend to be paid." Helms summarized his view of LIBERTAD in this way: "This legislation seeks to break the status quo by extending an offer of broad, U.S. support for a peaceful transition, while providing disincentives to companies whose [joint] ventures prop up the Castro...regime, the Communist regime in Cuba, that is exploiting the labor of the Cuban people and the resources of the American property owners." (CR, Vol.141, No.157, 10/11/95, p.S 14995, 14996).



**DODD LEADS FILIBUSTER ATTEMPT** - Senator Chris Dodd (D-CT), general chairman of the Democratic National Committee and former chairman of the Western Hemisphere Subcommittee, orchestrated a filibuster on the Senate floor for nearly two days before Dole's cloture motion to stop debate was brought up for a vote. One after another, Democrat Senators opposed to LIBERTAD spoke on the issue of Cuba and everything else from Medicare to B-2 bombers. Senator Claiborne Pell (D-RI) ranking subcommittee member spoke authoritatively against the bill agreeing with President Clinton's defacto policy of engaging the Cuban government saying, "Rather than ratcheting up the pressure even further in order to isolate Cuba, as this bill would do, we should be expanding contact with the Cuban people. In that regard, I believe the measures announced by President Clinton last week are a step in the right direction." (CR, Vol.141, No.158, 10/11/95, p.S 14997). Dodd himself posed broad and penetrating questions encompassing the wide scope of the opposition's arguments. He asked, "Are we more likely as well to impose additional hardships on the people of Cuba not the Government, but the people of Cuba? Are we going to make the transition to democracy more difficult or less difficult if this legislation is adopted and signed into law? Finally, will this legislation place added strains on our relations with other governments?" (CR, Vol.141, No.158, 10/11/95, p.S 15008).

More to the core of the opposition's arguments is the issue that Title III, Section 2302 (Liability For Trafficking In Confiscated Property Claimed By United States Nationals) of LIBERTAD (S. 381) will generate 300,000 to 400,000 lawsuits and tie U.S. federal courts in knots. As narrowly construed, LIBERTAD provides for a cause of action under the U.S. court jurisdiction only if a foreign investor is trafficking in illegally confiscated property in Cuba and either has assets or is doing business in the United states. By the Cuban government's own admission, there are only 212 active joint-ventures involving foreign companies doing business in Cuba, most of them not affecting U.S. properties nor providing any basis for U.S. jurisdiction. Further, Section 2302 presumes in favor of the certified claimants.

**LIBERTAD GAINS BIPARTISAN SUPPORT IN THE SENATE** - On the second day of debate, Senator Bob Graham (D-FL), an original cosponsor of LIBERTAD, recollected his support for the Cuban Democracy Act of 1992 declaring, "The Cuban Democracy Act helped force an economic crisis for Castro's government...Unfortunately, it has not resulted in any movement toward liberalization of his political regime in terms of steps toward democratic government, nor has it resulted in any significant improvement in human rights." Clearly reiterating his support for LIBERTAD he stated, "This legislation increases the pressure on the Cuban Government from profiting from confiscated property. This legislation has already deterred the flow of foreign capital to the Castro regime as investors who are anxious to enter into business partnership with the Castro government have been closely monitoring this legislation awaiting action by the United States." (CR, Vol.141, No.158, 10/12/95, p.S 15101)

**SECOND CLOTURE VOTE SCHEDULED** - Due to the absence of key Senate supporters who were out of town, Dole's cloture motion failed (56 to 37) to achieve the required three-fifths or 60 votes needed to close off debate and bring LIBERTAD to a vote. Bipartisan support included Senators Bradley (NJ), Bryan (NV), Graham (FL), Hollings (SC), Lautenberg (NJ) and Lieberman (CT). A second cloture vote is expected on Tuesday, October 17th. Once debate is closed off, Dodd's filibuster will end and Majority Leader Dole will bring the bill up for a vote where it is expected to pass by less than the two-thirds or 66 votes needed to be veto proof. Following Senate passage, conferees will be chosen and the conference committee will work to reconcile differences between the House and Senate passed bills. Needing to win Florida in the general election, President Clinton is not likely to enter the 1996 presidential campaign season having vetoed LIBERTAD.

**STATE DEPARTMENT REJECTS HOUSE  
PASSED BURTON BILL**

In his letter of September 20th sent to House Speaker Newt Gingrich that Rep. Ileana Ros-Lehtinen (R-FL) described as a "veto message" not a "veto threat," Secretary of State Warren Christopher stated that while the State Department found the goals of LIBERTAD "laudable, its specific provisions are objectionable and in some cases contrary to broader U.S. interests." Elaborating, Christopher said the bill set "inflexible standards" for the establishment of a transition government in Cuba and that it jeopardized "other key U.S. interests around the globe." He cited "U.S. assistance to Russia and other nations of the former Soviet Union" and he specifically alluded to the penalties contained in the bill against countries such as Russia assisting Castro in the completion of the Juragua nuclear power plant in Cienfuegos. Although Secretary Christopher expressed the State Department's firm commitment "to seeking the resolution of U.S. property claims by a future Cuban government," he described the right of action against traffickers of confiscated American owned properties doing business in the United States as "misguided" and suggested that those trafficking provisions in conjunction with the transition requirements contained in the bill also erected "an enormous legal hurdle to participation by U.S. businesses in the rebuilding of a free and independent Cuba." Further, the State Department "cannot support the bill and, if it were presented to the President, would urge a veto."

The House, however, on September 21st with strong bipartisan support passed LIBERTAD by a vote of 294 to 130, a margin sufficient to withstand a presidential veto. Key House Democrats included Rep. Robert Torricelli and Rep. Robert Menendez both of New Jersey. Of the 294 members of Congress voting aye, there were 227 Republicans and 67 Democrats in favor of the legislation while only 4 Republicans voted against. Assessing the possibility of a presidential veto, Rep. Menendez, referring to the 67 Democrats who supported the bill, said, "One-third of his own caucus has joined the majority in saying they want this passed." (TWT, "House votes to tighten Cuba net," 9/22/95, p.A1).

**TREASURY ISSUES TRAVEL LICENSES TO  
U.S. CORPORATE EXECUTIVES**

Carla Hills, former U.S. trade representative under President Bush led a delegation of 47 business executives from the automotive, retail, insurance, hotel, defense and communications industries to Cuba on Friday, October 6th. Executives included chairmen and CEOs from such companies as General Motors, J.C. Penney, Sears, Hyatt Hotels, Rockwell International, Travelers Insurance, Tandy Co. and Kmart. Hills is a member of the Time Warner Inc. board of directors. ~~The publishing and communications giant~~ recently merged with Ted Turner's CNN. It was reported that Time Inc. sponsored the trip whose members were licensed by the Treasury Department's Office of Foreign Assets Control as "honorary journalists." President Clinton's chief of staff, Leon Panetta, is said to have met with Hills and the corporate executives at the White House prior to the group's trip to Havana where they met with Fidel Castro. This extraordinary visit comes on the heels of President Clinton's announcement to ease travel restrictions to Cuba. (MH, "Many exiles blast new Cuba plan," 10/7/95, p.18A; MH, In The Americas, 10/8/95, p.28A; MH, "Congress to investigate U.S. executives' Cuba trip," 10/10/95, p.6A).

## PRESIDENT CLINTON EASES EMBARGO

As he approaches the 1996 presidential campaign, President Clinton, in a move that is sure to fan the pre-election embers of an already intensely heated public policy debate on Cuba, announced an easing of the U.S. embargo by encouraging Cuba's "peaceful transition to a free and open society." The president's Washington announcement, described as an anti-isolationist message, was contained in a speech before the human rights organization Freedom House. His characterization of the new move in dual terms of tightening "the enforcement of our embargo" and promoting "democracy and the free flow of ideas more actively," prompted Senate Majority Leader Robert Dole's (R-KS) harsh criticism by pointing out that, "The embargo against Cuba has been the law of the land since President Clinton came to office. It should not be news that the U.S. law will be enforced."

The Clinton administration's policy shift did not appear to be justified by any prior move by the Castro regime toward the free flow of ideas, free and fair elections or democracy in general. Administration policy relies largely on the Cuban Democracy Act of 1992 (CDA) which states in part that, "It should be the policy of the United States to be prepared to reduce sanctions in carefully calibrated ways in response to positive developments in Cuba." Instead, the administration's policy unilaterally expands people-to-people contact "to engage in a fuller range of activities in Cuba" through what the CDA calls non-governmental organizations or NGOs. The president announced in his speech the first U.S. government-NGO grant of \$500,000 to be "awarded to Freedom House to promote peaceful change and protect human rights" in Cuba. This new policy which Castro attacked vigorously in his annual 26th of July speech will require the close cooperation of the Castro regime for it to work. (See US CPR, Vol.2, No.7, "Castro rejects CDA Track II," 8/31/95, p.6).

Further, the administration's policy shift includes expanded non-tourist U.S. travel to Cuba for: research, news gathering, cultural, educational, religious or, human rights purposes. Under the new policy, Western Union is permitted to reopen offices in Cuba to facilitate the free flow of U.S. dollars for the above mentioned purposes. This paves the way for the future reinstatement of family remittances estimated at \$400 million annually. While U.S. news organizations such as CNN and Associated Press have reported from Cuba, the Cuban government controlled Prensa Latina for the first time will be permitted to open news bureaus in the U.S. Of this move, Dole was equally critical saying, "It is difficult to understand why the President would now allow Cuban government propagandists masquerading as 'journalists' to open shop in the United States." The US CPR reported earlier in the year (US CPR Vol.2, No.5, "Report on Press Freedom in the Americas Cites Cuba," 7/7/95, p.5) on the Inter-American Press Association's country-by-country summary which described Cuba as a country where, "information once again has been converted into exclusive state property." With regard to the Clinton administration's expanded cultural and educational contacts, the US CPR reported on Kenia Serrano Puig and Rogelio Polanco Fuentes the Cuban communist youth leaders who in their 6-week national tour of the U.S. college campuses openly criticized the embargo and the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995 (US CPR, Vol.2, No.3, "Cultural Exchange Program Continues," 5/15/95, p.5). More of the same can be expected under the administration's loosening of the embargo restrictions where the State Department through its offices at the U.S. Interest Section in Havana will routinely issue unrestricted travel visas for Cuban students. The government controlled students will come to the United States for the purpose of both criticizing U.S. policy toward Cuba and strengthening their political and economic contacts as well as their socialist ties in America.

<b>SHORT TAKES</b>
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**FORMER PRESIDENT JIMMY CARTER SEEKS DIALOGUE BETWEEN CUBAN EXILE GROUPS AND THE CASTRO REGIME** -- Under the auspices of the Carter Center in Atlanta, Georgia, and with his once-national security adviser for Latin America, Robert Pastor, former President Carter held two separate days of consultations with various Cuban exile groups in an effort to promote talks among the exiled Cubans and, between them and the Cuban government of Fidel Castro. While in Cuba last May, Pastor met with Castro to discuss a future meeting with Carter and himself. Clinton administration officials disavow any coordination with Carter on the proposed dialogue plan. Both Carter and Pastor oppose the Helms-Burton bill as does the Clinton administration. (TAC, "Cuban exiles reject Castro talks," 9/22/95, p.A1).

**VATICAN DISCOUNTS REPORTS OF VISIT AND OF SECRET TALKS WITH CASTRO REGIME** -- A recent story by veteran reporter and author Tad Szulc suggesting secret diplomatic negotiations between the Vatican and the Castro regime were flatly denied. In his special report to The Miami Herald, Szulc's suggestion that Pope John Paul II would discuss the Cuba issue during his U.S. meeting with President Clinton and possibly even visit Cuba during an upcoming trip to Central America scheduled for February were discounted by Vatican and U.S. officials. Although Castro never officially broke-off diplomatic relations with the Vatican, the Pope has never visited Cuba. Each maintains their respective embassy in Rome and Havana. Pope John Paul II last year appointed the first Cuban Cardinal in 32 years, the former Archbishop Jaime Ortega of Havana. Citing the "opinion of persons closely following this situation," Szulc concluded that the Pope's meeting with Clinton may lead to "a form of three-way dialogue" including the Vatican, Havana and Washington. (MH, "Vatican opens a dialogue with Cuba," p.1A, 10/1/95; MH, "Pontiff in Havana? 'out of the question,' the Vatican declares," p.1A, 10/3/95; MH, "Cuban Catholic Church denies talks with Castro," p.7A, 10/4/95).

**CLINTON ADMINISTRATION TO GRANT CASTRO VISA** -- While Libya's Moammar Gadhafi and Iraq's Saddam Hussein will not be receiving visas and Cuba remains on the State Department's list of nations supporting international terrorism, Cuban dictator Fidel Castro will be granted a visa to enter the United States to address the United Nations General Assembly later this month. Despite strong protestations from 24 members of Congress in July led by Rep. Ileana Ros-Lehtinen (R-FL) (see US CPR Vol.2, No.6, p.5, 7/19/95) and Senate Majority Leader Robert Dole (R-KS), the Clinton administration denies there has been any change in U.S. policy toward Cuba. (WP, "Castro to Attend Festivities at U.N.," 10/3/95, p.A13; ABC Evening News, 10/10/95).

**CASTRO SCHEDULED TO ADDRESS UNITED NATIONS GENERAL ASSEMBLY FOR 50TH ANNIVERSARY** -- Castro, in his first trip to the U.S. since being granted a visa by President Jimmy Carter in 1979, is scheduled to address the U.N. General Assembly on Sunday, October 22nd as part of the U.N.'s 50th anniversary celebration in New York City. Castro, whose movements will be restricted to ~~within 25 miles of the U.N. in Manhattan, is expected~~ to attend private dinners and meetings with select members of Congress and preferred corporate executives. Castro is expected to remain in New York through October 24th. (WP, "Castro to Attend Festivities at UN," 10/3/95, p.A13; CNN, Headline News, 10/7/95).

**CERTIFIED CLAIMANT PROCTOR & GAMBLE SHIFTS POSITION IN SUPPORT OF LIBERTAD** -- In a letter dated October 9th to leaders of the Cuban American community and supporters of LIBERTAD, John E. Pepper, Chairman of the Board and Chief Executive declared his company's support for the revised legislation which adds explicit protections for the rights of certified claimants. Pepper expressed his company's agreement with the "aims and goals" of the bill saying that their previous position was based on an earlier draft of the legislation.

<b>NOTABLE QUOTES</b>
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"You don't know me. But I am working for the goals that the Cuban revolution originally held, which have since been abandoned in favor of simply holding onto power and control...I am actually an admirer of socialism." Comments by Richard Nuccio at meeting in Miami with moderate Cuban exiles. Nuccio is the Special Adviser to the President and the Secretary of State for Cuba. (FLSS, "Cuban refugees ask angry questions," 9/10/95, p.18A).

"...as economic conditions continue to deteriorate, Castro is becoming increasingly desperate for foreign currency. Thus the Cuban regime is now encouraging massive foreign investment for the first time. Property and businesses, many confiscated in the early 1960s from American citizens, are being sold at bargain prices to Mexicans, Canadians, and Europeans." Views by Rep. Dan Burton (R-IN), chairman of the Western Hemisphere Subcommittee. (MH, Viewpoints on U.S.- Cuba Relations, "Tighten the embargo," 9/20/95, p.15A).

"...I am writing to urge you to oppose Title III of legislation Sen. Helms will offer as an amendment...because it poses the most serious threat to the property rights of the certified claimants since the Castro regime's confiscations more than thirty years ago...In effect, this provision creates within the federal court system a separate Cuban claims program available to Cuban-Americans who were not U.S. nationals as of the date of their injury. This unprecedented conferral of retroactive rights upon naturalized citizens is not only contrary to international law, but raises serious implications with respect to the Cuban Government's ability to satisfy the certified claims." Letter, dated September 20, 1995, to U.S. Senators by David W. Wallace who is chairman of Lone Star Industries a certified U.S. claimant and chairman of the Joint Corporate Committee on U.S. Cuba Claims.

"These suits don't allow us to get our properties back, but they can scare foreign companies out of Cuba and recover damages. We think there'll be a few test cases involving important players, then an avalanche of investors leaving Cuba." Remarks on Title III of the Helms-Burton bill by Nicholas J. Gutierrez, Jr. a Cuban American attorney with the Miami law firm of Ruden McClosky. (MH, "Stakes high in Cuba claims bill," 10/2/94, p.13).

"Since the Cubans are now interested in developing tourism and some of our companies are tourism-related businesses, development of these islands could generate revenues for paying compensation." Remark by Roger Chesley of Amstar Property Rights Holdings LLC. (U.S. News & World Report, "A new round in an old fight with Cuba - Fresh controversy over seized U.S. property," 10/16/95, p.64).

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**Ralph J. Galliano, Editor**

## **DOLE-HELMS LIBERTAD AMENDMENTS PASS SENATE (H.R.927)**

**WASHINGTON --** Moving one step closer to what appears to be eventual passage of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, the Senate on October 19th voted 74 to 24 in favor of H.R.927 which supports democratic reforms, tightens the embargo on Castro's Cuba, and makes foreign investors who traffic in confiscated property accountable in the U.S. courts if they also maintain assets in or do business in this country. However, the very strength of this trafficking provision, designated as Title III, nearly derailed LIBERTAD when staunch opposition led by Senator Chris Dodd (D-CT) twice succeeded in preventing the adoption of a cloture motion to stop debate in order to bring the bill to a vote. With Senate rules requiring a three-fifths majority or 60 votes to cut off debate by the opposition, the first cloture motion on October 12th failed by a vote of 56 to 37 with Republicans holding firm but key Democrats such as Bradley (NJ), Graham (FL), Hollings (SC) and Lieberman (CT) breaking partisan ranks. Majority Leader Bob Dole brought to the floor a second cloture motion on October 17th but not before an intense debate ensued on the Senate floor leading to its defeat. Senator Feingold (D-MN) argued for the opposition reiterating previous objections that LIBERTAD, "seeks to impose on other nations -- close allies in many cases -- extraterritorial provisions which conflict with international law and various treaties to which the United States is party." (CR, Vol. 141, No. 160, 10/17/95, p.S15210). Senator Nunn (D-GA) invoked national security arguments by reading a letter he received from U.S. Marine Corp. General J.J. Sheehan the Commander in Chief of the U.S. Atlantic Command stating, "From a military perspective, the current version of the Helms-Burton Bill could create the conditions for more migrants." (CR, Vol. 141, No. 160, 10/17/95, p.S15211). Dodd continued to argue, "...what this Title III of the bill will do is expand the universe, the population of those who would be able to utilize the U.S. system in order to be compensated for lands that were expropriated from them." (CR, Vol. 141, No. 160, 10/17/95, p.S15212). Cuban American leaders such as Nicolas J. Gutierrez, Jr. of the National Association of Sugar Mill Owners of Cuba based in Miami dispute this view stating their preference for restitution rather than compensation of confiscated properties from a post-Castro government in Cuba. (See USCPR, Vol.2, No.9, 10/15/95, p.6). Senator Helms (R-NC), chairman of the Foreign Relations Committee, weighed in on the floor debate by attempting to clear the record stating, "Last week, for example, this Senate was told that all certified claimants oppose this bill. Not so. For example, Colgate-Palmolive, a certified claimant whose stolen property is valued at over \$14 million in 1960 dollars, wrote to me stating this communication is to state for the record the support of Colgate-Palmolive Co. for Senate bill S.381. This is the bill pending right now." Helms named other certified claimants as supporting LIBERTAD including: Proctor & Gamble, Consolidated Development Corp. an oil company, and Cintas Foundation, a New York charitable organization. By a vote of 59 to 36, the second motion to cut off debate failed losing two previous Republican supporters -- Senators Jeffords (VT) and Kassebaum (KS) -- in the process.

**TITLE III DELETED** - Senators Helms and Dole, unable to achieve cloture, counting two Republican defections and one absent Republican - Hatfield (OR) -intending to vote against cloture as well, chose to fight another day by deleting the controversial Title III in order to halt debate and to bring LIBERTAD to a vote ensuring Senate passage. This they did on October 18th when cloture was finally adopted on the third motion by a vote of 98 to 0. As Senator Helms brought his offer to the floor saying it was his "intention to lay before the Senate amendment No.2936, the LIBERTAD ACT, with titles I and II only," (CR, Vol.141, No.166, 10/18/95, p.S15277), Majority Leader Dole, just one vote shy of the needed 60, took the opposition to task declaring, "A determined minority -- at the urging of the White House -- was able to prevent action on the legislation." He added, "I know for the Democrats it is not easy to stand up to the kind of White House blitz that has occurred." Showing cooperation on the part of supporters of LIBERTAD, Dole pointed out that, "we already made 10 changes to address administration concerns. We were willing to make more to address issues raised in this debate." Dole went on to accuse the White House of talking tough and then working "to undermine the sanction Castro fears most." Describing the importance of Title III to the overall bill, Dole said, "It is the chilling effect on [foreign] investment in Cuba caused by the provisions of Title III that worries Fidel Castro the most." (CR, Vol.141, No.161, 10/18/95, p.S15277).

Even before LIBERTAD, with Title III deleted, was brought up for a final vote, Dodd threatened the supporters of the bill upon hearing that Title III could be reinstated during the House-Senate conference set up to reconcile differences in the respective bills. Dodd warned, "I certainly understand and respect the right of the conferees to have and decide what they are going to decide, but I would have to also put my colleagues on notice that I would use whatever procedural vehicles are available to me as a Member of this body to stop consideration of the legislation if that [the reinstatement of Title III] were to occur." (CR, Vol.141, No.162, 10/19/95, p.S15316). Then, Dodd attempted to disassemble Title II, *Assistance to a Free and Independent Cuba* authored by fellow Democrat Rep. Bob Menendez (NJ) until Senate colleagues including Graham (D-FL) and Bradley (D-NJ) rose in defense of Title II and the Senate rejected Dodd's amendment on Graham's motion to table by a vote of 64 to 34. Finally, on October 19th, following 5 days of protracted debate, the Senate passed H.R.927 as amended by Senators Helms and Dole having deleted Title III. (CR, Vol.141, No.162, 10/19/95, pp.S15324, S15325).

**BUDGET RECONCILIATION H.R.2517** - Representatives Lincoln Diaz-Balart (R-FL) and Ileana Ros-Lehtinen (R-FL) were successful in amending the Budget bill (H.R.2517) and passing H.R.927 once again in the House on October 26th giving LIBERTAD, containing Title III, another vehicle for passage separate from the free-standing bill. However, H.R.927 is not expected to survive the Byrd rule in the Senate even if it survives in the House-Senate conference. Under this rule named after Senator Robert Byrd (D-WV), a budget bill provision can be deleted if it does not produce a change in revenue or spending or if such changes are "merely incidental." To waive the rule, 60 votes are required. Given the Senate's unsuccessful attempt to garner 60 votes to invoke cloture on two previous occasions, the likelihood of the Budget Reconciliation Bill containing LIBERTAD also surviving the Byrd rule is not good.

**H.R.927 HOUSE-SENATE CONFERENCE** - True to his word, Dodd using "whatever procedural vehicle available" to stop consideration of LIBERTAD, on November 13th stalled the formation of the House-Senate conference by refusing to appoint the Senate conferees. The House has appointed: Reps. Gilman(R-NY), Burton(R-IN), Ros-Lehtinen(R-FL), King(R-NY), Diaz-Balart(R-FL), Hamilton(D-IN), Gejdenson(D-CT), Torricelli(D-NJ) and Menendez(D-NJ). Dodd declared, "here we are debating going to conference with the House on legislation that has no particular urgency whatsoever." Senator Lott (R-MS), the Senate Whip, responded later in the day explaining "we are just trying to appoint conferees on an issue that passed, three-fifths of the Senators voting for it in a bipartisan vote, and now we are being told that there is opposition to appointing conferees." (CR, Vol.141, No.179, 11/13/95, p.S16974, S16995).

## CURRENT STATUS OF LIBERTAD

Introduced in House as H.R.927 (Burton).	02/14/95
House subcommittee markup completed; approved by a vote of 6 to 0.	03/22/95
House full committee markup completed; approved by a vote of 26 to 6.	07/11/95
House passed H.R. 927 (Burton) by a floor vote of 294 to 130.	09/21/95

Introduced in Senate as S.381 (Helms).	02/09/95
Senate considered H.R.927 as passed the House.	10/11/95
Senate considered (Dole) substitute amendment No. 2898 to H.R.927.	10/11/95
Senate's first cloture motion rejected by a vote of 56 to 37.	10/12/95
Senate's second cloture motion rejected by a vote of 59 to 36.	10/17/95
Senate considered (Helms) substitute amendment No. 2936.	10/18/95
Senate's third cloture motion adopted by a vote of 98 to 0.	10/18/95
Senate adopted (Helms) substitute amendment No. 2936 to No. 2898.	10/19/95
Senate agreed to (Dole) substitute amendment No.2898.	10/19/95
Senate passed H.R.927 as amended by a vote of 74 to 24.	10/19/95
House-Senate conference pending.	

House passed Budget Reconciliation (H.R.2517) containing H.R.927 (Burton) as Title VI, Subtitle C by a vote of 227 to 203.	10/26/95
House-Senate conference pending.	

## U.S. CUBA NEGOTIATIONS OVER LIBERTAD

As the USCPR reported in April, congressional opposition to LIBERTAD was to be led by Rep. Charles Rangel (D-NY) in the House and by Senator Chris Dodd (D-CT) in the Senate. (USCPR, Vol.2, No.2, 4/17/95, p.2). Together, they have nearly succeeded in accomplishing what in Rangel's own words was a strategy to "take the teeth" out of the Helms-Burton bill. In both the House and Senate version: the sugar provisions have been eliminated or softened; the visa provisions have been eliminated in the Senate version; and the claims provision dealing with trafficking (Title III) has been deleted from the Senate passed bill. Opponent's early strategy to stop the legislation or to eviscerate it included having President Clinton go so far as to veto LIBERTAD. Comes now a credible story from *The Washington Times* written by foreign affairs correspondent Tom Carter reporting that Clinton has agreed to veto LIBERTAD in return for Castro's release of political prisoners. According to the report, Rangel stated that "I have heard that the release of political prisoners could have an effect on how our foreign policy relates to Cuba." The deal was purportedly struck in New York City at Cuba's Permanent Mission to the United Nations during Castro's U.S. visit in celebration of the UN's 50th anniversary. In response to Carter's story, Congressman Lincoln Diaz-Balart (R-FL) stated, "The issue in Cuba is not the freedom of 5 or 10 prisoners, but the freedom of 11 million Cubans." Diaz-Balart described Clinton's approach to Helms-Burton as "wrong ever since we filed the bill last February." A pattern of secret negotiations appears to be emerging as a hallmark of Clinton administration U.S. Cuba policy. (TWT, "Clinton offers deal to veto tougher sanctions on Cuba," 11/10/95, p.A1; Newsrelease, Lincoln Diaz-Balart, 11/10/95).

<b>UNITED NATIONS - CUBA REVIEW</b>
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**CASTRO ADDRESSES UN GENERAL ASSEMBLY** -- Fidel Castro, granted a visa by the Clinton administration to attend the UN's 50th anniversary celebrations in New York, addressed the UN General Assembly on Sunday, October 22nd criticizing the United States, the embargo (which he insists on calling a blockade) and wealthy nations while promoting the Cuban revolution, world socialism and calling for universal disarmament. **CASTRO CALLS FOR PERMANENT THIRD WORLD SEAT ON UN SECURITY COUNCIL** -- Irony resounded throughout the General Assembly hall as Castro called for democratization of the UN and the equality of states. Describing as "obsolete" the "veto privilege" of the UN Security Council, Castro attacked it as a new "colonialism" within the UN where no Third World country was represented among the 5 permanent members -- Britain, France, Russia, China and the U.S.

**UN VOTES TO END US EMBARGO AGAINST CUBA** -- Less than two weeks after Castro's UN speech and for the fourth consecutive year, the United Nations General Assembly on November 2nd voted to oppose U.S.- Cuba policy by passing a resolution to end the 33 year old embargo voting 117 to 3 with 39 abstentions. Russia, China, Canada, Argentina and Mexico were among the nations voting against the United States. Japan abstained. This compared with last year's vote of 101 to 2 with 48 abstentions. This year, in addition to Israel, Uzbekistan joined the U.S. in opposing the Cuban sponsored resolution. Among the 15 nations of the European Union (EU), only Britain, Germany and the Netherlands abstained while Spain which serves as the EU president until January, voted against the U.S. Agenda item #27 read: "Necessity of Ending the Economic, Commercial and Financial Embargo Imposed by the United States of America Against Cuba." U.S. Representative to the U.N., Ambassador Victor Marrero, described the embargo as a "bilateral issue not properly considered by this body." (USUN Press Release #183-(95), 11/02/95, p.1; NYT, "UN Urges US to End Ban on Cuba," 11/03/95, p.A8).

**LIBERTAD TO AFFECT UN** -- Future UN votes could be affected by the passage of The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1995. LIBERTAD's Title I, Section 101 calls for the President to seek "a mandatory international embargo" against Cuba "within the Security Council." In addition, Title I, Section 104 opposes "Cuban membership in international financial institutions" and instructs the Secretary of the Treasury to withhold "United States payments to international financial institutions" in "an amount equal to the amount of the loan or other assistance to the Cuban Government." This could include the UN as well as such international financial institutions as the IMF, World Bank and the Inter-American Development Bank. Through its little-known worldwide network of UNDPs, NGOs and independent agencies such as UNESCO, the United Nations provides Cuba with millions of dollars in annual loans, grants and subsidies involving such areas as religion, arts & sciences, mining, atomic energy and telecommunications.

**UN PROMOTES BUSINESS AND INVESTMENT IN CUBA** -- A project of the United Nations Program for Development, UNDP through its Development Information Network, DEVNET, a nongovernmental organization (NGO), publishes the monthly 4-color magazine *Business Tips on Cuba* in 7 different languages including Russian and English. Topics covered include agriculture, nuclear energy, tourism, mining and oil exploration. The magazine, promoted in conjunction with the European Union, is distributed worldwide in more than 40 countries in Africa, Asia, Europe and Latin America. Former UN representative, Charles Lichenstein, in an article for the Heritage Foundation's *Policy Review* reports that in 1994, the U.S. paid 25 % (\$298 million) of the UN's administrative budget; 31.7% (\$1.2 billion) of the UN's peacekeeping budget; \$368 million to the UN's independent agencies; and, an estimated \$2 billion in voluntary peacekeeping. (BTC, 9/95; HE, "The High Cost of UN Membership," 11/03/95,p.8).

## TREASURY'S OFAC ISSUES REGULATIONS

President Clinton's October 6th announcement loosening travel, currency, educational and journalistic embargo restrictions (See USCPR, Vol.2, No.9, p.4) have prompted the Department of the Treasury's Office of Foreign Assets Control to issue amended Cuban Assets Control Regulations (31 CFR part 515) effective October 17, 1995. These new regulations contain an interpretation of the terms "research and similar activities" (Section 514.416) "educational activities" (Section 515.419) and the term "authorized trade territory" (Section 515.322) is redefined. Unless specifically licensed, "transactions in connection with tourist travel to Cuba" (Section 515.560) are prohibited.

Overall, the amended regulations allow for the issuance of a "general license" to permit Cuban-Americans having family to travel to Cuba once a year in extreme humanitarian circumstances. Currency transactions, for which Western Union was reauthorized to open offices in Cuba, include: remittances for close family relations not to exceed \$500 (Section 515.563); registration and renewal of intellectual property rights (Section 515.527); and, to establish and operate news organizations (Section 515.572). This section authorizes "all transactions necessary" to set up news bureaus in Cuba including but not limited to: leasing office space, hiring Cuban nationals, purchasing Cuban-origin goods and services, and paying fees related to operations in Cuba.

Specific licenses may be issued in "Support for the Cuban people" (Section 515.574) including but not limited to activities of "recognized human rights organizations" and "individuals and non-governmental organizations [NGOs] which promote independent activity intended to strengthen civil society in Cuba." Only this section of the new regulations appears to directly address the so-called Track II (See USCPR, Vol.2, No.7, p.6) provision of the Cuban Democracy Act (Section 1705(g), Assistance To Support Democracy in Cuba) upon which the Clinton administration relies heavily to promote democracy in Cuba.

The entire set of regulatory amendments, however, purport "to promote democratic change in Cuba" and are euphemistically described as "changes to the administration of the Cuban embargo" rather than the gradual lifting of the embargo which they in fact are. Moreover, the customary required public notice of proposed rulemaking and the opportunity for public participation is waived whereby "the Regulatory Flexibility Act, 5 USC 601-612 does not apply" because they involve a "foreign affairs function." (FR, "Rules and Regulations," Vol. 60, No.203, 10/20/95, pp. 54194-97).

## OFAC FINES U.S. COMPANIES

Exercising its enforcement authority, Treasury's OFAC has fined 6 American companies for embargo violations involving the Cuban Assets Control Regulations. Among them, the pharmaceutical giant Merck & Co. which allegedly contracted with a Cuban laboratory for testing services, engaged in travel-related activities and import violations. Merck settled the matter by paying a \$127,500 civil penalty. Other U.S. companies include NationsBank (\$24,938), CoreStates Bank, Philadelphia (\$11,559), Citibank (\$7,125) and Banco Bilbao Vizcaya of Spain, New York Branch (\$5,019) who were fined for funds transfer transactions. AT&T reached a \$12,700 settlement with Treasury for export control matters that although licensable AT&T was described as getting ahead of itself. Under license, the Cuban Democracy Act of 1992 allows for the provision of humanitarian aid and for telecommunications to Cuba. (Treasury News, 10/24/95, RR-658; WSJ, "Treasury Payment Settles Cuban Embargo Violations," 10/25/95, p.B7).

## SHERRITT SPINS OFF CUBA INVESTMENTS

Sherritt Inc. the Canadian based mining, fertilizer and petroleum company is restructuring in an apparent attempt to avoid the reach of the U.S. federal courts. The restructuring move will spin off all of Sherritt's Cuba ventures into a separate publicly traded company called Sherritt International Corporation. The announcement was made in late October in Havana by Ian Delaney chairman of Sherritt Inc. who will become chairman of the new company. Sherritt Inc. has become Cuba's "largest foreign investor and linchpin in Castro's plans to rebuild his economy" according to *Business Week* having dubbed Delaney "Fidel's Favorite Capitalist." Sherritt's 1994 acquisition of oil and gas interests from Talisman Energy Inc., for example, helps Cuba to overcome its acute oil shortage following the collapse of the Soviet Union.

Angry U.S. property owners who had their properties confiscated by Castro in the early 1960s, are relying in large part on the proposed Helms-Burton bill (LIBERTAD) now making its way through Congress. Specifically, Title III, *Protection of Property Rights of United States Nationals Against Confiscatory Takings by the Castro Regime*, may be used by property owners against companies like Sherritt, Inc. who traffic in such property and either have assets in or do business in the United States thus coming within the reach of U.S. federal courts. Until the announced restructuring, Sherritt Inc. was considered such a company with a fertilizer plant located in Vancouver, Washington. American claimants whose properties Sherritt is knowingly exploiting in Cuba include Freeport McMoRan of New Orleans and Consolidated Development Corporation of Miami. Consolidated executive Alberto Diaz-Masvidal notified Sherritt last February that its "joint venture agreements with the Cuban Government involve confiscated property belonging to a U.S. citizen." Treasury's OFAC placed Sherritt's Cuban subsidiaries on a blacklist last June warning U.S. companies that to do business with these "blocked" companies would be a violation of the U.S. embargo against Cuba. (Bloomberg, "Sherritt Buys Talisman's Cuban Holdings," 1/4/95,p.1; Consolidated Press Release,"Consolidated Serves Notice on Canadian Companies," 02/23/95,p.1; BW,"Meet Fidel's Favorite Capitalist," 6/26/95,p.58; FT,"Sherritt to spin off Cuba interests," 10/31/95/p.20).

## RUSSIA-CUBA AGREEMENTS SIGNED

Described as "the most important group from Russia to visit communist-ruled Cuba since the breakup of the Soviet Union," First Deputy Prime Minister Oleg Soskovets led a high level 40 member delegation to Cuba which included senior officials from the military, trade, nuclear energy, oil, agriculture and food processing ministries along with 30 Russian businessmen. Talks on the Lourdes intelligence gathering facility targeted at the United States were held; a \$30 million credit was agreed upon to maintain the Juragua nuclear plant; a sugar-for-oil barter deal was signed for years 1996-1998; and Moscow agreed to help finance Cuba's sugar harvests joining European banks and international sugar houses. While passage of LIBERTAD would cut off U.S. aid to Russia equal to its \$200 million annual payment to Cuba for use of Lourdes, Senator Dodd opposes the move as "wrongheaded" to deny aid to Russia "based on the fact that they provide concessional aid to Cuba." In the meantime, it is reported that "the World Bank will give Russia \$829 million in new loans." (Russian Reform Monitor - AFPC, 10/13/95, No.60; MH, "Russia, Cuba agree to rebuild shattered economic ties," 10/17/95,p.5A; CR, Vol.141,No.179, 11/13/95,p.S16975).



<b>SHORT TAKES</b>
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**NUCCIO ISSUES WARNING TO BUSINESS EXECUTIVES TRAVELING TO CUBA --** During a question and answer period, Richard Nuccio, Special Adviser to the President and Secretary of State for Cuba, the featured speaker at an AmCham Cuba luncheon in Washington, declared that "if they [business executives] had engaged in business dealings, they would have been in violation of U.S. law and subject to prosecution." NEWSTOUR, the Time Inc. sponsored trip whose members were licensed by the Treasury Department's Office of Foreign Assets Control (OFAC) as "honorary journalists" received one of several Washington briefings from White House chief of staff Leon Panetta prior to the 11th Time Newstour departure to 5 destinations. (TIME, "To Our Readers," 10/23/95, p.3).

**CASTRO'S WELL ORCHESTRATED NEW YORK CITY SCHEDULE --** Although restricted to within 25 miles of the UN and uninvited to most official UN functions, the Cuban dictator's schedule, influenced in large part by John S. Kavulich II of the U.S. Cuba Trade and Economic Council based in Manhattan, had more than 200 invitations to breakfasts, lunches, dinners interviews and meetings. Castro's week-long whirlwind propaganda tour fueled by the U.S. media involved numerous events throughout the City. Among his activities were meetings with business executives hosted by the Council on Foreign Relations; a luncheon at *US News & World Report* magazine publisher Mort Zuckerman's Fifth Avenue apartment; a dinner hosted by Peggy Dulaney, the daughter of former Chase Manhattan Bank president David Rockefeller; a meeting with Chinese Communist Party leaders at the Manhattan headquarters of Chemical Bank; and a rousing revolutionary speech at Harlem's Abyssinian Baptist Church sponsored by the Interreligious Foundation for Community Organizing where he was embraced by such political and leftist luminaries as Reps. Charles Rangel(D-NY), Jose Serrano(D-NY), Nydia Velazquez(D-NY) and radical 60's activist Angela Davis who once served on the national ticket of the Communist Party USA. Davis was recently reported to have brought \$5 million in pharmaceuticals under the auspices of the U.S. & Cuba Medical Project donated by Eli Lilly and licensed by Treasury's OFAC. One veteran diplomat observed that if the Clinton administration was going to grant Castro a visa, it should have been limited to the duration of his speech immediately following which he should have been required to return to Havana. (MH, "Castro tweaks the U.S. at encore in Harlem," 10/23/95, p.1A; MH, "Castro courts Harlem, Bronx," 10/24/95, p.1A; TBS, "Castro gets wish list from U.S. businesses," 10/26/95, p.1A; TNA, "Mask of Angela Davis," 10/30/95).

**MOAKLEY ACCEPTS CASTRO INVITATION TO LEAD TRADE MISSION --** Following their dinner meeting at the Cuban UN mission in New York, Rep. Joseph Moakley (D-MA) accepted Castro's invitation to lead an unprecedented trade mission to Cuba. Moakley agrees with Castro that the embargo should be lifted and recommend the same to President Clinton back in April. Moakley is expected to invite corporate executives from GTE, Reebok, Gillette and the Bank of Boston all located in his 9th Congressional District. UPI reported that Moakley "told the Cuban leader President Clinton would move toward normalizing relations with the Caribbean nation if he is re-elected president." (BG, "Moakley asks Clinton to end Cuba embargo," 4/13/95; UPI World View, "Castro Invites Mass. Rep. to visit Cuba," 10/25/95; BH, "Moakley accepts offer to visit Castro in Cuba," 10/25/95, p.1).

**ROS-LEHTINEN SENDS LETTER TO PRESIDENT CLINTON --** Objecting to granting Treasury Department OFAC licenses to Rep. Moakley and corporate executives for the purpose of blatantly conducting a trade mission to Havana, Rep. Ileana Ros-Lehtinen (R-FL) sent a letter to President Clinton urging him to "make clear that the United States will penalize anyone who willingly violates the embargo toward Castro." Ros-Lehtinen called the Moakley visit "an attempt to lobby the U.S. government to lift the embargo." (Rep. Ros-Lehtinen letter to President Clinton, 10/26/95).

<b>NOTABLE QUOTES</b>
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"You have shamed the U.N. by permitting Fidel Castro to talk to you, because he's nothing but a dictator." Comment by Rep. Bob Menendez (D-NJ) directed at the United Nations following Castro's address. (MH, "Don't expect reforms, Castro says," 10/23/95, p.10A).

"I observe, I really observe, today more than ever before a new phenomenon which is a great interest on the part of the American businessmen to have economic relations with Cuba and for the possibilities to do business with Cuba." Fidel Castro's CNN interview with Bernard Shaw during Castro's New York visit to the UN. (NYT, "Sensing Shift, Cuba Leader Lobbies Against Embargo," 10/23/95, p.A11).

"For many months, the Cuban government's propaganda machine has been heralding the new law as state-of-the-art foreign investment legislation. After all the buildup, however, the new law is bound to disappoint most potential investors, since it is merely a cosmetic rework of earlier legislation." Op-Ed by Matias F. Travieso-Diaz a Washington attorney with the firm of Shaw, Pittman, Potts & Trowbridge. (JOC, "Cuba's Sham Investment Law," 10/25/95, p.6A).

Even if you set aside the issue of the embargo, there are key issues from the business perspective which need to be addressed and which suggest very strong commercial and political risk in Cuba." Tom Cox, executive director of the Washington based U.S.-Cuba Business Council. (TBS, "Castro gets wish list from U.S. businesses," 10/26/95, p.1A).

"The incredible disasters that have occurred in the countries of the former Soviet Union, in spite of their enormous resources of energy, raw materials and external finance, contrasted with the impressive successes of China and Vietnam, indicate what we can and cannot do if we want to save the revolution and socialism." From Fidel Castro's 26th of July speech. (FT, "Castro keeps reform on the leash," 10/27/95, p.19).

"The country is in a completely different situation from the one you saw in April 1994. At that time, there were still doubts that the [revolutionary] project begun 36 years ago could be saved, and some were calculating how many days or months we had to live. Today, that is not even mentioned, because we have more than enough reasons to be optimistic." Speech by Cuba's foreign minister Roberto Robaina before a group of 332 so-called moderate Cuban exiles meeting in Havana. (WP, "A More Confident Cuba Hosts Its Exiles," 11/05/95, p.A28).

"Fear pervades Mr. Castro's island, and there is no sign of any Cubano Lech Walesa mobilizing in the cigar factories. Mr. Castro's move in September to allow businesses wholly owned by foreigners will only fortify Cubans with dollars, who are the backbone of his rule." Op-ed by Andrew Meier described as writing "often about the former Soviet bloc." (NYT, "Cuba Libre, and Benetton, Too," 11/11/95, p.23).

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# U.S. \* CUBA Policy Report

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Ralph J. Galliano, Editor

## CONFEREES PREPARE TO MEET ON CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY (LIBERTAD) ACT

**WASHINGTON** -- The way for LIBERTAD, which had become enmeshed in a major battle over the future conduct of U.S. foreign policy, was cleared for House-Senate conference when Senators Jesse Helms (R-NC) and John Kerry (D-MA) came to an agreement over pending ambassadorial nominations and two treaties. Helms, with the full support of Foreign Relations Committee Republicans, insisted that Democrats first allow a Senate vote on the State Department reorganization bill (S.908) and appoint its conferees. Senator Dodd (D-CT), honorary chairman of the Democratic National Committee who had stalled a vote on Senate conferees for LIBERTAD, agreed to lift his hold (CR, Vol.141, No.179, 11/13/95, p.S 16996). This occurred on December 7th (CR, Vol.141, No.194, 12/7/95, p.S 18231) with the Senate agreeing to the request by the House for conference. Senate conferees were named on December 14th (CR, Vol.141, No.199, p.S 18639).

