UNITED STATES – SECTION 211
OMNIBUS APPROPRIATIONS ACT
(PUB. LAW 105-277 (1998))

(WT/DS176)

Rebuttal Submission of the European Communities and their Member States

Geneva, 15 February 2001

TABLE OF CONTENT

1. INTRODUCTION 3

2. CONSEQUENCES OF FOREIGN EXPROPRIATIONS ON DOMESTIC ASSETS 3

2.1. Public international law 3

2.2. US Jurisprudence and Practice 5

2.3. Other States' practice 6

3. SCOPE AND OPERATION OF SEC. 211 OAA 6

3.1. Scope of Sec. 211 OAA 7

3.2. Operation of Sec. 211 OAA 8

4. INCOMPATIBILITIES OF SEC. 211 OAA WITH THE US OBLIGATIONS STEMMING FROM TRIPS AND THE PARIS CONVENTION 12

4.1. Sec. 211(a)(1) OAA 12

4.2. Sec. 211(a)(2) and (b) OAA 13

5. CONCLUSION 15

LIST OF EXHIBITS 16

1. INTRODUCTION

1. In light of the extensive number of questions to which the parties have replied recently and in light of the often detailed discussions which took place at the first substantive meeting with the Panel held on 24-25 January 2001, the European Community and their Member States (in the following the EC) will take this opportunity to represent their case in light of the arguments made and highlight the remaining conflictual issues.

2. We will address the following issues:

   - Consequences of foreign expropriations (public international law aspects, US practice, practice of other countries)

   - Scope and effects of Sec. 211 OAA as compared with US jurisprudence and practice concerning foreign expropriations

   - Incompatibilities of Sec. 211 OAA with TRIPs and Paris Convention

3. The US have been arguing continuously that Sec. 211 OAA is a Cuba specific codification of well-established US law and practice aimed at dealing with US assets whose owners were subject to foreign expropriations. They also claim that Sec. 211 OAA is therefore not subject to the US obligations under TRIPs.

4. The EC has already pointed out why Sec. 211 OAA has nothing to do whatsoever with the well established US law and practice in relation to the domestic effects of foreign expropriations. Section 211 OAA concerns exclusively the treatment of US trademarks and tradenames against which the Cuban expropriations can have had no effects, and therefore the customary international law principles on expropriations raised by the US to defend Section 211 OAA are simply not relevant for the purposes of resolving this dispute.

2. CONSEQUENCES OF FOREIGN EXPROPRIATIONS ON DOMESTIC ASSETS

2.1. Public international law

5. Under public international law, the main principle to be recalled with regard to "ownership" is that, as a consequence of the principle of sovereign equality of States, every State has the right to regulate the ownership of property in its own territory.

6. This right includes the right to regulate how to acquire, enjoy, enforce and transfer property. It also includes the right to establish under which conditions the State

may compulsorily take private property, in other words, nationalise, confiscate or expropriate it. A corollary of this principle is that a State is not required to accept another State's expropriation of property on the first State's territory.

7. In light of this principle, the EC has never challenged that the US is entitled not to recognise Cuban expropriations as changing the ownership of US trademarks and tradenames.

8. In light of the same principle, however, the US is not entitled to refuse to recognise a change in ownership in an expropriating State of property that is incontestably under the jurisdiction of the expropriating State (business assets in Cuba) and to draw certain consequences therefrom. As highlighted in our answers to the questions from the Panel, the US assertion is highly dangerous given that, in fact, all trading nations take it for granted, and operate on the basis of the presumption, that ownership of property is regulated by the national legal system where the property is considered to be situated. Questioning this fundamental rule would be a source of great uncertainty and disruption for the normal course of international trade.

9. As highlighted in our replies to the questions from the Panel, some limits as to the rights of a state to regulate the ownership of property in its own territory have been developed under customary international law with regard to the treatment of nationals of other States, i.e. *aliens*. In particular, property rights of *aliens* are at present protected by a customary "international minimum standard" of treatment. On the basis of this standard, an expropriation, to be legitimate under international law has to respect the following requirements: it must be for a public purpose and it must be followed by the payment of prompt, adequate and effective compensation. However, the principles of customary international law on expropriations were not so clear at the beginning of the 1960s when the Cuban expropriations took place.

