



Cuban Studies Institute

April 21, 2023

The Honorable Debbie Wasserman Schultz
United States Congress
270 Cannon Office Building
Washington, D.C. 20515

The Honorable Darrell Issa
United States Congress
2108 Rayburn House Office Building
Washington, D.C. 20515

Dear Debbie and Congressman Issa:

When the Castro regime took power in Cuba in 1959, the regime engaged in a program of wholesale confiscation, without payment, of businesses and property in Cuba. The Cuban government also purported to extend the effects of its confiscation to property, such as trademarks, that the Cuban victims owned in the U.S. and other countries. The Cuban regime took actions to seize control of U.S. related assets including lying in wait for renewal of U.S. trademark registrations to register those trademarks in the name of a Cuban government entity based on its ownership of the confiscated business and trademark in Cuba.

To protect U.S. trademarks and their legitimate owners from the effects of the confiscations decreed by the Cuban government, the U.S. Congress enacted Section 211 of the Omnibus Appropriations bill in 1998.

After passage of the law, companies who were in partnership with the Cuban government utilizing such stolen trademarks were able to convince the French government and the European Union to challenge the law at the World Trade Organization (WTO). The U.S. won 13 out of 14 claims brought by the EU against the law. The WTO held that Section 211 is entirely consistent with WTO principles except that it was inconsistent with the national-treatment, most-favored-nation principles under the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS) because Section 211 on its face applies only to Cuban nationals and their successors. Since 2002, Section 211 has been out of compliance with the WTO while remaining in effect.

H.R. 1505 makes it clear that Section 211 applies to all parties claiming U.S. rights in confiscated Cuban trademarks, regardless of nationality. Such simply crafted technical correction will satisfy the WTO ruling and prevent the EU from applying trade sanctions against the United States. The USTR has stated that this legislation would bring the United States into compliance with the decision of the 2002 WTO Appellate Decision.

- This legislation will: (1) maintain protection in the U.S. for the true owners of confiscated Cuban trademarks; (2) apply to all people, regardless of nationality; (3) clarify that trademarks and trade names confiscated by the Cuban government will not be recognized or enforced in the United States when the person asserting rights is someone who knew or had reason to know that they were used in connection with a business or assets that were confiscated.

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- Once revised, Section 211 is consistent with all our international treaty obligations including the Inter-American Convention on Trademarks. Article 3 of the Inter-American Convention expressly permits non-recognition of a trademark when such recognition would be contrary to the public order or public policy of the state in which recognition is sought.

Property rights must be respected, and it is wrong for governments to take property from individuals and companies, whether nationals or foreigners, without payment of prompt, adequate and effective compensation. These bills uphold the firmly established principle of our law and public policy that foreign confiscatory measures must never be given effect to property situated in the United States.

I applaud these efforts to strengthen Section 211 and to introduce H.R. 1505 that reinforce the principles of property protection under U.S. law. The Castro regime should not be allowed to profit from the effects of illegal confiscations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jaime Suchlicki".

Jaime Suchlicki
Director/Emeritus Professor