**CONFEREES** - The Chair appointed the following Senators: Helms (R-NC), Coverdell (R-GA), Thompson (R-TN), Snowe (R-ME), Pell (D-RI), Dodd (D-CT) and Robb (D-VA). It was ordered that the following House members be the managers of the conference: Reps. Gilman (R-NY), Burton (R-IN), Ros-Lehtinen (R-FL), King (R-NY), Diaz-Balart (R-FL), Hamilton (D-IN), Gejdenson (D-CT), Torricelli (D-NJ) and Menendez (D-NJ).

**SUMMARY OF HOUSE-SENATE DIFFERENCES** - Several major differences appear in the House (9/21/95) and Senate (10/19/95) passed versions of LIBERTAD to be reconciled in conference. First and foremost is Title III, *Protection of Property Rights of U.S. Nationals Against Confiscatory Takings By the Castro Regime*, deleted in the Senate (See US CPR, Vol.2, No.10, p.2). Second, is the House passed Title IV, *Exclusion of Certain Aliens*, originally contained in Title III of both bills as introduced. Third, the House expands on Title I, Section 106, *Assistance by the Independent States of the former Soviet Union for the Cuban Government*, having added Section 110, *Withholding of foreign assistance from countries supporting nuclear plant in Cuba*, specifically addressing aid to nations that have joined Russia in a consortium to complete the Juragua I nuclear plant. House Section 111, *Expulsion of criminals from Cuba*, is also new. Neither sections are contained in the legislation as passed the Senate. The Senate version of LIBERTAD's Title I contains four sections not passed by the House: Sections 110, *Importation safeguard against certain Cuban products*; 111, *Reinstitution of family remittances and travel to Cuba*; 112, *News bureaus in Cuba*; and, 113, *Impact on lawful U.S. Government activities*. The three most controversial provisions likely to be reported out of conference committee are: Title III, Title IV, and Senate passed Title I, Section 110 which is formerly Title I, Section 109 as marked up in House subcommittee (3/22/95) and dropped to avoid a House Ways and Means Committee markup. It has reemerged with revised language citing NAFTA rules of origin and the Food Security Act of 1985 as they pertain to the reimportation of Cuban sugar. A conference report is expected by mid-to-late February.

## WHSC MEMBERS WARN CHRISTOPHER

In an effort to halt the bailout of Cuba's financially troubled Mexican telecommunications partner, Grupo Doms, the chairman along with key members of the House Western Hemisphere Subcommittee (WHSC) and one member of the powerful Rules Committee issued a terse warning to Secretary of State Warren Christopher against such a move. The letter, which is reprinted below, called on Christopher not to allow the Clinton administration to permit American telecommunications companies to participate with foreign companies to refurbish Cuba's dilapidated internal telephone system. AT&T is said to be the most likely company.

The letter cites the 1992 Cuban Democracy Act (CDA) which allows the president to permit the delivery of a telecommunications signal up to the gateway of Cuba. The CDA also gave the president the policy option of either sharing telecom revenues with the Cuban government or placing them in blocked accounts for possible later settlement of U.S. Cuba property claims. President Clinton chose to share telecom revenues with Cuba.

"To allow U.S. companies to provide telecommunications services beyond the gateway would exceed the scope of the CDA and erode the U.S. trade embargo against Castro's tyranny still further," the letter said.

## BIPARTISAN LETTER TO SECRETARY OF STATE ON TELECOMMUNICATIONS

November 28, 1995

The Honorable Warren Christopher

Secretary of State

U.S. Department of State

2201 C Street, N.W.

Washington, D.C. 20520

Dear Mr. Secretary:

We are writing to express our concern that the State Department appears likely to propose expanding the rules to permit U.S. firms to make direct investments in Cuba for the purpose of upgrading Cuba's internal telecommunications network. It is well known that Grupo Doms, a Mexican telecommunications firm in partnership with STET an Italian telecommunications firm, having entered into a joint-venture with the Cuban government, is experiencing serious financial problems and is seeking a U.S. partner. Any such action would be considered far beyond the scope of the Cuban Democracy Act of 1992 (CDA) and a blatant violation of the U.S. trade embargo in direct contravention of the Trading With The Enemy Act.

Section 1705(e) of the CDA is limited to the provision of telecommunications services between the United States and Cuba. U.S. investment to refurbish Cuba's internal telephone network was carefully debated and rejected by Congress in 1992. The State Department's general policy guidelines of July 22, 1993, for the implementation of telecommunications provisions of the CDA, limit U.S. companies "to deliver a signal to an international telecommunications gateway in Cuba." These guidelines expressly limit Treasury's Office of Foreign Assets Control (OFAC) to "only license transactions in Cuba necessary to deliver a signal to an international telecommunications gateway to Cuba" and Mr. Richard Newcomb's testimony is on record.

State's own guidelines which require the review of U.S. Cuba telecommunications policy within 12 to 18 months is long overdue. While Congress has been deprived of vital information and statistics, Castro himself recently stated that the telecommunications traffic between the U.S. and Cuba is 20,000 calls per day averaging 12 minutes per call. Accordingly, the dictatorship will have received nearly \$60 million during the 12 month period ending December 31, 1995. Congress will not tolerate any attempt to use this forthcoming report to exceed the mandate of the CDA. To allow U.S. companies to provide telecommunications services beyond the gateway would exceed the scope of the CDA and erode the U.S. trade embargo against Castro's tyranny still further.

Sincerely,

Rep. Ileana Ros-Lehtinen (R-FL)

Rep. Lincoln Diaz-Balart (R-FL)

Rep. Robert Menendez (D-NJ)

Rep. Robert Torricelli (D-NJ)

Rep. Dan Burton (R-IN)

### 35 REPUBLICANS OPPOSE CHOICE OF SPANIARD AS NATO CHIEF

The selection of the new NATO secretary general became enmeshed with U.S. Cuba policy on the eve of NATO's deployment of 60,000 peacekeeping troops to Bosnia including 40,000 Americans when Reps. Diaz-Balart (R-FL), Ros-Lehtinen (R-FL) and 33 other members of Congress implored the Clinton administration not to support the eventual choice of the 16 NATO ambassadors, Spanish Foreign Minister Javier Solana. Their letter is reprinted below.

Spain lies outside of NATO's Integrated Military Structure. Solana, officially a Marxist until September 29, 1979, is described as having been at the forefront of the anti-NATO campaign by Spain's Socialist Workers Party during the 1970s and 1980s and has served in every Spanish government since the Socialists came to power in 1982. According to the letter, Solana "has been particularly vocal in his opposition to our sanctions against the Cuban dictatorship." Spanish investments in Cuba's tourist industry have placed it among the island's top foreign business partners. On December 5, 1995, the Russian news agency, Interfax, reported its then-foreign minister Andrei Kozyrev's approval of Solana as NATO secretary general describing him as "one of the best candidates from the point of view of Russia's interest in partnership with the alliance... Solana has both voiced and proved his warm, friendly, and partnershiplike attitude to Russia." Moscow adamantly opposes eastward expansion of NATO. U.S. Marine Corps. Gen. John Sheehan, commander-in-chief of the U.S. Atlantic Command which currently includes responsibility over Cuba, also serves as NATO's Atlantic commander. NATO's choice of Solana is said to have upset Senate Majority Leader Robert Dole (R-KS) and Senate Foreign Relations Committee Chairman Jesse Helms (R-NC).

### HOUSE REPUBLICAN'S LETTER ON SOLANA

November 28, 1995  
The Honorable Warren Christopher  
Secretary of State  
U.S. Department of State  
2201 C Street, N.W.  
Washington, D.C. 20520  
Dear Mr. Secretary:

We are writing to ask that the United States not support the candidacy of Spanish Foreign Minister Javier Solana for General Secretary of the North Atlantic Treaty Organization (NATO).

Spain has never been a full member of NATO, choosing instead "civil" membership. It would be totally inappropriate for NATO to be headed by someone whose government is outside the Integrated Military Structure of that essentially military organization.

Furthermore, we do not believe that Minister Solana has distinguished himself as a strong ally of the United States. He has been particularly vocal in his opposition to our sanctions against the Cuban dictatorship, for example.

Because of the critical role of NATO in Europe, and in anticipation of possible new and significant U.S. military deployment to Europe, we believe the U.S. must re-examine all potential candidates for NATO military objectives. We do not believe that Minister Solana is that candidate.

Sincerely,

Rep. Lincoln Diaz-Balart (R-FL)  
Rep. Ileana Ros-Lehtinen (R-FL)  
Rep. Chris Smith (R-NJ)

Rep. Joe Barton (R-TX)  
Rep. Jerry Solomon (R-NY)  
Rep. Dana Rohrabacher (R-CA)  
Rep. Bill Thomas (R-CA)  
Rep. Dan Burton (R-IN)  
Rep. Barbara Cubin (R-WY)  
Rep. Tom Delay (R-TX)  
Rep. David Funderburk (R-NC)  
Rep. Spencer Bachus (R-AL)  
Rep. Walter B. Jones, Jr. (R-CA)  
Rep. Mike Crapo (R-IN)  
Rep. Howard McKeon (R-CA)  
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Rep. Don Manzullo (R-IL)  
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Rep. Gil Gutknecht (R-MN)  
Rep. Mac Collins (R-GA)  
Rep. Martin R. Hoke (R-GA)  
Rep. Bob Stump (R-AZ)  
Rep. Wayne Gilchrest (R-MD)  
Rep. Phil English (R-PA)  
Rep. Mark Foley (R-FL)  
Rep. John Mica (R-FL)  
Rep. John M. McHugh (R-NY)  
Rep. Jon Christensen (R-NE)  
Rep. Scott McInnis (R-CA)

## SHERRITT RESTRUCTURING COMPLETE

Sherritt Inc., the diversified Canadian company with substantial holdings and investments in Cuba, controversial because of knowingly and willfully trafficking in U.S. confiscated properties, has successfully completed its restructuring into two independent companies and expects to receive C\$341 million in net proceeds. Both Sherritt Inc. and Sherritt International will be traded on the Toronto stock exchange. Ian Delaney, chairman and CEO of Sherritt Inc. will also become chairman of Sherritt International while Fred Willhauser, senior vice president for oil and gas at Sherritt Inc., will become CEO of Sherritt International. Delaney has described the new company as a "proxy for Cuba's industrial and economic recovery."

Sherritt Inc., based in Fort Saskatchewan, Alberta, with an American plant (Sherritt Fertilizer Inc.) located in Vancouver, Washington, apparently hopes to shield itself from litigation in U.S. courts under Title III of LIBERTAD. Upon passage of the Cuban Liberty and Democratic Solidarity Act expected early this year, two American companies (Freeport McMoRan of New Orleans and Consolidated Development of Miami) which hold claims against Cuba for uncompensated confiscated property would have standing to sue, Sherritt's restructuring notwithstanding. Consolidated gave Sherritt notice last February. In anticipation of such action, Delaney called the new company financially strong and "bulletproof."

Sherritt Inc. will retain its fertilizer, Canadian oil and gas, advanced industrial materials and technology businesses. Sherritt International, a Toronto based company, has taken over all of Sherritt's Cuba interests in cobalt, nickel, oil and gas, engineering and metallurgical technologies. The Toronto based company is expected to expand its Cuba operations into transportation, real estate, tourism, agriculture, sugar, communications and finance. (Bloomberg, "Sherritt: Files Preliminary Prospectus for New Company," 10/26/95; FT, "Sherritt to spin off its Cuba interests," 10/31/95, p.20; Bloomberg, "Sherritt: Terms of Underwritten Rights," 11/21/95; Bloomberg, "Sherritt Inc. Will Raise C\$341 Million From Rights Offering," 12/20/95).

## NUCCIO PROCEEDS ON TRACK II OF CDA

Richard A. Nuccio, Special Adviser to the President and Secretary of State for Cuba, conducted a briefing at the Smithsonian Institution in Washington, D.C. on December 6, 1995 regarding the administration's new licensing policy and procedures (see USCPR, Vol.2, No.10,p.5) pursuant to President Clinton's October 6, 1995 announcement (see USCPR, Vol.2, No. 9, p.4) to expand contact, travel and financial transfers to Cuba by individuals, families, non-governmental organizations (NGOs) and foundations. Nuccio announced this as the second step of the second track pursuant to Section 1705 - *Support For the Cuban People* under the Cuban Democracy Act (CDA) of 1992. Nuccio, who also announced that licensed humanitarian shipments (step one of the second track) have topped \$100 million, expressed concern over the array of Cuban government organized NGOs or GONGOS "that the regime has created to attract and channel the flow of international humanitarian assistance to the Cuban people." Section 1705(b) regarding donations of food states, "Nothing in this or any other Act shall prohibit donations of food to nongovernmental organizations or individuals in Cuba." Administration policy formulation may be facing unintended consequences of Cuban government interdiction.

In the meantime, Nuccio's "step two" encourages corporate executives to become engaged in Cuba via their foundations and corporate giving committees, allowing them to travel to Cuba under the auspices of the CDA to provide *Support For the Cuban People*. (Promoting Civic Culture and Support For the Cuban People, remarks by Nuccio, 12/06/95).



<b>SHORT TAKES</b>
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**U.S. MILITARY JURISDICTION OVER CUBA TO SHIFT** -- Gen. Shalikashvili, chairman of the Joint Chiefs of Staff (JCS), favors an increase in the area of responsibility of the U.S. Southern Command (Southcom) to include Cuba, the Caribbean and the Gulf of Mexico. This area would be added to Southcom's present jurisdiction of Central and South America. Cuba is presently under the jurisdiction of the U.S. Atlantic Command headquartered in Norfolk, Virginia and headed by Marine Corps Gen. John Sheehan who oversaw the camps of 32,000 Cuban rafters detained at the U.S. Naval Base at Guantanamo Bay, Cuba in late 1994 and 1995. Sheehan opposes the change in jurisdiction. (Inside the Pentagon, "JCS Chair Expands Southcom's Reach Into Caribbean," 11/9/95, p.1; MH, "Miami-based Southcom may takeover Caribbean," 12/4/95, p.1B).

**SOUTHCOM TO MOVE FROM PANAMA TO SOUTH FLORIDA** -- The Panama Canal Treaties negotiated by then-President Carter require the departure of all U.S. forces from Panama including Southcom. JCS chairman, Shalikashvili, favors a Southcom move to south Florida which is expected to take place after June 1, 1997 following final approval by the Secretary of Defense. (Ibid).

**CASTRO'S HARLEM SPEECH DURING UN VISIT ON U.S. PROPAGANDA TOUR** -- Clad in green military fatigues after changing from his blue business suit following his address to the General Assembly during the UN's 50th anniversary celebration in New York last October, Castro, speaking at the Abyssinian Baptist Church in Harlem, is now on video tape. The English translated video has become the propaganda centerpiece of the Cuban government for anti-embargo, anti-Helms-Burton meetings across the U.S. including Miami, Chicago, Atlanta, Birmingham and Washington, D.C. (Boletin Informativo, "Castroite Campaign Continues in U.S. Black Community," 12/8/95, p.1. Trans. for USCPR by Jose G. Roig).

**ROCHA DEPUTY TO CHIEF-OF-MISSION IN HAVANA** - Manuel Rocha, posted to the U.S. Interest Section from the National Security Council (NSC) to become deputy chief of press is now deputy to the chief-of-mission, Joseph Sullivan. Rocha who was born in Colombia worked for Richard Feinberg while at NSC and became a point man for anti-embargo activist and former chief-of-mission (1979-1982), Wayne Smith, in an effort to defeat LIBERTAD. (See USCPR, Vol.2, No.6).

**U.S. INTEREST SECTION IN HAVANA CONTINUES TO GRANT VISAS FOR PRO-CASTRO CULTURAL EXCHANGES** -- Norberto Medina, editor of La Gaceta de Cuba a publication of the Cuban National Union of Writers and Artists (UNEAC) considered an arm of the Central Committee of the Communist Party has traveled throughout the U.S. extolling the virtues of Fidel Castro, Che Guevara and the Cuban Revolution. Medina participated in English, Spanish and Creole (Haitian) poetry sessions in numerous cities including Miami, New York, Washington, D.C., Chicago, Los Angeles, Houston and Atlanta. The Clinton administration's policy change announcement last October will increase such cultural exchanges and loosen travel and money transfers to Cuba. (Ibid).

**NUCCIO PROMOTES DISSIDENT UMBRELLA GROUP CONCILIO CUBANO** - Created last November, the Concilio Cubano is comprised of 108 dissident factions. Among the committee of 12 founding members, Concilio Cubano is reported to have voted 10-to-12 against using the 1976 Cuban constitution as the legal framework from which to build. One such founding member, Elizardo Sanchez, a leftist and preferred dissident favors dialogue with the Castro regime, an immediate lifting of the embargo, and openly opposes LIBERTAD. The group has petitioned the Cuban government for permission to hold a meeting in Havana from February 24 - 27. The document calls upon the UN and the Catholic Church for assistance. Nuccio hopes an organization similar to Solidarity in Poland or UNO in Nicaragua will emerge from Cuba with the help of the administration's Track II policy of *Support For the Cuban People* under the Cuban Democracy Act. (MH, "Cuban dissidents create new coalition," 12/11/95, p.10A; Undated Concilio Cubano document, trans. by Jose G. Roig for the USCPR).

<b>NOTABLE QUOTES</b>
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"Every businessman who's interested in world trade, is a little bit offended by being blocked out of a lovely little country right next door even when we are doing huge amounts of business with communists all over the world." Dwayne Andreas, chairman Archer Daniels Midland Co.(ADM).(CBS Morning News, Paula Zahn in Miami reporting on Cuba, 12/11/95).

"In general we have always applied a policy of open trade, exchange of ideas, exchange of people with the communist countries in order to get them to change. We do not have a policy that relates to Cuba. We have a policy in the United States that is a Miami policy, that is a Florida policy, and that is a New Jersey policy because that's where the Cuban Americans live." Morton Zuckerman, editor-in-chief U.S. News & World Report. (Ibid).

"There is a general consensus. And I think the great majority of the Cuban exile community is in favor of stronger sanctions. And secondly, I think that if you would lift the sanctions you're essentially letting foreign business go into Cuba, take advantage of the slave labor conditions that the Cuban people are working under without the Cuban people really having the means with which to participate openly in a democratic, capitalist society... They can't freely contract with their employer. They have to do it through the Cuban government and get paid in pesos rather than hard currency." Nicolas J. Gutierrez, Jr., secretary, National Association of Sugar Mill Owners of Cuba. (Ibid).

"Last year and this year we'll be transporting 100,000 Cuban Americans going to the island to visit family." Vivian Mannerud, owner of Airlines Brokers Co. ABC Charter of Miami has landing rights in Cuba. (Ibid).

"In fact, most U.S. businesses have many other parts of the world in which they are intensely interested outside Cuba. Cuba is an unstable situation and while it has a certain romanticism for some - even in the business community - I don't feel this chomping at the bit, this massive pressure for a different policy on Cuba." Richard Nuccio, Special Assistant to the President and the Secretary of State for Cuba. (JOC, "Cuba's Investment Law Draws Criticism, Praise," 12/11/95, p.10A).

"The intelligence facilities in Cuba are vital and central to Russian strategy. And that is because they can get a heads-up on what's going on in the United States." Pamela Falk with the Caribbean Cultural Center commenting on the Lourdes facility from Havana, Cuba. (NBC Nightly News, Ed Rabel reporting, 12/28/95).

"Today people in the world are not talking about whether Cuba will disappear or not. They are discussing how long it will take us to completely recover." Raul Castro, commander-in-chief of Armed Forces. (FT, "Cuba comes out of shell to search for allies," 1/4/96, p.4).

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# U.S. \* CUBA Policy Report

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Washington, D.C., USA

Ralph J. Galliano, Editor

## U.S. AND BRITAIN CLASH OVER CUBA POLICY -- CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY (LIBERTAD) ACT MAJOR POINT OF CONTENTION

**WASHINGTON --** The British government has expressed concerns regarding certain provisions of the House version of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act headed for House-Senate conference. The legal consequences of LIBERTAD's Titles III and IV on UK companies both trafficking in U.S. confiscated properties in Cuba and doing business or having assets in the United States could prove severe. See Ambassador Kerr's letter to conferees printed on page three.

British companies doing business in Cuba ranging from oil exploration to telecommunications to sugar refining could be subject to severe penalties in U.S. courts for trafficking. One company, Tate & Lyle PLC, has extensive U.S. holdings. Tate & Lyle, the UK sugar and sweeteners (high fructose corn syrup used by the soft drink industry) group owns 64% of the U.S. sugar refining market since its purchase of New Orleans, Louisiana based Supreme Sugar Company from Archer Daniels Midland (ADM) last year. AE Staley, the big Midwestern food company commands a 25% share of the U.S. market for high fructose corn syrup and in 1995 was reported Tate & Lyle's most profitable operation. Fletcher-Smith of Coral Gables, Florida, formerly Tate & Lyle Enterprises, Inc., a sugar industry exporter coordinating the U.S. market remains a key Tate & Lyle subsidiary. ADM, the biggest U.S. corn sweetener producer, is Tate & Lyle's largest shareholder (7%). The Department of the Treasury's Office of Foreign Assets Control stated on March 4, 1994 (FAC No. C-138526) that "A U.S. company or individual may make a secondary market investment in such a company provided that the investment does not result in control in fact of the third-country company by the U.S. investor." ADM's chairman, Dwayne Andreas, who is vociferously opposed to the U.S. embargo against Cuba, stated recently to *The Washington Times*, "Common sense will lead to the end of the embargo in the next administration." ADM subsidiary, ADM International Ltd., located in Kent, England may be caught up in an anti-trust criminal investigation for price fixing launched last year against ADM by the Justice Department when a grand jury subpoenaed the records of ADM, AE Staley and Tate & Lyle among other agribusiness companies.

**UK-CUBA POLICY --** Although the UK never broke relations with Cuba, three factors appear to have influenced this shift in British policy toward Cuba. First, the Foreign and Commonwealth Office minister, Tristan Garel-Jones (1990-1993), opposed to closer ties with the Castro regime stepped down in 1993 and was replaced by David Heathcoat-Amory (1993-1994). Second, the British Foreign Office appears to have concluded that Castro was going to be around much longer than expected following the collapse of its benefactor the Soviet Union. Third, British business interest in Cuba has increased markedly.

Following the departure of Garel-Jones, a series of events helped to strengthen the relationship between the UK business-political community and Cuba. In May 1994, Alarcon, president of Cuba's National Assembly, visited the UK at the invitation of the British

InterParliamentary Union. In September 1994, Ian Taylor, Britain's Trade and Technology minister became the first British minister in 20 years to visit Cuba leading a business delegation to the island and initialing the Investment Promotion and Protection Agreement (IPPA). In October 1994, the Havana Asset Management (HAM) fund was launched by BETA Funds International with a goal of investing \$50 million. In January 1995, the IPPA was signed. In May 1995, the Russian news agency, *Interfax*, reported "that a joint-stock company would be founded by British, Brazilian, German, Italian and Russian firms to complete construction of the first unit of the [Juragua] nuclear power plant" which is strongly opposed in the U.S. Congress. Baroness Young, a former British Foreign Office minister and Conservative Party member of the House of Lords led two trade and parliamentary delegations to Cuba, one in 1994 and another in 1995. This recent visit became the largest UK trade delegation ever to travel to Cuba at which she announced two new British trade initiatives. A total of three trade missions are reportedly upcoming. While in Washington last year, Baroness Young, who opposes LIBERTAD, spoke out saying she thought the Helms "proposals would be entirely against GATT." Britain's Commonwealth Development Corporation (CDC) which finances private sector projects is looking closely at investment opportunities in electric power generation, financial services and agriculture. The CDC also plans to open an office in Havana. As part of an ongoing British government program, 15 members of the Cuban Finance Ministry are currently being trained in London.

**BRITAIN AND THE EUROPEAN UNION** -- British socialists within the European Parliament have taken the lead in normalizing relations with Castro's communist government. On January 18th, the European Parliament voted 349-16 for a report written by Stanley Newens (Labour-London Central) who favors a transition to a socialist market economy. Michael McGowan (Labour-Leeds) commented, "It is time to show Cuba the solidarity that the Union gave Central Europe after the dismemberment of the Soviet Union." During debate, members of parliament severely criticized U.S. policy including the embargo, the Cuban Democracy Act, and the Cuban Liberty and Democratic Solidarity Act presently in House-Senate conference. The European Union is planning a trade and assistance agreement with Cuba.

**TITLES III & IV OF HOUSE PASSED VERSION OF LIBERTAD** -- At issue between the U.S. and the UK is the alleged trafficking by UK companies of U.S. confiscated properties in Cuba. "There are widely accepted procedures available to all states, including the United States, to settle their own citizen's claims arising from the expropriation of their property by foreign governments," stated Ambassador Kerr's letter. Accordingly, he urges the U.S. to settle its claims with Cuba as did the UK in 1978 following the expropriation of its citizens' property in 1959-60. The U.S. adjudicated its citizens' property claims against Cuba in 1972 through the Foreign Claims Settlement Commission. Of the 8,816 claims filed, 1,195 were denied, 1,710 were dismissed or withdrawn and 5,911 were awarded totalling \$1.8 billion. U.S. Cuba claims account for the largest confiscation of American owned property by a communist government in history. Today, unsettled U.S. Cuba claims are valued at approximately \$6 billion.

Concern over confiscated property remains evident in the signing last year of the IPPA an agreement to protect future British investment in Cuba. So much so, the UK's Department of Trade and Industry upon signing the IPPA commented that the agreements "provide for the future protection of existing and future investment under the law of the host country and, in the event of expropriation, for the prompt, adequate and effective payment of compensation." Ironically, the U.S. relies on similarly worded international law with just such a provision. (MH,

"Britain's Tate & Lyle PLC announced a \$1.33 billion bid for Staley Continental, 4/9/88, p.4D; FT, "UK business wants our man in Havana," 5/25/94, p.5; FT, "UK investment accord with Cuba," 9/16/94, p.6; CUBAINFO, "First Investment Management Fund Opens in Havana,"

11/3/94, p.7; CUBAINFO, "Agreement to Secure British Investment," 2/7/95, p.11; CUBANEWS, "Britain Trade Delegation Signals Willingness," 3/95, p.2; CUBAINFO, "Baroness Young of UK in Washington Opposes Helms Legislation," 3/16/95, p.6; INTERFAX, "Russia and Cuba to Complete Juragua Nuclear Plant," 5/5/95, p.4; MH, "Exec Went Undercover as FBI Informant: He Taped Meetings for Anti-Trust Probe," 7/1/95, p.1C; FT, "Tate and Lyle buys refinery for £15.5m," 8/2/95, p.20; FT, "Britain eyes Cuban deals," 1/18/96, p.5; Reuters, "European Parliament Urges Taking Cuba Out of Isolation," 1/18/96, p.1; translation for USCPR provided by Jose G. Roig).

**BRITISH AMBASSADOR TO U.S.  
WRITES TO CONFEREES**

27 December 1995  
The Honorable  
Lincoln Diaz-Balart  
431 Cannon House Office Building  
Washington, D.C. 20515

British Embassy  
Washington  
3100 Massachusetts Ave. NW  
Washington, D.C. 20008  
From the Ambassador

**CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY (LIBERTAD) ACT OF 1995**

Dear Congressman Diaz-Balart,

I write to explain the concerns of the British Government about certain provisions of the House version of the Cuban Liberty and Democratic Solidarity Act (HR 927), as you and other members of Congress prepare to discuss this draft legislation in Conference Committee.

The United Kingdom, and indeed the European Union, shares the desire of the Bill's sponsors to see a peaceful transition to democracy in Cuba. We attach paramount importance to the need for full respect for fundamental freedoms in Cuba, and we have condemned violations of human rights there. We hope that the limited economic reforms which have been introduced will pave the way for more comprehensive moves to a free market economy. We believe that constructive dialogue with the Cuban Government is the best way to encourage and support this transition, and the introduction of genuine democracy.

The United States has over the years chosen a different course, seeking to bring about change through the imposition of an economic embargo. That judgement is a matter for the United States. But the House version of the legislation under consideration would also affect the interests of other sovereign states, their companies, and their citizens. In particular, Title III of the House version seeks to assert the application of US law outside the US contrary to accepted principles of international law. Any such assertion of extra-territorial jurisdiction would damage relations between the United States and its main trading partners. This is compounded by Title IV which seeks to exclude from the United States non-US companies' employees and individuals because of their trade with, or involvement in, Cuba.

There are widely accepted procedures available to all states, including the United States, to settle their own citizen's claims arising from the expropriation of their property by foreign governments. In the case of Cuba, the British Government signed an agreement with the Government of Cuba in October 1978 which provides for compensation in respect of personal property, frozen bank balances and other assets expropriated by the Cuban Government: other governments have reached similar agreements.

The clear intent of Title III of the House version is to interfere in the commercial judgement of foreign companies in relation to a third country market, by threatening them with litigation in the US courts. This is the core of our concern. When extraterritorial provisions were made under the US Cuban Democracy Act 1992, we made an Order and Directions under the UK's Protection of Trading Interests Act 1980, prohibiting any persons in the United Kingdom from complying with those aspects of the US embargo. Were the provisions in the House version of the current draft legislation to be enacted, United Kingdom Ministers would have to contemplate again taking similar action to mitigate their impact on our companies.

I do not believe that further public disagreement and disarray between us would assist the cause of democracy and economic freedom in Cuba. I therefore hope that you will keep our concerns in mind during the Conference Committee's deliberations.

Yours Sincerely,  
John Kerr

## UK COMPANIES IN CUBA

The following British companies have been identified as doing business in Cuba or having business interests in Cuba by a combination of international press reports and various organizations including La Sociedad Economica (London/Paris), the Cuban American National Foundation (Miami/Washington) and the U.S.-Cuba Trade and Economic Council, Inc. (New York). The latter's list was printed in the Congressional Record on October 11, 1995 (p.S15018).

Amersham (pharmaceuticals)	Goldcorp Premier Ltd. (manufacturing)
BETA Gran Caribe Fund(invest mgt.)	ICI Export (chemicals)
Body Shop Intl. (toiletries)	Ninecastle Overseas Ltd. (investment mgt.)
British-American Tobacco	Premier Consolidated Oilfields (oil)
British-Borneo PLC (oil)	Rothschild (investment banking)
Cable & Wireless (telecom)	Simon Petroleum Technology (oil)
Castrol (oil)	Tate & Lyle PLC(sugar)
ED&F Man (sugar)	Tour World (tourism)
Fisions (pharmaceuticals)	Unilever (soap & detergent)
Glaxo (pharmaceuticals)	Welcomme (pharmaceuticals)

## UK-CUBA TRADE FIGURES

Cuba's imports from the United Kingdom have declined steadily since 1989 from \$87.1 million to \$21 million in 1993 a drop of 76% over the five year period. In 1994, Cuba's imports from the UK rose a dramatic 91% over the previous year from \$21 million to \$40 million. Cuba's exports to the UK over the same period showed a similar pattern of decline from \$56.3 million in 1989 to \$12.9 million in 1993 accounting for a 77% drop. In 1994, Cuba's exports to the UK made a modest recovery increasing 25% from \$12.9 million to \$16.1 million for the year. The increase in Cuba's exports to the UK, however, lagged far behind Cuba's dramatic increase in imports from the UK during 1994 at 25% versus 91% respectively.

Cuban exports to the UK in 1994 (\$16.1 million) consisted mainly of fruit (\$6.2 million), molasses (\$5.7 million) and tobacco (\$3.2 million). The UK's exports to Cuba (\$40.1 million) for the same period involved: foodstuffs (\$10.7 million) primarily wheat (\$8.5 million); chemicals (\$4.1 million) mainly industrial (\$2 million), farm (\$5 million) and other, some unspecified, chemicals (\$4.1 million); machinery (\$10.2 million) varied from auto engines (\$.3 million), agricultural (\$ .1 million), electrical (\$1.7 million) and scientific (\$2.3 million); consumer goods (\$3.1 million) primarily books and magazines (\$2 million). Chemicals included radioactive materials (\$ .9 million) and machinery consisting of telecommunications equipment (\$ .2 million). The UK-Cuba trade decline from 1989 to 1993 may be attributable to the tenure of Foreign Office minister Garel-Jones (1990-1993) who was opposed to closer ties with Cuba. The upturn in UK-Cuba trade figures is evident in 1994.

Import-export figures not yet available for 1995 will show whether a growth pattern develops as a result of improved UK-Cuba trade relations. (Analysis by editor from data presented in Cuba: Handbook of Trade Statistics, 1995).



## LICENSING: LOOPHOLE OR POLICY?

Strengthening "civil society" and providing humanitarian assistance have become the cornerstone of the Clinton administration's Cuba policy crafted by Richard A. Nuccio, Special Adviser to the President and the Secretary of State for Cuba. The implementation of this policy has encouraged a myriad of individuals, groups and other organizations to travel to Cuba as long as they appear to be providing assistance in SUPPORT FOR THE CUBAN PEOPLE (Section 1705; 22 USC 6004) as authorized under this so-called TRACK II provision of the 1992 Cuban Democracy Act. In many cases, this is accomplished by visiting with preferred dissidents or by carrying \$200 or less in humanitarian aid including foods, medicines, hygienic articles and other items to friends, relatives or to non-governmental organizations (NGOs) as long as it is not intended for the government of Cuba. While there is no actual minimum or maximum value assigned to goods that are permitted to be shipped or carried to Cuba, the U.S. Department of Commerce grants a general "gift" license, one of over 20 types of general export licenses to embargoed countries, routinely approved after filing a simple application form based on the declared value of goods under \$200. The application asks for the donor's name, address, goods to be shipped or carried, their fair market value and the intended end use. Commerce submits applications for goods valued over \$200 to the State Department for clearance. For example, a license may be granted to donate a high speed computer if the end use is a hospital or an NGO although, a special license and approval from the State Department is required. The threshold value for goods granted gift license status to embargoed countries such as North Korea, Iran, Iraq and Libya is \$400. Cuba is the exception at \$200.

In a letter (printed below) from "International Adventure" addressed to sportsmen, it is suggested participants carry "a minimum of \$100.00 worth of [p]harmaceutical products" along with them on their hunting trip to Cuba. In an ad dated 10/30/95, the group charges \$1,619 and \$1,727 respectively for 8 day fishing and hunting trips. In the case of the Moakley trip (see p.6), ABC, a non-profit entity becomes the vehicle to conduct a profitable business trip to Cuba. Spending U.S. dollars in connection with business or recreational trips to Cuba is prohibited.

## LETTER TO SPORTSMEN

### INTERNATIONAL ADVENTURE

"Serving Discriminating Sportsmen for 22 Years" 20 Worthington, Maryland Heights, MO 63043 314/434-0506

Dear Sportsman:

We have room for a few clients who would like to join me on the following scheduled Humanitarian Aid Tours to Cuba:

January 5th thru January 12th

February 9th thru February 16th

March 1st thru March 8th

We depart from Nassau at 5:00 PM and return 10:30 AM. You are allowed to bring 22 lbs. in medical supplies. We suggest a minimum of \$100.00 worth of Pharmaceutical products. I will send you a list.

While there, the Cubans will take you duck, quail, whitewing, morning dove and guinea fowl hunting or bass fishing for five days, both morning and afternoon plus one day of siteseeing. The Hotel is 4-star, the food excellent, the people super friendly. All in all it's fabulous! Ask those who went. Call now!

Sincerely,

Charles J. Puff  
President

**ROS-LEHTINEN CALLS FOR IMMEDIATE  
INVESTIGATION**

January 17, 1996

The Honorable Robert Rubin  
Secretary of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20540

Dear Secretary Rubin:

I urge you to immediately investigate the Missouri based company "International Adventure" which is promoting hunting and fishing trips to Cuba under the guise of humanitarianism. In the enclosed tour information created by the company to publicize the trip, it appears that these tours are clearly designed to violate the U.S. embargo against Castro's tyranny by shamefully promoting the tours as humanitarian trips.

While the trips are characterized as humanitarian, most of the publicity about the tours highlight the hunting and fishing portions of the trip in Ciego de Avila province in Cuba. It is obvious that the tours are targeted at hunters and fishermen, not at those who seek to take humanitarian aid to the island. It is insulting to the suffering people of Cuba, who struggle everyday against a bloody tyranny, that individuals head to the island to enjoy the natural assets of Cuba - assets they cannot themselves enjoy because of the Castro dictatorship.

Your Department must make clear that violations of the U.S. embargo on the Castro regime will not be tolerated and I hope you immediately investigate this company and take appropriate action against it if you find that it is violating the law.

Your immediate attention to this matter will be greatly appreciated.

Sincerely,

Ileana Ros-Lehtinen  
Member of Congress

**MOAKLEY HEADS BUSINESS DELEGATION**

Rep. Joe Moakley (D-MA), who was issued a personal invitation by Fidel Castro at a dinner in New York last October during the UN's 50th anniversary celebration, led a U.S. business delegation mixed with academicians and representatives of humanitarian groups under the guise of a humanitarian visit to the island. The trip was originally intended to explore trade and investment opportunities in Cuba. Because of complaints from various members of Congress including Reps. Lincoln Diaz-Balart (R-FL) who decried it as "a pretty indefensible trip," and Ileana Ros-Lehtinen who said, "[o]ur own federal agencies are set up to be their travel agents," the trip was recast as a humanitarian mission after promising to meet with dissidents. Reported among the 12 business executives were representatives from ITT Sheraton, Gillette and the Bank of Boston.

Moakley's trip was organized by a newly formed anti-embargo group supported by Saul Landau of the Institute for Policy Studies called the American Business Council (ABC) Forum on Cuba a self-described 501(c)(3) non-profit corporation. In a December 14th memorandum, Michael J. Ryan president of ABC invites interested persons to attend a conference in Havana on "The United States and Cuba: A New England Perspective" at a cost of \$8,500 per person to include "air fare to Cuba, ground transportation, accommodations and meals during the four day stay in Cuba." The memo states that ABC "supports non-governmental organizations working to strengthen civil society and to promote human rights in Cuba."

NOTABLE QUOTES

The following quotes by Richard A. Nuccio, Special Adviser to the President and the Secretary of State for Cuba, were extracted from his speech entitled "U.S. Assistance to the Economic Reconstruction of a Transitional and Democratic Cuba" presented at the Shaw Pittman Conference on Foreign Investment in Cuba, Washington, D.C. on January 26, 1996.

"...all indications are that Fidel Castro is still firmly in control in Cuba, and gives no sign that he intends to lead a political transition." (p.1).

"I believe, and our policy is based on the assumption, that the next president of Cuba is already living on the island. It is the leadership that emerges out of a future Cuban transition which will have to make the political commitment to reform and set the direction and content of Cuba's effort to modernize." (emphasis added, p.2).

"I have always been fascinated that the voting records of our two Republican Cuban American Members of Congress look more like Democrats than Republicans on a range of issues concerning public assistance, education, immigration, and others. Surveys of Cuban Americans have long indicated a preference for a much larger role for the state in society than what one might argue is the center of gravity for U.S. politics." (p.3).

"Cuba as a nation has de-capitalized in a manner probably without precedent. Apart from the few sectors in which there has been a substantial inflow of foreign investment, Cuba's infrastructure has deteriorated markedly." (p.3).

"...this is one reason why we do not believe the radical measures proposed in [the] Helms-Burton legislation are justifiable -- the size and nature of the foreign investment now flowing into Cuba will not save the Cuban Government." (p.3).

"Unless the process of structural reform accelerates before a democratic transition takes place, the enormous potential of Cuba's private sector and the capacity of foreign investors to help resuscitate the island will remain untapped. U.S. investors should be at the forefront of this effort with the competitive advantages that only U.S. firms can bring but this will not happen without sound economic policies in place. And such policies are more likely to be in place with international expertise to help design and implement them." (p.4).

"While I think that U.S. official assistance to Cuba will be essential during a transition, it should by no means be the only, and certainly not the largest source of international support. International Financial Institutions (IFIs) must also play a central part in Cuba's reconstruction. I know that the IMF, the World Bank and the IDB are all watching developments in Cuba with great interest." (p.5).

"We could not have a meaningful discussion about the U.S. role in Cuba's reconstruction without mentioning expropriation claims...Therefore, the United States expects that a future Cuban government, out of its own interests as well as those of claimants, will meet its responsibilities under international law of providing restitution or prompt, adequate, and effective compensation for expropriated properties. Such a step will help heal old wounds and restore confidence in the institution of private property on the island." (pp.7-8).

"Rather than allowing the U.S. Government to use good judgement and established principles of international law to resolve U.S. expropriation claims, which our government has done successfully in a number of other countries, Helms-Burton would complicate the resolution of claims immensely by creating a cause of action in U.S. courts to sue "traffickers" in U.S. claimed properties." (p.8).

## SHORT TAKES

**LATIN AMERICAN POLICY MAKERS DEPART** -- Key Clinton administration policy makers including Alexander F. Watson, Assistant Secretary of State for Inter-American Affairs, Richard E. Feinberg, Special Assistant to the President and Senior Director for Inter-American Affairs at the National Security Council (NSC) and, Morton H. Halperin, Special Assistant to the President and Senior Director for Democracy at NSC have announced their departures. Except for Halperin, neither Feinberg nor Watson, who once quipped that Cuba was a domestic issue, spent much time involved with Cuba policy. Halperin's position will likely remain unfilled. Names mentioned to fill Watson's position are: Harriet Babbitt the current U.S. ambassador to the OAS; Mark Schneider, assistant for Latin America and the Caribbean at AID; and, Jeff Davidow the current U.S. ambassador to Venezuela considered the most likely candidate. Watson will depart in the Spring.

**CANADA AMENDS ORDER TO FIGHT U.S. TRADE RESTRICTIONS AGAINST CUBA** -- In anticipation of LIBERTAD's passage in the U.S. Congress, the Canadian government announced on January 18th that it has amended a 1992 order designed to block attempts by the U.S. to restrict trade between Cuba and U.S.-owned subsidiaries in Canada. The order also requires these companies to report to the Attorney General of Canada any restrictions or attempts to influence their trade with Cuba.

**PLAYA GIRON/BAY OF PIGS: TRIUMPH, FIASCO AND TRAGEDY CONFERENCE PLANNED IN HAVANA** -- Sponsored by the National Security Archive in Washington, D.C. and Brown University in Rhode Island in conjunction with the Cuban government's Center for the Study of National Security Issues headed by Fabian Escalante formerly head of Cuban state security, the program describes the would-be liberators as "invaders" who "were defeated in fierce fighting at Playa Giron within seventy-two hours by Cuban militia forces" resulting in the socialist consolidation of the Cuban Revolution by Fidel Castro. The all expense paid conference will be held at the Copacabana "a splendid four-star hotel with fresh water and salt water swimming and snorkeling, tennis, squash and other activities." U.S. conference participants are listed as: Enrique Baloyra (University of Miami), Philip Brenner (American University), Jorge Dominguez (Harvard University), Piero Gleijeses (Johns Hopkins University), Peter Kornbluh (National Security Archive), and Thomas Skidmore (Brown University). The John D. and Catherine T. MacArthur Foundation is providing the grant to the National Security Archive for this conference.

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# U.S. \* CUBA Policy Report

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Ralph J. Galliano, Editor

## **CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY (LIBERTAD) ACT OF 1996 TAKES FAST TRACK TO PASSAGE FOLLOWING AIRPLANE SHOOTDOWN**

**WASHINGTON --** Castro's missiles-of-February brought down two unarmed civilian planes flown by Brothers to the Rescue. Three of the four pilots who perished were Americans. They were shot down on Saturday, February 24th in the Florida Straits while flying in international airspace. The firing of the MIG 29 air-to-air missiles also brought the wrath of Congress down upon the Cuban dictatorship as never before with the swift passage and enactment of a vastly fortified version of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 containing a codification of the embargo.