10. In conclusion, because of the fundamental right of States to regulate property on their own territories, the EC does not consider that the US defence is relevant to the present dispute. Even if the expropriations of property in Cuba following the Cuban revolution were contrary to international law in whole or in part (a question that the US has not addressed), and even if the US had a claim against Cuba in this regard (also a question not addressed by the US), this is simply a claim for compensation on behalf of its nationals that were affected at that time. It is in any event certainly not a right to deprive nationals of WTO Members of the protection they are guaranteed under the WTO Agreement.

11. Furthermore while the US intends to give the impression of a well-established jurisprudence and practice in relation to the recognition of domestic effects to foreign expropriations, the reality is not as homogenous as claimed.

2.2. US Jurisprudence and Practice

12. Apart from the jurisprudence quoted by the US in its First Written Submission (on which the EC has already commented) in which the effects of foreign expropriations on assets located in the US were generally denied by US Courts, the EC would like to draw the Panel's attention to some other instances in which US courts have given effect to foreign expropriations over property located in the US.

13. For example, in *United States v. Pink*,[1] the Supreme Court held that the State of New York must give extraterritorial effect to actions of the Russian Government which confiscated assets of a bank, including a branch office in New York, where the US, by its policy of recognition of the Government of the Soviet Union, agreed to no longer question the validity of such acts. Similarly, in *Anderson v. N.V. Transandine Handelsmaatschappij*,[2] the court held that a Dutch confiscation decree which affected property in the US was valid. Similarly, in *Banco Nacional de Cuba v. Chemical Bank New York Trust Co*.,[3] the court held that US policy would be furthered by allowing Banco Nacional to sue as successor to private banks as the former owners had not sought to intervene nor lodged protests in the twenty years in which the case was pending; and, in *United States v Belmont*,[4] recognising the US had no greater right to money deposited in a New York bank than a Russian corporation, the court held it appropriate to give effect to the Soviet expropriation of the New York account.

14. In other cases, US courts have applied the act of state doctrine. The act of state doctrine states that US courts generally refrain from examining the validity of a taking by a foreign state of property within its own territories.[5] This doctrine is based on the presumption that every sovereign state ought to respect the independence of every other sovereign state, and the courts of one state, therefore, will not sit in judgement on the acts of a sovereign within its own territory.[6] As the act of state doctrine shields the expropriation from the scrutiny of U.S. courts, where the act of state doctrine is applied, the courts, in effect, presume the validity of the expropriation**.**[7]

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1 315 U.S. 203 (1942).

2 289 N.Y. 9 (1942).

3 658 F.2d 903 (2d Cir. 1981).

4 301 U.S. 324 (1937).

5 *See* RESTATEMENT (THIRD) FOREIGN RELATIONS LAW § 443 (1987).

6 *See Underhill v. Hernandez*, 168 U.S. 250 (1897).

7 *See, e.g., Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964).

2.3. Other States' practice

15. In other countries, there exist indeed also a number of final judicial decisions that expressly recognize the ownership rights of a post-expropriation beneficiary and we have referred to a number of such decisions in reply to questions 40-42 from the Panel.

16. Furthermore, as foreshadowed in the presentation at the first meeting with the Panel, the EC submits a complete list of the Havana Club trademark registration situation worldwide.[8]

3. SCOPE AND OPERATION OF SEC. 211 OAA

17. Throughout this Panel procedure, it has been US policy to refrain from replying to precise questions as to the scope, operation and objectives of Sec. 211 OAA. The replies to Question 1 from the Panel give a good illustration of this phenomenon.

18. In the view of the EC the language of Sec. 211 OAA is sufficiently straightforward to reasonably allow an appreciation of its scope and operation. This is supported by the authoritative interpretation given by the most influential Appellate Court in the US in the case referred to repeatedly by both parties.[9]

19. The EC would also like to mention that in line with established rules on the issue of burden of proof, as expressed by the Appellate Body in *India – Patent Protection*[10], the burden to prove that Sec. 211 OAA may mean something else than its plain text is squarely on the US.

20. Furthermore the EC would like to remark that the US in several instances deliberately mix up the question of ownership of trademarks/tradenames in Cuba and issues of ownership to trademarks/tradenames in the US. A good example for this kind of confusion can be found in the US reply to question 21 from the Panel where the US states:

> "Added to this was the fact that, because Cuban trademarks cannot be used in the United States, there was no opportunity for the original owners to bring suit for infringement with respect to the confiscated mark."

Given the principle of territoriality of trademarks (see Art. 6(3) Paris Convention) a Cuban trademark can under no circumstance be used against an infringent in the US.

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[8] Exhibit EC-22.

[9] Exhibit EC-16.