**HOUSE-SENATE CONFERENCE --** Senate Foreign Relations Committee Chairman Jesse Helms (R-NC) and House International Relations Committee Chairman Ben Gilman (R-NY), in less than four days after the shootdown, convened the House-Senate conference on Wednesday, February 28th at 10:00 A.M. in Room S-116 of the U.S. Capitol, opening the final act of this legislative drama that began its public debut the year before on February 9th when Helms as head of the Foreign Relations Committee introduced (S.381) his first piece of legislation intending "to do everything possible as chairman to help bring freedom and democracy to Cuba." Shortly thereafter on February 14th, House Western Hemisphere Subcommittee Chairman Dan Burton (R-IN) introduced (H.R.927) the companion bill. In House-Senate conference, Sen. Robb (D-VA) called for "accommodation with the administration" in order "to speak as one voice against the Castro regime." Rep. Menendez (D-NJ) expressed the conferees' desire to have "the strongest possible bill" to pass both Houses particularly in view of the recent incident and asked for an adjournment to work out their differences with the administration. By late afternoon that Wednesday, the House-Senate conference committee had completed six hours of intense but unyielding negotiations with the White House and paved the way for passage of the conference report (No. 104-468 to accompany H.R.927) by both Houses of Congress voting 74-to-22 in the Senate on March 5th and 336-to-86 in the House the following day. In the aftermath of the shootdown, conferees inserted Section 116 invoking the names of the four victims and calling for the *CONDEMNATION OF CUBAN ATTACK ON AMERICAN AIRCRAFT* urging the "President to seek, in the International Court of Justice, indictment for this act of terrorism by Fidel Castro." Section 205(a)(7) outlines the *REQUIREMENTS AND FACTORS FOR DETERMINING A TRANSITION GOVERNMENT* in Cuba that "does not include Fidel Castro or Raul Castro."

**LIBERTAD-LAW OF THE LAND --** President Clinton, who had adamantly opposed the Helms-Burton bill prior to the shootdown, affixed his signature to the document on Tuesday, March 12th in a brief signing ceremony at the White House Old Executive Office Building attended by key Members of Congress, Cuban exiles, supporters and family members of the slain Brothers to the Rescue pilots.

**PRECEDENT SETTING LEGISLATION** -- No disagreement exists in the continuing debate between proponents of LIBERTAD and its opponents that Cuba's expropriation of American owned property without compensation violates international law. The difference in opinion arises in the lack of any acceptable remedy available to the owner and what is seen as the failure of the international community to sanction Cuba for profiting from foreign investment in that property. LIBERTAD's Title III, *PROTECTION OF PROPERTY RIGHTS OF UNITED STATES NATIONALS*, finds in Section 301 that: (1) "Individuals enjoy a fundamental right to own and enjoy property which is enshrined in the United States Constitution," and (2) "[t]he wrongful confiscation or taking of property belonging to United States nationals by the Cuban Government, and the subsequent exploitation of this property at the expense of the rightful owner, undermines the comity of nations, the free flow of commerce, and economic development." No other nation has enacted into law such sweeping protections for its citizens who have "had property wrongfully confiscated" (Section 301(6)(B)) by another government.

Opponents of the newly enacted law declare that the right of action made available under Title III allowing U.S. nationals to sue "traffickers" in federal courts "sets a dangerous precedent" through its "improper extraterritorial assertion of U.S. jurisdiction." (See Canada's Diplomatic Note, USCPR, p.4). The European Union (EU) protested LIBERTAD as an "extraterritorial application of U.S. jurisdiction" that would restrict EU trade in goods and services with Cuba. Washington attorney, Brice Clagett, an ardent defender of LIBERTAD, calls the interests of both states "equally extraterritorial, since the activity with which both are concerned is taking place in a third country, Cuba." The Canadian and British blocking orders exempting U.S. owned companies from the application of U.S. laws is viewed by LIBERTAD's supporters as being extraterritorial where both Canada and the UK shield their nationals from legal action.

Proponents of LIBERTAD believe the new law sets a favorable precedent by filling the void created by the lack of enforcement action on the part of the international community. Although the international community condemns state theft of property, it fails to place any sanctions on the offending state, in this case Cuba. Daniel W. Fisk, with the majority staff of the Senate Foreign Relations Committee says, "LIBERTAD puts the international community on notice that the U.S. as a matter of public policy will penalize foreign nationals and companies trafficking in U.S. confiscated property." If foreign nationals either have assets in the United States or do business here, they fall under U.S. jurisdiction. They have a choice: they can do business with Cuba or they can do business with the United States; but, they can't do both. Fisk, the primary crafter of the new law suggests, "it is incumbent on the international community to give consideration to devising a mechanism to fill the void and to create standards of enforcement."

**ENACTMENT OF PUBLIC POLICY** -- Not since the declaration of the economic embargo against Cuba for the confiscation of American owned property has there been a stronger expression of U.S. public policy toward Cuba than the enactment of LIBERTAD. The only significant policy pronouncement dealing with Cuba since has been the Cuban Democracy Act of 1992 where in Section 1709 (22 U.S.C. 6008) the issue of existing claims remains unaffected. Among LIBERTAD's stated purposes are the following: "to strengthen international sanctions against the Castro government" (Section 3(2)); "to provide a policy framework for United States support to the Cuban people in response to the formation of a transition government or a democratically elected government of Cuba" (Section 3(5)); and, "to protect United States nationals against confiscatory takings and wrongful trafficking in property confiscated by the Castro regime" (Section 3(6)). According to Clagett, "Title III stands on its own feet as a lawful and reasonable enactment of U.S. public policy on a matter within U.S. jurisdiction."



## **PRESIDENT ANNOUNCES MEASURES**

Responding to the Cuban military's shootdown of two American civilian planes, President Clinton announced on February 26th that his administration would seek U.N. Security Council condemnation; promptly reach agreement with Congress on the pending Helms-Burton legislation; request Congress pass legislation authorizing compensation to the families of victims from blocked Cuban assets held in U.S. banks; restrict movement of Cuban diplomats in the U.S.; increase support for Radio Marti broadcasts to Cuba; and, suspend indefinitely all commercial charter flights to Cuba from the United States.

The President called for and received bipartisan support for the Helms-Burton legislation which passed both Houses of Congress overwhelmingly. Unspecified compensation for the families of the victims from the frozen Cuban assets held in the United States since 1962 requires specific legislation. No action has been taken. U.S. Representative to the UN Madeleine Albright has asked the Security Council to require Cuba to pay compensation. Final Security Council action on this matter awaits the U.N.'s International Civil Aviation Organization's (ICAO) report upon completion of its investigation. The ICAO met in Montreal on March 6th. Indefinite suspension of charter flights, restriction on the movements of Cuban diplomats and increased support for Radio Marti have all been implemented.

## **OFAC OPENS BRANCH OFFICE IN MIAMI**

The Treasury Department's Office of Foreign Assets Control (OFAC) charged with the enforcement of the Cuban Assets Control Regulations (Title 31 Part 515 of the U.S. Code of Federal Regulations) announced the March 11th opening of its Miami branch office. Four staffers soon to be six will work with the U.S. Customs Service and the U.S. Attorney's office in Miami to boost enforcement of the U.S. trade embargo against Cuba. The office located at 909 Southeast First Avenue, Room 735A, in Miami is open Monday through Friday from 8:00 A.M. to 4:00 P.M. and can be reached by calling 305/530-7177. The office also has a bilingual "embargo hotline" 305/536-6769 to be accessed either to report possible violations or to ask questions about permissible travel and other related embargo matters. Richard Newcomb, director of OFAC says, "The presence of this branch office should send a strong message to Fidel Castro. The Cuban American community should know we are serious about the embargo and committed to enforcing it." Although authorization to open this Miami office was created by the enactment of the 1992 Cuban Democracy Act, it has taken the Clinton administration four years to do so.

As long as they don't make more than one such trip per year, Cuban Americans are permitted to make family visits to Cuba to see close relatives for humanitarian purposes and don't need to apply for a "special license" but are granted a blanket "general license" requiring no formal application. Despite the executive ban on direct flights to Cuba following the Brothers to the Rescue shootdown, third country travel for qualified persons is permitted. Consequently, companies like ABC Charters operating out of Miami are still in business but are now linking with third countries such as Mexico and the Bahamas. Those who seek clarification of the exceptions to the embargo should inquire by calling the above referenced telephone numbers. (USDOT News Release, "Treasury Boosts Cuba Enforcement with Miami Office Hotline," 3/8/96; MH, "Cuba embargo hotline abuzz on 1st day," 3/9/96, p.1C; MH, "Translation error causes confusion over embargo," 3/12/96, p.7B).

## CANADA OBJECTS TO NEW LAW

Within hours of President Clinton's signing of LIBERTAD on March 12th, Canada's minister of international trade, Arthur Eggleton, sent a letter of complaint to U.S. trade representative Mickey Kantor requesting consultations under Chapter 20, Article 2006 of NAFTA. Canada's objections focus on Title III's right of action by U.S. nationals to sue traffickers of confiscated property in U.S. federal court and Title IV's visa entry restrictions also aimed at traffickers. The presidential waiver provision only applies to Title III. In his statement issued the day after the signing, Eggleton objected to the new law charging it "could interfere with companies engaged in legitimate business" in Cuba. Consultations are normally held within 30 days. Mexico will join the consultation process which will be followed by the establishment of a dispute-settlement panel unless one of the parties withdraws the complaint. Such a panel could rule against the United States demanding it amend LIBERTAD which a Republican controlled Congress is unlikely to do. Alternatively, it could require the U.S. to compensate Canada and Mexico as an offset for its losses by providing other trade benefits. Many joint venture agreements with Cuba may contain provisions holding the foreign investors harmless. According to the Canadian Embassy in Washington, their country's trade with Cuba grew 54% between 1994 and 1995. Canadian exports to Cuba amounted to \$254.5 million in 1995 compared to \$115 million in 1994. Imports from Cuba reached \$320.9 million compared to \$194 million in 1994. More than 30 Canadian companies are reported to be doing business with the Castro regime including Sherritt International, Delta Hotels and Resorts and B.C. Sugar Refinery. An estimated 130,000 Canadian tourists visit Cuba annually. Canadian responses to the new law included Prime Minister Chretien raising the issue with President Clinton; Trade Minister Eggleton's letter to Trade Representative Kantor; and, Canada's ambassador to the U.S. sending a diplomatic note to Deputy Secretary of State Strobe Talbott on March 7th the day after both Houses of Congress voted overwhelmingly to accept the conference report negotiated with the White House. The diplomatic note is reprinted below.

## CANADA'S DIPLOMATIC NOTE

The Embassy of Canada presents its compliments to the Department of State of the United States of America and has the honour to refer to H.R. 927, the "Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996", that was approved by Congress this week.

The Government of Canada shares with the United States Government the goal of a peaceful transition in Cuba to a democratic society and an open economy. Canada has made repeated representations to the Cuban government on issues of human rights and civil liberties. Canada has condemned Cuba's shooting down on February 24 of two civilian aircraft with the tragic loss of U.S. lives and supports UN and ICAO follow-up actions to prevent such an unjustifiable use of force in the future.

Canada is convinced that only through a policy of engagement rather than isolation will a transition to democracy in Cuba be achieved. H.R. 927 constitutes an objectionable attempt to impose on other countries the U.S. policy on Cuba by, inter alia, exposing non-U.S. nationals doing business with Cuba to economic and personal sanctions.

The right of action by Title III of the bill sets a dangerous precedent. It is an improper extraterritorial assertion of U.S. jurisdiction and violates fundamental principles of international law regarding the settlement of claims for expropriated property. Title IV runs contrary to principles of international comity. Canada would view the use of Title IV to deny temporary entry to Canadian business persons as a violation of U.S. obligations under the NAFTA, including Chapter 16. The application of Title IV could also serve to undermine efforts to facilitate cross-border movements.

Canada also objects to provisions in H.R. 927 that seek to unilaterally affect the policies of the IMF and other international financial institutions by withholding contributions from those institutions that fail to comply with U.S. lending preferences. This would contravene commitments made by all members of those institutions, including the United States.

Canada has on previous occasions made known its opposition to H.R. 927. It would be an unfortunate irony for the United States to signal its condemnation of Cuba's illegal action in shooting down civilian aircraft by enacting legislation that itself violates international law to the detriment of U.S. allies. Canada urges the President, in his statement accompanying the signing of H.R. 927, to commit to implementing the legislation in a manner that is consistent with all U.S. international obligations, that eliminates or narrows its effect on third parties, and minimizes the impact on our bilateral relations.

The Embassy of Canada avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration. Washington, D.C. March 7, 1996

## FAA RESPONDS TO SHOOTDOWN

In a swift response to the February 24th incursion of Cuban airspace by one of three Brothers to the Rescue planes piloted by Jose Basulto and the subsequent shootdown in international airspace of two others by Cuban MIGs, the Federal Aviation Administration (FAA) issued a "Cease and Desist" order to U.S. pilots conducting unauthorized flights into Cuban airspace just five days after the incident. The order implies the Brothers to the Rescue bear some responsibility for the tragedy. In issuing the order, FAA administrator David R. Hinson found that "an emergency exists relating to safety in air commerce." A copy of the order reprinted below was mailed to each of the 33,225 pilots licensed in South Florida. Violations of this order can bring immediate revocation of pilot certificate, maximum civil penalties and seizure of aircraft. Basulto is under investigation by the FAA for an earlier incursion of Cuban airspace that allegedly occurred last July resulting in a literature drop over Havana. (USDOT-FAA Letter, "Emergency Cease and Desist Order and Notice of Enforcement Policy," 2/29/96; MH, "Fly over Cuba, lose license," 3/9/96, p.1B; WP, "FAA Cracks Down on Airspace Violations," 3/9/96, p.A4).

## FAA CEASE AND DESIST ORDER TO PILOTS

### DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION

On February 24, 1996, Cuban military aircraft intercepted and destroyed two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba. These aircraft posed no credible threat to Cuba's security. The President directed his Administration to take immediate steps in response to the Cuban Government's actions. Among other steps, the United States sought condemnations of Cuba's actions by the United Nations Security Council and the International Civil Aviation Organization. The President also suspended all commercial charter flights to Cuba indefinitely.

On February 27, 1996, the United Nations Security Council strongly deplored the destruction of the two civil aircraft by the Cuban air force, and requested that the International Civil Aviation Organization investigate the incident in its entirety and report its findings to the Security Council as soon as possible.

Unauthorized operations of U.S.-registered civil aircraft in Cuban territorial airspace is prohibited by the Federal Aviation Regulations. The United States Government has issued statements warning of the serious consequences that could occur should any person conduct such operations.

Notwithstanding such advice and warnings of the United States Government and the unlawfulness of the conduct, operations without authorization in Cuban territorial airspace have occurred.

Based on the circumstances described above, I find that an emergency exists relating to safety in air commerce, and that there is an immediate need to take action for reasons of safety of flight in the vicinity of the Florida Straits and to ensure against the unauthorized entry of U.S. civil aircraft into Cuban territorial airspace. Unauthorized operation of U.S.-registered civil aircraft into the territorial airspace of the Republic of Cuba is prohibited.

NOW, THEREFORE, IT IS ORDERED that any person holding a U.S. airman certificate and/or operating U.S.-registered civil aircraft, who has conducted unauthorized operations within Cuban territorial airspace, CEASE AND DESIST from this unlawful activity.

IT IS FURTHER ORDERED that all persons holding U.S. airman certificates and/or operating U.S.-registered civil aircraft comply with the Federal Aviation Regulations prohibiting unauthorized operation within Cuban territorial airspace.

#### ENFORCEMENT POLICY

TAKE NOTICE that, effective immediately, any person who makes unauthorized entry into the territorial airspace of the Republic of Cuba in violation of the Federal Aviation Regulations will be subject to enforcement action to the maximum extent permitted by law, including, but not limited to the following:

- Immediate revocation of pilot certificate;
- Maximum civil penalties;
- Seizure of aircraft involved in such a violation; and
- Appropriate judicial remedies.

(Authority: 49 U.S.C. Sections 40113(a), 44709, 46105(c), 46301, 46304(b), 46106, and 46107).

Further, any person who operates or attempts to operate an aircraft after pilot certificate revocation, or otherwise without a valid airman certificate, is subject to criminal penalties of up to 3 years in prison, and/or fines (49 U.S.C. Section 46306(b)(7)).

David R. Hinson  
Administrator

Issued February 29, 1996

## **UN SECURITY COUNCIL FAILS TO CONDEMN CUBA FOR SHOOTDOWN**

Under "instructions" from President Clinton to convene "an emergency session of the United Nations Security Council to condemn the Cuban action," U.S. Representative to the U.N. Madeleine Albright, in her capacity as rotating president of the fifteen member Council, was unable to achieve a consensus to "condemn" Cuba for the shootdown over the Florida Straits of two U.S. registered unarmed civilian planes on Saturday, February 24th. Albright encountered stiff resistance from some Security Council members and strong opposition from the People's Republic of China, one of five permanent members. Ever hopeful, following its initial meeting on the topic, Albright said, "a number of delegations did use the "c" word -- condemn. So we will see how it comes out" tomorrow.

In a White House briefing at 2:15 P.M. EST on February 25th nearly 24 hours after the incident took place, Secretary of State Warren Christopher announced the President's instruction to Albright to convene the emergency session of the Security Council which took place that evening in New York. Albright stopped short of calling the shootdown a case of state terrorism. Instead, she described it as "basically an illegal act" contrary to international conventions. On the following day, February 26th, Albright stated she was going to press "very hard for condemnation" in the Security Council. In the end, her Statement By The President Of The Security Council, issued at 4:00 A.M. Tuesday, February 27th, fell short of condemnation of Cuba instead "strongly" deploring the shootdown and requesting the UN's International Civil Aviation Organization (ICAO) investigate and report on the incident as soon as possible.

On the following day, February 28th, Bruno Rodriguez Parrilla, Cuba's UN ambassador submitted a letter from the ministry of foreign affairs to the president of the Security Council to address the "two pirate aircraft in Cuban airspace." The letter thanks "some important members of the Council" for approving a statement that "is fairly far from what the United States wanted."

At a special session of the U.N. General Assembly, held on March 6th, Cuban Foreign Minister, Roberto Robaina, received widespread applause for his explanation of Havana's justification of the shootdown, referring to Article 3 of the Chicago Civil Aviation Convention, which has not been signed by enough countries to put it into force. Responding sharply, Albright said, "I have listened with care for an apology for the breaking of international law, for an expression of regret at the death of four young men, for an offer to compensate the families and for a promise in the future to comply with the obligations by which all nations must live. I have listened in vain."

A condemnation by the Security Council would have placed it in a position to censure and penalize Cuba for wrongdoing. In deploring rather than condemning the shootdown by the Cuban air force, the Security Council merely issued its regrets for the unfortunate incident. Albright, putting the best face on the Security Council's decision explained, "a statement that strongly deplores this action and makes clear that it is a violation of international law is something that we consider a very strong response." A report by the ICAO, which met in Montreal on March 6th to hear the case, faulting Cuba could bring about Security Council measures holding it responsible for the shootdown. However, following the Security Council's statement issued on the 27th of February, it appears highly unlikely the Council would vote for international sanctions as called for in the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 signed into law on March 12th in the aftermath of the shootdown.

**SHORT TAKES**

**CRACKDOWN ON CONCILIO CUBANO** -- State Department spokesman Nicholas Burns excoriated the Cuban government for its state security agents' "repressive actions...against the umbrella opposition group Concilio Cubano." Burns called on the Castro regime "to accede to this organization's reasonable request to hold a conference in Havana on February 24." (SD Press Release, "Cuban Government Cracks Down on Human Rights Activists," 2/16/96).

**AIR AND SEA MEMORIAL CONDUCTED IN FLORIDA STRAITS ONE WEEK AFTER SHOOTDOWN** -- Accompanied by eleven Coast Guard Cutters, four helicopters and two C-130 search-and-rescue planes, a Cuban exile flotilla of 35 small boats and eight planes dropped wreaths and red, white and blue carnations on Saturday, March 2nd in memory of the four Cuban Americans killed in international airspace off the north coast of Cuba on February 24th. (WP, "Cuban Exiles Promise a Peaceful Flotilla at Spot Where Planes Were Shot Down," 3/2/96, p.A18; WT, "Cuban exiles honor their own," 3/3/96, p.A1).

**MEMORIAL SERVICE CONDUCTED AT ORANGE BOWL STADIUM IN MIAMI FOLLOWING FLOTILLA COMMEMORATION** -- An estimated 50,000 Cuban exiles attended a service marked by high emotion and solemnity with a flyover of three Brothers to the Rescue planes tipping their wings in honor of the fallen pilots following the memorial service conducted by Auxiliary Bishop Agustin Roman. Bishop Roman intoned the Lord to "Bless this nation that has welcomed us and all those who show solidarity with the suffering Cuba." (WP, "Flotilla Honors 4 Lost in Shoot-Down," 3/3/96, p.A1; Homily translated from Spanish by Jose G. Roig).

**CANDLELIGHT PRAYER VIGIL HELD OUTSIDE CUBAN INTEREST SECTION IN WASHINGTON** -- Several hundred Cuban American exiles and supporters conducted an orderly prayer vigil Sunday evening March 3rd in memory of the civilian pilots shot down over the Florida Straits. The demonstrators lit candles, prayed, waved Cuban flags and chanted the names of those killed: Mario de la Pena, Carlos Costa, Pablo Morales and Armando Alejandre, Jr. while dozens of riot-police kept a watchful eye on the vigil. (MH, "Exiles take their anger to Cuban mission in D.C., 3/4/96, p.6A).

**VIETNAM REPORTED TO BE TRAINING CUBAN COMMANDOS** -- According to a report in the well respected periodical *Jane's Defence Weekly*, Vietnam has been training Cuban seaborne commandos since 1990 for the purpose of bringing the "reality of warfare to the American public." (*Jane's Defence Weekly*, March 6, 1996).

**SECOND LOTTERY WITHIN CUBAN MIGRATION PROGRAM ANNOUNCED** -- The U.S. Interest Section in Havana is accepting applications from Cubans living on the island. Applications for the lottery began March 15th and last through April 30th with random computerized selection expected on May 1st. Under the U.S.-Cuba migration accord the Clinton administration reached with the Castro regime in order to halt the 1994 rafter crisis, the U.S. agreed to accept at least 20,000 Cubans annually. (MH, "2nd lottery will open U.S. door to Cubans," 3/12/96, p.1B).

**NUCCIO CANCELS POLICY SPEECH IN MIAMI** -- Richard Nuccio, Special Advisor to the President and Secretary of State for Cuba, abruptly and without explanation canceled a policy speech previously planned for February 29th and rescheduled for March 15th. The White House denied reports of Nuccio's resignation. (MH, "U.S. official cancels Cuba-policy speech," 3/15/96, p.13A).

**CUBAN MILITARY OFFICERS RECEIVE INTELLIGENCE BRIEFING IN NEW YORK** -- Six Cuban military officers were granted U.S. visas in Mexico City to attend a CIA briefing late last month proving the two unarmed Cessnas were outside Cuba's 12-mile limit and in international airspace when they were destroyed by Cuban MIGS. The Cubans were briefed by John Gannon who also briefed the U.N. Security Council. (WP, "Planes weren't in your airspace CIA shows Cuba," 3/16/96, p.20A).

**NOTABLE QUOTES**

"They [Cuban MIG pilots] shot the planes down. They are professionals. These are all people we trust, but I take responsibility for what happened." (NYT, "Castro Says Exiles Provoked Attack," 3/3/96, p.8L). "They [Brothers to the Rescue] harassed our Air Force, violated our air space, dropped leaflets on our capital and engaged in other constant acts of provocation." Fidel Castro's justification for the shootdown by Cuban Air Force MIG pilots of unarmed civilian planes on February 24, 1996. (TIME, "This Cold War Is Back-Interview: Fidel's Defense," 3/11/96, p.38).

"We reiterate that we do not want any American blood shed for Cuba. This is our struggle. People of the United States: We need your moral support, not your blood." Statement made on Saturday, March 2nd at Opa-Locka Airport in Miami by Jose Basulto a Bay of Pigs veteran and founder of Brothers to the Rescue. (WP, "Flotilla Honors 4 Lost in Shoot-Down," 3/3/96, p.A1).

"Last week's congressional passage of the Helms-Burton legislation also gives the Cuban government a new propaganda tool. The authorities can claim that the economic hardships suffered by the Cuban people are not primarily the fault of government mismanagement, but the fault of a U.S. law." Gillian Gunn Clissold is the director of the Cuba Project at Georgetown University's Center for Latin American Studies. (MH, "What next in Cuba?" 3/10/96, p.1C).

"Under international law, a nation is not limited to regulating acts that occur on its territory. Its laws can reach the conduct of its nationals abroad; they can also reach acts committed abroad that have substantial effects on it. Dealing in stolen property of U.S. citizens in Cuba has effects that easily suffice to warrant the exercise of our jurisdiction." OP-ED by Brice M. Clagett addressing the issue of "extraterritoriality" arising from the enactment of LIBERTAD. Clagett is an attorney specializing in international law with the Washington law firm of Covington & Burling. (JOC, "Cuba bill doesn't break the law," 3/12/96, p.10A).

"The four Cuban-American martyrs who gave their lives last week, Armando Alejandre, Jr., Pablo Morales, Mario de la Pena, Carlos Costa, made this [passage of the Cuban Liberty and Democratic Solidarity Act] possible. We dedicate this bill to their blessed memory. We will see to it that they did not die in vain." Rep. Dan Burton, chairman of the Western Hemisphere Subcommittee following enactment of the Helms-Burton bill into law. (CR, Vol.142, No.35, 3/14/96, p.E371).

The Institute for U.S. Cuba Relations was established in 1993 as a non-partisan, tax-exempt, public policy research and education foundation whose purpose is to study U.S. Cuba relations past, present and future. In addition to its newsletter, the U.S. \* CUBA Policy Report, the Institute publishes books under its imprint U.S. \* CUBA INSTITUTE PRESS. The Institute is classified as a Section 501(c)(3) organization under the Internal Revenue Code of 1954, and is recognized as a publicly supported organization described in Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. Individuals, corporations, companies, associations, and foundations are eligible to support the work of the Institute for U.S. Cuba Relations through tax-deductible gifts. The Institute neither seeks nor receives federal taxpayer funding. The Institute's mailing address is: 1730 M Street, N.W., Suite 400, Washington, D.C. 20036, USA. Telephone #: 202/675-6344.

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# U.S. \* CUBA Policy Report

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Ralph J. Galliano, Editor

## **GILMAN AND HELMS CALL FOR PROMPT CONSULTATIONS WITH CLINTON ADMINISTRATION FOR IMPLEMENTATION OF THE CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY (LIBERTAD) ACT OF 1996**

**WASHINGTON --** In their joint letter of March 27th, the committee chairmen responsible for the "oversight of the implementation of the LIBERTAD Act," called upon President Clinton to begin the "consultation process." Moving to ensure that LIBERTAD (PL 104-114) "is fully and effectively implemented," Rep. Ben Gilman (R-NY) and Sen. Jesse Helms (R-NC) asked the president to include representatives from the State Department, the Justice Department, the U.S. Agency for International Development (USAID), and the Treasury Department's Office of Foreign Assets Control (OFAC) to work with their respective staffs from the committees on International Relations and Foreign Relations. OFAC's director, Richard Newcomb, is responsible for enforcement of the U.S. embargo against Cuba and for development of the necessary regulations to implement it. Richard Nuccio, who retreated to his previous post at the State Department as principal advisor to the assistant secretary of state for inter-American affairs, adamantly opposed the LIBERTAD legislation in his former capacity as special advisor to the president and the secretary of state for Cuba and is not expected to overtly take part in the interagency consultations particularly now that his White House office is officially closed effective April 15th.

**IMPLEMENTATION --** A March 2nd unclassified State Department cable (#042508) which was sent to U.S. embassies and consular offices worldwide immediately following the House-Senate conference agreement on February 28th (See USCPR, Vol.3, No.3, 3/29/96, p.1), summarized LIBERTAD's main provisions, commented on implementation, provided talking points and explained the defining term of Title III - "trafficking." The cable reveals the State Department's apparent ambivalence to the implementation process. Referring to President Clinton's objections to certain provisions contained in the legislation, the cable mentions that these objectionable provisions remain in the conference report "including a number which will undoubtedly trouble U.S. allies." Among the "talking points," the cable suggests, "[w]e take the concerns [of] our allies in account as we implement the bill, and will be consulting further with your government regarding the issues it raises." The cable also states, "[a]s should be apparent, implementation of the legislation, particularly with regard to identifying traffickers and denying visas, will be extremely difficult and resource-intensive." Reiterating President Clinton's objections, the cable stresses that the White House was "able to achieve certain changes, including a presidential authority to suspend Title III lawsuits."

**PRESIDENTIAL WAIVER --** In his remarks of April 2nd during Italian President Scalfaro's White House visit, President Clinton expressed his intention to invoke the suspension. Scalfaro also acts as the current president of the European Union which opposes LIBERTAD and Italy's state-owned telephone company, STET, is a partner with Grupo Domos, a Mexican company in a joint venture with Cuba, to upgrade Cuba's domestic telecommunications network.

Clinton stated unequivocally at the April 2nd news conference that, "[t]he Helms-Burton bill provides the president with a waiver authority which I believe makes it possible for me to implement that bill in a way that does not violate the commercial rules and regulations governing nations, and that will not undermine our strong, broad-based and consistent commitment to open trade among nations, and I will do my best to do that." In a recent Washington meeting with Canadian Foreign Minister, Lloyd Axworthy, *Canada Quarterly* reported Secretary of State Warren Christopher as saying, "I believe we will work our way through this particular problem trying to take into account the interests and concerns of Canada." In a speech at Johns Hopkins SAIS here in Washington, Axworthy questioned "whether it is appropriate for any country unilaterally to take measures intended to force other countries to agree with its foreign policy."

**CONSULTATIONS** -- In accordance with the "strict congressional oversight" called for in the conference report, the first meeting, held on Friday, April 19th on Capitol Hill, was attended by representatives from the Departments of State and Treasury along with staff representatives from the appropriate House-Senate committees and subcommittees. Both Michael Ranneberger, coordinator of Cuban affairs and Kevin Sullivan, economic officer, represented the State Department's Cuba Desk while OFAC's director, Richard Newcomb, represented Treasury. No one from either USAID or the Justice Department attended this initial meeting. With Nuccio falling back to inter-American affairs at the State Department, the center of gravity for U.S. Cuba policy seems to have returned to the Cuba Desk where it resided before Dennis Hays resigned his position as coordinator in protest of the secret immigration negotiations that took place between Peter Tarnoff, undersecretary of state for political affairs and Ricardo Alarcon, president of Cuba's National Assembly. (See USCPR, Vol.2, No.4, 6/2/95, p.1).

The importance of chairmen Gilman and Helms calling for "prompt" consultations with regard to implementation becomes evident in light of the fact that the effective date of Title III - *Protection of Property Rights of United States Nationals* is designated as August 1, 1996, while the effective date of Title IV - *Exclusion of Certain Aliens* is the March 12th date of enactment. In addition, NAFTA consultations on implementation of LIBERTAD called for by Canada and Mexico on March 12th are required to take place within 45 days. (See USCPR, Vol.3, No.3, 3/31/96, p.4). Although a formal list has yet to be compiled, the focus of the meeting was the implementation of Title IV. Inasmuch as OFAC's standard of enforcement is "reasonable cause," State's standard for deciding whose name will appear on a list to exclude those persons found trafficking in U.S. confiscated property in Cuba will be based upon "convincing evidence" compiled from embassy reports, news reports, and any other source evidence that becomes available. This prospective view, as to whether a person is engaged in trafficking on or after the date of enactment of LIBERTAD, must meet the "other than routine maintenance" test whereby a pre-existing trafficker should not be presumed to receive an automatic exemption from Title IV enforcement. "New and different acts of trafficking" should present clear cut cases for exclusion. The expectation is that the State Department will send out warning letters to foreign companies from which an INS and State Department "watch list" will be created to exclude alien traffickers and their immediate families from entry into the United States. The State Department has acknowledged it will be publishing Title IV implementation guidelines. It also should be noted there is no presidential waiver application in Title IV. It was conveyed at the meeting that "no conclusions" have been reached on the implementation of Titles I and II. With the exception of the presidential waiver, Title III is viewed as a matter to be handled by the courts. It appears that the interagency working group created before passage of LIBERTAD will be essentially the same working group that opposed the legislation prior to its enactment. Based on the Clinton administration's intent to minimize the diplomatic fallout over enactment of LIBERTAD, it remains to be seen how effectively the executive branch will implement this new law.

## **LIBERTAD ACT OF 1996:**

### **HIGHLIGHTS**

*The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 was enacted into law on March 12, 1996. The law establishes August 1, 1996 as the date Title III becomes effective.*

■ Prohibits U.S. persons from investing in Cuba's domestic telecommunications network and requires semiannual reports detailing the monthly payments of U.S. dollars made to Cuba by American telecommunications companies authorized under the Cuban Democracy Act of 1992. (Title I, Section 102(g)).

■ Codification of the U.S. embargo against Cuba as in effect on March 1, 1996 requires the president to seek Congressional approval before lifting the embargo in whole or in part but does not preclude its unilateral tightening. (Title I, Section 102(h)).

■ Reduction in U.S. assistance to the independent states of the former Soviet Union in an amount equal to their assistance to Cuba with respect to the Lourdes intelligence facility and the completion of the Cienfuegos nuclear power plant. This section is subject to presidential waiver for reasons of national security. (Title I, Sections 106(d) and 111(b) respectively).

■ Provision of assistance to Cuba during both a transition and a democratic government is subject to an authorization of appropriations and to its availability. (Title II, Section 202(b)).

■ Determination by the president that a transition from a communist totalitarian dictatorship to a representative democracy has occurred in Cuba is predicated upon the exclusion from any such government of both Fidel and Raul Castro. (Title II, Section 205(a)(7)).

■ Determination of a democratically elected Cuban government includes free and fair elections, movement toward a market-oriented economy, constitutional changes, an independent judiciary, and demonstrable progress in returning or compensating for confiscated properties to U.S. citizens. (Title II, Section 206).

■ U.S. nationals whose property was wrongfully confiscated by the Castro regime have the "right to bring an action" in the courts of the United States against traffickers in an amount equal to the value of the property plus interest, court costs, and legal fees. The value of the property must exceed \$50,000 exclusive of such costs. (Title III, Section 302).

■ Provides the President with two separate forms of authority permitting the suspension of the "effective date" for a period not to exceed six months and the suspension of the "right to bring an action" not to exceed six months. The President must show the suspension is both in the national interest and that it will expedite a transition to democracy. The suspensions may be extended for additional six-month periods under the same requirements. (Title III, Section 306).

■ Exclusion from the United States of aliens who on or after the date of enactment traffic in confiscated American property in Cuba. (Title IV, Section 401).

*The following is a review of the major provisions of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 and is not intended to be a comprehensive summary of the Act. Reference should be made to Conference Report 104-468, dated March 1, 1996 and/or to Public Law 104-114, dated March 12, 1996, 110 Stat. 785.*

## TITLE I

### **STRENGTHENING INTERNATIONAL SANCTIONS AGAINST THE CASTRO GOVERNMENT**

Title I effectively calls for the strict enforcement of sanctions while strengthening the embargo at every turn calling upon the president to "advocate" a "mandatory international embargo." Section 102(g) - Prohibition on Investment in Domestic Telecommunications Services stymies the Clinton administration's movement toward an expanded interpretation of the Cuban Democracy Act of 1992 (CDA) which permits "telecommunications services between the United States and Cuba." LIBERTAD explicitly prohibits U.S. "investment" in the domestic telecommunications network within Cuba" (See USCPR, Vol.3, No.1, 1/17/96, p.2) and requires semiannual reports to Congress "detailing payments made to Cuba by any United States person." U.S. dollar estimates of these transfers range from \$60 million to \$100 million during 1995 the first full year of operation. Perhaps the most significant aspect of LIBERTAD coming out of the conference committee is the inclusion of *Section 102(h) - Codification of Economic Embargo*, heretofore absent. As a result, all economic restrictions against Cuba, as of March 1, 1996, "shall remain in effect" until they are suspended or terminated in accordance with Section 204 of the Act. *Section 204 - Termination of the Economic Embargo of Cuba* enumerates the steps Cuba must take in its transition to democracy before the embargo can be lifted. Section 102(h) alters the relationship between Congress and the White House with respect to the president's prerogative over the embargo. Every president, since John F. Kennedy first imposed a total trade embargo on Cuba by executive order 3447 on February 3, 1962, has had the ability to shape U.S. Cuba policy by either tightening or loosening the embargo. LIBERTAD requires the president to obtain congressional approval before loosening or lifting the embargo. This section, however, does not preclude the president from acting unilaterally to further tighten the embargo. *Section 106 - Assistance By the Independent States of the Former Soviet Union for the Cuban Government* amends the Foreign Assistance Act of 1961 to specifically include assistance to intelligence and military facilities at Lourdes and Cienfuegos. While it discourages, it does not prevent the president from exercising a waiver if it is deemed to be in the national security and if the president certifies that the Russian government has assured the U.S. it is "not sharing intelligence from Lourdes with officials or agents of the Cuban government." A report to Congress is called for in case of a presidential certification. Russia provides Cuba with \$200 million in credits annually for use of the Lourdes spy base described as one of the "largest and most sophisticated intelligence stations" in the world. This section of LIBERTAD is also intended to halt non-market based trade involving the exchange of Russian oil for Cuban sugar which is expected to be scrutinized more closely in light of the recent increase in world oil prices and the decrease in world sugar prices. Similarly, *Section 111 - Withholding of Foreign Assistance from Countries Supporting Juragua Nuclear Plant in Cuba* addresses the safety issues arising from its completion. While *Section 110 - Importation Safeguard Against Certain Cuban Products* prohibits the importation of any product of Cuban origin, it specifies restrictions on sugar imports and requires assurances that

sugar products entering the United States are not products of Cuba. This section cites Article 309(3) of NAFTA which "permits the United States to ensure that Cuban products or goods made from Cuban materials are not imported into the United States from Mexico or Canada and that U.S. products are not exported to Cuba through those countries." (See US CPR, Vol.2, No.7, 8/31/95, pp.4-5). *Section 112 - Reinstitution of Family Remittances and Travel to Cuba* lifts the prohibition of general license remittances which have been estimated to account for \$400 million to Cuban families residing on the island providing the Cuban economy with a substantial flow of U.S. dollars. Treasury Department's Office of Foreign Assets Control (OFAC) permits family remittances on special license only. The reinstitution of family remittances requires the Cuban government to permit freely operated small businesses. Family travel requires Cuba's "abrogation of the sanction for departure from Cuba by refugees and release of political prisoners." *Section 114 - News Bureaus in Cuba* calls for a "fully reciprocal" exchange including journalists from Radio and TV Marti. LIBERTAD's raison d'être is embodied in *Section 116 - Condemnation of Cuban Attack on American Aircraft*. Specifically - Statements by the Congress - "The Congress strongly condemns the act of terrorism by the Castro regime in shooting down the Brothers to the Rescue aircraft on February 24, 1996."

## TITLE II

### *ASSISTANCE TO A FREE AND INDEPENDENT CUBA*

Title II sets forth American policy toward a post-Castro Cuba separately enumerating the steps to be taken in each instance for a transition government and a democratically elected government in order to receive U.S. assistance. *Section 202 - Assistance for the Cuban People* calls on the president to "develop a plan for providing economic assistance to Cuba" subject to an authorization of appropriations and to its availability. *Section 204(a) - Termination of the Economic Embargo on Cuba* permits the president to take steps to "suspend the economic embargo of Cuba and to suspend the right of action created in section 302" once there is a transition government in place after the president consults with Congress and "to the extent such steps contribute to a stable foundation for a democratically elected government." Under Section 204(e), the president's suspension "shall cease to be effective upon enactment of a joint resolution" that "Congress disapproves the action." Only one joint resolution may be considered in a six-month period. Among the requirements listed in *Section 205(a)(7) for Determining a Transition Government*, is the exclusion of both Fidel and Raul Castro. In addition to Section 205(b)(2)(C) "assuring the right to private property," Section 205(b)(2)(D) calls for the taking of "appropriate steps" to either return to U.S. citizens or to "provide equitable compensation" for property taken. *Section 206 - Requirements for Determining a Democratically Elected Government* is one that "results from free and fair elections" which have been "conducted under the supervision of internationally recognized observers." A democratic government must show that it is "moving toward a market-oriented economic system based on the right to own and enjoy property." It must also show that "demonstrable progress" has been made in returning or compensation for confiscated property. In *Section 207 - Settlement of Outstanding United States Claims to Confiscated Property in Cuba*, the Secretary of State is required to provide a report 180 days from enactment of LIBERTAD to the appropriate congressional committees "containing an assessment of the property dispute question in Cuba" including an "estimate of the number" and an "amount" of both the certified and non-certified claims. Section 207(d)

states in a sense of Congress that "the satisfactory resolution of property claims by a Cuban Government recognized by the United States remains an essential condition for the full resumption of economic and diplomatic relations between the United States and Cuba."

### TITLE III

#### ***PROTECTION OF PROPERTY RIGHTS OF UNITED STATES NATIONALS***

In a series of congressional findings, Title III of LIBERTAD addresses the wrongful taking of American owned property, the unjust enrichment through "trafficking," and the lack of international remedies available to U.S. nationals. In part, Section 301 describes international law as lacking "fully effective remedies for the wrongful confiscation of property" although it recognizes "that a nation has the ability to provide for rules of law with respect to conduct outside its territory" having a "substantial effect within its territory" in order to protect its citizens. The conference committee report is clear in distinguishing between the rights of certified claimants and the rights of non-certified claimants. The conference report states its "intent not to supplant or undermine the Foreign Claims Settlement process, but to provide an additional remedy for U.S. nationals through which they may take action to protect their claim to a confiscated property in Cuba." It further states that it "expects that the existence of this remedy will make the recovery process less complicated because it will deter investment in and development of confiscated property in Cuba."

**Section 302** creates a civil *Liability for Trafficking in Confiscated Property Claimed by United States Nationals* against "any person that, after the end of a 3-month period beginning on the effective date" (August 1, 1996) of Title III, trafficks in confiscated property belonging to a U.S. national. A trafficker is liable for either the certified amount or in the case of a non-certified claimant "the fair market value" based on either "current value" or "value of the property when confiscated plus interest, whichever is greater; and court costs and reasonable attorneys' fees". The 5911 certified claimants are deemed to have given notice upon certification of their claims by the Foreign Claims Settlement Commission (FCSC) on July 6, 1972. Non-certified claimants are required to give traffickers a 30-day written notice in addition to the three month grace period from the effective date of Title III. **Section 302(a)(3) - Increased Liability** entitles all claimants to seek treble damages. In the case of certified claimants, treble damages begin to accrue three months after the effective date and for non-certified claimants three months plus 30 days after the effective date of Title III. In the case of a trafficker involved with a certified claim, such trafficker will be liable for damages from the time of notice of (July 6, 1972) through to the period ending three months after the effective date (August 1, 1996) of Title III. Thereafter, treble damages begin to accrue if the trafficker does not cease and desist. **Section 302(a)(5) - Treatment of Certain Actions** requires non-certified claimants to wait two years before exercising their right of action to sue traffickers in U.S. courts without adversely affecting the accrual of treble damages unless trafficking ceases. **Section 302(b)** establishes an *Amount in Controversy* where an action can be brought only if the "sum or value" exceeds \$50,000 exclusive of interest, costs, and attorneys' fees. **Section 302(d) - Enforceability of Judgements Against Cuban Government** makes a judgement against "an agency or instrumentality of the Cuban Government" unenforceable in either a transition or a democratic government. **Section 302(e) - Certain Property Immune from Execution** prevents both attachment and execution of judgement against property used for an "accredited diplomatic" purpose. **Section 302(f) - Election of Remedies** precludes any person who brings an action



under common law or any provision of law from turning around and bringing the same action under LIBERTAD. The reverse also applies, whereby, a person who brings an action under LIBERTAD cannot bring the same action under common law or any other provision of law. **Section 302(f)(2) - Treatment of Certified Claimants** finds a Title III recovery charged against the value of the claim with only the difference outstanding and due. In the case of a full recovery, the claim will be considered discharged. If there is no recovery, then the claimant will be treated as all others who did not bring an action for damages. **Section 302(h) - Termination of Rights** becomes effective when the President suspends the right of action in the case of a transition government under Section 204(a) and shall cease upon "transmittal to the Congress of a determination of the President under section 203(c)(3) that a democratically elected government in Cuba is in power." **Section 302(h)(2) - Pending Suits** "commenced before the date of such suspension or termination" shall not be affected. **Section 303(c) - Rule of Construction** clearly specifies that non-certified claimants shall not "be included in the claims certified to the Secretary of State by the Foreign Claims Settlement Commission for purposes of future negotiations and espousal of claims with a friendly government in Cuba when diplomatic relations are restored." **Section 304 - Exclusivity of Foreign Claims Settlement Commission Certification Procedure** disallows any further adjudication of U.S. Cuba claims by the FCSC. **Section 305 - Limitation of Actions** requires an action be brought under Section 302 within two year after the trafficking has ceased. **Section 306 - Effective Date** sets the date Title III takes effect as August 1, 1996. This section also grants the president the authority to invoke two separate suspensions. The first allows the president to suspend the effective date "for a period of not more than 6 months" if he reports in writing to the appropriate committees at least 15 days before the effective date begins that "the suspension is necessary to the national interest of the United States and will expedite a transition to democracy in Cuba." Additional suspensions become available using the same criteria. The second suspension available to the president is to "suspend the right to bring an action" under Title III for a period of not more than 6 months. Additional suspensions become available using the same criteria. The key date to watch for the suspension of the August 1st effective date is July 17th. The conference committee's intent is stated quite clearly as to whether the president can justifiably suspend either the effective date or the right of action: "The committee strongly believes that the question of whether suspension will expedite a transition to democracy in Cuba should be the central element of the President's decision whether to exercise the suspension authority, and not just be one of the factors to be considered by the President." It is evident that present circumstances in Cuba do not warrant a presidential suspension.

#### TITLE IV

#### **EXCLUSION OF CERTAIN ALIENS**

Title IV stands alone to the extent it becomes effective after the date of enactment and the application of its definition of "trafficking" is much narrower than in Title III. The exclusion of traffickers and their immediate families from the United States based on trafficking that occurs on or after the date of enactment offers the trafficker the opportunity to cease and desist and not be affected by Title IV. Although, it would not necessarily immunize traffickers from Title III litigation and liability for damages. Title IV cannot be suspended by the president. The Secretary of State may suspend only for reasons of medical emergency or entry into the United States involving a Title III action.

**NOTABLE QUOTES**

"The key to this legislation is not whether damages can be collected but to create sufficient uncertainty so investors think twice about going into Cuba. The purpose is to get rid of Fidel Castro." Nicolas J. Gutierrez, Jr. refers to the intent of LIBERTAD. Gutierrez, an attorney at the Miami law firm of Adorno & Zeder, heads its international practice group. "A lot of people who had given up on their properties now have something tangible. This creates opportunities for estate planning because now they have something to leave their heirs." George Harper talks about the significance of LIBERTAD to Cuban Americans. Cuban born Harper is an attorney at Steel Hector and Davis a Miami law firm. (MH, "Lawyers field calls about Cuba lawsuits," 3/17/96, p.1F).

"There is no U.S. property in Cuba. Cuba is not an exclusive U.S. market or warehouse. In Cuba, all property belongs to the state or to partners we have chosen." Statement by Roberto Robaina, Cuba's Foreign Minister, in protest of LIBERTAD. (Inter Press Service, "Cuba: Government Denies Existence of U.S. Property," 3/20/96, p.1).

"Whether or not Helms-Burton sanctions actually have any real impact, investors are going to be hiding all over the place." Peter Scott is the head of the Havana Asset Management fund based in London. (MH, "Cuba's tunnel still long, dim," 4/1/96, p.29).

"We will be compiling lists of excludable aliens and they shall be excluded. Every indication I have is that this is fatal for Castro's desire to attract foreign investment." Rep. Lincoln Diaz-Balart (R-FL) refers to the anticipated impact of LIBERTAD's Title IV regarding visas. (MH, "U.S. seeks to reassure allies on Helms-Burton law," 4/4/96, p.16A).

"Here you have a foreign company buying at cut-rate prices property owned by American citizens, intending to share profits with Fidel Castro and then laughing all the way to the bank." Jorge Mas Canosa comments on trafficking within Title III of the Helms-Burton legislation recently enacted into law. Mas Canosa is president of the Cuban American National Foundation with offices in Miami and Washington. (NYT, "New U.S. Curbs Sound Alarms for Cuba Investors," 4/6/96, p.3).

"Very few multinational corporations operate with one company. There's a master holding company and in each country they have a separate corporation... You can assert all you want, but it's a very difficult burden to pierce those corporate veils." James Whisenand of the law firm of Whisenand & Turner in Miami focuses on plaintiff's burden of proof under the Title III provisions of LIBERTAD. (LT, "Attorneys Capitalize on Anti-Castro Law," 4/8/96, p.2).

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Ralph J. Galliano, Editor

## U.S. TRADING PARTNERS ANTICIPATE IMPLEMENTATION OF CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY (LIBERTAD) ACT OF 1996

**WASHINGTON** -- In an effort to exert substantial international pressure on the Clinton administration as it moves toward implementation of LIBERTAD's Title IV - *Exclusion of Certain Aliens* for trafficking in U.S. confiscated property by the Castro regime, major U.S. trading partners Canada, Mexico, Japan, the European Union and the United Kingdom have expressed their anger with the enactment of the new law. Canada and Mexico have called for NAFTA consultations; the European Union has called for World Trade Organization (WTO) consultations; Japan, the EU and the UK raised the issue before the annual ministerial meeting of the Organization for Economic Cooperation and Development (OECD); and, the UK trade minister warned of retaliatory measures against the United States.

**NAFTA CONSULTATIONS** - Consisting of full day meetings, NAFTA consultations were held on Friday, April 26th and Tuesday, May 28th at the office of the U.S. Trade Representative (USTR) in Washington. The closed door meetings were attended by government representatives from each of the three countries. The first round of consultations consisted primarily of technical legal questions and requests for clarification as to how the State Department planned to implement Title IV. In general, the first meeting was marked by an air of cooperation with the U.S. side attempting to allay the fears of its NAFTA trading partners. However, following considerable pressure from Congress, the second round of consultations was characterized as much more political than trade oriented. In the view of Canadian and Mexican officials in attendance, it lacked the flexibility implied on April 26th. Apparently, USTR was adamant that Title IV of LIBERTAD which sets certain standards did not constitute "trade protectionism in disguise." Concerning NAFTA Chapter 1603 which grants U.S. entry to businessmen who are otherwise qualified, the new law does not exclude any particular country just specific individuals found to be trafficking. A third session is likely to follow the release of Title IV guidelines by the State Department before Canadian and Mexican sides call for a formal meeting of the NAFTA Commission the next step in the dispute resolution process.

**WTO CONSULTATIONS** - The 15 member European Community formally requested consultations objecting to the "extraterritorial implications of this legislation" on May 3rd under the 1995 global trade agreement GATT creating the World Trade Organization (WTO). In a series of letters sent to Booth Gardner the U.S. ambassador to the European Union (EU), to Senate Majority Leader Dole and to House Speaker Gingrich, the EU set in motion the dispute resolution mechanism whereby the U.S. has 10 days to respond to the EU request for consultations. Thereafter, if talks should fail to resolve the outstanding issues, a dispute panel may be set up in 60 days to review and rule on the complaint. Ultimately, the EU could benefit from a sanctions ruling against the United States by the 123 member WTO. On May 2nd, Senator Dole, the apparent Republican presidential nominee, called on President Clinton to help to create a commission to review WTO dispute settlement decisions adverse to the United States.

**OECD MEETING** - At the May 21-22 annual ministerial meeting of the 27 nation Paris based OECD of which the United States is a member, Japan and the EU failed in their efforts to condemn the United States for "unilateralism" a reference to the enactment of LIBERTAD and its tightening of the U.S. embargo on Cuba. Leon Brittan, vice president of the European Commission, described LIBERTAD as "extraterritorial and expropriatory" at an OECD press conference. In the end, the OECD issued a communique defending multilateralism. Canada's former finance minister, Donald Johnston, will become the OECD's next secretary general.

**UK WARNS OF RETALIATION** - Ian Taylor, speaking for the British government at a London conference sponsored by the Caribbean Trade Advisory Group (CARTAG) on May 2nd, issued a warning to the United States that the UK would "take all appropriate steps to protect the[ir] legitimate trading interests" against implementation of LIBERTAD. Taylor referred to "potential domestic counter-measures" with respect to the exclusion of any British business executives on account of enforcement of the new law. Later in the month, however, British Foreign Secretary Malcomb Rifkind indicated that Britain had no plans to retaliate. And in a May 29th Washington Press Club speech he characterized enactment of LIBERTAD as "unilateral and extraterritorial." Under Title IV consideration are two UK companies involved in the Cuban sugar business ED&F Man and Tate & Lyle. (See USCPR, Vol.3, No.2, 2/15/96).

**STATE DEPARTMENT DELEGATION TO EUROPE** - A U.S. State Department delegation conducted a "good will" tour to major European capitals in early May to brief foreign governments on implementation of LIBERTAD. The delegation included Kevin Sullivan, the economic officer at the Cuba Desk, and two legal advisors. The message to EU officials in Brussels, Rome, London and Madrid was that the new law "compelled" the U.S. government to deny visas to traffickers and that a "grace period" would be granted to suspected company executives; simply doing business with Cuba was not a violation of U.S. law. It was explained that the process would include advisory letters followed by warning letters granting traffickers a 45-day grace period to deny, appeal, divest or face sanctions denying U.S. entry. This process could take until mid-July when President Clinton must decide whether to suspend the August 1st effective date of Title III also suspending the right of action for six months.

**INTERAGENCY CONSULTATIONS** - The second interagency meeting to oversee the implementation of the LIBERTAD Act which was held on Wednesday, May 15th left many in Congress more frustrated than the initial April 19th meeting had over the slowness of the executive branch to implement Title IV. Neither warning letters nor guidelines were prepared for presentation by the time the second meeting convened. Since the State Department's pronouncement earlier in the month of its intent to "minimize the effect on friendly countries," there was particular concern that only a few corporate executives would receive letters making them an example while their families and company shareholders would be free to enter the U.S. contrary to Title IV requirements. Under Title IV, LIBERTAD grants authority to the Secretary of State to deny visas and to exclude from the United States any alien who is determined "after the date of enactment" to have confiscated property "a claim to which is owned by a United States national" or who "trafficks" in such property. The Secretary of State has delegated responsibility for making "determinations" as to who will be excluded from entry into the United States to the Acting Assistant Secretary of State for Inter-American Affairs, Jeffrey Davidow. The former U.S. ambassador to Venezuela replaces Alexander Watson who retired earlier this year. The next interagency meeting is set for sometime in June by which time the initial wave of advisory letters will have been sent to suspected traffickers and the State Department's guidelines will have been issued.

## CHRISTOPHER SPEAKS IN MEXICO CITY

Rep. Ileana Ros-Lehtinen's (R-FL) May 7th letter to Secretary of State Warren Christopher reprinted below apparently caused the State Department's Bureau of Inter-American Affairs to issue a press guidance the next day in an attempt to clarify Christopher's statements to businessmen during his Mexico City visit for bilateral talks. Suggesting that his statement "could be construed by some investors to mean that the Clinton Administration will take a soft approach toward the implementation of Helms-Burton," the Miami Congresswoman urged Christopher to pursue "strong implementation and active monitoring of possible violations." Christopher's reference to the "prospective" character of the forthcoming State Department guidelines didn't make clear that traffickers prior to the March 12th date of enactment who continue to traffick in "confiscated property, a claim to which is owned by a United States national," will be subject to Title IV visa entry restrictions. The State Department's press guidance addressed this point. When asked in Mexico City how LIBERTAD would "affect Mexican business in the commercial relationship between Mexico and the United States," Christopher responded in a way that was not reported by Reuters by saying the forthcoming guidelines would be intended to "maximize the pressure on the Cuban government to *change* (emphasis added) ... and to minimize the effect on friendly countries and businesses in friendly countries." After stating that "Cuba is not moving toward democracy or free markets, they are going in the other direction," Christopher implied that the president had full discretionary authority to suspend Title III notwithstanding the requirement in the law (Section 306(b)(1)) that "the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba." The Conference Committee Report specifies, "The committee strongly believes that the question of whether suspension will expedite a transition to democracy in Cuba should be the central element of the President's decision whether to exercise the suspension authority, and not just be one of many factors to be considered by the President."

## ROS-LEHTINEN LETTER TO CHRISTOPHER

May 7, 1996  
The Honorable Warren Christopher  
Secretary of State  
2201 C Street, N.W.  
Washington, D.C. 20520  
Dear Mr. Secretary:

I am concerned about the implications of your comments made recently in Mexico that the Helms-Burton law will only affect future investments in Cuba, when in reality, the intent of the law also includes freezing current investments by penalizing investors who make any modifications or improvements to their present investments in the island.

According to the Reuters News Agency, you stated in Mexico that "I can tell you one and that is that I think regulations will be prospective in character. People who invest in the future, after the date of the law, are those who will be caught in the effects of the law rather than those who did in the past." I am afraid that your statement could be construed by some investors to mean that the Clinton Administration will take a soft approach toward the implementation of Helms-Burton in an effort to appease some of our allies who are against the law.

However, such an approach will not help in assuring that the foreign investments to Cuba are choked off to deny Castro the hard currency he needs to maintain his regime. Only through strong implementation of the legislation and active monitoring of possible violations, can Helms-Burton be a vehicle to help return democracy to Cuba.

I hope that your statements do not signal that the Administration is not serious about implementing Helms-Burton and I strongly urge you that the final regulations reflect the intent of the law concerning present investment in Cuba.

Your immediate attention to this matter will be greatly appreciated.

Sincerely,  
Ileana Ros-Lehtinen  
Member of Congress

## ADVISORY LETTERS ISSUED

Decisions made in foreign corporate board rooms are beginning to reflect the new realities of the U.S. market place as redefined by the enactment of LIBERTAD. In anticipation of receiving an "advisory letter" from the State Department, CEMEX, the third largest cement company in the world based in Mexico which maintains substantial U.S. presence, has halted its Cuba operations. While the *Miami Herald* reported on May 29th that "CEMEX has terminated that contract and transferred responsibility for the plant to a government-run Mexican bank, the Banco Nacional de Comercio Exterior," the *Financial Times* reported on the day before that CEMEX's 1994 annual report indicated that CEMEX was providing "'technical support' to a plant jointly owned by the Cuban Cement Producers Association and Bancomext, Mexico's state-owned foreign trade bank." Under LIBERTAD's definitions, CEMEX and the two Mexican banks are considered traffickers while the Cuban Cement Producers Association is considered an "agency or instrumentality of a foreign state." As a result, foreign nationals employed by either bank located in the United States would come under the purview of LIBERTAD's Title IV and could be denied entry into the country. Bancomext has offices in Atlanta, Chicago, Dallas, Los Angeles, Miami, New York and San Antonio. In addition, LIBERTAD Section 102(a)(1) and (2) which reaffirm Section 1704(a) of the Cuban Democracy Act (CDA) of 1992 "urges the president to take immediate steps to apply the sanctions described in section 1704(b)(1)" of the CDA against foreign countries assisting Cuba. While this grants the president discretionary sanction authority, it does not prevent application of Title IV and Title III sanctions against traffickers. Lone Star Industries chairman David Wallace advised Lorenzo Zambrano head of CEMEX in a letter last year that it might be trafficking in its Mariel cement plant. Zambrano, who apparently ignored the matter until now, never responded to Wallace's letter. Lone Star Industries is one of 5911 U.S. certified claimants. By just a few days, CEMEX barely escaped receiving an advisory letter from the State Department. In so doing, CEMEX avoids both Title IV and Title III sanctions since Title III becomes effective August 1st permitting certified claimants to file a right of action three months after the effective date against actively engaged traffickers.

As of May 29th, advisory letters had been sent to: Sherritt International, a Canadian mining and energy company; Grupo Domos, a Mexican conglomerate; and STET, the Italian state-owned telecommunications company. Sherritt is believed to be trafficking in property owned by Freeport MacMoRan of New Orleans and of Consolidated of Miami. Grupo Domos and STET would be utilizing property claimed by IIT. All three American companies are U.S. certified claimants.

Sherritt Inc., having a plant in the United States located in Vancouver, Washington, spun-off its Cuban assets and formed a new public company last year called Sherritt International in order to shield itself from the American trafficking legislation aimed at foreign investors doing business in Cuba. Grupo Domos, on the other hand, entered into a telecommunications joint venture with the Cuban domestic telephone company, ETECSA, to modernize its service and equipment following the provision of U.S. gateway-to-gateway service to Cuba authorized under the Cuban Democracy Act of 1992. STET International, a subsidiary of the soon to be privatized Italian state-owned telecommunications giant STET, entered into partnership with Grupo Domos acquiring 25% of the Cuban joint venture. Of these three companies, Sherritt remains the most vulnerable company believed to be trafficking in confiscated property the claim of which is owned by a U.S. national. Grupo Domos chief executive Javier Garza Calderon is



reported to have "brought back [to Mexico] two daughters who were studying in Boston." STET executives would be subject to Title III visa entry restrictions.

Affected also by implementation of LIBERTAD's Title IV may be the British telecommunications giant Cable and Wireless and Veba the German industrial conglomerate if as expected both enter into business arrangements with STET. The British brewer Whitbread could become exposed to both Title III and Title IV sanctions if its licensing agreement with Canadian brewer Labatts goes through since Bacardi, a U.S. national, lays claim to the Bacardi beer trademark Hatuey which Labatts is presently using. Generally, Labatts U.S. sales could be adversely impacted. ING, the Dutch insurance and banking company which helped to finance the 1995-96 sugar crop, is expected to "completely terminate all of its involvement in the Cuban sugar industry." Although ING has no plans to leave Cuba, this action would appear to distance it from LIBERTAD's Title IV visa entry provisions and Title III right of action suits under the trafficking provisions that otherwise could be brought by exiled Cuban-American sugar mill owners who are now U.S. nationals. ING's acquisition of the failed British investment bank Barings last year has given it an unexpected presence in the United States with locations in Atlanta, Chicago, Los Angeles, New York, San Francisco and St. Louis. ING also announced in March that it planned to list on the New York Stock Exchange in 1997.

Other companies vulnerable to Title IV visa entry sanctions include: Bennetton, the Italian clothing manufacturer; Sol Melia, the Spanish hotel company; ED&F Man and Tate & Lyle, the British sugar companies; and Pernod-Ricard, the French distiller believed to be trafficking in Bacardi property in Cuba. A copy of the State Department's "advisory" letter sent to Sheritt International, Grupo Doms and STET is reprinted below.

### STATE DEPARTMENT ADVISORY LETTER

May 29, 1996

Dear \_\_\_\_\_,

We understand that \_\_\_\_\_ may be involved in a joint venture with a Cuban Government entity to \_\_\_\_\_.

We believe the property subject to your arrangement was previously expropriated without compensation by the Cuban Government from a U.S. national whose claim was certified by the U.S. Foreign Claims Settlement Commission.

As you may be aware, the United States recently enacted the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, which entered into force on March 12, 1996, provides for the denial of visas to or exclusion from the United States of any foreign national whom the Secretary of State determines is a person who, after March 12, 1996, confiscates or traffics in confiscated property in Cuba, a claim to which is owned by a U.S. national. Title IV also requires the exclusion of corporate officers, principals or controlling shareholders of companies that engage in "trafficking" as well as the spouse, minor child or agent of such persons.

Title IV states that a person "traffics" in confiscated property if that person knowingly and intentionally "transfers, distributes, dispenses, brokers or otherwise disposes of confiscated property; purchases, receives, obtains control of, or otherwise acquires confiscated property; or improves or invests in (other than for routine maintenance) or begins to manage, lease, possess, use or hold an interest in confiscated property. The term "traffics" also covers entry from confiscated property, as well as causing, directing, participating in or profiting from trafficking by or through another person or entity. However, the Congressional Conference Committee report explaining its view of the legislation stated "the sale or abandonment of confiscated property in Cuba for purposes of disengaging from Cuba is excluded from the definition of trafficking." A copy of Title IV is enclosed.

The Department of State is currently developing implementing guidelines for Title IV, which we expect to publish soon. We expect to begin making determinations under Title IV based on careful review of the facts in each case, once the implementing guidelines are in place. Please be advised that, if \_\_\_\_\_ has engaged in activities after March 12, 1996, that come within the meaning of confiscation or trafficking in confiscated property under Title IV, persons associated with the company may be subject to a determination of visa ineligibility or excludability by the Department of State, in accordance with the terms of the Act.

The United States Government is moving expeditiously to implement the provisions of the Act. I hope this information will be useful to you in making any decisions about involvement with confiscated property in Cuba, a claim to which is owned by a U.S. national. If you have any information (concerning your) \_\_\_\_\_ investment in Cuba that you wish to provide, you may forward it to the Office of Cuban Affairs, Room 3244, U.S. Department of State, Washington, D.C. 20521.

Sincerely,

<p><b>LIBERTAD: REPORTS AND OTHER REQUIREMENTS</b></p>
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LIBERTAD: Enacted into law March 12, 1996.

**TITLE I**

§102(g)(6)	<b>TELECOMMUNICATIONS SERVICES.</b> President to submit to Congress a <u>report</u> detailing telecommunications payments to Cuba by U.S. companies.	Semiannually.
§106(a)	<b>CIENFUEGOS NUCLEAR PLANT.</b> President to submit to Congress a <u>report</u> detailing progress toward withdrawal of personnel of any independent state of the former Soviet Union from nuclear facility in Cienfuegos, Cuba.	No later than 90 days after date of enactment. (June 10, 1996).
§106(d)	<b>LOURDES INTELLIGENCE FACILITY.</b> President is authorized to withhold assistance to independent states of the former Soviet Union in an amount equal to their payments for use of the Lourdes intelligence facility in Cuba. A waiver requires the President to certify it is important to U.S. national security and Russia is not sharing intelligence with Cuba. Upon certification, President is required to submit to Congress a <u>report</u> describing the intelligence activities of Russia at Lourdes including the extent of payments and credits.	On or after date of certification. Report may be submitted in classified form.
§107(b)	<b>TV MARTI.</b> Director of USIA to submit to Congress a <u>report</u> on conversion of TV Marti to UHF.	Not later than 45 days after date of enactment and every three months thereafter until conversion is complete.
§108	<b>ASSISTANCE BY FOREIGN COUNTRIES.</b> President to submit to Congress a <u>report</u> of bi-lateral assistance, commerce, joint ventures and identification of countries trading with Cuba, whether subject to claim, and the debt of the Cuban government.	90 days after enactment and by January 1st of each year thereafter. (June 10, 1996).

**TITLE II**

§202(g)	<b>PLAN OF ASSISTANCE FOR CUBAN PEOPLE.</b> President to transmit to Congress a detailed <u>report</u> describing the plan providing economic assistance to Cuba at such time as President determines that a transition or a democratically elected government in Cuba is in power.	Not later than 180 days after date of enactment. (September 8, 1996).
§202(h)	<b>TRADE AND INVESTMENT RELATIONS.</b> President to submit to Congress a <u>report</u> on U.S. policy objectives regarding trade relations.	When the President determines a democratically elected government is in power in Cuba.
§203(c)(2)	<b>STRATEGY FOR PROVIDING ASSISTANCE.</b> President to transmit to Congress a <u>report</u> setting forth strategy for providing assistance to transition government in Cuba.	Preliminary report required 15 days after President makes determination and formal report 90 days after.

§203(c)(4)	<b>ASSISTANCE FOR CUBAN PEOPLE.</b> President to transmit to Congress a <u>report</u> on assistance provided under §202 plan.	Annual reports not later than 60 days after end of each fiscal year.
§204(a)	<b>SUSPENSION OF ECONOMIC EMBARGO AND RIGHT OF ACTION.</b> When President suspends economic embargo and right of action he is required to <u>notify</u> Congress.	Immediately <u>and</u> no less frequently than every 6 months thereafter.
§204(e)	<b>REVIEW OF EMBARGO SUSPENSION.</b> President to submit to Congress a <u>report</u> following determination that a democratically elected government is in power in Cuba.	Suspension shall cease to be effective upon enactment of Joint Resolution of both Houses of Congress disapproving of suspension.
§207	<b>ASSESSMENT OF PROPERTY DISPUTE.</b> Secretary of State to provide a <u>report</u> to Congress with an estimate of number and amount of claims of confiscated property by Cuban government held by U.S. nationals in addition to certified claims.	No later than 180 days after date of enactment. (September 8, 1996).

### TITLE III

§302(a)(8)	<b>SUMMARY AND STATEMENT OF LIABILITY.</b> Attorney General to <u>publish</u> in Federal Register a concise summary including a statement of liability and remedies under Title III.	60 days after date of enactment. (May 11, 1996).
§306(a)	<b>EFFECTIVE DATE OF TITLE III.</b>	August 1, 1996.
§306(b)(1)	<b>SUSPENSION OF EFFECTIVE DATE.</b> President to <u>report</u> in writing to Congress that his suspension of effective date is necessary to the U.S. national interests and that it will expedite a transition to democracy in Cuba. Suspension is for a period of 6 months.	At least 15 days before effective date.
§306(b)(2)	<b>ADDITIONAL SUSPENSIONS.</b> Based on same criteria as above including <u>reports</u> .	At least 15 days before the date additional suspension is to begin.
§306(c)(1)(B)	<b>SUSPENSION OF RIGHT OF ACTION.</b> President to <u>report</u> in writing to Congress that his suspension of the right to bring an action under Title III with respect to trafficking in confiscated property is necessary to the U.S. national interests and that it will expedite a transition to democracy in Cuba. Suspension is for a period of 6 months.	At least 15 days before suspension takes effect.
§306(c)(2)	<b>ADDITIONAL SUSPENSIONS.</b> Based on same criteria as above including <u>reports</u> .	At least 15 days before the date the additional suspension is to begin.
§306(d)	<b>RECISION OF SUSPENSION.</b> President may rescind any suspension upon <u>reporting</u> to Congress that doing so will expedite a transition to democracy in Cuba.	Any time following suspension.

### TITLE IV

§401(a)	<b>EXCLUSION FROM US OF ALIENS.</b> Secretary of State to exclude aliens who have confiscated or trafficked in U.S. owned property in Cuba. Although no formal reports are required, the State Department is expected to issue <u>guidelines</u> for exclusion and to produce a list of excludables.	As of date of enactment.
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## FAA'S LETTER TO BASULTO

U.S. Department of Transportation  
Federal Aviation Administration  
May 16, 1996

Office of the Assistant Chief Counsel  
Southern Region of Orlando, Florida

Certified - Return Receipt Requested  
and Federal Express  
Mr. Jose Basulto

### EMERGENCY ORDER OF REVOCATION

The Administrator has determined that safety in air commerce or air transportation and public interest require the immediate revocation of your Commercial Pilot Certificate. Therefore, the following constitutes an Emergency Order of Revocation:

1. At all times material herein you were and are now the holder of Commercial Pilot Certificate No. 002122405.
2. On or about July 11, 1995, representatives of the Miami Flight Standards District Office, Federal Aviation Administration (FAA), met with you, in your capacity as President of the Brothers to the Rescue, Inc. (BTTR), and advised you of the potential serious consequences of unauthorized entry into Cuban territorial airspace. The FAA representatives also advised you that any violations of the Federal Aviation Regulations (FAR) or international regulations would be vigorously investigated. (The Cuban Government had alleged that aircraft N2506, registered to BTTR, had operated into Cuban airspace without authorization on June 1, 1995).
3. On or about July 13, 1995, you operated civil aircraft N2506, a Cessna 337, the property of another, on a passenger carrying flight departing from Opa Locka Airport, Miami, Florida, on a DVFR flight plan.
4. During the course of said flight you operated civil aircraft N2506 into the territorial airspace of the Republic of Cuba.
5. During the course of said flight you operated civil aircraft N2506 into the Havana, Cuba Terminal Control Zone.
6. During the course of said flight you operated civil aircraft N2506 into Prohibited Area MUPI of the Republic of Cuba.
7. At all times mentioned herein, the areas described in paragraphs 4, 5, and 6 above were either restricted areas or prohibited areas of the Republic of Cuba, as defined in Cuban Law 1318: LEY 1318 - ORGANIZACION, PLANIFICACION Y CONTROL DE LOS VUELOS SOBRE EL TERRITORIO Y REGION DE INFORMACION DE VUELO DE LA REPUBLICA DE CUBA (Cuban Law 1318) and REGLAMENTO DE LA LEY 1318 DE 1976 (Cuban Law 1318 of 1976). Specifically, Cuban Law 1318 and Cuban Law 1318 of 1976 define the terms Prohibited Area and Restricted Area as follows: ...
9. On or about August 29, 1995, the U.S. Department of State issued a statement warning that entering Cuban territory...
10. On or about August 29, 1995, you, and other members of the BTTR were advised again by representatives of the...FAA...
11. On or about August 31, 1995, the FAA issued a Notice of Proposed Certificate Action (Notice), proposing to suspend your airman certificate for 120 days for operating a U.S. - registered civil aircraft in the territorial airspace of the Republic of Cuba in violation of sections 91.703(a)(2), 91.703(a)(3), and 91.13(a) of the FAR.
19. During the course of your February 24, 1996, flight, as described in paragraphs 15 and 16 above, aircraft operated by the Republic of Cuba shot down two U.S.-registered civil aircraft, N2456S and N5485S, which were being operated by pilots on behalf of BTTR.
20. Your operation of civil aircraft N2506, in the manner and under the circumstances described above, was careless or reckless so as to endanger the lives or property of others.
23. As a result of the foregoing facts and circumstances, you:
  - a. Violated Section 91.703(a)(2) of the Federal Aviation Regulations...in particular, you operated an aircraft in violation of the following regulations of the Republic of Cuba:
    - i. Law 1218 of the Republic of Cuba (LEY 1218 - REGLAMENTO DE SOBREVUELO AL TERRITORIO NACIONAL), Article 3 ...
    - ii. Law 1218 of the Republic of Cuba Article 5 ...
    - iii. Law 1218 of the Republic of Cuba Article 14 ...
    - iv. Law 1318 of the Republic of Cuba (LEY 1318 - ORGANIZACION, PLANIFICACION Y CONTROL DE LOS VUELOS SOBRE EL TERRITORIO Y REGION DE INFORMACION DE VUELO DE LA REPUBLICA DE CUBA) Article 10...
    - v. Law 1318 of the Republic of Cuba ... Article 14...
    - vi. Law 1318 of 1976 of the Republic of Cuba ... Article 7...
    - vii. Law 1318 of 1976 of the Republic of Cuba, Article 25...

As a result of the foregoing, the Administrator has determined that safety in air commerce or air transportation and the public interest require the revocation of your Commercial Pilot certificate. The Administrator further finds that an emergency requiring immediate action exists in respect to safety in air commerce or air transportation and the public interest and, accordingly, this Order shall be effective immediately.

NOW, THEREFORE, IT IS ORDERED, pursuant to the authority vested in the Administrator by 49 U.S.C. Sections 44709 and 46105, that any and all airman certificates held by you including Commercial Pilot Certificate No. 002122405, be and hereby are, revoked. IT IS FURTHER ORDERED that said certificate(s) be surrendered to the undersigned immediately. Note ...

You may appeal from this Order in accordance with the paragraph below.

EDDIE L. THOMAS  
ASSISTANT CHIEF COUNSEL  
BY:  
KEITH S. MAY  
Managing Attorney  
Office of the Assistant Chief Counsel  
Southern Region at Orlando, Florida

### APPEAL

You may appeal from this Order within ten (10) days from the date it is served by ... Whether or not you choose to appeal from the provisions of this order, you must surrender your Commercial Pilot certificate ... immediately.

**FAA ORDERS EMERGENCY REVOCATION  
OF BASULTO'S PILOT CERTIFICATE**

In a May 16th seven page letter sent by U.S. certified mail and FedEx, the Federal Aviation Administration (FAA) abruptly revoked the pilot's certificate of Jose Basulto founder of the volunteer organization Brothers to the Rescue. Basulto is also a Brigade 2506 veteran of the Bay of Pigs. The FAA letter to Basulto is partially reprinted above. The unusual move of issuing an "Emergency Order of Revocation" rather than a revocation or suspension prevents Basulto from flying while he appeals his case. Attorneys for Basulto filed an appeal on Friday, May 24th; the FAA rapidly filed its prepared response to the appeal by close of business that same day. In a separate legal action, Basulto is also seeking a court injunction in the Southern District of Florida against the FAA's emergency order. If successful, the injunction would allow Basulto to fly while his case is under administrative appeal. Otherwise, the administrative process could take months; and an administrative loss, which is highly likely, would permit Basulto to appeal at the federal court level. Extensively citing Cuban law, the FAA seeks to enforce the laws of a foreign country with which the United States does not maintain diplomatic relations. (See paragraphs 7 and 23(a)(i) through vii). In paragraphs 19 and 20, the FAA lays blame on Basulto for the February 24th shootdown by Cuban MIGS of two Brothers to the Rescue planes which killed the four pilots on board. The significance of this could be far reaching since the UN's International Civil Aviation Organization's (ICAO) investigative report now overdue is expected by the end of June. A report by the ICAO, which met in Montreal on March 6th to hear the case, faulting Basulto could relieve Cuba of potential Security Council measures condemning it to be responsible for the shootdown. (See USCPR, Vol.3, No.3, p.6). Given the highly charged political atmosphere created by the February 24th incident, the FAA letter could not have been sent to Basulto without explicit White House approval.

**SHORT TAKES**

**UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT UPHOLDS TRAVEL BAN TO CUBA** -- In an opinion filed by the federal court in San Francisco on the constitutionality of the travel ban, the Court held the ban did not violate the civil rights of U.S. citizens. Freedom to Travel Campaign v. R. Richard Newcomb, No. 95-15291, April 29, 1996. (MH, "U.S. court upholds ban on travel to Cuba," 5/1/96, p.10A). **CASTRO REGIME CLAIMS US EMBARGO COST CUBA \$40 BILLION** --The Cuban government used a UN trade and development conference held in South Africa to attack the US embargo and the Helms-Burton Act claiming the embargo has cost Cuba \$40 Billion. (JOC, "Cuba blasts US over high cost of blockade," 5/3/96, p.5A). **ZYUGANOV DEFEAT OF YELTSIN IN JUNE 16TH ELECTIONS WOULD BOOST CASTRO** -- A defeat of Yeltsin by Communist Party candidate Gennady Zyuganov in the upcoming Russian elections in addition to boosting Castro's morale would help Cuba with badly needed spare parts, fertilizers and oil. Zyuganov's promise of renationalization of Russian industries would open the door to greater support for the island. (MH, "Yeltsin foe has a fan in Havana," 5/20/96, p.10A). **RUSSIAN FOREIGN MINISTER MAKES TWO DAY VISIT TO HAVANA** -- In a clear message to the United States, Russian Foreign Minister, Yevgeny Primakov defied the passage of LIBERTAD by pledging stronger support for the Castro regime. (FT, "Russia vows to defy US on links with Havana," 5/24/96).

NOTABLE QUOTES

"We are so satisfied to be called internationalists, to be called socialists, to be called communists." Cuban dictator Fidel Castro's closing remarks before a three-day gathering of the union congress CTC, the Central de Trabajadores Cubanos, in Havana preceding May Day celebrations. (WP, "Cold War Wind Chills U.S.-Cuba Ties," 5/2/96, p.A20).

"The U.S. should not be left in any doubt that its actions against the U.K. and other trading partners are likely to have an adverse impact upon U.S. interests both internationally and domestically." Ian Taylor, who is the UK's trade and technology minister, speaks at a seminar in London. (WP, "Britain May Retaliate for Helms-Burton Act," 5/3/96, p.A25).

"There certainly has been a chilling effect on Canadian companies wanting to or who have invested in Cuba." Richard Dearden refers to the passage of LIBERTAD and its impact on Canadian business investments in Cuba. Dearden is a Toronto attorney with the firm of Gowling, Strathy and Henderson. (FP, "Cuban chill taking hold," 5/3/96, p.5).

"The Europeans ought to either join us in isolating the Castro regime or admit that what they're doing is profiteering off of tyranny." Marc Thiessen, spokesman for Senate Foreign Relations Committee Chairman Jesse Helms, comments on the European Union's filing of an official complaint against the United States with the World Trade Organization on May 3rd over LIBERTAD or Helms-Burton as it is more commonly referred to. (TWT, "New Cuba sanctions draw official complaint from EU," 5/4/96, p.A1).

"The bottom line is that the U.S. has security concerns that are not applicable to the European Union. Castro's dictatorship lies 90 miles off our coast." Rep. Robert Menendez (D-NJ) of the House International Relations Western Hemisphere Subcommittee comments on the EU action. (TWT, "New Cuba sanctions draw official complaint from EU," 5/4/96, p.A1).

"While we may expect Fidel Castro to ignore property rights, we certainly should not expect international businesses -- which themselves rely on property rights -- to act as fences for our stolen property." Robert E. Freer, Jr. is a Washington attorney with the firm of Freer & McGarry. (JOC, "Note to Europe: Squeeze Castro," 5/23/96, p.7A).

"If the [Mexican] bank has a continuing interest in the confiscation of property, it should be categorized as a trafficker, and [its top officials] should be denied entry into the United States." Dan Fisk, with the majority staff of the Senate Foreign Relations Committee, responds to the withdrawal from Cuba of CEMEX and the transfer of its joint venture interests to a Mexican bank. (MH, "Mexican firm exits Cuba on eve of new sanctions," 5/29/96, p.1A).

The Institute for U.S. Cuba Relations was established in 1993 as a non-partisan, tax-exempt, public policy research and education foundation whose purpose is to study U.S. Cuba relations past, present and future. In addition to its newsletter, the U.S. \* CUBA Policy Report, the Institute publishes books under its imprint U.S. \* CUBA INSTITUTE PRESS. The Institute is classified as a Section 501(c)(3) organization under the Internal Revenue Code of 1954, and is recognized as a publicly supported organization described in Sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. Individuals, corporations, companies, associations, and foundations are eligible to support the work of the Institute for U.S. Cuba Relations through tax-deductible gifts. The Institute neither seeks nor receives federal taxpayer funding. The Institute's mailing address is: 1730 M Street, N.W., Suite 400, Washington, D.C. 20036, USA. Telephone #: 202/675-6344.

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# U.S. \* CUBA Policy Report

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Institute for U.S. Cuba Relations  
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Ralph J. Galliano, Editor

## STATE DEPARTMENT ISSUES GUIDELINES FOR TITLE IV OF THE CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY (LIBERTAD) ACT OF 1996

**WASHINGTON --** The State Department's Bureau of Inter-American Affairs under Acting Assistant Secretary of State, Jeffrey Davidow, issued Public Notice 2403 the long awaited guidelines implementing LIBERTAD's Title IV - *Exclusion of Certain Aliens*. While LIBERTAD's Title III - *Protection of Property Rights of United States Nationals* which separately grants certified and non-certified claimants the right to sue traffickers having assets in the U.S. beginning November 1, 1996 and March 12, 1998 respectively, the effective date for Title IV is LIBERTAD date of enactment or March 12, 1996. Congressional critics charge the State Department with "dragging its feet" and taking "three months to send out three simple advisory letters" to known traffickers (See USCPR, Vol.3, No.5, p.4) and three months to draft a set of guidelines. Specifically, Section 401 - *Exclusion From the United States of Aliens Who Have Confiscated Property of United States Nationals, or Who Traffic in Such Property*, requires the Secretary of State to "deny a visa to," and the Attorney General to "exclude from the United States any alien who the Secretary of State determines is a person who, after the date of enactment" has confiscated or trafficked in confiscated property the "claim to which is owned by a United States national." Secretary of State Warren Christopher delegated authority to carry out Title IV "to the Assistant Secretary of State for Inter-American Affairs to make the determinations of excludability and visa ineligibility."

**CRITERIA FOR EXCLUSION OF CERTAIN ALIENS --** Based on the proceedings of the first consultation meeting between Congress and the Clinton administration that took place on April 19th at the behest of Senator Helms (R-NC) and Congressman Gilman (R-NY), the State Department's standard of enforcement is "convincing evidence." Revealed in the guidelines is a deliberative process of information gathering, verification, and interagency consultation. Although unstated within the guidelines, the process thus far has consisted of the issuance of a warning letter referred to as an "advisory" letter so as not to upset U.S. allies. Preceding the "prior notification" of determination, this advisory letter can be issued at any time as information becomes available. This is followed by a "notification by registered mail" whereby "45 days after the date of the notification letter" names "will be entered in the visa lookout system and port of entry exclusion system" unless it can be shown that the foreign investor trafficking in confiscated property the "claim to which is owned by a United States national" either has divested from such property in Cuba or that the determination is in error.

**CONFIDENTIALITY --** Congressional critics complain that the State Department's guidelines defy public scrutiny and deterrence by permitting it to "inform the alien's country of nationality in confidence through diplomatic channels of the name of any corporation or entity" that is found to be trafficking. Critics point out that contrary to the intent of the law, the guidelines also invoke a "confidentiality of records" (section 11) which Title IV does not require.

## ***TITLE IV GUIDELINES***

### ***HIGHLIGHTS***

*Public Notice 2403, Guidelines Implementing Title IV of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, issued on Friday, June 14th, was submitted to Congress and distributed to foreign embassies in Washington. These guidelines became effective on June 17th upon publication in the Federal Register and will be used until "revisions" are "made as appropriate" and also published in the Federal Register.*

■ "The Secretary of State has delegated authority to the Assistant Secretary of State for Inter-American Affairs to make determinations of excludability and visa ineligibility under Section 401(a) of the Act."

■ The point of contact for all inquiries regarding implementation of Title IV of LIBERTAD is designated as "The Office of Cuban Affairs" in the Bureau of Inter-American Affairs at the State Department. The office is located at: Room 3244, U.S. Department of State, Washington, D.C. 20520. Their telephone number is: 202/647-7505.

■ Depending upon available resources, the State Department will collect information as to whether "property in Cuba owned by a U.S. national has been confiscated or whether trafficking in such property confiscated from a U.S. national has occurred." The State Department may request information from the U.S. Foreign Claims Settlement Commission (FCSC) as to whether "certain property" is a U.S. certified claim along with the status of "current ownership" from the FCSC.

■ In the case of non-certified claimants, the State Department "may request claimants to provide additional information related to" ownership, confiscation or trafficking of "the property concerned."

■ Title IV determinations of excludability and ineligibility "will be made when facts or circumstances exist that would lead the [State] Department reasonably to conclude that a person has engaged in confiscation or trafficking after March 12, 1996."

■ A 45-day grace period will be granted after the receipt of the "notification letter" to an alien determined to be trafficking under Title IV.

■ The "notification letter" will inform the alien that "divesting from a trafficking arrangement" will avert exclusion from the United States.

■ The guidelines state, "It is not sufficient in itself for a determination under section 401(a) that a person has merely had business dealings with a person for whom a determination is made under section 401(a).

■ The State Department specifies that "the determinations of ineligibility or excludability" are to remain "confidential."

**STATE DEPARTMENT PRESS BRIEFING**

*The following excerpts from State Department Spokesman Nicholas Burns were extracted from his press briefing of Monday, June 17, 1996, the day the guidelines for Title IV - EXCLUSION OF CERTAIN ALIENS were printed in the Federal Register and became effective.*

"...we will now begin to identify people who will not be able to travel to the United States --they or their spouses or their minor children -- because they are principals in corporations that now own property that was once owned by American citizens that was confiscated by Castro during the nationalization period of the early 1960s."