[10] AB-1997-5 paragraph 74

21. The US asserts in its reply to question 21 from the Panel (paragraph 57)

> "For these reasons section 211 did not meaningfully change the legal situation with respect to those trademarks covered by its provisions compared to the situation under the pre-existing law".

The EC would like to refer the Panel to paragraphs 3-7 of its first written submission. The EC would also like to refer again to the Havana Club trademark which, before Sec. 211 OAA entered into force, was duly registered and renewed by the USPTO. These acts can no more be performed since Sec. 211 entered into force.

22. From these more general considerations we would now like to move to the more specific issues. We have already explained in some detail how the three operative parts of Sec. 211 OAA work and what the scope of Sec. 211 OAA englobes. We would limit ourselves here to point out the main features of Sec. 211 OAA in the light of the US replies to questions from the Panel.

3.1. Scope of Sec. 211 OAA

23. To start with the scope of Sec. 211 OAA, the following can be said: this provision applies to all US trademarks or tradenames which are the same or substantially similar to a trademark or tradename used in connection with a business which was confiscated in Cuba.

24. This means that the US trademark/tradename does not have to have any factual or legal link with a trademark/tradename which existed in the US at the moment of the Cuban confiscation. While this is obvious for "similar" trademarks/tradenames which logically can have no link with a confiscated business, this also applies to the "same" trademark. In other words the identity required relates exclusively to the signs or combinations of signs of which the trademark is composed, but not to the trademark as an asset.

25. Furthermore the US trademarks covered by Sec. 211 OAA may concern other classes of products than the classes of products covered by the trademark used in connection with the expropriated business.

26. From the US reply to Question 1(b) from the Panel it would appear that the US agrees that Sec. 211 OAA applies also to situations in which no trademark or tradename has existed in the US, which can be considered the same or substantially similar to a trademark /tradename used in connection with a Cuban business, when the latter was confiscated.

27. The situation of a US trademark, which has been obtained after a previous trademark had been abandoned, has expressly been recognised as being subject to the curtailments operated by Sec. 211 OAA in the judgement of the District Court

referred to earlier.[11] Indeed this Court held that Sec. 211 (b) OAA also applies when the US trademark had been abandoned by its "original" owner under the provisions of US law governing abandonment.

28. In relation to the scope, it can therefore be said that the established US jurisprudence and practice in relation to the recognition of foreign expropriations on domestic assets is strictly limited to such assets which were effectively and legally the object of the confiscation. The target of Sec. 211 OAA are trademarks and tradenames which have never been effectively confiscated, because Cuban expropriations did not have any effects in the US, and have existed in the hands of owners unrelated to the expropriated Cuban business or have only been created in the US after the Cuban revolution.

3.2. Operation of Sec. 211 OAA

29. As to the operation of Sec. 211 (a)(2) and (b) OAA we would like to first reiterate some basic features of the US system of trademark protection.

30. To start with, a distinction has to be made between so-called common law trademarks and registered trademarks. The common law[12] of protection against unfair competition provides for an action to protect unregistered trademarks, service marks, tradenames, designs and tradedress through actual use in commerce as long as they meet certain fundamental requirements for protection which may vary from State to State. Such common-law trademarks are typically territorially limited to the federal State or region where they are used.

31. Registered federal trademarks under the Lanham Act are a completely different creature. A registered federal trademark may or may not be based on a pre-existing common law trademark. It is perfectly possible to obtain a registered trademark without having had any common-law trademark previously.

32. Therefore the ownership of a common-law trademark has to be strictly separated from the ownership of a registered federal trademark. The US has been seeking throughout the proceedings before the Panel to mix up these two matters.

33. However our main focus is, as far as trademarks are concerned, not on common law trademarks but on US federal registered trademarks.

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[11] See exhibit EC-8 at p. 43.

[12] Which is the - not necessarily identical - common law of the federal 50 States and the federal common law.

34. A US federal registered trademark is created by the act of registration. Before registration a registered trademark does not exist and consequently there exists no owner of such right.

35. Before such a registration is granted, the USPTO has to verify that the applicant meets all requirements for trademark registration. One of the elements to be verified is the use or intention to use the signs or combination of signs in commerce for the products concerned. This latter criterion and some other criteria can also be invoked by third parties. Once granted a federal registered trademark becomes "incontestable" after 5 consecutive years of use and can no more be challenged by any contender who asserts prior rights. A similar effect occurs already after 5 years of registration.