"We briefed all of the governments concerned -- the Canadian Government, the Mexican Government, other governments in Europe -- before we issued these guidelines today. I can tell you that throughout the summer we'll be proceeding with Article IV implementation. By the end of the summer, we should be in a position, frankly, where some people will not be able to use their U.S. visas should they possess them. If they do not possess a U.S. visa, they'll not be able to acquire one at the American Consulate or Embassy for travel to the United States."

"As you know, the language of the legislation, as written by Congress, refers to "traffickers." But in layman's terms, again, these are people who have acquired property that belong to American people, so we consider it stolen property."

"A major point of distinction...is that we are not talking here about the United States trying to prevent foreign investment in Cuba. We are trying to prevent investment in property owned by American citizens. It's a very fine but very important distinction there."

"What we didn't want to see was legislation that would have an impact on any company investing in Cuba--any foreign company. We wanted to focus it on this question of fairness. We think it's a very fair question that if American citizens held assets -- financial assets or property or a plant in Cuba--prior to 1959, it wasn't fair if that property were to be nationalized and then sold off by the Cuban Government as if it were their own to a foreign company."

"I should also tell you, we've decided we're not going to publish a list of the companies affected. There's not going to be any kind of public blacklist. We think that would run contrary to what we're trying to achieve with our allies and our friends. We're not trying to humiliate or embarrass companies or countries here."

"What we're trying to do is focus on the root of the problem, and that is that a communist government nationalized property unfairly, did not compensate Americans for that, and then sold it off."

"... we want to keep focusing the burden of responsibility on Castro himself. He's the one who confiscated the property of Americans. He's the one who sold it off. It's his responsibility."

"I think it's very important that the Canadian people who are reading this transcript and listening to this broadcast understand one thing: This is not an attempt by the United States to identify Canadian or Mexican or French or British companies and unfairly try to exclude them from investing in Cuba. If they would invest in legitimate assets, then the United States Government would have no quarrel with that. But they're investing -- they have to understand this -- in stolen property of American citizens."

"We have an obligation to American companies and American families and individuals who have been affected to protect them. That's a very important distinction which I believe is lost in the foreign commentary on this legislation."

## SECRECY OF REPORTS

Among the numerous reports the President of the United States is to submit to Congress (see USCPR, Vol.3, No.5, pp.6 and 7) required under LIBERTAD, the Section 106(d) report describing the intelligence activities of Russia at its Lourdes intelligence facility in Cuba is the only report that "may" be submitted in "classified" form although it is not a requirement. The reports (Section 106(a) and 108(a) referred to in the Congressional letters printed below deal with the unfinished nuclear power plant at Cienfuegos and assistance by foreign countries to Cuba respectively. In his transmittal letter to the Congress, President Clinton makes note that "the report is classified and should be accorded appropriate safeguards against unauthorized access or disclosure." Foreign Relations Committee Chairmen Helms and Gilman point out that these reports "contain invaluable information and data that should be made available to the public." They refer to the data in these SECRET reports as having "been derived from unclassified sources and are designated as such." Rep. Ileana Ros-Lehtinen (R-FL) in a reference to the Section 108 report states in her letter to the president that "Keeping the names of the companies secret would eliminate the threat of public pressure against the companies and would weaken the effect of the legislation."

## LETTERS TO PRESIDENT

June 13, 1996  
The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

I am concerned over reports indicating that the Administration will not make public the names of foreign companies in Cuba which could be subjected to claims by United States citizens under the new Helms-Burton law and which appear in a report recently completed by various agencies of the U.S. government. If these reports are correct, it would represent a distortion of the intent of the law, designed to protect American property that has been illegally confiscated and to discourage foreign investors from financing the repression by the Castro regime of the Cuban people.

One of the main pressure points against these investors is to publicly denounce their trafficking in illegally confiscated U.S. property. Keeping the names of the companies secret would eliminate the threat of public pressure against the companies and would weaken the effect of the legislation. It also eliminates the transparency of the process, instead converting it into a secretive one, with no apparent accountability.

I urge you to make public the names of the foreign companies found to be trafficking in illegally confiscated U.S. property in Cuba.

Your immediate attention to this matter will be greatly appreciated.

Sincerely,  
Ileana Ros-Lehtinen  
Member of Congress

June 20, 1996  
The President  
The White House  
Washington, D.C. 20510

Dear Mr. President:

Your separate reports to Congress submitted June 13, 1996, pursuant to sections 106(a) and 108(a) of the "Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996," contain invaluable information and data that should be made available to the public. We request that you take expeditious steps to declassify this document, release a redated version, or produce a similar unclassified report for submission to the Congress.

We note that much of the information and data contained in these "SECRET" reports have been derived from unclassified sources and are designated as such. For that reason, we believe that most, if not all, of the contents of these crucial reports can and should be made public.

We thank you for your cooperation and look forward to an early reply to our request.

With best wishes.

Sincerely,

Jesse Helms  
Chairman  
Committee on  
Foreign Relations

Benjamin A. Gilman  
Chairman  
Committee on  
International Relations

## OAS ASSAILS US FOR HELMS-BURTON

The Organization of American States (OAS) vote on June 4th in Panama assailing the U.S. for the enactment of Helms-Burton may have lost its initial impact when it came to light that the secretary general's kidnapped brother Juan Carlos Gaviria was freed in mid-June only after Fidel Castro's intervention. The pro-Castro narco-terrorists were given refuge in Cuba in return for the release of former Colombian president Cesar Gaviria's brother. Rep. Lincoln Diaz-Balart (R-FL) called for a congressional investigation into the deal between OAS Secretary General Gaviria and Castro to liberate his brother. The OAS resolution directed the Inter-American Juridical Committee to examine Helms-Burton and report on its validity under international law. Canada's secretary of state for Latin America, Christine Stewart, welcomed the vote saying, "This resolution reflects the growing concern of the international community that the Act's extraterritorial impact violates accepted principles of international law." Proposed by Canada and Mexico, the OAS resolution is part of Canada's grand strategy to bring worldwide pressure to bear on the United States and on President Clinton in particular to suspend the right of action under Title III giving U.S. nationals with claims to confiscated property in Cuba the right to sue "traffickers" in U.S. courts. The OAS vote was a major boost for Castro's anti-Helms-Burton campaign calling into question Cesar Gaviria's effectiveness and credibility as secretary general of the 32 member hemispheric organization. The OAS voted 23-to-1 in favor of the resolution with only the U.S. voting against. The remaining co-sponsors were either absent or abstained from voting. As a member country, Cuba has been excluded from the OAS since 1962.

## OAS RESOLUTION

[Resolution co-sponsored by the delegations of Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.]

### THE GENERAL ASSEMBLY, CONSIDERING:

That one of the essential purposes of the Organization of American States (OAS), as established in its Charter, is to seek the solution of political, juridical, and economic problems that may arise among the member states;

That international order consists essentially of respect for the personality, sovereignty, and independence of the states and faithful fulfillment of obligations derived from treaties and other sources of international law, as reaffirmed in Article of the OAS Charter;

That Articles 10 and 34 of the Charter establish that every American state has the duty to respect the rights enjoyed by every other state in accordance with international law and that member states should refrain from practising policies and adopting actions or measures that have serious adverse effects on the development of other member states; and

That the member states have repeatedly recognized that economic integration is one of the objectives of the inter-American system and that, in this context, it is essential to expand trade and investment at the regional and subregional levels;

RECALLING that, at the Summit of the Americas, the heads of state and government reaffirmed their strong commitment to multilateral rules and disciplines within the framework of agreements to promote prosperity through economic integration and free trade.

CONCERNED over the enactment and application by the member states of laws and regulations the extraterritorial effects of which affect the sovereignty of other states and the legitimate interests of entities and individuals under their jurisdiction, as well as free trade and investment; and TAKING NOTE of the declaration of the ministers of foreign affairs of the Rio Group, who met in Cochabamba on May 27, 1996, and the declarations of both member and other states on the adoption of national laws with extraterritorial effects to obstruct international trade and investment of other countries with third countries, as well as the free movement of persons;

RESOLVES: 1. To instruct the Inter-American Juridical Committee, at its next regular session and as a matter of priority, to examine the validity under international of the Helms-Burton Act and present its findings to the Permanent Council.

2. To request the Permanent Council to report to the General Assembly of the Organization of American States at its 27th regular session on the implementation of this resolution.

**GROUP SEEKS DIALOGUE WITH CUBA ON  
BEHALF OF U.S. CERTIFIED CLAIMANTS**

In a strategy aimed at countering the impact of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, John Kavulich, president of the New York based U.S. Cuba Trade and Economic Council wrote to the Office of Foreign Assets Control (OFAC) on behalf of various Council members requesting the conditions under which OFAC "would grant a license for travel-related expenses to visit the Republic of Cuba." OFAC's response and Kavulich's letter are reprinted below. Kavulich states the purpose of the trip "would be for a dialogue" about certified claims "with appropriate representatives" of the Cuban government. OFAC's director, R. Richard Newcomb, referred Kavulich to "relevant sections of the Cuban Assets Control Regulations 31 C.F.R. Part 515" which in part state: "Nothing in this section ... authorize transactions in relation to any business travel not otherwise authorized by specific license issued pursuant to this part." Kavulich, who travels to Cuba monthly, testified one year ago on June 30th before Rep. Phil Crane's (R-IL) House Ways and Means Trade Subcommittee, refused to reveal his Council's corporate membership when asked by Rep. Clay Shaw (R-FL) a member of the subcommittee. Since, Kavulich has made public one member of the Council that of Archer Daniel Midland (ADM) whose chairman Dwayne Andreas has publicly called for trade with Castro's Cuba and for a lifting of the U.S. embargo against Cuba.

**EXCHANGE OF LETTERS**

U.S.-Cuba Trade and Economic Council, Inc.  
30 Rockefeller Plaza New York, New York 10112  
4 June 1996  
Mr. R. Richard Newcomb, Director  
Office of Foreign Assets Control  
United States Department of the Treasury  
Washington, D.C. 20220

Dear Mr. Newcomb:

The U.S.-Cuba Trade and Economic Council has been approached by an increasing number of United States companies, all of whom have claims certified with the Foreign Claims Settlement Commission, to learn under what conditions the Office of Foreign Assets Control would grant a license for travel-related expenses to visit the Republic of Cuba. The purpose of the visit would be for a dialogue about United States company certified claims with appropriate representatives of the Government of Cuba.

Thanking you in advance, I look forward to hearing from you at the earliest possible date as such a proposed visit has been proposed to begin on 15 June 1996. Warmest personal regards.

Sincerely,  
John S. Kavulich II  
President

cc: The Honorable Christopher Dodd      File  
The Honorable Lee Hamilton  
The Honorable Charles Rangel  
The Honorable Bill Richardson  
The Honorable Peter Tarnoff  
The Honorable Anthony Lake  
Mr. Michael Ranneberger

DEPARTMENT OF THE TREASURY  
Washington, D.C. 20220  
June 18, 1996  
FAC No. C-151769

Dear Mr. Kavulich:

This responds to your communications of June 4, 1996, on behalf of the U.S.-Cuba Trade and Economic Council, Inc., inquiring about the travel to Cuba of U.S. companies who have claims against Cuba.

Current licensing policy and the conditions under which licenses may be issued to authorize travel-related transactions are contained within the relevant sections of the Cuban Assets Control Regulations, 31 C.F.R. Part 515 (the "Regulations"). Consistent with our practice, changes in the Regulations, including changes [in] licensing policy, are announced by publication in the Federal Register. For your information and guidance, we are enclosing a copy of the currently applicable Regulations.

Sincerely,  
R. Richard Newcomb  
Director  
Office of Foreign Assets Control

John S. Kavulich, II  
President  
U.S.-Cuba Trade and Economic Council, Inc.  
30 Rockefeller Plaza  
New York, NY 10112-0002

Enclosure



<b>SHORT TAKES</b>
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**HELMS-BURTON BEGINS TO CHILL FOREIGN INVESTMENT IN CUBA** -- A series of corporate decisions mark the implementation of Title IV. CEMEX, Mexico's biggest and the fourth largest cement producer in the world, fends-off the State Department's "advisory letter" and terminates its contract with the Cuban government. A Canadian sugar broker, Redpath Ltd. of Toronto, announces it is no longer buying Cuban sugar. Upon receipt of an advisory letter, Sherritt International's chairman Ian Delaney travels to Havana to meet with Cuban government officials and the company calls for "diplomatic efforts" to resolve the dispute. By far the most important foreign investor in Cuba, Sherritt is involved in mining, oil, tourism, sugar, and agribusiness. Sol Melia, Spain's largest hotel company, cancels plans to build additional hotels in the U.S. and cancels its planned U.S. stock offering. (MH, "Mexican firm exits Cuba on eve of new sanctions," 5/29/96, p.1A; FT, "Sherritt urges talks on Cuba," 6/3/96, p.6; TS, "The Cuba strategy 'Ottawa' plots three-part attack on U.S. law," 6/7/96, p.E1; FT, "Sol Melia drops U.S. plan," 6/6/96, p.16).

**CUBA "LIBERTAD" WATCH (CLW)** -- The grassroots task force formed "to help facilitate the implementation and enforcement" of the Helms-Burton law publicly announced the names of suspected traffickers. The list of foreign companies includes: Spain - Tabacalera Espanola, S.A. (Tobacco), Banco Vizcaya/Bilbao (Banking), Banco Sabadell (Banking); France -- Societe Generale de France (Sugar), Sucres et Denrees (Sugar); Netherlands -- ING/Barings (Banking); Britain -- Tate & Lyle (Sugar), ED&F Mann (Sugar), Belize Holdings (Sugar), Vitol S.A. (Anglo-Dutch Sugar); Mexico: Banco Nacional de Comercio Exterior (Banking); Brazil -- Souza Cruz, S.A. (Tobacco); Lebanon -- Fransabank (Banking). An attorney with the Miami law firm of Adorno & Zeder, Nicholas J. Gutierrez, Jr., represents clients in whose properties these companies are suspected to be trafficking. In one of several letters sent to the State Department, Gutierrez provides "extensive" background information "concerning the current financing, operation and exploitation" of these properties in Cuba. CLW states it is "conducting a public awareness campaign" to identify additional traffickers. CLW's contacts include Jay Fernandez in Washington, D.C., Alina Ramirez in NY/NJ, Rafael Sanchez-Aballi in Miami, and Guillermo Toledo in Puerto Rico. (CLW Press Release, "State Department Receives Information From Claimants," 6/13/96).

**THE INTERNATIONAL CIVIL AVIATION ORGANIZATION (ICAO) COMPLETES REPORT** -- The Montreal-based ICAO, a UN aviation arm, completed its report concluding the downing of the Brothers to the Rescue planes by Cuban MIGS on February 24th killing four pilots occurred in international airspace contrary to Cuban claims. The ICAO met on June 26th before sending its report to the Security Council. (See USCPR, "UN Fails to Condemn Cuba for Shootdown," Vol.3, No.3, p.6). The ICAO did not immediately make its report public. (MH, "Inquiry on planes a blow to Castro," 6/20/96, p.13A).

**DIAZ-BALART DECRIES SECRET U.S. MEETINGS WITH CUBAN MILITARY OFFICIALS** -- Rep. Diaz-Balart (R-FL) decried a video tape showing U.S. military officials "fraternizing" with senior Cuban military officials exchanging gifts including a plaque presented by Cuban General Perez Perez to retiring U.S. Guantanamo commander, Admiral Haskins. In turn, Perez was given a "detailed U.S. military map of Guantanamo Base." Also present at the meetings were General Sheehan head of the U.S. Atlantic Command and Colonel McKay the new commander of the U.S. naval base at Guantanamo in Cuba. Diaz-Balart calls upon the Clinton administration for "an immediate and serious change of policy." (Press Release, "Diaz-Balart Denounces Secret U.S. Meetings With Senior Castro Military Officials," 6/25/96).

NOTABLE QUOTES

"In contrast, Castro has pursued only limited economic reform and his regime, rather than the Cuban people, would be the big winner from looser U.S. restrictions." Susan Kaufman Purcell, vice president of the Americas Society, takes exception to Wayne Smith's arguments favoring engagement instead of isolation of Fidel Castro's Cuba. (FA, "The Cuban Illusion: Keeping the Heat on Castro," May/June 1996, p.159).

"This is not a question of proscribing conduct outside U.S. territory. The U.S. can prove a compelling interest. It's difficult to make the argument that regaining such confiscated property is against international law." Ignacio Sanchez is a lawyer with Kelley, Drye and Warren in Miami. (TS, "U.S. Won't Relent on Cuba," 6/7/96).

"We're preparing for a long litigation and we're raising money. It's not going to be easy to fight Sherritt." Alberto Diaz-Masvidal is a founder of Consolidated Development Corporation a U.S. certified claimant. (MH-BM, "Claims on Cuba," 6/10/96, p.25).

"I would hope that during the two-year period anyone who might be trafficking in Bacardi properties would take advantage of the delay, rectify their situation, and solve the problem themselves." Chip Reid, executive vice president of Bacardi Ltd., refers to the two year waiting period non-certified claimants have under the Helms-Burton before they can sue foreign traffickers in their confiscated property. (MH-BM, "Claims on Cuba," 6/10/96, p.24).

"...there are provisions in the Helms-Burton law which give the President some flexibility, and I am reviewing what the facts are and trying to determine what the best and most proper way to implement the law is. But I have made no decision..." President Clinton responds to question at a White House press conference. (WH Press Release, "Joint Press Conference of President Clinton and President Robinson of the Republic of Ireland," 6/13/96).

"Many in the European and Caribbean trading community are telling us that they are receiving signals on deep, deep background from administration officials that after the election in November, they will find some way to avoid enforcing it." In Mexico City, Jorge Calderon, the foreign affairs secretary for the Mexican opposition Revolutionary Democratic Party (PRD) comments on LIBERTAD.(SAE, "Mexico, Canada vow to fight Helms-Burton," 6/16/96, p.22A).

"Helms-Burton does not have a lot of support among big American companies because it threatens to complicate their re-entry into Cuba as well as U.S.-Cuba relations after Castro." Robert Muse is an international lawyer with the Washington law firm of Muse & Associates. (TIME, "Punishing Cuba's Partners," 6/24/96, p.54).

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Ralph J. Galliano, Editor

## **PRESIDENT CLINTON APPROVES TITLE III AND SUSPENDS RIGHT OF ACTION PROVISION OF THE CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY (LIBERTAD) ACT OF 1996**

WASHINGTON -- At 1:42 P.M. EDT on the afternoon of Tuesday, July 16th, White House press secretary Michael McCurry announced at a briefing President Clinton's decision not to suspend the effective date of LIBERTAD's Title III -- *PROTECTION OF PROPERTY RIGHTS OF UNITED STATES NATIONALS* allowing it to "come into force." The effective date of Title III is now set at August 1, 1996 and cannot be suspended. At the same time, McCurry proceeded to announce that the president "will suspend the right to file suit for six months" under Title III until February 1, 1997. This suspension action prevents U.S. nationals from filing a cause of action in federal courts against traffickers of their confiscated property in Cuba for a period limited to six months unless the president under Section 306(c)(2) of the Act "determines and reports in writing to the appropriate congressional committees at least 15 days before the date on which the additional suspension is to begin that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba". The president's decision was not made until that morning following a late night meeting with advisors the day before. Explaining his six month suspension, Clinton said in his statement to the press presented by McCurry, "my Administration will work to build support from the international community on a series of steps to promote democracy in Cuba. These steps include: increasing pressure on the regime to open up politically and economically; supporting forces for change on the island; withholding foreign assistance to Cuba; and promoting business practices that will help bring democracy to the Cuban workplace. At the end of that period, I will determine whether to end the suspension, in whole or in part, based upon whether others have joined us in promoting democracy in Cuba."

**LIABILITY ATTACHES** -- Three months following the effective date, on November 1, 1996, any trafficker who does not divest on or after that date will be liable for treble money damages based on the "fair market value" after notice has been given. The president's suspension of the right of action does not effect the "notice" provision of the Act. The conference committee noted in its report dated March 1, 1996, that "investors in Cuba have been effectively on notice regarding the 5,911 certified U.S. claims since the Cuban claims program was completed on July 6, 1972." No further notice is needed. In the case of non-certified claimants, the conference committee required "an affirmative duty on the claimant to notify a potential defendant of the claimant's claim to the property." A 30-day period was added to the 3-month grace period extending it to December 1, 1996 for non-certified claimants. Under Section 306(d) of the Act, the president "may rescind" any suspension at any time. A continuous suspension denying claimants the ability to exercise their right of action may place the U. S. government in violation of the taking clause under the Fifth Amendment to the Constitution.

**CONGRESSIONAL REACTION** -- The reaction from Congress criticizing President Clinton's decision to suspend the right of action under Title III of LIBERTAD was both swift and bipartisan. Senate Foreign Relations Committee Chairman Jesse Helms (R-NC) decried President Clinton's action as taking "a firm stand on both sides of an important issue." House International Relations Committee Chairman Ben Gilman (R-NY) described the president's decision in political terms saying, "it seems to be more to keep the lid on until after the November elections. In so doing, he is denying justice for Americans whose properties have been stolen." House Western Hemisphere Subcommittee Chairman Dan Burton (R-IN) pointed out that the president's suspension "sends the wrong message to Castro" and accused him of "acting against the expressed intent of the Congress." Florida Senators Connie Mack (R) and Bob Graham (D) also weighed in with Graham declaring he was "disappointed with the president's decision to delay lawsuits against Castro and his business partners for six months" while Mack said that "with the stroke of a pen President Clinton has trampled the rights of hundreds of Americans in an effort to appease foreign governments." Congressman Lincoln Diaz-Balart (R-FL) blasted the White House as being "weak" and "indecisive." Congresswoman Ileana Ros-Lehtinen (R-FL) portrayed the suspension as "a cynical farce perpetrated by an Administration who from the outset has opposed Helms-Burton until it was dragged kicking and screaming to support the bill." Congressman Bob Menendez (D-NJ) accused the president of "walking away from democracy in Cuba." The following day, Menendez called on the president to "rescind the suspension of Title III lawsuits." The presumptive Republican Party nominee, former Senate Majority Leader Bob Dole, charged President Clinton with giving "Fidel Castro what he wanted most: a way to continue to attract foreign investment to finance his tyranny."

**GILMAN'S LETTER TO THE PRESIDENT** -- House International Relations Committee Chairman Ben Gilman's July 11th letter to President Clinton urging him not to suspend the right of action reiterates the intent of Congress as detailed in Conference Report 104-468 dated March 1, 1996. Gilman's letter, which is reprinted on page three of this issue, calls The Statement of Managers filed with the Conference Report "the primary source for determining legislative intent." His letter to the president restates the crucial language contained in The Statement of Managers whereby "The committee specifically rejected a proposal made by the Executive branch that the president be permitted to suspend the right of action" as he has in fact done "because it subordinated the question of whether suspension of the right of action would expedite a transition to democracy in Cuba to a larger question of whether suspension is important to the president's overall calculation of the national interest." At the July 16th White House press briefing, Deputy National Security Advisor, Sandy Berger, insisting the House-Senate negotiations were otherwise, contradicts the conference report saying the suspensions "were placed in Title III as part of a discussion that we had at the time that we signed on from our perspective for the purpose of at least giving the president the opportunity to fashion a more targeted approach." Burger goes even further when he redefines the suspension provisions by saying the president "is required every six months to make a judgement about whether that suspension continues in whole or in part. He could continue that suspension with respect to all suits, he could continue that suspension with respect to certain countries or certain companies."

**PRESIDENT CLINTON'S RESPONSE** -- In a terse one paragraph letter (reprinted on page three) sent separately to chairmen Helms and Gilman, President Clinton simply restated the criteria to be met under the suspension authority granted by Congress. His letter was accompanied by a three page "Statement By the President" complying with the need for a "report in writing" as required by the Act. By reinvoking the Cuban Democracy Act, Clinton sets forth his plan to engage allies and trading partners to help the U.S. "to promote democracy in Cuba" thereby laying the groundwork to obviate the right of action granted under Title III and defying the will of Congress. Clinton intends to "appoint a special envoy to spearhead this effort."

## GILMAN'S LETTER TO PRESIDENT

Committee on International Relations  
Washington, D.C.

July 11, 1996  
The President  
The White House  
Washington, D.C. 20500  
Dear Mr. President:

The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act (PL 104-114), approved March 12, already has begun to chill investment in Cuba as foreign companies can no longer freely exploit property confiscated by the Castro regime from U.S. citizens. This new law undermines Fidel Castro's desperate scheme to raise hard currency by selling off stolen property to unscrupulous companies.

I am concerned by published reports today, citing Administration officials, that you are considering a "limited waiver" of Title III of this Act, which affords Americans a right of action in U.S. courts against companies that are trafficking in their stolen U.S. property. Based on a faithful reading of the unambiguous Congressional intent behind this law, Congress consciously provided very narrow authority for deciding whether to suspend Title III. The Statement of Managers filed with the conference report on H.R. 927, which is perhaps the primary source for determining legislative intent, states with respect to subsection 306(b):

The committee of conference provided this suspension authority at the request of the Executive branch in order to afford the President flexibility to respond to unfolding developments in Cuba. The committee specifically rejected a proposal made by the Executive branch that the President be permitted to suspend the right of action upon determining and reporting to the appropriate committees of Congress that such suspension 'is important to the national interests of the United States, including expediting a transition to democracy in Cuba.'

The committee of conference could not accept the formulation proposed by the Executive branch because it subordinated the question of whether suspension of the right of action would expedite a transition to democracy in Cuba to a larger question of whether suspension is important to the President's overall calculation of the national interest. The committee strongly believes that the question of whether suspension will expedite a transition to democracy in Cuba should be the central element of the President's decision whether to exercise the suspension authority, and not just one of many factors to be considered by the President.

The formula included in the conference substitute requires the President to determine two separate and distinct matters before suspending the right of action: first that suspension 'is necessary to the national interests of the United States,' and second that suspension 'will expedite a transition to democracy in Cuba.'

In the judgement of the committee of conference, under current circumstances the President could not in good faith determine that suspension of the right of action is either 'necessary to the national interests of the United States' or 'will expedite a transition to democracy in Cuba.' In particular, the committee believes that it is demonstrably not the case that suspending the right of action will expedite a transition to democracy in Cuba, inasmuch as suspension would remove a significant deterrent to foreign investment in Cuba, thereby helping prolong Castro's grip on power.

Mr. President, the Castro regime and unscrupulous foreign companies are now conspiring to escape the reach of the LIBERTAD Act so that they can continue commercial ventures that exploit confiscated U.S. property and help fund the repression of the Cuban people. That fact alone suggests that suspending Title III would neither be "necessary to the national interests of the United States" nor "expedite a transition to democracy in Cuba."

Mr. President, your representatives negotiated in good faith with principal authors of this Act on the conditions for justifying a suspension of Title III. Aware of the intentionally narrow authority for suspending the right of action, you supported and signed this legislation just four months ago. We trust that, consistent with the letter and spirit of the law, you will not suspend Title III of the LIBERTAD Act.

With best wishes,  
Sincerely,  
Benjamin A. Gilman  
Chairman

## PRESIDENT CLINTON'S RESPONSE

The White House  
Washington

July 16, 1996  
Dear Mr. Chairman:

Pursuant to subsection 306(c)(1)(B) of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Public Law 104-114), (the "Act"), I hereby determine and report to the Congress that suspension for 6 months beyond August 1 of the right to bring an action under Title III of the Act is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba.

Sincerely,  
William J. Clinton

Attachment

## BUSINESS SEEKS SUSPENSION OF TITLE III

Leaders representing among the most important and influential business interests in the United States urged President Clinton to suspend LIBERTAD's Title III because it would jeopardize economic interests abroad, invite retaliation from our trading partners and fail to accomplish its purpose. Both letters printed below were sent from the National Association of Manufacturers and the U.S. Chamber of Commerce. The Chamber of Commerce traditionally opposes all embargoes and has come out specifically in recent years against the U.S. embargo on Cuba.

## BUSINESS WRITES TO THE PRESIDENT

NAM National Association of Manufacturers

June 28, 1996

The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

By July 15, you will have had to make a decision regarding implementation of Title III of the Helms-Burton Act. The NAM strongly urges you to suspend for six months the provision which allows a private right of action against foreign businesses with operations in Cuba.

As President, you have stressed the importance of exports and investment to U.S. jobs and growth. The Helms-Burton Act will have a boomerang effect on American manufacturers. Our major trading partners have demonstrated both the willingness and ability to take retaliatory action. There is a serious danger that, unless Title III is waived, international retaliation could spiral out of control, leaving U.S. manufacturers especially vulnerable.

Let me assure you that the NAM remains sensitive to the legitimate concerns of both individuals and corporations alike whose personal property and assets have been seized by the Castro government. Indeed, many of our member companies have outstanding claims in Cuba, but also poses a serious threat to U.S. export markets and investments.

As an aggressive promoter of U.S. interests abroad, you should be the first to recognize what is at stake. The NAM strongly urges you to waive Title III of the Helms-Burton Act.

Sincerely,  
Jerry Jasinowski  
President

July 1, 1996  
The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

As representatives of a broad cross-section of the U.S. business community, we urge you to suspend for six months the effective date of Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act.

As you have frequently explained to the American people, the United States' ability to benefit from the global economy is dependent on strong, stable, and reliable rules. We believe that these benefits are jeopardized by the enormous friction that will result if Title III is allowed to take effect. Some of our closest allies and most important trading partners are contemplating or have legislated countermeasures. U.S. firms will bear the brunt of these countermeasures. We believe that suspending the effective date would permit you to accomplish the purposes of the law without needlessly jeopardizing U.S. interests.

Many of our member companies had property in Cuba that was expropriated by the Castro regime. Yet, many of these companies, constituting some of the largest certified claimants, do not believe that Title III brings them closer to a resolution of these claims. To the contrary, Title III complicates the prospect of recovery and threatens to deluge the federal judiciary with hundreds of thousands of lawsuits. These companies, Title III's intended beneficiaries, support our view that Title III should be suspended at this time. We would also note that Section 207 of the law requires the Administration to prepare a report giving its estimate of the number and value of such claims. That report is not due until September. A six month suspension from August 1 would give the Administration time to fully assess the impact of Title III and consult further with our allies.

Finally, we believe that if Title III were to become effective, it would drive a wedge between the United States and our democratic allies that would significantly hinder any future multilateral efforts to encourage democracy in Cuba. For this, and the reasons stated above, we urge you to act in the interest of the United States by suspending the effective date of Title III of the LIBERTAD Act.

Sincerely,  
The National Foreign Trade Council  
Organization for International Investment  
U.S. Chamber of Commerce  
European-American Chamber of Commerce  
U.S. Council for International Business



**STATE DEPARTMENT ISSUES  
LETTERS OF DETERMINATION**

The first nine letters of determination were sent by the State Department on Wednesday, July 10th to directors and officers of Toronto based Sherritt International, a Canadian company with mining, oil, tourism and agricultural interests in Cuba. Seven of the nine are Canadians and two are British. They are: Ian Delaney, chairman; Daniel Owen, director; Frederick Wellhauser, CEO; Samuel Ingram, senior vice president; Dennis Maschmeyer, senior vice president. Neil Carragher and Michael McKibbin are affiliated with Veridian, Inc. formerly Sherritt, Inc. Sherritt International is believed to be a wholly owned subsidiary of Veridian. The Sherritt executives who are British are: Rupert Pennant-Rea, director and former deputy governor of the Bank of England along with Patrick Sheehy, director and former chairman of British American Tobacco.

The executives have 45 days to divest "from the business arrangements" in Cuba including "withdrawing" from their position "as a corporate officer or principal" of the corporation before their names are "entered in the appropriate visa lookout system and port of entry exclusion system" or visa is denied. If the circumstances described in the determination letter is incorrect or no longer applicable, executives should notify the State Department's Office of Cuban Affairs in Washington.

Congressman Bob Menendez (D-NJ) an important architect of the LIBERTAD Act said, "Title IV is a very effective tool in deterring foreign investment in Cuba. It offers companies a choice, observe U.S. law or have your rights to visit and conduct business in the U.S. revoked; Sherritt has made its choice." Over 100 executives of foreign companies trafficking "in confiscated property a claim to which is owned by a United States national" are reported to be under consideration to receive determination letters excluding entry or denial of a visa. A copy of the State Department's letter is printed below.

**LETTER TO TRAFFICKERS**

July 10, 1996

Dear \_\_\_\_\_:

The Department of State has determined that \_\_\_\_\_ Corporation is trafficking in U.S. confiscated property as defined under Title IV of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, also known as the Helms-Burton Act, 22 U.S.C. 6021 et seq. Under the terms of this Act, the corporate officers and principals of any company found to be in violation of Title IV are excludable from entry into the United States, together with their spouses, minor children and agents.

There is sufficient information to determine that \_\_\_\_\_ Corporation has "knowingly and intentionally" engaged in trafficking within the meaning of section 401 (b) (2) (i) (I) (II) (III) and (ii) of the Act. Among this information is (SPECIFICS INCLUDED HERE) regarding \_\_\_\_\_ Corporation's operations in Cuba after March 12, 1996. In (date), the U.S. Foreign Claims Settlement Commission certified that (AMERICAN CITIZEN OR CORPORATION) had suffered a loss in the amount of \$\_\_\_\_\_ million as a result of confiscation by the Cuban government.

Accordingly, this is to inform you that your name, as well as the names of your spouse and minor children and agent, if applicable, will be entered in the appropriate visa lookout system and port of entry exclusion system, and any visa or entry application will be denied pursuant to section 401 (a) (3) and (4), as applicable, of the Act, effective forty-five days from the date of this letter. Diverting from the business arrangements described above would avert the exclusion. This could include withdrawing from your position as a corporate officer or principal of \_\_\_\_\_ Corporation.

If you have any information that would lead the Department of State to reasonably conclude that \_\_\_\_\_ Corporation has not, or is no longer, engaged in trafficking as defined by the Act, or that an exception to trafficking under section 401 (b)(2)(B) applies, you should provide such information to the Office of Cuban Affairs, room 3244, U.S. Department of State, Washington D.C. 20520.

Sincerely,

Jeffrey Davidow

Acting Assistant Secretary of State for Inter-American Affairs

**CERTIFIED CLAIMANT FILES SUIT  
OUTSIDE OF HELMS-BURTON**

Attorneys for Consolidated Development Corporation, a U.S. certified claimant, filed suit in U.S. District Court in the Southern District of Florida against Sherritt Inc., a publicly held Canadian mining corporation, its affiliated companies, the Cuban government, and its affiliated companies, for conversion. The Complaint alleges that the "Defendants have violated 22 U.S.C. § 2370(e)(2) and international law by wrongfully and maliciously conspiring and converting to their exclusive use and benefit the covered properties and rights." The civil suit (Case No.96-1820), which was filed in Miami on Tuesday, July 2nd, seeks compensatory damages in excess of \$1 million, punitive damages, interest, and legal fees. Consolidated has demanded a jury trial. This case derives from the Cuban government's confiscation on November 23, 1959, of oil and gas properties belonging to Consolidated's subsidiaries. Its loss was adjudicated before the U.S. Foreign Claims Settlement Commission (Claim No. CU-2535) on June 30, 1971 in the amount of \$832,470.58 (Decision No. CU-5979). It estimates the company's reserves have been depleted over the years since the property seizure by about \$50 million.

Consolidated alleges that Sherritt barter its oil for Cuban nickel and cobalt refining them into a byproduct used in fertilizers processed and sold in the United States through a Sherritt subsidiary located in Vancouver, Washington. Sherritt and the Cuban government entered into a joint-venture in December 1994 and on February 21, 1995, Consolidated's president, Alberto Diaz-Masvidal, notified the company's chairman and CEO, Ian W. Delaney, that it "may be subjected to U.S. Court justification" and to "cease and desist." This notification occurred months before Sherritt spun-off its Cuba properties on October 4, 1995, into another company called Sherritt International to shield it from possible litigation under the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act. Four of the companies named in the suit: General Nickel Company, S.A.; Moa Nickel, S.A.; International Cobalt Company, Inc.; and, Cobalt Refining Company, Inc. are considered an agency or instrumentality of a foreign state within the meaning of 28 U.S.C. § 1603(b) and listed as "Blocked Persons and Specially Designated Nationals" for purposes of the U.S. embargo against Cuba by the Treasury Department's Office of Foreign Assets Control. The case was not filed under the Title III trafficking provision of Helms-Burton and consequently is not affected by President Clinton's six-month suspension of the right of action.

**CONSOLIDATED DEVELOPMENT CORP.**

**v.**

**SHERRITT, INC.**

CONSOLIDATED DEVELOPMENT CORPORATION,  
a Delaware corporation, and CONSOLIDATED  
CUBAN OIL AND GAS RIGHTS CORPORATION, a  
Florida corporation,

Plaintiffs,

**v.**

SHERRITT, INC., a foreign corporation, SHERRITT INTERNATIONAL, INC., a foreign corporation, CANADA NORTHWEST ENERGY LIMITED, a foreign corporation, THE REPUBLIC OF CUBA, a foreign state, CUBAPETROLEO, a Cuban governmental corporation, COMMERCIAL CUPET, S.A., a foreign corporation, UNION DE LAS EMPRESAS DE NIQUEL, a Cuban governmental corporation, GENERAL NICKEL COMPANY, S.A., a foreign corporation, MOA NICKEL, S.A., a foreign corporation, INTERNATIONAL COBALT COMPANY, INC., a foreign corporation, and THE COBALT REFINERY COMPANY, INC., a foreign corporation,  
Defendants.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
CASE NO. 96-1820-CIV-GRAHAM  
MAGISTRATE JUDGE TURNOFF

**SHORT TAKES**

**THE CENTER FOR INTERNATIONAL POLICY (CIP) LAUNCHES INITIATIVE TO END U.S. EMBARGO ON CUBA** -- Although the Helms-Burton Act codifies the embargo which can only be changed by an act of Congress, the Washington office of the Center for International Policy is creating "an unofficial private commission of business executives, lawyers and trade specialists who oppose the embargo." CIP vows never to "publish the names of our commission members." The non-profit organization is headed by Robert E. White the former U.S. ambassador to El Salvador and Paraguay. The director of its Cuba project is Wayne Smith who headed the U.S. Interests Section in Havana from 1979 -1982. CIP maintains an office in Miami and arranges delegations for visits to Cuba. (CIP Letter, June 1996).

**THE CUBAN AMERICAN NATIONAL FOUNDATION (CANF) ISSUES REPORT ON IMPLEMENTATION OF HELMS-BURTON** -- The Washington office of the Cuban American National Foundation released a report on Thursday, July 11th at a Capitol Hill hearing before the House Western Hemisphere Subcommittee of the International Relations Committee covering the implementation of the Helms-Burton Act. The report called "The Immediate Impact of the Cuban Liberty & Democratic Solidarity Act (LIBERTAD)" documents numerous cases of foreign companies and investors that have either left Cuba since the law's signing or are reassessing their presence in Cuba as a result of LIBERTAD. It also details the Castro regime's reaction to the law and their strategy to help investors evade sanctions. The 22-page report includes an updated list of CANF's "Cuba's Hall of Shame" listing 318 foreign companies reportedly doing business with the Castro regime. (CANF Press Release, "CANF Report Calls Impact of Helms-Burton 'Immediate and Verifiable,'" 7/10/96).

**CASTRO LINKED TO DRUG TRAFFICKING THROUGH CUBA** -- *The Miami Herald* broke a story on Thursday, July 25th linking Fidel Castro to drug smugglers after a Miami cocaine bust at a West Dade warehouse found photographs of Castro posing with the traffickers, Cuban cigars and Colombian cocaine. An investigation by the U.S. Drug Enforcement Administration's Miami Field Division has been underway since the bust in January when the White House, Justice and State Departments national security officials were notified. Jose Luis Ponce, first secretary of the Cuban Interests Section in Washington, called the allegations "an outrageous lie" saying it was "a pretext" for a military invasion of Cuba. (MH, "Traffickers Tie Castro to Drug Run," 7/25/96, p.1A).

**UN SECURITY COUNCIL FAILS YET AGAIN TO CONDEMN CUBA FOR SHOOTDOWN** -- Following the February shootdown by Cuban MIGs of two Brothers to the Rescue civilian planes that caused the deaths of four pilots, President Clinton called for an emergency session of the UN Security Council to pass a resolution condemning Cuba. (See US CPR, Vol.3, No.3, 3/29/96, p.6). Unable to persuade the Council, U.S. Representative Madeleine Albright in her capacity as rotating president of the 15 member Council was only able to have the Council "deplore" Cuba for its hostile actions and to agree to have the International Civil Aviation Organization (ICAO) conduct an investigation of the incident. That subsequent report found Cuba had downed the planes in international airspace in violation of international law. Cuba protested loudly. The Council voted 13 for the watered down resolution "condemning the use of weapons against civil aircraft". Russia and China abstained. Any hopes of punishing Cuba by having it pay restitution to the families of the victims have been dashed. (ICAO Working Paper, C-WP/10441, 6/20/96; MH, "No Sanctions Against Cuba for shootdown," 7/20/96, p.15A; WP, "UN Cautiously Addresses Cuba Plane Incident," 7/27/96, p.A3).

NOTABLE QUOTES

"I think that the intent and extent of the [Helms-Burton] Act has been largely exaggerated by our allies and in the press. I would like to clarify a few things, less some people lose sight of the facts. First, I would like to read the opening clause of the bill under Section 3, entitled, Purposes: '(1) to assist the Cuban people in regaining their freedom and prosperity, as well as in joining the community of democratic countries that are flourishing in the Western Hemisphere;' Apparently, that is what all the clamor is about, freedom and prosperity for the Cuban people versus corporate profits." Rep. Bob Menendez (D-NJ) is a prime architect of LIBERTAD particularly Title II. (Statement WHSC Hearing, "The Implementation of the LIBERTAD Act of 1996," 7/11/96, p.2-3).

"Castro -- I'm going to go down and see him. I want to put a refinery there. I'm going to have our Spanish subsidiary do it because we don't control them, so it's perfectly legal for them to do it." Dwayne Andreas, chairman of the Archer Daniels Midland Co.(ADM), refers to investment in Cuba. (WPM, "Chairman Across the Board," 7/14/96, p.29).

"Canada believes that a foreign policy of constructive engagement is the best approach for advancing political and economic reform in Cuba. Although we share similar goals with the United States, we consider that measures such as the Helms-Burton Act are highly counter-productive." Pierre Pettigrew is Minister for International Cooperation. (News Release, "Canada Encouraged By U.S. President's Decision on Helms-Burton Act," 7/16/96, No.127).

"In evaluating its priorities, the Canadian government has decided that trivializing the lack of freedom and the human rights abuses in Cuba is preferable to losing \$100 million in investments for Canadian companies or negatively affecting bilateral trade, which totals \$575 million a year." Rep. Ileana Ros-Lehtinen (R-FL), the first Cuban-American elected to Congress, is the vice-chairman of the House Western Hemisphere Subcommittee and a co-sponsor of Helms-Burton. (WSJ, "Canada's Hypocritical Foreign Policy Coddles Cuba," 7/19/96, p.A13).

"Contrary to what The [London] Times declared in an editorial two days ago, the [Helms-Burton] legislation would not expose foreign countries to American sanctions for trading with Cuba. Quite the contrary: investors from Britain or elsewhere are perfectly free to do anything they want in Cuba, except traffic in stolen property." Mark Falcoff is resident scholar at the American Enterprise Institute (AEI) in Washington, D.C. (LT, "Is Castro worth a trade war?" 7/19/96, p.16).

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# **U.S. \* CUBA Policy Report**

**Volume 3, Number 8**

**August 30, 1996**

**Institute for U.S. Cuba Relations  
Washington, D.C., USA**

**Ralph J. Galliano, Editor**

## **THE CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY (LIBERTAD) ACT<sup>1</sup> IMPLEMENTATION OF TITLE III<sup>2</sup>**

**WASHINGTON --** On July 30, 1996, the Senate Foreign Relations Subcommittee on Western Hemisphere and Peace Corps Affairs held a hearing on "The LIBERTAD Act: Implementation and International Law." Senator Paul Coverdell presided. The hearing consisted of two panels. The first panel included Jeffrey Davidow, Assistant Secretary of State for Inter-American Affairs and Jennifer Hillman, General Counsel of the Office of the United States Trade Representative. Panel II included Monroe Leigh of Steptoe & Johnson, Alberto Mora of Holland & Knight, Brice Clagett of Covington & Burling, and Robert Muse of Muse and Associates. The following statement representing the views of the editor was submitted.

### **I. INTRODUCTION**

By suspending the right of a U.S. national to bring an action for trafficking in confiscated property under Title III of The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 also known as the Helms-Burton Act,<sup>3</sup> President Clinton has exceeded the "intentionally narrow" suspension authority granted by Congress.<sup>4</sup> Neither of the conditions specified under this authority, requiring it to be necessary to the "national interest" of the United States and that

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<sup>1</sup>Public Law No. 104-114, [H.R.927], 110 Stat.785, March 12, 1996. 22 USC 6021. President Clinton signed the "Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996" into law during a brief ceremony at the White House Old Executive Office Building in Washington, D.C. on March 12th.

<sup>2</sup>The Clinton Administration opposed LIBERTAD's Title III -- PROTECTION OF PROPERTY RIGHTS OF UNITED STATES NATIONALS throughout the bill's 1995-96 legislative process.

<sup>3</sup>LIBERTAD was introduced in the Senate on February 9, 1995, by Senator Jesse Helms (R-NC), chairman of the Foreign Relations Committee, and in the House on February 14, 1995 by Representative Dan Burton (R-IN), chairman of the Western Hemisphere Subcommittee of the International Relations Committee. It is commonly referred to as the Helms-Burton Act.

<sup>4</sup>Gilman letter to Clinton, July 11, 1996, at 2 [hereinafter cited as Gilman Letter]. Congressman Ben Gilman (R-NY), chairman of the Committee on International Relations, says in his letter to the president, "Aware of the intentionally narrow authority for suspending the right of action, you supported and signed this legislation just four months ago."

a suspension "will expedite a transition to democracy in Cuba,"<sup>5</sup> were present at the time of suspension. If they had been, the president was obligated under the law to "report" them to the "appropriate congressional committees" in the course of his decision to suspend. The president's decision to suspend Title III's right of action until February 1, 1997<sup>6</sup> without taking these facts into account was contrary to the "unambiguous" intent of Congress<sup>7</sup> and therefore violated the letter and spirit of the law.

## II. BACKGROUND

The signing of The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act by President Clinton on March 12, 1996 paved the way for a series of reports and other requirements under the new law<sup>8</sup> including the authority Congress granted to the president to suspend the effective date of Title III<sup>9</sup> as well as the authority to separately suspend the right of action granted under Title III "if the President determines and reports in writing to the appropriate congressional committees at least 15 days before the suspension takes effect that such suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba."<sup>10</sup> Congress further granted the president the authority to "rescind any suspension" made under this subsection.<sup>11</sup>

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<sup>5</sup>§ 306(c)(1)(B), 110 Stat. 821-22, sets specific conditions to be met by the president in order to suspend the right of action.

<sup>6</sup>White House/NSC Press Office, "Press Briefing By Deputy National Security Advisor Sandy Berger And Under Secretary of State For Political Affairs Peter Tarnoff," July 16, 1996, at 2. [hereinafter cited as WH/NSC Press Briefing]. White House Press Secretary Michael McCurry announced the president's decision.

<sup>7</sup>Gilman Letter, *supra* note 4, at 1.

<sup>8</sup>U.S.- CUBA POLICY REPORT, "Libertad: Reports and Other Requirements," Vol.3, No.5, May 31, 1996, at 6-7.

<sup>9</sup>§ 306(b)(1), 110 Stat. 821. Title III -- PROTECTION OF PROPERTY RIGHTS OF UNITED STATES NATIONALS.

<sup>10</sup>§ 306(c)(1)(B), 110 Stat. 821-22. This section requires if the president makes a determination to suspend the right of action given these two conditions that such determination be reported in writing to the appropriate congressional committees. Instead, each of the committee chairman received a policy "Statement By The President" attached to a single sentence transmittal letter restating the language contained in the law in place of a report. BLACK'S LAW DICTIONARY 450 (6th ed. 1995) defines determination: "As respects an assessment, the term implies judgement and decision after weighing the facts."

<sup>11</sup>§ 306(d), 110 Stat. 822, "Rescission of Suspension." Rep. Bob Menendez (D-NJ) called upon President Clinton to rescind his decision to suspend the right of action. News Release, "Congressman Menendez Calls on President to Rescind the Suspension of Title III Lawsuits," July 17, 1996.



### III. LEGISLATIVE INTENT

House International Relations Committee Chairman Ben Gilman's July 11th letter to President Clinton urging him not to suspend the right of action reiterates the intent of Congress as detailed in the conference report of March 1st.<sup>12</sup> Gilman's letter calls The Statement of Managers filed with the Conference Report "the primary source for determining legislative intent."<sup>13</sup> His letter to the president restates the crucial language contained in The Statement of Managers whereby "The committee specifically rejected a proposal made by the Executive branch that the president be permitted to suspend the right of action" as he has in fact done "because it subordinated the question of whether suspension of the right of action would expedite a transition to democracy in Cuba to a larger question of whether suspension is important to the president's overall calculation of the national interest."<sup>14</sup> Both conditions were considered "two separate and distinct matters."<sup>15</sup> However, expediting a transition to democracy clearly was intended by Congress to become the "central element" in the president's decision of whether or not to suspend the right of action.<sup>16</sup> The conference committee did "afford the president the flexibility to respond to unfolding developments in Cuba"<sup>17</sup> in granting the president the authority to suspend the right of action. Since there was no evidence of any constructive change by the Castro regime toward human rights, democracy or economic reform, the criteria of "current circumstances"<sup>18</sup> in Cuba at the time of the president's decision did not warrant a suspension of the right of action. On the contrary, the lack of any positive developments toward change in Cuba implored the president not to exercise the suspension authority "consciously"<sup>19</sup> granted to him by the conference committee.

### IV. PRESIDENT EXERCISES THE SUSPENSION AUTHORITY

On the afternoon of Tuesday, July 16th, White House press secretary Michael McCurry announced at a briefing President Clinton's decision not to suspend the effective date of LIBERTAD's Title III allowing it to "come into force."<sup>20</sup> The effective date of Title III is now

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<sup>12</sup>House Conference Report No. 104-468, March 1, 1996, pp.65-66 [hereinafter cited as H.Conf.Report]. Ben Gilman was a Manager on the Part of the House and submitted the conference report.

<sup>13</sup>Gilman Letter, supra note 4, at 1.

<sup>14</sup>H.Conf.Report, supra note 12, at 65. Gilman Letter, supra note 4, at 1.

<sup>15</sup>Id. Gilman Letter, supra note 4, at 2.

<sup>16</sup>Id.

<sup>17</sup>Id. Gilman Letter, supra note 4, at 1.

<sup>18</sup>Id. Gilman Letter, supra note 4, at 2.

<sup>19</sup>Gilman Letter, supra note 4, at 1.

<sup>20</sup>WH/NSC Press Briefing, supra note 6, at 2.

set at August 1, 1996 and cannot in future be suspended.<sup>21</sup> At the same time, McCurry proceeded to announce that the president "will suspend the right to file suit for six months" under Title III until February 1, 1997.<sup>22</sup> This suspension action prevents U.S. nationals from filing a cause of action in federal courts against traffickers of their confiscated property in Cuba for a period limited to six months unless the president "determines and reports in writing (emphasis added) to the appropriate congressional committees at least 15 days before the date on which the additional suspension (emphasis added) is to begin that the suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba".<sup>23</sup> The very same conditions must be met in the case of an additional suspension as for the initial suspension.

At the July 16th White House press briefing, Deputy National Security Advisor, Sandy Berger, insisting the House-Senate negotiations were otherwise, contradicts the conference report saying the suspensions "were placed in Title III as part of a discussion that we had at the time that we signed on from our perspective for the purpose of at least giving the president the opportunity to fashion a more targeted approach."<sup>24</sup> Burger goes even further when he redefines the suspension provisions by saying the president "is required every six months to make a judgement about whether that suspension continues in whole or in part. He could continue that suspension with respect to all suits, he could continue that suspension with respect to certain countries or certain companies."<sup>25</sup> Such a broad interpretation of the president's suspension authority under Title III fails to appear anywhere in the law's legislative history.

In a one paragraph letter sent separately to chairmen Helms and Gilman, President Clinton simply restates the conditions to be met under the suspension authority granted by Congress. In an attempt to comply with the need for a "report in writing" as required by the Act, his letter was accompanied by a three page policy "Statement By the President" rather than any justification of the suspension to show the two conditions set by Congress had in fact been met.<sup>26</sup> The president's statement sets forth his plan to engage allies and trading partners to help

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<sup>21</sup>Id. at 11. Deputy National Security Advisor, Sandy Berger acknowledged this fact in response to a reporter's question stating, "He [the president] cannot once Title III --- by virtue of the action taken today to let Title III come into effect, he cannot vitiate that. Title III has now come into effect."

<sup>22</sup>Id. at 2.

<sup>23</sup>§ 306(c)(2), 110 Stat. 821-22, "Additional Suspensions."

<sup>24</sup>WH/NSC Press Briefing, supra note 6, at 19.

<sup>25</sup>Id. at 11.

<sup>26</sup>Id. at 10. A reporter questioned Berger at the press briefing over the apparent lack of explanation contained in the president's letter to chairmen Helms and Gilman suspending the right of action, "To postpone this for six months, doesn't the President have to explain some reason of national interest or national security?"

the U.S. "to promote democracy in Cuba" <sup>27</sup>thereby laying the groundwork to obviate the right of action granted under Title III and defying the will of Congress.

## V. LIABILITY ATTACHES

On November 1, 1996, three months following the effective date for Title III, any trafficker in confiscated property who does not divest on or after that date will be liable for treble money damages<sup>28</sup> based on the "fair market value"<sup>29</sup> plus interest<sup>30</sup> after notice has been given under Section 302 -- Liability For Trafficking in Confiscated Property Claimed by United States Nationals.<sup>31</sup> The president's suspension of the right of action does not effect the "notice" provision of Title III.<sup>32</sup> The conference committee noted in its report dated March 1, 1996, that "investors in Cuba have been effectively on notice regarding the 5,911 certified U.S. claims since the Cuban claims program was completed on July 6, 1972."<sup>33</sup> No further notice is needed. In the case of non-certified claimants, the conference committee required "an affirmative duty on the claimant to notify a potential defendant of the claimant's claim to the property."<sup>34</sup> A 30-day period was added to the 3-month grace period extending it to December 1, 1996 for non-certified claimants.<sup>35</sup> Although the president may reassert his suspension,<sup>36</sup>

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<sup>27</sup>The purpose of Title III is set forth as the protection of property rights of United States nationals while the purpose of the right of action is to deter trafficking by foreign investors of confiscated property in Cuba. The White House and the National Security Council interpret the purpose of Title III to promote democracy in Cuba.

<sup>28</sup>H.Conf.Report, supra note 12, at 58. § 302(a)(3), 110 Stat. 815-16.

<sup>29</sup>§ 302(a)(1), 110, Stat. 815.

<sup>30</sup>H.Conf. Report, supra note 12, at 57. § 302(a)(1), 110, Stat. 815.

<sup>31</sup>§ 302(a), 110 Stat. 815-17, "Civil Remedy."

<sup>32</sup>President Clinton's July 16th announcement not to suspend Title III makes it effective as of August 1, 1996 and doesn't affect the notice provision. Even if the president were to have suspended Title III, the conference report is clear as to notice with respect to the certified claimants under the International Claims Settlement Act of 1949, Title V.

<sup>33</sup>H.Conf.Report, supra note 12, at 59. § 302(a)(3), 110 Stat. 815-16.

<sup>34</sup>Id.

<sup>35</sup>Id. at 58-59. The conference report states: "For U.S. nationals with claims not certified by the FCSC, the conference substitute requires a 30-day advance notice to the defendant (after the 3-month grace period) by non-certified claimants before they can seek treble damages. The conference substitute further provides that a trafficker can avoid treble liability by ceasing to traffic in the property in question by the conclusion of the 30-day period following the provision of notice. A trafficker that ceases trafficking during such 30-day period nevertheless remains liable for damages for trafficking that took place between the conclusion of the 3-month grace period following the effective date and the time that the trafficking ceased."

a continuous suspension denying claimants the ability to exercise their right of action may place the U. S. government in violation of the taking clause under the Fifth Amendment to the Constitution.<sup>37</sup>

## VI. THE CUBAN DEMOCRACY ACT OF 1992<sup>38</sup>

The president's White House announcement to suspend the right of action described his administration's policy as "consistent with the Cuban Democracy Act."<sup>39</sup> In doing so, the president has reverted back to an earlier period in his administration depicted by his opposition to Helms-Burton which first surfaced on April 13, 1995 during a CNN White House interview. Seeing no need for additional legislation, President Clinton expressed his unequivocal support for the Cuban Democracy Act of 1992 exclaiming, "I don't know why we need any more legal authority than we already have."<sup>40</sup> Five months later on September 14, 1995, Richard Nuccio, the Special Adviser to the President and the Secretary of State for Cuba, when asked about the Clinton Administration's position on Helms-Burton responded by saying, "it believed it had all the authority necessary under the Cuban Democracy Act to conduct Cuban policy."<sup>41</sup> The Administration had pursued this policy of support for the Cuban people for three years when the Castro regime cracked down on the dissident group called Concilio Cubano in February 1996<sup>42</sup> and then on Saturday the 24th of February shot down two unarmed civilian planes in international airspace flown by Brothers to the Rescue killing Pablo Morales, Carlos Costa, Mario de la Peña, and Armando Alejandro.<sup>43</sup>

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<sup>36</sup>§ 306(d), 110 Stat. 822, "Rescission of Suspension."

<sup>37</sup>U.S. CONST. amend. V, cl.3. "nor shall private property be taken for public use without just compensation."

<sup>38</sup>Public Law No. 102-484, 106 Stat. 2575-81, October 23, 1992, 22 USC 6001.

<sup>39</sup>Statement By The President [hereinafter cited as Statement By The President], The White House, Office of the Press Secretary, July 16, 1996, at 1.

<sup>40</sup>U.S.- CUBA POLICY REPORT, "President Clinton Opposes Cuban Liberty and Democratic Solidarity (LIBERTAD) Act," Vol.2,No.3, May 15, 1995, at 1.

<sup>41</sup>U.S.- CUBA POLICY REPORT, "Interview with Richard A. Nuccio Special Adviser to the President and the Secretary of State for Cuba," Vol.2,No.8, September 30, 1995, at.1.

<sup>42</sup>State Department Press Release, "Cuban Government Cracks Down on Human Rights Activists," February 16, 1996.

<sup>43</sup>Miami Herald, "MiGs blast 2 exile planes," February 25, 1996, at 1A.

But before final passage of Helms-Burton in March of this year, Richard Nuccio,<sup>44</sup> who had played an instrumental role in the passage of the Cuban Democracy Act,<sup>45</sup> had helped to shape Clinton Administration Cuba policy. Nuccio visited with U.S. trading partners in Canada, Mexico and throughout Europe attempting to promote business practices that would help bring democracy to the Cuban workplace. He described the reality of his pursuits quite clearly: "If European governments and companies decide to invest in Cuba, we would hope that they would place very strong political conditionality on their investments to make sure that workers were treated fairly, that they were free to organize, that there are environmental standards respected. In short, that European companies operate in Cuba the way they would expect to operate in their own countries. And, if they were to do so, they might have some benefit in Cuba. But, the way that European investment is occurring now, it provides little if any help for the long run goal of achieving a peaceful and democratic transition."<sup>46</sup> Nuccio's role with respect to the implementation of the Cuban Democracy Act achieved little if any progress in the way of persuading U.S. trading partners to do more to help bring about the kind of changes in Cuba now being proposed by the president in the wake of his suspension of the right of action.

Explaining his six month suspension, President Clinton said in his statement to the press presented by McCurry on July 16, "my Administration will work to build support from the international community on a series of steps to promote democracy in Cuba. These steps include: increasing pressure on the regime to open up politically and economically; supporting forces for change on the island; withholding foreign assistance to Cuba; and promoting business practices that will help bring democracy to the Cuban workplace. At the end of that period, I will determine whether to end the suspension, in whole or in part, based upon whether others have joined us in promoting democracy in Cuba."<sup>47</sup> The intent of Congress places the burden of change in Cuba upon the Castro regime not upon the international community. Whether "others" join the United States to promote democracy in Cuba is immaterial to the implementation of Title III and whether U.S. nationals may or may not exercise their legal right of action against traffickers acquiring "unjust enrichment through the use of confiscated

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<sup>44</sup>Miami Herald, "State Department official named new czar for Cuba," May 26, 1995, at 14A: President Clinton announced the selection of Richard Nuccio to a newly created post on May 25, 1995; Miami Herald, "U.S. official cancels Cuba-policy speech," March 15, 1996, at 13A: Nuccio abruptly and without explanation canceled a policy speech previously planned for February 29, 1996 and rescheduled for March 15th. The White House denied reports of Nuccio's resignation; Miami Herald, "Cuba adviser steps down to old post," April 14, 1996, at 22A: On April 13, 1996, the White House announced that Nuccio would be returning to his previous post at the State Department of Principal Adviser to the Assistant Secretary of State for Inter-American Affairs. Nuccio opposed Helms-Burton which passed both Houses of Congress voting 74-to-22 in the Senate on March 5th and 336-to-86 in the House the following day. Nuccio departed his position one month after Helms-Burton was signed into law on March 12th.

<sup>45</sup>U.S.-CUBA POLICY REPORT, Vol.2, No.8, September 30, 1995, at 2.

<sup>46</sup>Id. at 7.

<sup>47</sup>Statement By The President, *supra* note 39, at 2.

property."<sup>48</sup> It was also announced the president would "appoint a special envoy to spearhead this effort."<sup>49</sup>

Certainly, the president has the right and authority to appoint an envoy to continue Richard Nuccio's work under the Cuban Democracy Act. But to justify doing so by suspending the right of action is contrary to the intent of Congress. Making the continuation of his suspension contingent upon a presidential assessment of the results of this complex diplomatic effort is entirely independent of and goes beyond the narrow authority granted by the conference committee. Furthermore, the authority for a presidential determination of "whether to end the suspension in whole or in part"<sup>50</sup> fails to appear anywhere in the legislative history of Helms-Burton.

#### IV. THE PROPERTY ISSUE

The essential purpose of Title III is "to deter trafficking in wrongfully confiscated property"<sup>51</sup> the claim to which is owned by a U.S. national. To attribute a different meaning to Title III is to misinterpret its intended purpose.<sup>52</sup> The implementation of Title III in a manner other than to provide a U.S. national with a judicial remedy necessary to deter trafficking by foreign investors in such confiscated property in Cuba is to deprive claimants of their rights and in the process to obviate Title III.

The Cuban Democracy Act, to which the Clinton Administration adheres, provides support for the Cuban people and strengthens sanctions but leaves the treatment of existing U.S. property claims against Cuba unaffected.<sup>53</sup> Picking up where the Cuban Democracy Act leaves off, Helms-Burton imposes severe penalties against foreign investors "trafficking" in confiscated properties in Cuba. The president's suspension of the right of action circumvents the property issue and coincides with the administration's earlier objection to Helms-Burton.<sup>54</sup> The

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<sup>48</sup>H.Conf.Report, supra note 12, at 57.

<sup>49</sup>WH/NSC Press Briefing, supra note 6, at 5.

<sup>50</sup>Statement By The President, supra note 39, at 2.

<sup>51</sup>H.Conf.Report, supra note 12, at 32; § 302(11), 110 Stat. 815.

<sup>52</sup>Statement By The President, supra note 39, at 1. "I have decided to use the authority provided by Congress to maximize Title III's effectiveness in encouraging our allies to work with us to promote democracy (emphasis added) in Cuba." WH/NSC Press Briefing, supra note 6, at 2. Berger states, "The purpose of the President's decisions that Mike [McCurry] has just announced is to use the leverage provided by Title III of the Libertad Act in a most effective manner to promote democracy (emphasis added) and political change in Cuba. This is the fundamental purpose of this provision."

<sup>53</sup>§ 1709, 106 Stat. 2580. "Existing Claims Not Affected."

<sup>54</sup>Supra note 40.



suspension authority granted by the conference committee does not give the president that right although it is the interpretation attributed to it by the administration.<sup>55</sup>

## V. CONCLUSION

President Clinton exercised his suspension authority in an improper manner when he suspended the right of action for six months under Title III of the Helms-Burton Act. The president's suspension authority was wrongly interpreted in the broad rather than the narrow sense intended by the conference committee and simultaneously failed to comply with the two conditions set forth in Title III of the Act which would have required an explanatory report to justify suspension had these conditions in fact been met. Suspension of the right of action does not adequately "discourage persons and companies from engaging in commercial transactions involving confiscated property."<sup>56</sup> The Helms-Burton Act already provides for a three month grace period "intended to permit persons who currently are 'trafficking' within the meaning of [T]itle III to wind down their activities in Cuba in order to avoid liability."<sup>57</sup> The president does have the authority to use this time period in a manner consistent with his goal "to build support from the international community on a series of steps to promote democracy in Cuba."<sup>58</sup> Although the president could have acted immediately after signing Helms-Burton in March to engage U.S. trading partners to help to promote democracy in Cuba, the administration's Cuba policy was characterized by virtual inaction.<sup>59</sup> Reinstating the right of action is more likely to discourage trafficking and in doing so "to deny the Cuban regime of Fidel Castro the capital generated by such ventures"<sup>60</sup> thereby preventing foreign investors from exploiting the "property confiscated from U.S. nationals."<sup>61</sup> Since the president has an affirmative duty to uphold the law, he should rescind his suspension effective November 1, 1996 the extent of the 3-month grace period permitted by the Act<sup>62</sup> his envoy's mission notwithstanding.

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<sup>55</sup>WH/NSC Press Briefing, supra note 6, at 8. Berger says, "I believe the purpose of Title III and the purpose of Helms-Burton was to promote democracy in Cuba. We are better off promoting democracy in Cuba if we can do it with added impetus from our allies and others than if we are simply acting alone, and that's what we'll try to do over the next six months."

<sup>56</sup>H.Conf.Report, supra note 12, at 58.

<sup>57</sup>Id. at 57.

<sup>58</sup>WH/NSC Press Briefing, supra note 6, at 2.

<sup>59</sup>Id. at 8. A reporter asked Berger the pointed question, "Why have you not engaged in this serious, long discussion between March and today so that you would be able to today to either allow the provisions of the bill to go into effect or to waive them?"

<sup>60</sup>H.Conf.Report, supra note 12, at 58.

<sup>61</sup>Id.

<sup>62</sup>Id. at 57.

## NOTABLE QUOTES

The following quotes are taken from the statements presented by the witnesses appearing at the hearing before the Subcommittee on Western Hemisphere and Peace Corps Affairs of the Committee on Foreign Relations held in Washington, D.C. on July 30, 1996.

"The Administration believes that we should use the leverage that Title III creates to work with -- rather than against -- our allies and trading partners to promote democratic change." Jeffrey Davidow is the Assistant Secretary of State for Inter-American Affairs. Statement at page 4.

"...the President suspended the right to file suit for six months, during which time the Administration will work to build support from the international community on a series of concrete steps to promote democracy in Cuba. At the end of the six-month period, the President will judge whether there has been sufficient progress in convincing others to join in promoting democracy in Cuba such that a further suspension may be warranted." Jennifer Hillman is the General Council for the Office of the United States Trade Representative. Statement at page 2.

"As the [Helms-Burton] Act notes, the practice of trafficking in expropriated property undermines U.S. foreign policy and commerce by enabling the Castro regime to perpetuate itself at the expense of the property's rightful owners." Monroe Leigh is an attorney with the Washington lawfirm of Steptoe & Johnson. Statement at page 14.

"...it can be forecast that entities at highest risk from Title III actions will be the large multinationals engaged in visible, high-value projects in Cuba and also operating in the United States." Alberto J. Mora is an attorney at the Washington office of Holland & Knight. Statement at page 9.

"Since no one disagrees that Castro's confiscations of property owned at the time by U.S. nationals violated international law, Title III is clearly consistent with that law as to those claimants -- who are the only ones who can sue before 1998, assuming that the President eventually stops suspending their lawsuits." Brice M. Clagett is an attorney at the Washington lawfirm of Covington & Burling. Statement at page 2.

"Title III of the Helms-Burton Act...will serve as a mechanism for Cuban Americans to assert claims directly against the nation of Cuba with respect to property expropriations in that country. Title III is therefore a federal courthouse version of the U.S. Foreign Claims Settlement Commission's programs that have hitherto been authorized by Congress, in conformity with international law, solely on behalf of those occupying the status of U.S. nationals at the time of foreign property expropriations." Robert L. Muse is an attorney with Muse & Associates in Washington, D.C. Statement at page 3.

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## **PRESIDENT CLINTON APPOINTS STUART EIZENSTAT AS "SPECIAL REPRESENTATIVE OF THE PRESIDENT AND SECRETARY OF STATE FOR THE PROMOTION OF DEMOCRACY IN CUBA"**

**WASHINGTON** -- Stuart E. Eizenstat is to serve as the president's "special envoy" to America's allies and trading partners whose companies are affected by Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996. Title III - *Protection of Property Rights of United States Nationals* sets forth "Liabilities for trafficking in confiscated properties claimed by United States citizens." President Clinton's suspension of the right to sue traffickers under Title III for six months (see USCPR Vol.3, No.7), while allowing Title III itself to become effective as of August 1st, paved the way for the president's initiative of a special representative named by the White House on August 16th. Madeleine Albright, U.S. Ambassador to the United Nations, and former U.S. Representative and Chairman of the House Foreign Relations Committee, Dante Fascell, were named as advisers to Eizenstat. Clinton characterized the goals of Eizenstat's added portfolio as building "international support for increasing pressure on Cuba to open up politically and economically; encouraging forces for change on the island; better targeting foreign assistance in ways that advance democratic goals; and promoting business practices that will help bring democracy to the Cuban workplace." Eizenstat, who presently serves as Under Secretary of Commerce for International Trade, expects Cuba matters to take up 20-to-25 percent of his time when he's not "promoting U.S. exports, assisting American business efforts abroad, enforcing laws against unfair trade practices and developing trade policy." Eizenstat also maintains responsibilities as Special Envoy for Property Claims in Central and Eastern Europe.

**BACKGROUND** - A lawyer by profession, Eizenstat worked in Atlanta for the law firm of Powell, Goldstein, Frazer & Murphy until 1976 when he joined the Carter presidential campaign. In the Carter administration, he served as the president's Assistant for Domestic Affairs and Policy and the Executive Director of the Domestic Policy staff at the White House. As domestic policy adviser to President Carter, Eizenstat coordinated the relocation of Cuban refugees during the 1980 Mariel boatlift. Following President Carter's defeat by former California Governor Ronald Reagan, Eizenstat remained in Washington with the D.C. office of Powell Goldstein. In 1993, he returned to government as President Clinton's U.S. Representative to the European Union with the rank of ambassador.

**SPECIAL ENVOY NOT AUTHORIZED UNDER TITLE III** - The appointment of a special envoy by the president for the purpose of exercising the suspension authority (§ 306(c)(1)(B)) or any additional suspensions (§ 306(c)(2)) granted by Congress, has no basis in the Helms-Burton law and is not supported by legislative history. It was first raised by Peter Tarnoff, Under Secretary of State for Political Affairs, at a White House Press Briefing on July 16th, the day President Clinton's decision to suspend the right of action was announced.

**MULTILATERAL APPROACH SOUGHT** - Eizenstat, who met with Cuban-American civic leaders in Florida (8/20) and New Jersey (8/21) before traveling abroad for high level meetings with U.S. allies and trading partners, is seeking to shed the three decades old "go-it-alone unilateralist policy toward Cuba" and craft instead "a more consensual, unified multinational approach" in cooperation with our allies and trading partners for the purpose of achieving a transition to democracy in Cuba that is "not under threat of Helms-Burton sanctions." Countries whose businesses have been adversely affected by the implementation of Titles III and IV of Helms-Burton have exerted intense diplomatic pressure on the United States both directly with threats to pass retaliatory legislation to protect their companies and indirectly acting through multilateral organizations such as NAFTA, the WTO, the OAS and the OECD.

Eizenstat's travels have brought him to the capital cities of Mexico (8/28), Canada (8/30), the European Union (9/3), Spain (9/10), Germany (9/11) and the United Kingdom (9/12) for high level meetings with government officials, heads of non-governmental organizations (NGO), and corporate business executives. For governments, Eizenstat has suggested the utilization of foreign embassies in Cuba to support the human rights community and to distribute humanitarian assistance to the ostensibly independent NGOs rather than to the Cuban government; for foreign NGOs he suggested ways to "strengthen the independent sector" on the island; and, for the international business community he "suggested the adoption of self-initiated, voluntary, self-enforcing business principles like those that governed the apartheid period [in South Africa] -- the Sullivan Principles." This would include "a commitment to a safe workplace, the environment, the freedom of employees to be able to go to public facilities, fair labor standards, and, most particularly for Cuba, the ability to hire and pay workers directly" rather than through the Cuban government. In Brussels (9/3), Eizenstat assured European Community business and government leaders that their cooperation in obtaining "*concrete results*" on Cuba will allow President Clinton on January 16, 1997 to make the determination to suspend the right of action for another six months which the president can do "indefinitely." On August 16th, Clinton described Eizenstat's mission as engaging "our allies over the next six months on concrete measures to advance democracy in Cuba."

While President Clinton reserves the right to appoint a "special envoy" to seek cooperation from U.S. allies and trading partners in helping the U.S. to achieve a transition to democracy in Cuba, further suspensions predicated upon whether a special envoy elicits "*concrete results*" appears to be outside the narrow scope of Helms-Burton, contrary to Congressional intent, and does nothing to advance Title III property rights of U.S. nationals. The burden for change lies with the Cuban government rather than the international community.

### IN EIZENSTAT'S OWN WORDS

*The following comments have been attributed to Ambassador Eizenstat since his appointment by the president to become "special envoy" for the promotion of democracy in Cuba:*

"I know that some are skeptical that the U.S. and other democracies can put aside our differences on Cuba. I have some experience working with our friends in Europe, and I am more hopeful." (MH, "Skepticism, challenges greet new envoy to Cuba," 8/17/96).

"The United States has spent 50 years supporting democracy and freedom in Europe. It's only right that, at a time when the U.S. is confronting the single repressive regime remaining in the Western Hemisphere, our allies should help us." (MH, "Envoy on Cuba issues meets skeptics," 8/21/96, p.1B).

"The nations of the Western Hemisphere, like Germany and its partners in Europe, have made a collective commitment to democracy because it is the only system of government that can adequately protect human rights and human dignity. Cuba stands alone as the only non-democratic nation in the Americas. The Cuban system does not constitute an alternative -- it is an oppressive anachronism. Just as the U.S. and Germany and Europe have worked together to promote freedom and democracy in the Soviet Union and former Eastern Bloc, in South Africa, Central America and throughout the world, we can and must do so in Cuba." (Statement of Ambassador Stuart Eizenstat, Bonn, Germany, 9/11/96, p.1).

"On the 16th of January, the President has to make a determination as to whether to continue the suspension of these suits. And that will be based on two factors. One is the question of national security; whether it's of national security interest. And the second is whether, by suspending further, the President can certify that such a suspension will expedite the transition to democracy. And that it was in that context that independent action would be looked at. Therefore, such action would have a dual benefit: it would help to promote democracy in Cuba and at the same time avoid a cycle of retaliation and counter-retaliation, trade tensions, and exacerbation of transatlantic relations, which is eminently avoidable and which we should do everything possible to avoid and not exacerbate. We've got a problem. We know it has to be managed in a way that's consistent with our law, but is sensitive to the concerns that I've heard." (USIS, "Press Round Table, U.S. Embassy London," 9/12/96, p.1).

"There is and there will remain after this exercise a divergence in the philosophical attitudes on how to promote democracy in Cuba. Our allies essentially think it's through engagement and more trade; we continue to support the embargo and isolation of Castro. That's not going to change." (USIS, "Press Round Table, U.S. Embassy London," 9/12/96, p.3).

"The government of President Aznar has intensified Spain's commitment to promote democratic change in Cuba and can play a prominent role in increasing bilateral and multilateral efforts toward this end. We seek a comprehensive framework of cooperation leading to *concrete and specific measures* to promote democracy in Cuba, measures, again, which this new government has taken already." (IUST, "US special representative on Cuba Stuart Eizenstat," 9/20/96, p.23).

<p><b>HELMS-BURTON DRAFTERS REITERATE CONGRESSIONAL INTENT</b></p>
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In a letter to President Clinton dated September 5th, principal drafters of Helms-Burton have gone on record disagreeing with the president's "decision to suspend the right of U.S. citizens to take advantage of the right of action." The letter expresses concern over the proposal for international companies doing business in Cuba to adopt the "Sullivan-type principles" because it could unintentionally increase foreign investment. Helms-Burton drafters state that the "country specific suspensions of Title III go well beyond the narrow scope of the suspension authority." The drafters conclude their letter by stating they "will continue to press for full implementation of the Libertad Act." A copy of their letter follows.

## LETTER TO PRESIDENT

CONGRESS OF THE UNITED STATES  
Washington, D.C. 20515

September 5, 1996  
The President  
The White House  
Washington, D.C. 20500  
Dear Mr. President:

We wish to reiterate our disagreement with your decision to suspend the right of U.S. citizens to take advantage of the right of action created by Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (P.L. 104-114).

The Castro regime and unscrupulous foreign companies are still conspiring to escape the reach of the LIBERTAD Act so that they can continue commercial ventures which exploit confiscated U.S. property and subsidize the repression of the Cuban people.

According to your July certifications to Congress on this issue, you intend to decide "whether to end the suspension, in whole or in part, based upon whether others have joined us in promoting democracy in Cuba." On August 16, Ambassador Stuart Eizenstat, your special representative for promotion of democracy in Cuba, stated that "we are looking for concrete, specific measures" by our allies in the interest of democracy and human rights in Cuba.

We agree that, unless your recent diplomatic initiative produces concrete and specific results in the near future, there will be no basis in law or fact for further suspending the right to bring an action under Title III. Moreover, in our view, a further suspension of Title III should not even be considered unless our trade and investment partners have:

- demonstrably increased pressure on the Castro regime to adopt political and economic liberalization;
- provided material support to genuinely independent individuals and nongovernmental organizations for use in carrying out democracy-building efforts;
- terminated all foreign assistance to the Cuban government (including nonmarket-based trade, as defined in section 106(c)(2)) of the LIBERTAD Act;
- ceased any form of government loans, credits, or other financing to any person for the purpose of financing transactions involving any confiscated property, the nuclear power plant at Juragua, or the intelligence facilities at Lourdes;
- encouraged their nationals to strictly condition any continuing business ventures in Cuba on practices that promote economic and political freedom, fundamental human rights, and workers' rights (including collective bargaining, direct hiring of employees, and fair wages);
- supported efforts in the United Nations and Organization of American States to hold the Castro regime accountable for human rights violations and promoted initiatives to send human rights monitors to Cuba; and
- not submitted complaints under the procedures of the World Trade Organization or the North American Free Trade Agreement regarding the implementation of the LIBERTAD Act.

Regarding Ambassador Eizenstat's proposal to consider "Sullivan-type principles" for Cuba, we are concerned that this initiative could unintentionally *increase* foreign investment in Cuba under conditions imposed by Castro that resist any palliative effects of foreign commerce. History has repeatedly -- and recently -- demonstrated that Fidel Castro is unwilling to reform his command economy, to respect labor rights, to allow collective bargaining, or to permit employers to hire workers without the interference of the government.

Such Sullivan-type principles would serve only as a "fig leaf" to facilitate foreign investment, which benefits the *status quo* in Cuba. As a result, such principles are inconsistent with long-standing U.S. policy and do nothing to protect the confiscated property of U.S. citizens. At the very least, unless foreign companies *demonstrably alter their own behavior* by rejecting trade and investment with Cuba until these basic principles are fully observed, an imperfect tool would be reduced to a tragic farce.

Moreover, we believe that the suggestion of possible country-specific suspensions of Title III goes well beyond the intentionally narrow scope of the suspension authority. As the principal drafters of this legislation, we state that such a country-specific suspension of Title III is not permissible under the law.

We will continue to monitor the application of U.S. law closely, and we hope that this reiteration of Congressional intent will assist in clarifying future Administration deliberations with respect to Title III. We will continue to press for the full implementation of the LIBERTAD Act.

Sincerely,

JESSE HELMS  
Chairman  
Committee on Foreign Relations

ILEANA ROS-LEHTINEN  
Member of Congress

ROBERT MENENDEZ  
Member of Congress

ROBERT TORRICELLI  
Member of Congress

BENJAMIN A. GILMAN  
Chairman  
Committee on International Relations

DAN BURTON  
Member of Congress

LINCOLN DIAZ-BALART  
Member of Congress



## BANCOMEXT COMES UNDER TITLE IV FIRE

Congresswoman Ileana Ros-Lehtinen's letter to Secretary of State Warren Christopher on August 14th (see letter below) requests that he consider issuing a "determination" letter to Bancomext, the foreign trade bank of Mexico, under Title IV of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996. Title IV - *Exclusion of Certain Aliens* would require the denial of visas and the exclusion from the United States of executives of the seven Bancomext offices. Under the Title IV guidelines issued in June, determinations "will be made when facts or circumstances exist that would lead the Department reasonably to conclude that a person has engaged in confiscation or trafficking after March 12, 1996" the date President Clinton signed the Helms-Burton legislation into law. It was widely reported in the press in late May of this year (see US CPR, Vol.3, No.5, p.4) that CEMEX, the third largest cement company in the world based in Mexico, was divesting itself of the plant in Mariel the claim to which is owned by Lone Star Industries one of the 5911 certified U.S. claimants. According to CEMEX's 1994 annual report, it was providing technical support to a plant jointly owned by the Cuban Cement Producers Association and Bancomext. CEMEX, having substantial U.S. holdings, narrowly escaped receiving an advisory letter from the State Department in May. At the same time, Mexican officials confirmed the transfer of CEMEX's responsibilities to Bancomext which now risks not only its presence in the United States but also its eurobond market worth hundreds of millions of dollars for which it is required to file with the SEC. On June 11th, the National Association of Sugar Mill Owners of Cuba wrote to Michael Rannenberger, coordinator of the Office of Cuban Affairs, naming Bancomext as one of eleven likely sources of foreign funds financing the 1996 sugar harvest which was also reported in the Financial Times on July 24th. By September 17th, Ros-Lehtinen's letter had not yet filtered down from Christopher's office to Rannenberger.

## ROS-LEHTINEN LETTER TO CHRISTOPHER

August 14, 1996  
The Honorable Warren Christopher  
Secretary  
U.S. Department of State  
2201 C Street N.W.  
Washington, D.C. 20520  
Dear Mr. Secretary:

I respectfully request that you examine the possibility of using the authority granted under the visa denial and exclusion provisions of Title IV of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to issue a determination to Bancomext, also known to be trading as *Consejeria Comercial de Mexico*, the Mexican Trade Commission and Banco Nacional de Comercio Exterior, hereinafter referred to as "Bancomext."

On or after March 12, 1996, the date of enactment of Title IV, Cemex, a Mexican cement production and shipping company having plants and facilities in the United States, by its own admission, halted its operations in Cuba involving confiscated property and transferred its interest to Bancomext. If Bancomext holds a continuing interest in this confiscated property, whereby, it has purchased, received obtained control of, or otherwise acquired confiscated property from CEMEX, it might place it in direct violation of Section 401(b)(2)(i)(II) of the LIBERTAD Act.

Bancomext, headquartered in Mexico City, maintains seven offices in the United States including Atlanta, Chicago, Dallas, Los Angeles, Miami, New York, and San Antonio. Pursuant to Title IV, Bancomext's top officials, principals, shareholders, and their immediate families could be deemed excludable from the United States and or denied entry into the United States if the bank has failed to disinvest from Cuba.

As the foreign trade bank of Mexico, any continuing commercial interest in confiscated property in Cuba by Bancomext will not make it immune from enforcement of Title IV. Unlike Title III of LIBERTAD, Title IV does not provide for any suspension, waiver, or exemption that is applicable to Bancomext's trafficking in U.S. confiscated property.

Your immediate attention to this important matter will be greatly appreciated.

Sincerely,  
Ileana Ros-Lehtinen  
Member of Congress

## **CANADA INTRODUCES LEGISLATION TO COUNTER HELMS-BURTON**

Amendments to the Foreign Extraterritorial Measures Act (FEMA) to counter Helms-Burton were introduced by Canadian Prime Minister Jean Chrétien's Liberal government in the House of Commons on Monday, September 16th. FEMA, which first became law in February 1985, was "designed to defend Canadian interests against attempts by foreign governments or courts to apply unreasonable laws or rulings in Canada" that are viewed as infringing on Canadian sovereignty including the "blocking" of documents to foreign courts. Foreign Affairs Minister Lloyd Axworthy and International Trade Minister Art Eggleton believe the proposed FEMA amendments will give Canadian companies more legal tools with which to defend themselves against Title III lawsuits should President Clinton decide not to continue the six month suspensions of the right of action on January 16, 1997. According to Axworthy, "This package of amendments is a key element of Canada's leadership role in the international campaign against Helms-Burton." Eggleton described the FEMA amendments as "a deterrent against U.S. companies seeking to penalize Canadian firms doing legitimate business with Cuba. We will continue our joint efforts with other countries to oppose Helms-Burton."

The proposed FEMA amendments would permit Canada's Attorney General to issue "blocking" orders preventing Title III judgements from being enforced in Canada. This would only be necessary if the Canadian defendant maintained no assets in the United States. Under Title III, an American plaintiff would be highly unlikely to file suit if the alleged trafficker did not do business in the United States. On the other hand, if a claimant was able to collect damages in the U.S., the FEMA amendments contain a "clawback" provision allowing for suit in Canadian courts to recover the full amount of the award plus court costs in both countries to be applied against the American's assets in Canada. FEMA amendments contain increased penalties to discourage Canadians from complying with Helms-Burton that Canadian courts may vary according to mitigating circumstances. The FEMA changes increase the maximum financial penalties against Canadian companies to C\$1.5 million. The proposed FEMA amendments are expected to pass the Canadian Parliament easily becoming law in early or mid-November at about the time the results of the U.S. elections are known by November 5th.

## **CONSOLIDATED DEVELOPMENT CORP. v. SHERRITT, INC. et al.**

Certified claimant, Consolidated Development Corporation, which filed suit against Sherritt Inc. on July 2nd of this year in federal court in Miami for conversion of properties and rights and conspiracy to defraud (see USCPR, Vol.3, No.7), has served its complaint on Canadian companies Sherritt, Inc. (Viridian), Sherritt International, Inc., Canada Northwest Energy Limited, and The Cobalt Refinery Company, Inc. Cuban company Moa Nickel, S.A. has also been served. Other defendants are in the process of being served. According to public records available in U.S. District Court in Miami (Case No. 96-1820), the Washington, D.C. law firm of Popham, Haik, Schnobrich & Kaufman, Ltd. represents Sherritt International and The Cobalt Refinery Company, Inc. while the Miami firm of Aragon, Burlington, Weil & Crockett, P.A. represents Sherritt Inc. Consolidated has subpoenaed the Treasury Department's Office of Foreign Assets Control to produce documents related to their listing of certain defendants as "Blocked Persons and Specially Designated Nationals" (see USCPR Vol.2, No.5) as well as the issuance of licenses to U.S. persons and/or U.S. institutional investors who purchased Exchange Certificates issued by Sherritt and/or Sherritt International. Metsch & Metsch, P.A. of Miami and Mark Dunaevsky, Esq. of Evanston, IL represent Consolidated in this matter. This case is filed outside of Title III of the Helms-Burton Act.