36. This mechanism is one of the very reasons for the introduction of Sec. 211 OAA. The "Havana Club" trademark was duly registered in the USPTO in 1976 and had become by 1998, when Sec. 211 OAA was adopted, incontestable. It is insofar also instructive that the USPTO has refused in 1994 and 1995 requests for the registration of a "Havana Club" trademark made by members of the Arechabala family, the former owners of the expropriated Cuban business which used the "Havana Club" trademark.

37. This is confirmed by the information available from the website of the USPTO in relation to the "Havana Club" Trademark[13] which shows that this registration has been subject to several cancellation attempts, all of them having been unsuccessful.

38. As to the operation of Sec. 211 OAA the EC would like to point to a unique feature of Sec. 211 OAA which distinguishes it fundamentally from traditional remedies and defences in trademark law as well as from jurisprudence and practice concerning foreign expropriations.

39. The owner of the confiscated business himself is given under Sec. 211 OAA no cause of action or defence at all. He is not even a party - neither necessary nor permissible - to litigation involving the application of Sec. 211 OAA[14]. Any infringer of a registered trademark can invoke Sec. 211(a)(2) and (b) in an infringement procedure brought by the owner of the registered trademark. The infringer does not need to have the consent or authorisation by the owner of the confiscated business to invoke this defence. The confiscated business may have ceased to exist altogether or the owner may have died without successors or simply disappeared.

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[13] Attached as exhibit EC-21.

[14] In the litigation on the Havana Club trademark and tradename the owner of the confiscated Cuban enterprise had the status of a witness.

40. This clearly demonstrates the punitive character of the operation of Sec. 211 OAA. This provision is exclusively concerned with the discriminatory curtailment of trademarks and tradenames in the hands of certain rightholders, without giving any corresponding right to the owner of the business allegedly aggrieved by the foreign confiscation.

41. These operational features distinguish Sec. 211OAA in a fundamental way from the US jurisprudence on foreign expropriations which is concerned with the allocation of ownership as between several contenders. As the US has rightly pointed out, US law and practice does indeed generally recognize the assets concerned in the hands of the pre-confiscation owner rather than in the hands of the beneficiary of the confiscation. To the contrary, Sec. 211 OAA is only concerned with curtailing the use of an asset by its legal owner, without giving any corresponding benefit to the "original" owner.

42. As to the question of whether a US national (legal or natural person) can be the owner of a tradename or trademark targeted by Sec. 211 OAA, the EC would like to note the evasive character of the reply given by the US to question 12 from the Panel.

43. Given the fact that the trademarks and tradenames targeted by Sec. 211 OAA do not have to be legally traceable to a Cuban owner, the question if OFAC can and has already granted transfer licenses is finally irrelevant, even though the text of the CACR is utterly clear that OFAC has the authority to grant such licenses. The EC would further like to note in relation to decisions of transfer by OFAC, that OFAC is only concerned with transactions in property in which Cuba or a Cuban national has an interest. It is not at all concerned with transactions in property owned by other persons.

44. Such US trademarks or tradenames may have been obtained in the US (with or without previous abandonment by the owner of a previous right) after the Cuban revolution, the rights may be legally traced back to an owner who is no designated national or may have existed in the hands of a US or non-designated national prior to the confiscation of the business in Cuba. The reply given by the US to question 13 from the Panel confirms that persons who are no designated nationals can obtain the registration of a trademark covered by Sec. 211 OAA.

45. For purposes of illustration the EC would like to mention only a few trademarks/tradenames which are owned by US entities and which are the same or substantially the same as trademarks/tradenames used in conjunction with expropriated Cuban business. The Punch and Partàgas trademarks, which were used in conjunction with expropriated Cuban cigar enterprises are held by US companies[15] and the Cohiba trademark which has also been used in conjunction

[15] See Exhibits EC-23 and EC-24

with a Cuban cigar enterprise which was expropriated is also registered for a US company[16].

46. The US has repeatedly tried to excuse the TRIPs inconsistencies of Sec. 211 OAA by referring to the uncertainty of how US courts might interpret this provision.

47. It should be sufficient to recall that US courts are constitutionally required to fully respect federal statutes. This rule is strictly observed by US Courts and the Federal Circuit Court in the judgement referred to earlier[17] gives a good illustration of how this rule is applied by continuously referring to Congress' intent, even if Congress' intent may create a violation of pre-existing US international obligations.