<b>SHORT TAKES</b>
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**WAYNE SMITH FOUND GUILTY OF MAKING LIBELOUS STATEMENTS IN 1992 INTERVIEW BROADCAST NATIONALLY ON PUBLIC TELEVISION** -- Wayne Smith, who headed the U.S. Interest Section in Havana from 1979 to 1982 and is considered the dean of Castro apologists, was found guilty in a Miami jury trial for knowingly and wrongfully making statements about the Cuban American National Foundation (CANF) that damaged its reputation and harmed its fundraising. CANF was awarded \$10,000 in compensatory damages and \$30,000 in punitive damages. The 60-minute documentary entitled "Campaign for Cuba" was produced by the University of West Florida. George J. Fowler III of New Orleans was the attorney for CANF while Alfredo G. Duran of Miami represented Smith. Smith is expected to appeal. (MH, "Lawsuit pits Cuba scholar against powerful exile group," 8/8/96, p.1B; AP, "Cuban Exiles Win Libel Suit," 8/9/96). **"THE LAST REVOLUTIONARY" RATHER'S TRIBUTE TO FIDEL CASTRO** -- A recently published article in the AIM REPORT (AR) by Agustin Blazquez criticizing Dan Rather's "CBS Reports" an hour interview with Fidel Castro broadcast on July 18th offers an enlightening look at Castro's propaganda machine in action. Blazquez, a talented Cuban-American artist and critic of the U.S. media's handling of Cuba in the news and the creation of the Castro myth, is also the producer of the documentary "Covering Cuba" a look at three decades of media coverage. A copy of AR may be obtained by contacting AIM at 202/364-4401. (AR, "Rather's Tribute to Fidel Castro," August-B 1996, 4 pages). **BLAZQUEZ'S DOCUMENTARY "COVERING CUBA" REJECTED BY CORPORATION FOR PUBLIC BROADCASTING (CPB)** -- Writing to 65 PBS stations for airing of his documentary on their "Point of View" program, four stations rejected Blazquez outright while the others failed to respond. In a letter to Senator Spector (R-PA) who chairs the appropriations subcommittee that deals with CPB funding, Blazquez said, "I think this is a prime example that public supported television stations are only interested in imposing their own point of view and tend to censor or ignore what does not conform with their bias." (AR, "Notes From The Editor's Cuff," August-B 1996). **CORPORATION FOR PUBLIC BROADCASTING HEADED BY FOUNDING MEMBER OF THE FAIR PLAY FOR CUBA COMMITTEE (FPCC)** -- The seven member board of directors of the Corporation For Public Broadcasting (CPB) elected Alan Sagner a political activist who headed the New Jersey Business Council for Clinton-Gore in 1992. President Clinton nominated Sagner to the CPB board in 1994. According to his FBI report, Sagner, who traveled to Cuba in 1959 and 1960, placed an ad in *The New York Times* in support of the Castro revolution largely financed by the Cuban mission at the United Nations. As a propaganda vehicle, the FPCC spread its pro-Castro message across the country with chapters at 37 colleges and 23 cities including one in New Orleans formed by Lee Harvey Oswald. As chairman of the CPB board, Sagner will be in charge of public radio and TV broadcasting for this country for the next four years. (TWT, "Proud liberal to lead public broadcasting," 9/18/96, p.A4; TWT, "The Fair Play for Cuba Committee," 9/19/96, p.A20). **DE LOS REYES MONITORS U.S. ELECTIONS FOR FIDEL CASTRO** -- Since First Secretary, Oscar de los Reyes, who operates from the Cuban Interests Section in Washington, D.C., was granted a six-month visa in May, he has watched C-SPAN, the evening news, read countless newspapers and magazines, and telephoned Congressional staffers monitoring the 1996 presidential election campaign for his government. (FLSS, "Cubans interested in U.S. campaign," 9/15/96, p.H1).

## NOTABLE QUOTES

"...there's something terribly wrong when Canada denounces the United States for voting a trade and investment boycott of the Fidel Castro regime because of its 37-year-long violation of human rights, and then at the same time demands sanctions against the military usurpers in Nigeria for their three-year violation of human rights." Arnold Beichman is a research fellow at the Hoover Institute. (MH, "Hypocrisy behind Canada's objections," 7/29/96, p.11A).

"Europeans and Americans share a continuing desire to help turn Cuba into a responsible member of the international community. But the [Helms-Burton] law is not the right way to achieve that goal. It offends and attacks America's trusted allies [and sets] a dangerous precedent that the United States itself will come to regret if other countries follow it in the future." Leon Brittan is the European Union Trade Commissioner. (MH, "European Union may retaliate against anti-Cuba law," 8/1/96, p.18A).

"The Clinton administration has ignored or excused most Russian intelligence operations against the United States. At a time when the administration has highlighted the threat of economic espionage, it is doing nothing to stop this [Lourdes] operation aimed at the United States." J. Michael Waller, vice president of the American Foreign Policy Council located in Washington, D.C., assesses Russian intelligence activities in Lourdes, Cuba. (TWT, "Russians spy on U.S. business using a listening post in Cuba," 8/4/96, p.A4).

"There is no question [Helms-Burton] is having an effect. The number of entrepreneurs who were visiting Cuba in large numbers, visiting ministries and talking about investment, is way down. Interest has literally dried up." Teo Babun is with the Cuba Development Company in Miami. (TWT, "Companies reconsider investments," 8/6/96, p.A10).

"I'm not aware of any link between Barings and Cuba. We have a representative office in Havana, and we have stopped sugar financing because of the Helms-Burton law. We will remain active in Cuba in activities which are in line with the Helms-Burton law." Ruud Polet with ING-Barings the Netherlands-based ING Bank in Amsterdam. (CN, "ING Withdrawal May Involve Bank Acquisition," 9/96,p.3)

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# **U.S. \* CUBA Policy Report**

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**Ralph J. Galliano, Editor**

## **PRESIDENT CLINTON TRANSMITS REPORT TO CONGRESS DETAILING PAYMENTS OF \$76 MILLION TO CUBA BY AMERICAN TELECOMMUNICATIONS COMPANIES**

**WASHINGTON --** The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 also known as the Helms-Burton Act accomplished what the Clinton administration under the Cuban Democracy Act of 1992, commonly referred to as the Torricelli Act, was unwilling to do on its own -- that is to report to Congress the dollar payments made directly to the Castro government by American telecommunications companies under license from the Clinton administration. Not since President John F. Kennedy imposed the U.S. embargo on all trade with Cuba on February 3, 1962, leading to the Cuban Assets Control Regulations issued on July 8, 1963 under the Trading With the Enemy Act, has the government of the United States approved such substantial transfers of U.S. dollars to communist Cuba. The "basic goal" of these regulations administered by the Treasury Department's Office of Foreign Assets Control "is to isolate Cuba economically and deprive it of U.S. dollars." President Clinton's report to Congress, House Document 104-267, dated September 23, 1996, details the payments made to Cuba totaling \$76,827,695.33 from 1994 through June 30, 1996.

Section 102(g)(6) of the Helms-Burton Act requires the president to report to Congress "on a semiannual basis" those "payments made to Cuba by any United States person as a result of the provision of telecommunications services." This subsection amends Section 1705(e) of the Torricelli Act permitting "telecommunications services between the United States and Cuba" to the extent that reporting becomes mandatory. Although Torricelli lacks a reporting requirement by the Executive Branch to Congress, the Clinton administration's "general policy guidelines" issued by the State Department on July 22, 1993, called for a review "by the State Department in consultation with the Treasury and Commerce Departments" in 12-to-18 months. In an exclusive POLICY REPORT interview (USCPR, Vol.2, No.8, 10/20/95) with Richard Nuccio, then Special Adviser to the President and the Secretary of State for Cuba, the editor asked when "public reports on the cash flow to the Castro government" as a result of telecommunications activities could be expected from the Clinton administration? Nuccio admitted, "we're actually slightly overdue on that review." As far as cash flow to Cuba, Nuccio revealed, "we are certainly talking about millions of dollars flowing to Cuba as well as millions of dollars flowing to the U.S. companies that are engaged in the long distance trade." The Clinton administration was at least 12 months overdue on its reporting at that time.

**CLINTON ADMINISTRATION TELECOMMUNICATIONS POLICY --** The Torricelli Act laid the groundwork in shaping the Clinton administration's telecommunications policy toward Cuba. Under the Act, the administration had the policy option of licensing "full or partial payment to Cuba of amounts due Cuba as a result of the provision of telecommunications services." The Clinton administration chose full payment to Castro's Cuba.

Under the guidelines, the State Department permitted "each company or U.S. subsidiary to remit to Cuba the full share of Cuba's earnings from the service approved by the FCC." As a result of this decision to license American telecommunications companies to travel to Cuba to negotiate contracts with the Cuban government, Treasury's OFAC "license[d] all payment terms to Cuba." The State Department guidelines permitted a "50/50 split of \$1.20 per minute accounting rate" which means Cuba receives half of all revenues generated by U.S.- Cuba telecommunications traffic to and from the island. In addition, the Cuban government receives a full \$1.50 surcharge for each collect call made from Cuba to a party in the United States. The guidelines also allowed State to "explore with Treasury and Commerce the possibility of licensing payment in-kind (e.g., earth stations, satellite equipment, etc.) on a case by case basis." The president's report does not refer to in-kind payments.

U.S.- Cuba telecommunications traffic for 1994, the first year of operation under this new arrangement, tallied 20 million minutes billed with revenue at \$27 million. In 1995, telecom traffic between the two countries totalled 98 million minutes. The estimate for 1996 is 125 million minutes. In 1992, the year the Torricelli Act became law, telephone service between the U.S. and Cuba was minimal and of poor quality involving just one authorized carrier, AT&T. Of 60 million call attempts between the U.S. and Cuba, there were only 500,000 completions during 1992. The Torricelli Act's telecommunication provision, for the first time, opened up the process to all qualified U.S. carriers.

**BLOCKED ACCOUNTS** -- When AT&T was the sole provider of telephone service to Cuba, the "amounts due Cuba as a result of telecommunications services" were placed in blocked accounts by the Treasury Department's Office of Foreign Assets Control. Blocked Cuban assets amounted to approximately \$150 million of which only \$30 million represented recoverable assets by 1964. Placed in interest bearing accounts, the last known census taken by OFAC in 1984 showed frozen Cuban assets totalling \$67 million of which \$28 million was designated as telecommunications revenues due to Cuba. Today, estimates of the value of the blocked account of Cuban assets range anywhere from \$80 million to \$100 million. The Torricelli Act makes it clear that licensing of telecommunications payments to Cuba "shall not require any withdrawal from any blocked account." Historically, assets from blocked accounts have been utilized by the United States government in the settlement of claims by U.S. nationals against nations that had expropriated American owned property without compensation. This took place in a claims settlement agreement between the United States and China in 1979 after which the Chinese assets worth approximately \$80.5 million were unblocked against claims amounting to \$197 million. In the case of U.S. Cuba claims where the Foreign Claims Settlement Commission in 1972 valued confiscated American property in Cuba at \$1.8 billion, frozen Cuban assets of \$100 million can barely cover their value. In fact, this first report of \$76 million transferred to the Cuban government from telecommunications revenue shows future payments will easily eclipse Cuba's assets held in blocked accounts.

**HELMS-BURTON HALTS EXPANSION OF TELECOM INTO CUBA** -- Section 102(g)(5) *Prohibition on Investment in Domestic Telecommunications Services* halted Clinton administration efforts to expand telecommunications services by American companies beyond the gateway. While the Torricelli Act only provided for "telecommunications services between the United States and Cuba," the State Department's guidelines of July 22, 1993, attempted to take the process a step further by stating it "could assess whether to allow improvements in domestic infrastructure to improve U.S. access to the Cuban market." Steadily on the increase, gateway-to-gateway telecom traffic may soon come under the Torricelli Act's scrutiny of Section 1710(a) dealing with "the Cuban government's accumulation of excess amounts" of U.S. dollars.



<b>TELECOM PAYMENTS TO CUBA</b>
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The following is a listing of OFAC licensed American telecommunications companies' payments to Cuba:

AT&T Corporation (formerly American Telephone and Telegraph Company).....	\$ 39,647,734.42
AT&T de Puerto Rico.....	524,646.58
Global One (formerly, Sprint Incorporated).....	4,870,053.05
IDB WorldCom Services, Inc. (formerly, IDB Communications, Inc. ....	3,038,857.00
MCI International, Inc. (formerly, MCI Communications Corporation).....	17,453,912.00
Telephonica Largo Distancia de Puerto Rico, Inc.....	150,282.40
WilTel, Inc. (formerly, WilTel Undersea Cable, Inc.).....	7,792,142.00
WorldCom, Inc. (formerly, LDDS Communications, Inc.).....	3,349,967.88
Total.....	\$ 76,827,695.33

<b>SECTION 207 REPORT FILED</b>
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As required by law (110 Stat. 813, 22 USC 6067) under Section 207 of the Helms-Burton Act, the Secretary of State has provided a report to Congress for the "Settlement of Outstanding United States Claims to Confiscated Property in Cuba." Copies of the document dated September 27th have been filed with the appropriate congressional committees including the Senate Foreign Relations, House International Relations, and the Senate and House Appropriations Committees. The report estimates the non-certified claims to number between 75,000 and 200,000 stating they "could run easily into the tens of billions of dollars." The report calls for the "prompt resolution of confiscated property claims" describing the process as "essential to the revitalization of the Cuban economy under a transition or democratic government" in Cuba which would send a "signal" to investors that such a government "understand[s] and respect[s] the importance of private property." Further, the report suggests the U.S. government could hold out the future investment potential of certified claimants as leverage in seeing that a future Cuban government promptly settles the non-certified claims of U.S. nationals. According to the State Department report, the "elements of a successful claims resolution strategy include" a "legal framework for property ownership," an "administrative process," a "credible and fair system for payment," and "effective enforcement." In addition to "U.S. assistance and support for resolving property claims," the report suggests similar assistance from "international financial institutions." The report closes by stating there is no need for further legislative review on this matter "prior to a change of government in Cuba."

**HELMS-BURTON IMPLEMENTATION UNIT  
ESTABLISHED BY STATE DEPARTMENT**

The State Department announced the creation of its "Helms-Burton Implementation Unit" on September 20th to help determine who is trafficking in confiscated property as defined by Title IV of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996. The Unit, contained within the Office for Cuban Affairs, is headed by Steven Hardesty a consular officer with experience in Eastern and Western Europe and Asia. Any U.S. national who believes someone is trafficking in their property is encouraged to telephone or fax the Unit at 202/647-7050 or 202/647-7095 respectively. The Unit collects, prepares, and presents information on specific confiscated property in Cuba where traffickers can be identified and matches it to the owner. The process attempts to develop a consensus inside the State Department that can be presented to an inter-agency working group. If the working group believes they have a case, then it is presented to the Assistant Secretary of State for Inter-American Affairs, Jeffrey Davidow, who decides whether to accept or reject the working group's finding. The assistant secretary makes the final decision which may lead to a determination of trafficking. The inter-agency working group consists of designated representatives from the State Department, the National Security Council, the U.S. Trade Representative, the Foreign Claims Settlement Commission, the Office of Foreign Assets Control, and the Central Intelligence Agency. The sending of both advisory letters to suspected traffickers and letters of determination to known traffickers continues.

**HELMS-BURTON UPDATE**

**THREE MONTH GRACE PERIOD FOR TRAFFICKERS ENDS** -- While President Clinton's decision to suspend the right of action for 6 months was announced on July 16th, the effective date of Title III, August 1, 1996, was not suspended. "Except as otherwise provided," Title III, Section 302(a), of Helms-Burton provides claimants a civil remedy whereby traffickers are liable for damages if they continue to traffick in confiscated property "after the end of the 3-month period beginning on the effective date of this title." (110 STAT. 815, 22 USC 6082). **NON-CERTIFIED CLAIMANTS TO GIVE WRITTEN NOTICE** -- Beginning November 1, 1996, non-certified claimants must give written notice to traffickers notwithstanding the president's suspension or the requirement they "may not bring an action on a claim... before the end of the 2-year period beginning on the date of enactment" (§302(a)(5)(C), 110 STAT. 817) specified as March 12, 1996. The exception to Section 302(a) is that non-certified claimants must give a 30 day notice in addition to the 3-month grace period before treble damages can be applied. Treble damages will take effect only "after the end of the 30-day period beginning on the date the notice is provided." (§302(a)(3)(B)(ii), 110 STAT. 816). **NOTICE BY CERTIFIED CLAIMANTS IN EFFECT SINCE 1972** -- Assuming the right of action is permitted to go into effect and President Clinton does not continue to suspend it, certified claimants will be in a position to sue traffickers for treble damages, effective November 1, 1996, without giving formal written notice. The House-Senate conference report noted that "investors in Cuba" have been on notice "since the Cuban claims program was completed on July 6, 1972." (House Conference Report No. 104-468, March 1, 1996, at 59).

## CLINTON-DOLE DEBATE CUBA POLICY

During the 1996 campaign, the first presidential debate between President William J. Clinton and former Senate Majority Leader Robert J. Dole took place in Hartford, Connecticut on October 6th. The following is the exchange by the candidates on the foreign policy issue of Cuba:

**DOLE:** Here we have Cuba, 90 miles from our shores, and what have we done? We passed a law that gave people a right to sue, and the president postponed it for six months. And it seemed to me if you want to send a signal, you've got to send a signal, Mr. President. The sooner, the better off we'll be if you put tougher sanctions on Castro, not try to make it easier for him.

**CLINTON:** Well, first of all, for the last four years, we have worked hard to put more and more pressure on the Castro government to bring about more openness and to move toward democracy. In 1992, before I became president, Congress passed the Cuban Democracy Act, and I enforced it vigorously. We made the embargo tougher, but we increased contacts people to people with the Cubans, including direct telephone service, which was largely supported by the Cuban American community.

Then Cuba shot down two of our planes and murdered four people in international airspace. They were completely beyond the pale of the law, and I signed the Helms-Burton legislation. Senator Dole is correct. I did give about six months before the effective date of the act before lawsuits can actually be filed, even though they're effective now and can be legally binding, because I want to change Cuba. And the United States needs help from other countries. Nobody in the world agrees with our policy on Cuba now, but this law can be used as leverage to get other countries to help us to move Cuba to democracy. Every single country in Latin America, Central America, and the Caribbean is a democracy tonight but Cuba. And if we stay firm and strong, we will be able to bring Cuba around as well.

**DOLE:** Well, that's the point I made. We have to be firm and strong, and I hope that will happen. It will happen starting next January, and maybe can happen the balance of this year. We have not been firm and strong. You look at the poor people who still live in Cuba, it's a haven for drug smugglers, and we don't have a firm policy when it comes to Fidel Castro. In my view, the policy has failed.

## DIRECT FLIGHTS TO CUBA RESUME

President Clinton, who banned direct flights to Cuba immediately following the downing of the two Brothers to the Rescue planes by Cuban MIGs on February 24th, approved a license application on October 22nd from Catholic Relief Services for an emergency flight to deliver 70,000 pounds of food assistance for victims of Hurricane Lili that struck Cuba on October 18th. The relief flight landed in Havana on October 26th instead of Cienfuegos, because of apparent airport damage. Three days after arrival from Miami, the food remained in a Havana warehouse while Cuban government health inspectors sifted through the rice, beans and milk to test for sanitation. Caritas, the charitable arm of the Catholic Church in Cuba, is to oversee the distribution of relief supplies. The Helms-Burton Act, which the president signed on March 12th, codified the embargo against Cuba involving "all economic sanctions in force on March 1, 1996" according to the Conference Report "as defined in section 4" which includes "all restrictions on trade or transactions with, and travel to or from, Cuba." Other applications for direct flights are under consideration at the Office of Foreign Assets Control.

**HELMS CALLS FOR INSPECTOR GENERAL  
TO INVESTIGATE CIVILIAN PLANE  
SHOOTDOWN BY CUBAN MIGS**

In separate letters to the Secretaries of Defense, State, and Treasury, Senate Foreign Relations Committee Chairman Jesse Helms (R-NC) asked for each to have their department's Inspector General conduct an investigation of the events surrounding the February 24th shootdown of two Brothers to the Rescue planes by Cuban MIGs in international airspace murdering four Cuban-Americans. Helms asked that the investigation determine "the facts," that "normal procedures were followed by the U.S. military," and he asked "how our government will respond" to a similar situation in the future. Helms charges that "U.S. officials watched on radar as Cuban MIGs headed toward the civilian aircraft" and "nothing was done to prevent the tragedy or to alert the civilian planes."

Helms wrote in identical letters that "The American people have not been told the truth about this tragic event" while "CIA officials were instructed to meet with Cuban intelligence officers immediately after the shootdown to show them U.S. intelligence data." Helms included a list of eleven questions about the incident. A copy of Helms' letter addressed to Defense Secretary William Perry is reprinted below.

**HELMS LETTER**

October 3, 1996  
The Honorable William J. Perry  
Secretary of Defense  
Department of Defense  
Washington, D.C. 20301-1155  
Dear Mr. Secretary:

There is substantial and growing evidence that U.S. military and civilian authorities were aware that three American planes belonging to "Brothers to the Rescue" were in danger before Cuban fighters shot two of them down in the Florida Straits on February 24, 1996. U.S. officials watched on radar as Cuban MIGs headed toward the civilian aircraft, and in one instance, we know that a U.S. Customs official alerted Tyndall Air Force Base in Florida.

Nothing was done to prevent the tragedy or to alert the civilian pilots.

I am now advised that evidence was revealed at a National Transportation Safety Board hearing (regarding the revocation of Jose Basulto's pilot's license) that tape recordings of conversations between Cuban MIGs and the air control tower in Havana indicate that Cuban aircraft were at one point about 3 minutes off the U.S. coast -- and there was no U.S. reaction.

In the past, U.S. aircraft were scrambled when Cuban aircraft were flying, with a far less aggressive purpose and at a greater distance from U.S. shores. In this case, do you agree that Cuban fighter planes were allowed to fly too close to U.S. territory without a proper response from our government?

A House International Relations Subcommittee held a hearing on the shootdown last week and a U.S. Customs official with significant knowledge of the incident was prohibited from testifying in an open session; and the two DoD officials who testified could not or would not answer any questions. It seems strange to me that CIA officials were instructed to meet with Cuban intelligence officers immediately after the shoot down to show them "U.S. intelligence data" (as was reported in the Washington Post), but the American people have not been told the truth about this tragic event. Can you help remedy that situation?

I respectfully request that your Inspector General be directed to conduct an investigation of this matter to determine: 1) the facts surrounding the February 24 shoot-down; 2) the normal procedures to be followed by the U.S. military during this type of incident (and whether these procedures were followed); and 3) how our government will respond to a similar scenario in the future. I ask that responses to the attached questions be part of the review.

Sincerely,

Jesse Helms

JH/gmh

Attachment: as stated

**CASTRO AUDIENCE WITH POPE  
AT VATICAN ASSURED**

Cuban dictator Fidel Castro's attendance at a five day World Food Summit between November 13-17 sponsored by the United Nations Food and Agricultural Organization in Rome is expected to lead to the Cuban communist's first ever meeting with Pope John Paul II. The Vatican's denunciation of the Helms-Burton Act along with the visit to Havana on October 25-29 by Archbishop Jean Louis Tauran, the Vatican's foreign minister, led to an invitation for the Pope to visit Cuba sometime late next year. In return, the French Archbishop is believed to have negotiated a greater role for the Roman Catholic Church in Cuba involving education, the government controlled media, and a relaxation of visas for priests and nuns. This will cement an alliance between the Vatican and Havana to help break Cuba's diplomatic isolation with the United States. According to the Archbishop, "The so longed-for visit of Pope John Paul II to Cuba would represent a culmination and a new departure point on the road towards normalized relations between the church and the state in Cuba." As a prelude to the U.N. conference, the Vatican issued an 80-page document called, "World Hunger a Challenge for All," where it criticized the U.S. embargoes against Cuba and Iraq declaring food a fundamental human right. The Pope will open the U.N. conference. (MH, "Castro may visit the Pope in Rome," 9/14/96, p.15A; MH, "Pope, Castro edging to a summit," 10/11/96, p.1A; TWT, "Vatican raps U.S. for bans on food," 10/25/96, p.A17; NYT, "Envoy's Visit May Pave the Way for a Papal Trip to Cuba," 10/28/96, p.A3; NYT, "Cuba and Vatican Agree on a Papal Visit," 10/30/96, p.A5).

**CANADIANS' GODFREY-MILLIKEN  
BILL INTRODUCED IN PARLIAMENT**

Two Liberal Members of Parliament, John Godfrey and Peter Milliken, introduced the Godfrey-Milliken Bill in the House of Commons on October 22, 1996. Affirming the principle of damages for trafficking in confiscated property set forth by the Helms-Burton Act and compensation for confiscated property, the sponsors of the proposed legislation jointly stated "that it is just and equitable that Canadian heirs of United Empire Loyalist (UEL) descent whose property was confiscated, stolen or destroyed during and subsequent to the American revolution, should be afforded the same assistance as is provided by the US government to its citizens who have had property in Cuba confiscated by that revolutionary regime." While appearing to agree on fundamental principles involving the concept of trafficking embodied in Helms-Burton, disagreement between the two sides only exists as to whether the settlement of claims for "British Debts" in the Jay Treaty of 1795 and under the terms of the subsequent Rufus King Agreement of 1802 included the settlement of United Empire Loyalist claims. In a question posed by the editor of the REPORT, Canadian ambassador to the U.S., Raymond Chretien, described Godfrey-Milliken as a "private bill," not supported by the Liberal government and therefore not expected to become law. Ambassador Chretien spoke (10/29) before The Atlantic Council's Standing Group on the Western Hemisphere. (MEM CRS, "Settlement of Loyalist Claims and Debts Owed to British Subjects following the American Revolution," 10/28/96; PR, "Godfrey-Milliken Response to Helms-Burton Introduced in Parliament," 10/22/96, pp. 1-2).

INTERNATIONAL BRIEFS
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**MEXICO PASSES LAW TO COUNTERACT HELMS-BURTON** -- The Mexican Congress overwhelmingly passed the "Act for the Protection of Commerce and Investment of Foreign Rules Contravening International Law" in early October to discourage Mexican companies doing business in Cuba from complying with Helms-Burton. The law would fine Mexican companies that comply with information requests but not penalize Mexican companies for withdrawing from their Cuban investments nor would it revoke or deny visas to American corporate executives whose companies file suit against Mexican companies in U.S. courts. Fines range from \$2,840 to \$284,000. (MH, "Toothless bill won't stop trade," 9/9/96, p.10A; CN, "Mexico Approves Law Against Helms-Burton," 10/96, p.8; FT, "Mexican antidote to Cuba law," 10/3/96, p.5)

**BRITISH TRADE DELEGATION VISITS CUBA** -- Parliamentarian Baroness Young, a senior Conservative Party Member and a former British Foreign Office minister, led a delegation of businessmen representing the petroleum, tourism, and the finance industries to promote bilateral trade with the communist-ruled island. Their visit included the tourism center at Varadero and the supertanker port at Matanzas. Young, who heads the "Cuba Initiative" has consistently led trade and parliamentary delegations to Cuba since 1994 with another planned for June 1997. Repeating the UK's opposition to the Helms-Burton Act, Young blamed the U.S. Congress rather than the Clinton administration for its passage. (JOC, "British trade mission begins Cuba talks," 10/8/96, p.3A; WTD, "A British trade mission led by Baroness Young," 10/8/96, p.3; FT, "UK-Cuba trade rising despite Helms-Burton law," 10/10/96, p.6; BBC SWB, "Baroness Young heads UK mission to Cuba," 10/11/96).

**RUSSIA AND VENEZUELA REAFFIRM SUPPORT FOR CUBA** -- Following talks with Venezuelan foreign minister, Burelli, Russian foreign minister, Primakov, announced at a Moscow press conference Russia's continued support of market based trade with Cuba, support for the completion of the Juragua nuclear plant, revival and expansion of the former triangular Soviet-Venezuelan-Cuban oil arrangement, and opposition to Helms-Burton. (AP, "Foreign Minister Says Cuban Nuclear Project Will Go Ahead," 10/14/96).

**WTO DISPUTE SETTLEMENT PANEL ON HELMS-BURTON EXPECTED** -- Under WTO rules, the U.S. was able to block the European Union's (EU) initial attempt to set up a dispute settlement panel to resolve differences over Helms-Burton. But the U.S. will not be able to do so a second time when the WTO Dispute Settlement Body is scheduled to meet again on November 20th. The U.S. views Helms-Burton as a national security issue rather than a trade issue and is likely to take that position in its defense. Australia, Canada, Cuba, and India joined the EU as third parties. A decision by the WTO that Helms-Burton violates world trade rules would require the U.S. to repeal Helms-Burton, compensate its trading partner harmed by the U.S. law, or face trade retaliation by the WTO. (FT, "EU takes anti-Cuba legislation to world trade body," 10/2/96, p.1; MH, "U.S. blocks panel on Helms-Burton," 10/17/96, p.20A; IUST, "U.S. Blocks European Request for WTO Panel on Helms-Burton," 10/18/96, p.11).

**EUROPEAN UNION (EU) AGREES ON "CLAW BACK" LEGISLATION AIMED AT HELMS-BURTON** -- The foreign ministers of the 15-nation EU agreed on so-called "claw back" legislation to allow European companies sued by U.S. nationals to countersue American companies in European courts to recover damages. Germany and the UK dropped their objections after receiving assurances that such claw back action would be quickly waived against European subsidiaries of U.S. companies such as Opel-GM. (FT, "EU agrees reprisal move to counter US anti-Cuba law," 10/29/96, p.4; WTD, 10/29/96, p.2).



**SHORT TAKES**

**MILITARY OPTIONS CONSIDERED AGAINST CUBA AFTER SHOOTDOWN** -- In early October the Clinton administration was presented with military options by the Pentagon at the request of national security adviser Anthony Lake following Havana's downing of two Brothers to the Rescue aircraft killing four Cuban-Americans in international airspace on February 24th. The military options included a cruise missile attack and a bombing attack against the MIG air base. These were rejected because of concern over Cuba's chemical and biological weapons capability during an armed conflict as well as the perceived vulnerability of the FP&L Turkey Point nuclear power plant located in Dade County south of Miami. The non-military options chosen instead were cutting off direct flights from the U.S. to Cuba and an agreement by the president to sign the Helms-Burton bill into law. (MH, "Missile attack weighed after shoot-down," 10/1/96, p.25A).

**CUBAN STAGE PLAY IN THE UNITED STATES FINANCED BY SHERRITT INTERNATIONAL** -- The Canadian mining company, Sherritt International, whose Cuban joint ventures have been black listed by the Treasury Department's Office of Foreign Assets Control and whose executives, including its president Ian Delaney, have received letters of determination from the State Department under Title IV of Helms-Burton which excludes traffickers of confiscated property by denying U.S. visas, has helped to finance a controversial Cuban film made into a stage production showing at the GALA Hispanic Theater in Washington, D.C. through November 10th. The play, "Strawberry and Chocolate," deals with the issue of homosexuality in Cuba and has met with the approval of the Cuban government which helped to arrange for the actor's visas with the State Department. Vladimir Cruz and Jorge Felix Ali, the play's lead actors obtained restricted visas prohibiting them from being paid for their acting and limited to ten weeks when the play completes its run. (PR, GALA Hispanic Theater, 9/9/96; WP, "Strawberry and Chocolate And Cuba's Just Deserts," 10/6/96, p.G4).

**U.S.-CUBAN GOVERNMENT COOPERATE OVER HIJACKING CASE** -- An FBI agent and a Justice Department official's travel to Cuba in September to investigate the July 7th hijacking of a Cuban Aero Taxi aircraft to the U.S. Naval Base at Guantanamo has led to the October 25th indictment of former Cuban police Lt. Col. Jose Fernandez Pupo by a federal grand jury in Washington on a single charge of air piracy. Before the 1995 U.S.-Cuba immigration agreement, Fernandez Pupo would likely have been granted the asylum he requested upon landing. Although under the agreement the U.S. is required to repatriate, the U.S. declined Cuba's request for the return of the hijacker. If convicted, he cannot by law receive asylum. (MH, "Hijack probe takes 2 U.S. agents to island," 9/26/96, p.20A; MH, "Cuban charged with air piracy," 10/26/96, p.1B).

**PENTAGON MAKES FINAL DECISION TO INCLUDE CUBA IN SOUTHCOM** -- Secretary of Defense William Perry has given final approval to a plan that shifts U.S. military jurisdiction over the Caribbean including Cuba from the Atlantic Command headquartered in Norfolk, Virginia to the Southern Command currently headquartered in Panama. Effective June 1, 1997, Southcom will relocate to West Dade County, Florida. (MH, "Caribbean to join Southern Command," 10/26/96, p.2B).

**EIZENSTAT'S FOURTH TRIP ABROAD** -- President Clinton's special envoy on Cuba, Stuart Eizenstat, made his fourth overseas trip to meet with America's trading partners opposed to Helms-Burton. The visit, scheduled from October 24th through November 3rd, includes stop-overs in Paris (10/25 - 10/26), Rome (10/27-10/28), The Hague (10/29), Copenhagen (10/31), and Brussels (11/1-11/2). This is expected to complete the first phase of Eizenstat's trips.

## NOTABLE QUOTES

"With the passage of the Helms-Burton law earlier this year, foreign companies trading with both Cuba and the United States must now be careful not to interfere with the rights of U.S. owners of property in Cuba. If they do, they risk their access to the U.S. market and could be the targets of lawsuits." Robert E. Freer is an attorney with the Washington law firm of Freer & McGarry. (JOC, "U.S. should stay the course on Cuba," 10/11/96, p.9A).

"If Venezuela's oil industry could assume Russia's obligations in the Western Hemisphere (Cuba), while we could assume corresponding Venezuelan obligations in Europe, both countries would save a lot on oil freight." Russian foreign minister, Yevgeny Primakov, envisions revival of Soviet-Venezuelan-Cuban oil supply arrangement of years past during a Moscow press conference following a meeting with Venezuelan foreign minister Miguel Angel Burelli Rivas. (AP, "Foreign Minister Says Cuban Nuclear Project Will Go Ahead," 10/14/96).

"Given the foreign policy and security concerns underpinning decades of US relations with Cuba, and in the light of the common interests we share with our European friends in regard to Cuba, the United States is surprised and concerned to find our tactical and foreign policy differences over Cuba raised before a multilateral trade forum." Booth Gardner, U.S. ambassador to the WTO, argues against the European Union's initiative to set up a dispute settlement panel over Helms-Burton at the WTO in Geneva. (ER, No.2167, "US Blocks EU's Request for WTO Panel Over Helms-Burton," 10/17/96, 513XLC).

"We want this bill (Helms-Burton) repealed. We see this as a dangerous trend. This is the most visible issue between our two countries. On this, on Helms-Burton, we will not let it go." Ambassador Raymond Chretien represents Canada in Washington. (TWT, "Helms aide offers no aid to Canadians on Cuba Law," 10/24/96, p. A13).

"We don't like imperial policies. Isolation by blockade is not a method for international relations. We have always been faithful to the principles of international law, of non-interference in the internal affairs of states." French Archbishop Jean-Louis Tauran, the Vatican's senior diplomat upon his arrival in Havana criticizing the Helms-Burton Act prior to his meeting with Cuban foreign minister Roberto Robaina. (NYT, "Envoy's Visit May Pave the Way for a Papal Trip to Cuba," 10/28/96, p.A3).

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# U.S. \* CUBA Policy Report

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Washington, D.C., USA

Ralph J. Galliano, Editor

## EIZENSTAT ADDRESSES STATUS OF FURTHER PRESIDENTIAL SUSPENSION OF RIGHT OF ACTION UNDER TITLE III OF HELMS-BURTON

**WASHINGTON** -- Under Secretary of Commerce for International Trade, Stuart Eizenstat, speaking before a luncheon meeting of the American Chamber of Commerce of Cuba in the United States, Inc. (AmCham Cuba) on Wednesday, November 20th at the Army and Navy Club in Washington, D.C., elaborated on his appointed task as special envoy for Cuba to America's allies and trading partners whose companies are directly affected by Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996. Signed by President Clinton on March 12th of this year, the Helms-Burton Act's Title III - Protection of Property Rights of United States Nationals sets forth "Liabilities for trafficking in confiscated properties claimed by United States citizens." This right-of-action, allowing claimants to sue traffickers, was suspended for six months by the president on July 16th effective August 1st. President Clinton is required by law to "report[s] in writing to the appropriate congressional committees at least 15 days before the suspension takes effect that such suspension is necessary to the national interests of the United States and will expedite a transition to democracy in Cuba." No action is necessary on the president's part if he determines, based upon this criteria, not to suspend the right to bring an action. Otherwise, the president must make his next determination to suspend by January 16, 1997. Ambassador Eizenstat's speech follows:

### **FORGING A MULTILATERAL POLICY TOWARD CUBA**

When the President appointed me in August to assume these additional responsibilities, in addition to my under-secretaryship, his goal was to try to move from a purely unilateral approach to Cuba toward forging a consensus to promote democracy on a multilateral basis. We've been criticized for over three decades for an excessively go-it-alone policy. So the President wanted to see, while he had suspended the law suits for six months under Title III, if we could forge a more broad-based multilateral effort which would encourage the promotion of democracy in Cuba. It's the first time such an effort has really been launched and its beginning to pay results. I have explained on now three trips to Europe with my fourth coming this very week, in fact today, as well as trips to Canada and Mexico, the importance that we attach to Cuba and to human rights and democracy in Cuba. There is, unfortunately, a feeling in significant quarters in Europe and elsewhere, a sort of romanticized view of the Castro regime as a somehow possibly misplaced aging revolutionary, without recognizing the brutality of the regime and without appreciating that it is indeed one of the most thorough going police states in the world. So one of the things that I do on my trips is not only meet with senior diplomats, foreign ministers, trade ministers, economic ministers, the business community, NGOs (non-governmental organizations), but also have a very heavy dose of public diplomacy because its important for people to understand the importance of Cuba to us. As I have stated so many times, we have worked with Europe for fifty years, spent countless billions of dollars to promote democracy and freedom in Europe. We've done so during the Cold War. We continue to do so after the Cold War; with them in Bosnia today; with our own troops involved. We've worked on democracy in Haiti and democracy in South Africa. Democracy in Cuba is just as important. It is the sole remaining dictatorship in a Hemisphere which has seen a great wave

of democratization. I dare say, the former Assistant Secretary for Latin American Affairs knows the dramatic and remarkable progress which 34 of the 35 countries of this Hemisphere have had over the last 15 years. It's dramatic. It's inspiring. There is only one country, Cuba, which has not been part of that movement. It's a country that's 90 miles from our shore. It's given us a million of our citizens. It has both domestic and foreign policy implications for us. And during much of Castro's regime, it was a regime which attempted to destabilize many pro-Western and pro-U.S. countries. So, it is something that has always been a critical factor for us. What we are trying to do is elevate on the radar screen and the decision-making agenda of our allies and trading partners an issue which has always been very high up on ours.

### ***HELMS-BURTON: TARGETED AND LIMITED***

I also have tried to explain the Helms-Burton Act because there is a massive amount of misinformation and indeed disinformation about the actual purposes and operation of the Act. It is widely believed to be an Act which applies our embargo writ large in an extraterritorial fashion and punishes those companies seeking to trade or invest in Cuba. It is nothing of the kind. It is targeted and limited only to that universe of companies which are investing in confiscated U.S. property and profiting thereby. And for that limited universe of companies, with even the most minimal amount of due diligence, which anyone, such as myself, who has a legal background would know, with even the most minimal amount of due diligence, one would know that the company is potentially using confiscated property because there has been a claims registry of 5,911 claims in Washington setting forth precisely the properties involved. So it's no mystery as to why the two companies that have thus far been cited, Grupo Doms in Mexico and Sherritt International in Canada, have, in fact, been so cited. One is using ITT's equipment and the other is mining a nickel mine that belonged to a U.S. company. This is simply an effort to try to protect the interests of U.S. citizens who have had their property confiscated and nothing more. That public education process is important; it continues.

### ***EUROPEAN UNION SEEKS TRADE PANEL IN WTO AGAINST HELMS-BURTON***

Nevertheless, notwithstanding the explanations that I give, such as the one I've just given to you, our U.S. allies across the board, whether in this Hemisphere or in Europe, whether governments or private sector, strongly and indeed passionately oppose the Act. It would be hard to overstate to you the level of anger and resentment in Europe and Latin America about this issue based on what they see as the principle of extraterritoriality from their perspective and more so than on any practical damage to their actual interest. They claim that both the Libertad Act and the legislation providing sanctions on Iran and Libya undermine in their estimation the U.S. commitment to the international trading system. And this has in turn led the European Union to file and on this very day, November 20 1996, to seek a panel in the WTO to deal with this matter. Many of us, myself, Charlene Barshefsky, and many others, Secretary Kantor, have all made it clear that pursuing this course in the WTO is a lose-lose proposition. That this is essentially a political and policy dispute which needs to be resolved diplomatically not by an institution designed to deal with trade disputes. That the gravamen of their complaint is not that this is a protectionist piece of legislation, it is rather the political arguments that they make to me. And that pursuing this matter in the WTO will only provide aide and comfort and sustain and support those elements in the U.S. who are already opposed to the WTO and it will invite an incitement of protectionist pressures.

**U.S. SEEKING CONCRETE AND SPECIFIC MEASURES  
BY ALLIES AND TRADING PARTNERS**

What we have sought are "concrete and specific measures" by our allies and trading partners to promote democracy in Cuba. And while I am more specific obviously in diplomatic channels than I can be here, I do want to give you an idea of the kinds of measures that we have suggested. We have said that these can be taken completely independently; not under threat of sanction; not as a set of ten commandments that the United States has brought down from Mount Sinai that have to be signed; but rather, things that will concretely advance the cause of democracy and make it clear that our friends and allies attach a greater significance to this issue than may have been demonstrated by some of them in the past. We've done so at three levels: governments, the non-governmental sector, and the private sector.

*For governments*, we have suggested such things as: increased contact with human rights activists; and the naming of human rights officers in their embassy to provide and affect a moral support for human rights activists; the distribution of international news articles; pressure on the Cuban government, publicly and privately on the need for reforms, economic and political; pressing Cuba in international fora such as the forthcoming vote in the United Nations General Assembly, where fortunately we are now getting additional co-sponsors; channeling assistance wherever possible through non-governmental rather than through governmental sources; conditioning development assistance on political change and many more.

*For the non-governmental sector*, with whom I've also met in many of the countries I have visited, we urged them to distribute their assistance wherever possible through independent organizations to try to strengthen those organizations by inviting members of the independent community, independent journalists, and others seeking a greater degree of freedom to their countries for seminars and conferences and to go down to Cuba to provide training and assistance to speak out when political prisoners are arrested; and, in general to encourage the development of an independent civil society so that in a post-Castro era, whether that's tomorrow or five years from now, the institutional framework, in terms of a penal code and judicial reform and banking and administrative reform, will be there so that what follows Castro will not be another dictatorship, but rather will be democracy. I think that all of you know that there is not a great history of democracy in Cuba and so working on this is important.

*For the private sector*, we obviously do not encourage investment because of our own embargo. But we know that it will continue and we want it to take a form that will empower the Cuban people rather than the Cuban government. So, what we have suggested is a set of "best business practices" that private companies will bring with them when they invest in Cuba. Business practices that are the best business practices they would follow when they invest elsewhere - a commitment to a clean environment, to a safe workplace, to fair wages, to the avoidance of illicit payments, and wherever possible, the ability to directly hire and pay Cuban workers. Now, this all obviously has to be subject, as any company knows when you invest, to the laws of the country involved. At this point, the Cuban government does not permit direct hire and pay. All workers for foreign investors are filtered through a government agency on the basis of the ideological purity of the worker. They insist on being paid in hard currency which they then take roughly 80% off the top and pay the workers an average of about \$10 a month in pesos. But for the private sector to enunciate those kinds of principles will add an additional voice for human rights and democracy in Cuba.

### ***FINDING COMMON GROUND WITH THE U.S.***

Although there is much more to be done, there are the beginnings of some encouraging signs. On November 7th, the Vice President of the European Commission, Sir Leon Brittan, gave a very important speech in New York calling on the Europeans and the U.S. to find common ground and to work together for the promotion of democracy in Cuba and the expansion of human rights and he went into some detail about that -- *a very important and a very welcome statement*. At the recently concluded Ibero-American Summit in Santiago of the Latin American countries, Spain, and Portugal, we had a very remarkable development. As expected, there was strong condemnation of the Helms-Burton Law; that was to be anticipated. But what was very positive and new, is that the President of Argentina, the President of El Salvador, the President of Chile, the host country, and others, pointedly and directly, with Castro in the audience, talked about the need for real democracy in Cuba, for a multi-party system, for free elections, for more democracy and pluralism, and more respect for worker rights. This is something that was very positive. I met with the foreign ministers of many of those countries and we were very pleased to see that happen. In addition, unlike past communiques, there was a very detailed communique issued on the importance of democracy in all countries in the Hemisphere -- not simply broad statements, but specifics about how this should be achieved, free press and the like. And so, Presidents Menem (Argentina) and Frei (Chile) and Caldera (Venezuela) and Aznar (Spain) spoke out strongly and were backed up by the communique. These are very positive judgements and we will continue our discussion with our allies to press for other specific actions.

### ***THE PRESIDENT'S DECISION ON FURTHER SUSPENSION***

I cannot prejudge what decision the President will make regarding a further suspension of a right to file suits; this is his and his alone. He must make that decision no later than the 16th day of January and he has to make it on the basis of two findings. The first under the statute is: would a further suspension be in the national security interests of the United States. The second finding is: would a further suspension expedite the transition to democracy. The more specific the measures are, the more the President will be able to weigh those in his decision. But this is, again, his decision; no one else can make it. That's what he gets paid for. It's a tough decision. I'm confident he'll make it in a way that protects our national interest and he'll make it in a way that will do the most possible to promote a transition to democracy in Cuba.

### ***BEST BUSINESS PRACTICES***

Now, I want to mention, in addition, a third factor. I mentioned already Leon Brittan's and the Ibero Summit. I want to mention what has happened on the private sector side - the "best business practices." At a conference in Chicago called the TransAtlantic Business Dialogue (TABD) Conference, the first of which was held last November in Seville and the one just a couple of weeks ago was held in Chicago with about 75 U.S. and European chief executives. They dealt in their communique and in the final statements by the European and American co-chairs, Mr. De Bree, a Dutch businessman (DSM Energy) and Alex Trotman the CEO of Ford, and they addressed this very difficult issue of Helms-Burton and also the issue



of the D'Amato legislation. What they said was a very strong condemnation of the legislation, again, not unexpected. What was important is, they also reflected agreement for the business community on the need for a common effort by the U.S. and the European Union to support democracy in Cuba. For example, in his closing remarks, Simon De Bree speaking for the European Business Community stated, "... in the Chicago Declaration (that's the communique), we call also on companies doing business internationally to follow internationally accepted principles and best business practices, such as providing non-discriminatory employment, safe places to work, and an effort consistent with applicable law to directly hire and pay workers in Cuba and elsewhere." He continued, "I want to underline this and add that we fully support the objectives of promoting democracy in Cuba. Although there are differences in approach between the U.S. and the European Union, especially relating to Cuba, our goal is the same." And Alex Trotman the CEO of Ford, speaking for the American business community said, "We fully support the U.S. policy of nearly 40 years of encouraging Cuba to move towards democracy." He added, "that the recommended practices for companies doing business in Cuba are a good place to start." The TABD by recommending that companies doing business in Cuba bring with them the best business practices they can employ elsewhere, will both expedite the transition to democracy in Cuba and help reduce trans-Atlantic tension.

So, in short, progress is being made. More progress is necessary and that is the reason why I am going to Ireland later this afternoon. I'll be glad to take your questions. I appreciate very much your providing me this forum.

### **QUESTIONS AND ANSWERS**

***Q. A number of our allies have passed so-called blocking legislation. How serious of a threat is this?***

A. At the end of October, the European Union passed blocking legislation. Canada had done so earlier. The essence of this blocking legislation is that it empowers the courts in Europe and in Canada to have jurisdiction to permit any European or Canadian company which must pay damages under Title III of Helms-Burton to in turn be able to countersue the U.S. company in their courts to get the money back. Kevin Sullivan, who is here from the Office of Cuban Affairs, he and his Office and the Legal Advisors Office are now in the process of analyzing the implications of that. From their perspective, they have intended to make this a complete block. We have certainly heard from many of our own companies that they're concerned that they'll be caught between conflicting legal obligations. The State Department and the Legal Advisors Office will be looking at exactly what the implications of that are. But, it is certainly serious and nothing to be taken lightly.

***Q. Would you comment on Castro's meeting with the Pope and how do you justify the contradiction between U.S.-China policy and U.S.-Cuba policy?***

A. That's a two part question. Let me answer both parts, first, with respect to Castro and the Pope. On my last trip to Europe I went to Rome. I met with both Italian officials and with the Deputy Foreign Minister of the Holy See. The Foreign Minister was unavailable because he was in Cuba at that time arranging the very meeting that has just transpired. And, I said to him what I would say to you, which is: obviously, the Holy See makes its own decisions. It has to do what is best for it. We understand the substantial interests that the Catholic Church has in Cuba and seeing that those interests are protected as much as possible. Quite frankly, the

Caritas organization of the Catholic Church is the most effective independent organization in Cuba. And yet, they are constantly harassed; they have difficulty getting materiel and equipment; and so, we appreciate the need for this. What I said, however, was important that the Holy See speak out in favor of a greater opportunity for worship, a greater opportunity for Caritas and the independent sector to function, a greater opportunity for the Cuban workers to have their human rights and worker rights observed, a greater opportunity for democratization so that the Church cannot be misinterpreted or used by others for propaganda value. I do hope and trust that balanced message will occur; but obviously, it is up to the Holy See to make that decision.

Now, the second part of your question is essentially the distinction between our policy on Cuba, which can be characterized as trying to isolate for 35 years the Castro regime, and the one with China, which can be characterized as constructive engagement. I would say to you that there are essentially about a billion differences between the two countries. That is to say, that any effort to isolate China, which has a quarter of the world's population, one of the largest economies, would be self-defeating; would be a very fruitless effort, punishing ourselves and our own companies, and that we believe that the best policy is engagement, while continuing to stress the human rights deficit there as we did only a couple of weeks ago with the arrest and sentencing of a pro-democracy advocate there. In addition, China, unlike Cuba, is not 90 miles from our shore. It's not part of the Hemisphere in which we've always had a very special interest. China, unlike Cuba, has not confiscated U.S. property without compensation and then given that property to foreign companies to further profit without any compensation to U.S. companies. That's not the situation that exists in China. So, the situation is very different and one has to take these one at a time rather than trying to apply a blanket approach to the world.

***Q. Is there any indication that individual companies investing in Cuba are willing to adopt this best practices pledge? If so, who are they and what kind of reception would that get from the Cuban government and is there any mechanism now being set up to track those companies who make that pledge?***

A. We are, when I again make my swings through these different countries, meeting with individual large businesses as well as business associations in Sweden, Denmark, and elsewhere. We hope that they will likewise adopt the kinds of principles that the Trans-Atlantic Community - the Business Dialogue Community, did which will then have a greater impact on their own members. To us, the best mechanism for that is in essence country-by-country trade associations. In trying to meet with every individual company is physically impossible. But, I think that can have a significant impact and interestingly even in countries like Mexico which has been perhaps the most resistant to what we have been proposing. I found the private sector quite interested in these kinds of business principles recognizing that they did have a certain social obligation to improve the rights of the Cuban workers. So, there's no sort of perfect enforcement mechanism. But I think the combination of the Trans-Atlantic Business Dialogue which is supported by hundreds and hundreds of companies and hopefully statements of support we will get from the individual trade associations in the countries will be an effective mechanism.

***Q. How would you respond to the statement from the Spanish government in taking a harder line towards business practices in Cuba?***

A. Long before Helms-Burton was a matter of law, those people, including President Aznar, who was then running for office, made it clear that there would be a substantial change in Spanish policy toward Cuba if, in fact, he was elected. He has done just that, quite independent

of anything we have suggested. He's made very important speeches, in Mexico earlier this year and then in Santiago, as I've mentioned. We think those are welcome. To the extent that he is urging his own business community to take firm actions to support worker rights, we think that's a very, very positive development. I would like to say likewise, in answer to your question to the extent that government leaders in these countries take that kind of position, it will obviously have an effect on the business community. Spain is also important because Spain is viewed, and I know that from my two-and-a-half years as Ambassador to the European Union, as having a special interest in Latin American and Cuban affairs within the European Union for obvious linguistic and historical and cultural reasons. So, having the Spanish government take this kind of independent position, not because the U.S. asked for it, but because they have done it on their own and it's consistent with what they ran on, has a very real impact of changing the tone of the debate within the rest of Europe.

***Q. An accepted business practice of long standing is the settlement of disputes by arbitration. Cuba has such a law. It has an established arbitration commission. There is in the Western Hemisphere a system for international arbitration. Are you sympathetic to the idea of working out some relationship between the established system in Cuba and the Hemispheric system - a good business practice leading to the establishment and strengthening of democracy?***

A. One of the issues with respect to arbitration has been the question of compensation for confiscated properties. That has long been complicated by the insistence of the Cuban government offsetting any compensation demands with the costs of the embargo. They are two completely separate issues because arbitration, as you indicated, is something an individual company or person could take advantage of, whereas the embargo is a broader issue not affecting those companies at all. And one of the issues we are looking at is the question of whether this arbitration mechanism is something that is viable or whether the Cuban government will continue to take positions which make it a non-starter. But it's a good question. It is something that we intend to begin to look at.

***Q. Is "best business practices," which is supposed to be voluntary, company by company, on an individual basis, going to be enough? We're less than two months away from the decision that President Clinton has to make as to whether or not he's seeing "concrete measures" put into place? What you're essentially talking about is "progress in words."***

A. No, not at all. First of all, these kinds of words are themselves very important because they indicate a shift in attitude and elevation of the issue. How does one promote democracy? You do it by encouragement. There are specific actions and I've mentioned many of those. We believe that we need to have additional steps and additional measures. What I've indicated is a good start. It's a foundation to build on. But we're hopeful over the next couple of months of having more that we can add on to. With respect to the voluntary nature of the business practices, of course its voluntary. The Sullivan Principles in South Africa which are not dissimilar from what we're talking about were voluntary. But they had a real impact because companies decided to abide by them. Companies make it very clear, and we've made it very clear. No one wants to legislate this. That is not a desirable thing from their standpoint; it would be counterproductive. So, these kinds of efforts are making progress. In this case, words have real meaning; they send a real message. But, there are additional measures which we're hoping to achieve. I've mentioned some of them and we hope that those will be forthcoming over the next several months.

I can only take one final question as I have an appointment at 2 pm.

**Q.** *I'm with the European Commission. I'd like to make two comments. First, you mentioned the speech Sir Leon Brittan gave on November 7th, which is an important speech where he talked about finding common ground between Europe and the U.S. In addition to that, he tried to correct the view that Europe romanticizes Castro and pointed out, that we have taken quite a significant number of measures in the past - independent of Helms-Burton, in fact, pre-dating Helms-Burton, to show some of the concerns about the lack of human rights and democracy in Cuba. My second comment, we would basically agree this is an important policy issue. But rather than saying that the EU is pursuing this in the wrong forum, I think we would turn that around and say we are using the appropriate forum and that the U.S. is using the wrong instrument, namely a trade instrument, to achieve a foreign policy objective.*

**A.** Well, with respect to your second point, the question is, having done the blocking legislation, what does the WTO action add except the potential to weaken the organization. In terms of any possible recovery, we will use every defense at our disposal, if we're forced to do so, in the WTO and it is in no one's interest to push that process to that point. With respect to Sir Leon's speech, it was not only timely but it was a remarkable speech in indicating the attitude of the European Union towards democracy in Cuba and indicating exactly what I mentioned before we were trying to achieve and that is elevating this issue so that it's not number 120 on the agenda and never gets mentioned but that it's a regular part of the European Union's agenda so that when they have meetings, when they pass resolutions, this can be done. I'll give you another example of what we mean. At the end of October the European Commission announced a 7.5 million dollar humanitarian aid program for Cuba in light of Hurricane Lilly but added two very, very strong paragraphs at the end, decrying a lack of human rights and democracy in Cuba and indicating that a change there was going to be necessary before any more concrete cooperation efforts could be taken. *That's very specific. It's very concrete. And it's very welcome.* So, I think we're moving in the right direction. But we have a lot more still to do and I'm sorry I can't take any more questions but I'm already late for my 2 o'clock appointment.

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# U.S. \* CUBA Policy Report

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Ralph J. Galliano, Editor

## EIZENSTAT PAVES THE WAY FOR PRESIDENT CLINTON TO SUSPEND RIGHT-OF-ACTION UNDER TITLE III OF HELMS-BURTON

**WASHINGTON** -- If one accepts the basis upon which President Clinton suspended the right-of-action last July 16th, to have "our allies and friends...join us in taking *concrete steps to promote democracy in Cuba*," then the substantial progress made by Cuba envoy and Under Secretary of Commerce for International Trade, Stuart Eizenstat, could warrant an additional suspension on January 16th of the right-of-action under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996. On the other hand, if one accepts House International Relations Committee Chairman Ben Gilman's admonition to President Clinton in his letter of July 11, 1996 where he stated, "Based on a faithful reading of the unambiguous Congressional intent behind this law, Congress consciously provided very narrow authority for deciding whether to suspend Title III," suspension is unwarranted. Gilman called the Statement of Managers filed with the conference report on H.R. 927 "the primary source for determining legislative intent" whereby "the President could not in good faith determine that suspension of the right-of-action is either 'necessary to the national interests of the United States' or 'will expedite a transition to democracy in Cuba'...inasmuch as suspension would remove a significant deterrent to foreign investment in Cuba, thereby helping prolong Castro's grip on power."

**CONCRETE AND SPECIFIC MEASURES** -- When President Clinton appointed Eizenstat on August 16th to serve as Special Representative of the President and Secretary of State for the Promotion of Democracy in Cuba, he described Eizenstat's mission as engaging our allies over the next six months on *concrete measures* to advance democracy in Cuba." On September 11, 1996, Eizenstat in Bonn, Germany said, "The United States seeks multilateral cooperation leading to *concrete and specific measures* to promote democracy in Cuba." As *concrete and specific measures*, Eizenstat has cited: the human rights vote in the UN General Assembly (62 to 25 with 84 abstentions); Vice President of the European Commission (EC), Sir Leon Brittan's November 7th speech in New York "calling on the Europeans and the U.S. to find common ground and to work together for the promotion of democracy in Cuba and the expansion of human rights;" the presidents at the Ibero-American Summit in Santiago, Chile calling for "real democracy in Cuba;" and the Trans-Atlantic Business Dialogue (TABD) Conference which issued its Chicago Declaration calling for "best business practices." In particular, Eizenstat refers to the EC's October statement criticizing the lack of human rights and democracy in Cuba while calling for change when it announced its \$7.5 million relief package in the aftermath of Hurricane Lilly. In the aggregate, Eizenstat believes these so-called *concrete and specific measures* are sufficient to continue a presidential suspension.

**PASSAGE OF EUROPEAN UNION'S INITIATIVE** -- Passage of the "Common Position" or the initiative of the European Union (see p.3) appears to have had its genesis in Eizenstat's private meetings held in the various salons of the European capitals following his

appointment as special envoy for Cuba. In particular, the Cuba proposal made by Spanish President Aznar's newly elected right-of-center government to the European Union appears to reflect Eizenstat's agenda presented last September during his whirlwind tour through Europe. According to the November 17, 1996 Sunday edition of the Spanish newspaper *EL PAIS*, in return for this multilateral initiative Eizenstat "literally promised" that President Clinton would suspend the right-of-action for another six months. President Clinton's decision must be made no later than January 16, 1997. *EL PAIS* claims it "has verified this through diplomatic sources." The Spanish newspaper further claims it "has had access" to the "details" of Eizenstat's proposals made to Spanish government officials and business leaders. The newspaper reports that with the exception of four specific items, the Spanish proposal submitted to the European Union and later watered down, was identical to Eizenstat's agenda items. *EL PAIS* listed the four exceptions as: the demand for Cuba to promote private property; the denial of European subsidies to Cuba; the denial of European nuclear cooperation with Cuba; and, the adoption by Europeans of a code of business conduct. Eizenstat's much touted "best business practices" rejected by the EU as reflected by the text of its initiative, was outlined in the communique issued by the EU's TransAtlantic Business Dialogue (TABD) annual conference called the Chicago Declaration. The TABD is comprised of about 100 of America's and Europe's top business executives. In his November 20th Washington speech to AmCham Cuba, Eizenstat stated without equivocation, "The TABD by recommending that companies doing business in Cuba bring with them the *best business practices* they can employ elsewhere, will both expedite the transition to democracy in Cuba and help reduce trans-Atlantic tensions."

**RESPONSE TO EU INITIATIVE** -- State Department spokesman Nicholas Burns issued a statement on December 2nd saying, "We welcome this important change from words to action by the European Union. This new common position clearly demonstrates the EU's commitment to work in a more active, coordinated, and sustained fashion toward the common goal of promoting a peaceful democratic transition in Cuba." An unnamed State Department official was reported by *The Wall Street Journal* on December 2nd as describing the EU action on Cuba as "a breakthrough in U.S.-EU relations." On December 4th, *The New York Times* reported a European diplomat as saying the EU initiative did not reflect a change in Europe's relationship with Cuba.

**DETERRING FOREIGN INVESTMENT IN CUBA** -- Of greater significance is the fact that the neither the EU nor the TABD adopted a demand for Cuba to promote private property -- the very essence of the suspension provision contained in Title III of Helms-Burton. While calling for human rights and freedom of association in Cuba, *The Miami Herald's* December 4th editorial "Europe gets tough on Castro," contrasts markedly with the present reality of European investment in Cuba including numerous ongoing trade missions. The EU's initiative while failing to address the issue of private property and *best business practices* leaves the back door to European investment in Cuba wide open adding credence to Chairman Gilman's earlier admonition to President Clinton that a "suspension would remove a significant deterrent to foreign investment in Cuba thereby helping to prolong Castro's grip on power."

**CONGRESSIONAL CHALLENGE EXPECTED** -- Inasmuch as Eizenstat's efforts, encouraging the EU to help to promote democracy in Cuba, are commendable, a special Cuba envoy is not authorized under Title III and the "*concrete and specific measures*" set forth by Clinton and Eizenstat never appeared in the legislative history nor is it a part of the suspension criteria. Eizenstat's end results fail to come within the purview of the suspension requirements of Title III of Helms-Burton. The Statement of Managers filed with the conference report on H.R. 927 referred to by Gilman does not contain either. Accordingly, Congress is expected to challenge the president's suspension.



## EU'S COMMON POSITION ON CUBA

EUROPEAN UNION  
THE COUNCIL

Brussels, 29 November 1996  
12161/96

COMMON POSITION of  
December 2, 1996

THE COUNCIL OF THE EUROPEAN UNION, Having regard to the [Maastricht] Treaty on the European Union and, in particular, Article J.2 thereof, HAS DEFINED THE FOLLOWING COMMON POSITION:

1. The objective of the European Union in its relations with Cuba is to encourage a process of transition to pluralist democracy and respect for human rights and fundamental freedoms, as well as a sustainable recovery and improvement in the living standards of the Cuban people. A transition is most likely to be peaceful if the present regime were itself to initiate or permit such a process. It is not European Union policy to try to bring about change by coercive measures with the effect of increasing the economic hardship of the Cuban people.
  2. The European Union acknowledges the tentative economic opening undertaken in Cuba to date. It is its firm wish to be Cuba's partner in the progressive and irreversible opening of the Cuban economy. The European Union considers that full cooperation with Cuba will depend upon improvements in human rights and political freedom, as indicated by the European Council in Florence.
  3. In order to facilitate peaceful change in Cuba, the European Union:
    - (a) will intensify the present dialogue with the Cuban authorities and with all sectors of Cuban society in order to promote respect for human rights and real progress towards pluralist democracy;
    - (b) will seek out opportunities -- even more actively than heretofore -- to remind the Cuban authorities, both publicly and privately, of fundamental responsibilities regarding human rights, in particular freedom of speech and association;
    - (c) will encourage the reform of internal legislation concerning political and civil rights, including the Cuban criminal code, and, consequently, the abolition of all political offenses, the release of all political prisoners and the ending of the harassment and punishment of dissidents;
    - (d) will evaluate developments in Cuban internal and foreign policies according to the same standards that apply to European Union relations with other countries, in particular the ratification and observance of international human rights conventions;
    - (e) will remain willing in the meantime, through the Member States, to provide ad hoc humanitarian aid, subject to prior agreement regarding distribution; currently applicable measures to ensure distribution through non-governmental organizations, the churches and international organizations will be maintained and, where appropriate reinforced. It is noted that the Commission is proceeding on the same basis;
    - (f) will remain willing, through the Member States, also to carry out focused economic cooperation actions in support of the economic opening being implemented. It is noted that the Commission is proceeding on the same basis.
  4. As the Cuban authorities make progress towards democracy, the European Union will lend its support to that process and examine the appropriate use of the means at its disposal for that purpose, including:
    - the intensification of a constructive, result-oriented political dialogue between the European Union and Cuba,
    - the intensification of cooperation and, in particular, economic cooperation,
    - the deepening of the dialogue with the Cuban authorities, through the appropriate instances in order to explore further the possibilities for future negotiation of a Cooperation Agreement with Cuba, on the basis of the relevant conclusions of the European Councils in Madrid and Florence.
  5. The implementation of this Common Position will be monitored by the Council. An evaluation of this Common Position will be undertaken after six months.
  6. This Common Position shall take effect on 2 December 1996.
  7. This Common Position shall be published in the Official Journal.
- Done at Brussels, For the Council, The President

## HELMS-BURTON UPDATE

**MISCELLANEOUS COURT FEES FOR CASES BROUGHT UNDER HELMS-BURTON ACT** -- The Administrative Office of the United States Courts issued an informational memorandum to judges and clerks dated November 12, 1996 regarding the miscellaneous fees for cases brought under Helms-Burton in accordance with Section 302(i) of the Act which states that "The fee should be established at a level sufficient to recover the costs to the courts of actions brought under this section." Accordingly, the Judicial Conference approved a miscellaneous fee of \$4,180 in addition to the fee for filing a civil action of \$120 for a total fee of \$4,300. **CIENFUEGOS NUCLEAR PLANT REPORT** -- President Clinton is required to submit to Congress a report detailing progress toward withdrawal of personnel of any independent state of the former Soviet Union from the nuclear facility in Cienfuegos, Cuba. This report is due no later than 90 days after the date of enactment of Helms-Burton. This Section 106(a) report was to be filed on June 10, 1996. **LOURDES INTELLIGENCE FACILITY REPORT** -- The president is authorized to withhold assistance to independent states of the former Soviet Union in an amount equal to their payments for use of the Lourdes intelligence facility in Cuba. A waiver requires the president to certify it is important to the U.S. national security and Russia is not sharing intelligence with Cuba. Upon certification, the president is required to submit a report to Congress describing the intelligence activities of Russia at Lourdes including the extent of payments and credits. This report may be submitted in classified form. President Clinton has not complied with Section 106(d) of Helms-Burton. **PLAN OF ASSISTANCE FOR CUBAN PEOPLE** -- The president is required to transmit to Congress a detailed report describing the plan providing economic assistance to Cuba at such time as he determines that a transition or a democratically elected government in Cuba is in power. This Section 202(g) report is required to be transmitted to Congress no later than 180 days after the date of enactment of the Helms-Burton Act or September 8, 1996. This report has not been filed.

## CUBA'S NATIONAL ASSEMBLY ATTEMPTS TO BLOCK HELMS-BURTON

In an attempt to block the Helms-Burton Act, Cuba's parliament, headed by the indomitable Ricardo Alarcon, president of the National Assembly, passed a counter-measure called the Law of Re-affirmation of Cuban Dignity and Sovereignty. Alarcon, in presenting the new law, said its aim was to make Helms-Burton "illegal, impossible to apply and without any legal value." The law declares "null and void" and rejects any individual or corporate claims made under Helms-Burton. Like blocking legislation from Canada, Mexico and EU regulations, the Cuban law attempts to prevent any cooperation with U.S. litigation under Helms-Burton. Cuba declares that any Americans who make claims under Helms-Burton will be exempted from any future settlement between the Cuban government and the United States. The document expresses a willingness for a country-to-country settlement providing compensation as opposed to restitution to Americans whose property was confiscated by the Castro regime. An additional provision sets up commissions for Cubans to file claims against the U.S. for damages and injuries resulting from the U.S. embargo. (TWT, "Cuba plans to counter Helms-Burton curbs," 12/23/96, p.A15; FT, "Havana's assault on U.S. sanctions law," 12/27/96, p.4).

## AMERICAN NEWS BUREAUS IN CUBA

Two days after the re-election of President Clinton on Thursday, November 7th the Cuban government announced its decision to approve the opening of a news bureau in Havana by CNN the Atlanta based cable and satellite worldwide news network. CNN, the Cable News Network, which is derisively referred to as the "Castro News Network" by its detractors, has earned this sobriquet in part because of CNN founder Ted Turner's warm relationship with Fidel Castro as well as the fawning broadcasts from Cuba including Bernard Shaw's hour interview with the Cuban dictator (10/22/95) and CNN's "Moneyline" broadcast from Havana over an entire week (5/29/95-6/2/95) last year. CNN has since merged with Time Warner Inc.

Primary among the requirements necessary for the president to "establish and implement an exchange of news bureaus between the United States and Cuba" as specified by Congress under the Helms-Burton Act is the condition that "the exchange is fully reciprocal." (§ 114, 110 Stat. 803, 22 USC 6044). Fully reciprocal would take into account the freedom of movement by journalists of "United States-based news organizations, including Radio Marti and Television Marti" which the Castro government opposes. Under Helms-Burton, Cuban government news bureaus such as Prensa Latina would also be permitted to operate from the United States. This section of Helms-Burton contains a provision on "Assurance Against Espionage." In order for this section of Helms-Burton to be implemented, the president through the Treasury Department's Office of Foreign Assets Control must grant its approval by issuing a "specific license" for CNN to open its office in Havana while only a "general license" would be required for journalists to visit Cuba. Congressman Ben Gilman, Chairman of the House International Relations Committee and Representatives Ileana Ros-Lehtinen and Lincoln Diaz-Balart stress the "fully reciprocal" news bureau provision of Helms-Burton in the letter reprinted below.

## CONGRESSIONAL LETTER

The Honorable Warren Christopher  
Secretary of State  
U.S. Department of State  
2201 C Street, N.W.  
Washington, D.C. 20520

November 20, 1996

Dear Secretary Christopher:

We urge the Administration to require that in considering the proposal by the Cable News Network (CNN) to establish a news bureau in Cuba, the Castro regime comply with all the requirements spelled out in Section 114 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act regarding the establishment of news bureaus on the island.

These requirements include: authorization for Radio and TV Marti to establish news bureaus in Cuba, full, unrestricted access throughout Cuba for accredited journalists regularly employed by United States news organizations, and assurances by the Castro regime not to interfere with the broadcast signal of the American news organizations or censor publications of the U.S. based news organizations.

By following these guidelines which reflect the intent of Congress, the United States will help to ensure that the establishment of news bureaus would break the information monopoly that the Cuban regime uses as a repressive tactic against the Cuban people. Allowing exclusive access to the island to news organizations hand-picked by the Castro regime would seriously compromise the objectivity of reporting from the island.

From Castro's long history of suppressing the free press on the island, there is vast evidence to suggest that permitting only American news bureaus of organizations selected by the regime would not serve the goal of helping the Cuban people have access to free, objective information nor getting an objective picture of today's Cuba to the world at large. Under no circumstances should we allow Castro to choose those American news organizations he wishes to broadcast from Cuba, while excluding others which he considers detrimental to the regime.

We urge you to respect the will of Congress and the spirit of the Libertad Act which you signed in March.

Sincerely,

Benjamin A. Gilman  
Member of Congress

Ileana Ros-Lehtinen  
Member of Congress

Lincoln Diaz-Balart  
Member of Congress

## FURTHER NORMALIZATION OF THE IMMIGRATION PROCESS

In its first bilateral migration talks since the Cuban military shot down two Brothers to the Rescue planes on February 24th, the Clinton administration convened its fifth in a series of meetings stemming from the September 1994 and May 1995 immigration agreements (USCPR Vol.2, No.3, p.3) between the two countries which was described at the time as "a unilateral concession" by Elliot Abrams a former assistant secretary of state for interAmerican affairs. The U.S. delegation of twelve was headed by Assistant Deputy Secretary of State John Hamilton while the Cuban delegation was headed by veteran hardline negotiator Ricardo Alarcon, president of the Cuban National Assembly, who in the wake of the May 1995 agreement described it as "normaliz[ing] relations in one area." Alarcon, in their meetings of December 4th and 5th, said it was a U.S. suggestion, not Cuba's, to extend repatriation of Cuban refugees beyond those interdicted at sea to include any reaching U.S. shores retroactive to May 1995. The White House, however, states it "does not contemplate the repatriation of Cuban nationals who are presently within our borders." To stem the flow of the August 1994 rafter crisis, the Clinton administration acceded in its September 9, 1994 accord with the Castro regime to permit a minimum of 20,000 Cuban refugees annually to legally emigrate to the United States thereby categorizing those outside this process as illegal immigrants. In its December 6th announcement, the White House stated that consistent with its "policy throughout the world," it would not "repatriate those determined to be refugees and those who have a valid claim to asylum." The U.S. request for Cuba to permit it to monitor the safety of repatriated Cuban refugees was neither accepted nor rejected by the Cuban government during this round of talks held in Havana. In the letter reprinted below from Congresswoman Ileana Ros-Lehtinen (R-FL) to Michael Kozak, the newly appointed chief of the U.S. Interest Section, she requests reconsideration of prevailing policy. In effect, the Clinton administration's immigration policy toward Cuban refugees renders the purpose of the Cuban Adjustment Act (CAA) of 1966 unnecessary since those who are repatriated are offered the opportunity to be granted visas to enter the U.S. The CAA found its precedent in similar Hungarian refugee legislation following the 1956 uprising against communist rule when nearly 200,000 fled the Soviet attack against Budapest.

## ROS-LEHTINEN LETTER TO KOZAK

Mr. Michael Kozak  
U.S. Interest Section - Havana

November 19, 1996

Enclosed please find letters and supporting documentation from former Cuban political prisoners Gregorio Amador Valdes, Ramon Rey Calzada, Pedro Hernandez Calero, Antonio Santos Perez, Evergico Roberto Penton Ravelo and Paulino Aguilar Perez, who have been denied entry into the United States by the U.S. Interest Section in Havana. I urge you to reconsider the cases of these four men and similar cases of former political prisoners who have been denied visas to the U.S. despite having been political prisoners of the Castro regime.

According to your office, these persons were denied visas because they failed to prove that they continued to be harassed by the regime. I believe this to be a groundless foundation for denial of visa because the mere fact that one was a political prisoner in Castro's gulags means that the individual is being targeted by the regime and monitored by the tyrant's authorities because of his beliefs. Having been arrested and jailed by the regime for one's actions against it would seem to be sufficient grounds to merit admission to the U.S. based on fear of future prosecution.

I am disappointed that the U.S. Interest Section has denied these former political prisoners entry into this great nation when it is clear that their past puts their future well-being in danger.

I would greatly appreciate it if you would reconsider the denial of entry into the United States to these four former political prisoners. Moreover, I encourage you that in the future similar cases of former political prisoners seeking refuge in the U.S. be positively analyzed.

Sincerely,  
Ileana Ros-Lehtinen  
Member of Congress

**SHERITT/VIRIDIAN/AGRIUM:  
THE AMALGAMATION OF SHERITT INC.**

The full transformation of Sherritt Inc. and the shifting of Sherritt's Cuba investments to a new entity is nearly complete. Sherritt Inc. apparently tried to avoid U.S. court jurisdiction and protect its U.S. subsidiary Sherritt Fertilizer Inc. located in Vancouver, Washington from litigation under Title III of Helms-Burton. After Sherritt Inc. changed its name to Viridian Inc. (4/22/96), Agrium Inc., another Canadian based fertilizer producer, agreed to a friendly takeover of Viridian (11/5/96). The merger will take the name of Agrium and will "create one of the largest fully integrated fertilizer concerns in North America," according to The Wall Street Journal. The Agrium-Viridian merger may bear Sherritt liability since shortly after Sherritt Inc. entered into a joint-venture with the Cuban government in December 1994, Alberto Diaz-Masvidal of Consolidated Development Corporation, a certified U.S. claimant, notified (2/21/95) Sherritt's then-chairman and CEO, Ian Delaney, that it "may be subjected to U.S. Court jurisdiction" and to "cease and desist." Instead, Sherritt Inc. continued its operations in Cuba involving confiscated property and spun off its Cuba investments into a wholly owned subsidiary called Sherritt International Corporation (11/24/95) nine months later. In a move sure to attract the attention of the State Department's Helms-Burton Implementation Unit (USCPR Vol.3, No.10, p.4) Sherritt International, the Canadian mining company, issued C\$675 million in convertible debt in the form of 6-percent 10-year convertible unsecured subordinated debentures to finance a major expansion of its Cuba projects reported to include sugar, petroleum refining, real estate and telecommunications. With the principal and interest on the notes from the convertible debt to be paid in the form of its restricted voting shares, Sherritt International investors could be barred from entry into the United States under Title IV of the Helms-Burton Act of 1996 according to the Toronto Globe and Mail's mid November interview of Marc Thiessen spokesman for the Senate Foreign Relations Committee in Washington, D.C. The law's namesake, Senator Jesse Helms, chairs the committee.

**CASE AGAINST SHERITT PROCEEDS**

The civil case, Consolidated Development Corporation v. Sherritt Inc. (No.96-1820), for conversion and conspiracy to defraud against Sherritt Inc., its affiliated companies, the Cuban government and its affiliated companies, proceeds in the U.S. District Court in the Southern District of Florida. Consolidated Development Corporation, a U.S. certified claimant, alleges that Sherritt barter its oil for Cuban nickel and cobalt refining them into a byproduct used in fertilizers which is processed and sold in the United States through a Sherritt subsidiary located in Vancouver, Washington. Prior to hearing the defendant's motions to dismiss, the Court granted the plaintiffs' motions to compel jurisdictional pre-trial depositions now scheduled for the first week of February 1997 in Toronto, Canada. In addition, the plaintiffs have filed a motion to compel the Office of Foreign Assets Control (OFAC) of the U.S. Department of The Treasury to submit withheld documents to the court for in camera review. OFAC withheld documents from production on the basis of governmental privilege. This case was filed in Miami on July 2, 1996 wholly outside of Helms-Burton and is not affected by President Clinton's decision to suspend Title III's right of action.

**INTERNATIONAL BRIEFS**

**OAS FINDS CUBA RESPONSIBLE FOR TUGBOAT SINKING** -- The OAS's InterAmerican Commission for Human Rights found clear evidence the Cuban government was responsible for the sinking of the tugboat 13 de Marzo drowning 41 men, women, and children which helped to spark the 1994 rafter crisis. Although the commission holds no legal powers, it recommended Havana punish the guilty and compensate the survivors. (MH,"OAS assails Cuba over sinking of tug," 11/7/96, p.20A). **ANNUAL IBERO-AMERICAN SUMMIT HELD** -- Presidents of 23 Latin American nations, Spain, and Portugal gathered in Santiago, Chile for their sixth annual summit. The summit concluded with a signed joint Declaration of Vina del Mar which rejected the Helms-Burton Act and issued a consensus view on freedom and democracy. (TWT,"Castro's first visit since 1971 stirs emotions in Chile," 11/9/96, p.A9; NYT,"As Latin Leaders Meet, Castro's Attendance Is Questioned," 11/11/96, p.A3; FT,"US curb on Cuban trade rejected," 11/12/96, p.10). **CUBA TO HOST 1999 SUMMIT** -- Cuba is scheduled to host the ninth annual Ibero-American summit in Havana in 1999 following Venezuela in 1997 and Portugal in 1998. (MH,"Castro rebuffs Latin summit reform pleas," 11/12/96, p.1A). **CUBA'S NICKEL/COBALT PRODUCTION AT RECORD HIGH** -- Nickel/cobalt production is expected to rebound to an all time high of 50,000 tons for 1996 from a low of 23,362 tons in 1994. Closing last year with 43,900 tons, Cuba is reported to have earned over \$300 million from exports in 1995. Sherritt International is expected to produce 24,000 tons from the Moa Bay plant in eastern Cuba. (FT,"Cuban nickel and cobalt production hits record," 11/12/96, p.28). **FOREIGN INVESTMENT SET TO EXPAND** -- South Africa's Gencor mining conglomerate and Australia's Western Mining Company (WMC) are reported separately to be nearing joint-venture agreements with Cuba in Camaguey province and in Holguin province respectively. Cuba maintains one of the worlds largest nickel reserves estimated at 800,000 tons. (FT,"Cuban nickel and cobalt production hits record," 11/12/96, p.28). **UN VOTES TO END EMBARGO** -- For the fifth straight year, the 185 member U.N. General Assembly voted against the U.S. embargo on Cuba 137 to 3 with 25 abstentions. Only Israel and Uzbekistan supported the U.S. Canada, Germany, Haiti, Russia, South Africa and all 15 European Union countries including Britain voted against the U.S. embargo. Among the abstentions were Japan, South Korea and Kuwait. Last year the vote was 117 to 3 with 38 abstentions. (UNGA,"Necessity of Ending the Economic, Commercial, and Financial Embargo Imposed by the United States of America against Cuba," 12 November 1996, GA/9164). **POPE GRANTS CASTRO AUDIENCE** -- Cuban dictator Fidel Castro received a personal audience with Pope John Paul II at the Vatican while in Rome to attend the UN World Food Summit. According to protocol, Castro's private audience was not treated as an official state visit but rather as a VIP audience. The meeting, held in the Pope's private library with Castro sitting across from the pontiff at a plain wooden writing table, was more reminiscent of a face-to-face confessional than a visit by a leading head of state. Castro extended a formal invitation for the Pope to visit Cuba later next year. (MH,"A Historic Meeting In Rome," 11/20/96, p.1A; FT,"Pope agrees to visit Cuba," 11/20/96, p.5). **UN ADOPTS HUMAN RIGHTS RESOLUTION** -- In one of 38 resolutions adopted by the U.N. General Assembly "dealing with a wide range of human rights issues including the situations" in Cuba, it voted 62 to 25 with 84 abstentions and 10 absences for the "Cuban government to release people detained for political activities" and it also called for "cooperation with the Special Rapporteur" on human rights. (UNGAP,"11 Country-Specific Human Rights Texts," 12 December 1996, GA/9201).



**SHORT TAKES**

**DIAZ-BALART CALLS FOR CUBAN POLITICAL PRISONER TO RECEIVE NOBEL PEACE PRIZE** -- South Florida Congressman Lincoln Diaz-Balart (R) called upon the Cuban exile community to promote the nomination of Leonel Morejon Almagro, a 31 year old lawyer being held at the Ariza prison in Cienfuegos, Cuba, for the Nobel Peace Prize. Morejon Almagro is one of the founders of Concilio Cubano the coalition of 140 pro-democracy organizations crushed by the Castro regime just prior to the shootdown of the two Brothers to the Rescue planes killing four crewmen on February 24th. Morejon Almagro is the elected leader of the internal dissident movement on the island. (PR,"Diaz-Balart Calls Meeting to Organize Committee to Promote Nomination of Leonel Morejon Almagro for Nobel Peace Prize," 11/6/96). **CUBAN-AMERICAN MILITARY COUNCIL (CAMCO) FORMED** -- Veteran U.S. military officer and member of the Bay of Pigs Assault Brigade 2506, Erneido Oliva, Jose Miro Torra, president of Brigade 2506, and Andres Garcia, head of the Cuban American Veterans Association have formed the Cuban-American Military Council comprised of Cuban exile "military personnel who have served honorably" in the pre-Castro armed forces, the U.S. armed forces, Brigade 2506, and the Cuban Revolutionary Armed Forces (FAR). CAMCO has an eleven point agenda whose purpose is to assemble a highly qualified military cadre prepared to assist the Cuban people in a transition to democracy. CAMCO expects to be fully organized by early 1997 with joint headquarters in Miami and Washington, D.C. CAMCO calls for "military-to-military contacts and support [for] the efforts of FAR members inside Cuba who wish to break with the dictatorship." (MH,"Back to the front," 11/11/96, p.1B). **CUBAN-AMERICANS FREE TO TRAVEL TO CUBA FOR THE HOLIDAYS** -- Despite President Clinton's announcement to curtail direct flights from the U.S. to Cuba following the February 24th shootdown, Cuban-Americans who fly through a third country and receive a visa for \$100 from the Cuban Interest Section in Washington do so at the rate of 100 per day on charter flights run by ABC Charters, Wilson International and C&T Charters out of Miami. (MH,"Flights to Cuba cost more this holiday season," 11/14/96, p.6B). **ANNUAL INDEX OF ECONOMIC FREEDOM RATES CUBA AT BOTTOM OF LIST** -- Tracking international progress toward a freer economy, the third annual index of economic freedom rates Cuba 148 out of 150 just ahead of Laos and North Korea. The index evaluates 10 key areas including trade policy, taxation, government intervention, monetary policy, capital flows and foreign investment, banking policy, wage and price controls, property rights, regulation, and black market activity. Hong Kong rated first and the U.S. sixth. Among those nations categorized as "Mostly Free" were Japan, Canada, Spain, and Israel while South Africa, Mexico, Nicaragua, Russia and China were categorized as "Mostly Unfree." Haiti, Vietnam, Iran, and Cuba were considered "Repressed." Created by the Heritage Foundation, the 1997 index was copublished by the Heritage Foundation and *The Wall Street Journal*. (WSJ,"Freedom and Growth," 12/16/96, p.A16). **ANNUAL SURVEY OF CIVIL LIBERTIES AND HUMAN RIGHTS RATES CUBA AMONG WORST OFFENDERS** -- Freedom House's 1996 annual survey rates 191 countries for civil liberties and human rights with four nations rated as the worst of the worst including Iraq, North Korea, Cuba and Sudan. Of the 5.77 billion people in the world, 21.7 percent now live in 79 "free" countries and 39.2 percent live in 59 "partly free" countries according to the report. (TWT,"Democracy advancing, but not in straight line," 12/23/96, p.A14).

## NOTABLE QUOTES

"On behalf of all Canadians, I wished him all the best in his second term. We did not speak for very long but I did have a chance to talk about some of the irritating issues that should be monitored. I did mention Helms-Burton..." Prime Minister Jean Chretien of Canada congratulates President Clinton on his reelection. (TS,"Chretien pushed Clinton to settle Helms-Burton row," 11/7/96, p.A27).

"Our determination to bring freedom and democracy to Cuba is every bit as strong as Cuba's. Now is the time for Europe and the US to begin searching for common ground, so that together we can bring Cuba into the international community, where it belongs." Sir Leon Brittan, EU trade commissioner, statement before the European American Chamber of Commerce in New York indicates a willingness to join Washington in pressuring Cuba on human rights. (FT,"Brittan calls for end to Cuba row," 11/7/96, p.10).

"We consider this a very constructive statement, and an important beginning in illuminating the European Union's own independent position favoring democracy in Cuba. This is the kind of positive step upon which future progress can be made to expedite the transition to democracy in Cuba." President Clinton's special envoy to Cuba, Stuart Eizenstat, comments on the EU's Leon Brittan's New York speech before the European American Chamber of Commerce indicating a willingness to join Washington in pressuring Cuba on human rights. (MH,"Bid to get EU to support Cuban democracy advances," 11/8/96, p.13A).

"The convergence of the Helms-Burton confrontation with the Vatican's opening to Castro poses the most serious challenge to U.S.-Cuban policy since the Eisenhower and Kennedy administrations." Biographer Tad Szulc has written extensively about Fidel Castro and Pope John Paul II. (WP,"Castro and the Pope," 11/10/96,p.C7).

"No doubt, there is a contradiction on inviting Fidel Castro to a meeting where the main point is democracy. I can't justify any dictatorship ... [b]ut democracy is contagious, and maybe Fidel will catch it." Carlos Menem, president of Argentina, comments on Castro's presence at the sixth Ibero-American summit held in Santiago, Chile. (NYT,"As Latin Leaders Meet, Castro's Attendance Is Questioned," 11/11/96, p.A3).

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