48. In this context it is also noteworthy that the WTO Agreement (including the TRIPs Agreement) is not self-executing in the US legal order.[18] This means that an individual cannot rely on TRIPs in a US Court but can only rely on the terms of the US implementing legislation. Furthermore it is well-established US jurisprudence that subsequent federal statutes have priority over previous international treaties concluded by the US, thus preventing a US court from interpreting US domestic law in a treaty conform manner in case of conflict. This principle has been applied by the US Court in the case referred to earlier[19] when this Court has found that: "…, Congress made clear its intention to repeal rights in marks and tradenames derived from treaties, where those marks and tradenames satisfy the requirements set forth in Sec. 211".

49. As far as USPTO is concerned, the clear wording of Sec. 211(a)(1) OAA, as implemented through Sec. 515.527(2) CACR, does not authorise to make payments to the USPTO necessary to file applications with the USPTO with respect to the registration and renewal of trademarks covered by Sec. 211 OAA. USPTO does not have any discretion to act otherwise.

50. On the basis of these additional considerations, the EC would like to proceed to highlight once again the principle aspects of the TRIPs incompatibilities flowing from Sec. 211 OAA.

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16 See Exhibit EC-25.

17 Exhibit EC-16 at pp. 26 et seq.

18 See Message from the President of the United States (Exhibit EC-18)

19 Exhibit EC 8 at p. 41.

4. INCOMPATIBILITIES OF SEC. 211 OAA WITH THE US OBLIGATIONS STEMMING FROM TRIPS AND THE PARIS CONVENTION

4.1. Sec. 211(a)(1) OAA

51. In relation to the violation of Art. 15(1) TRIPs and Art. 6 quinquies A of the Paris Convention by Sec. 211(a)(1) OAA, the US intend to give the impression that WTO Members remain completely free to allocate ownership of an intellectual property right. While it is true that WTO Members enjoy some leeway in relation to ownership, the TRIPs agreement gives clear guidance for who has to be considered as owner of an intellectual property right.

52. The starting point is Art. 1(3) TRIPs which refers to

> "…those natural and legal persons that would meet the criteria for eligibility for protection…"

53. Furthermore in each Section of Part II of TRIPs the characteristics of the rightholders are described. For example in the copyright Section of TRIPs it is the author of the work (see Art. 5 Berne Convention) who is the owner of the rights granted in this section and there exist no ten thousand options of how to designate the author.

54. As we have pointed out in reply to question 50 from the Panel, the owner of a trademark is circumscribed by Art. 15(1) TRIPs as an undertaking (natural or legal entity) which uses or intends to use a sign or any combination of signs to distinguish its goods or services from the goods or services of other undertakings.

55. Also from a plausibility point of view, it appears obvious that the assertion that WTO Members were completely free to allocate ownership of a trademark, would lead to absurd results and would make Arts. 16-21 TRIPs worthless. The EC is confident that the US would agree that a WTO Member cannot allocate the Coca-Cola or Microsoft trademarks to any owner selected at random from a telephone directory.

56. In the same vein, it has to be said that the US assertion that Art. 15(2) TRIPs allows WTO Members to refuse a registration request on the basis of any ground, as long as the ground is not expressly prohibited, would equally lead to absurd results and make Arts. 16-21 TRIPs redundant. The EC is also confident that the US would agree that it is not TRIPs compatible to deny trademark registration to signs in relation to softdrinks if the name starts with an "C" or for computer software if the name starts with "M".

57. The EC is of the view that registration under Art. 15(2) TRIPs can only be refused in the exceptional cases expressly mentioned in TRIPs and the Paris Convention. Such provisions can be found in Arts 22(3), 23(2), 24(5) TRIPs, Arts 6(2), 6ter, 6quinquies B Paris Convention. In the absence of a specific-optional or mandatory-

exception a request for registration has to be granted under Art. 15(1) TRIPs. The US have not invoked any specific exception provided for under TRIPs or the Paris Convention to justify Sec. 211(a)(1) OAA.

58. As to the scope of Art. 6 quinquies Paris Convention, based on the unambiguous wording of this provision the EC maintains its interpretation as pointed out in paragraphs 6-10 of the presentation at the first meeting with the Panel. In our view all trademarks duly registered in their country of origin are covered, independently of issues of form of the trademark.

59. However the question of coverage would appear to be irrelevant for the resolution of this dispute, because Sec. 211(a)(1) OAA undoubtedly also denies registration to such trademarks which meet the particular condition as to form claimed by the US.

60. As to Art. 6 quinquies B Paris Convention we would limit ourselves to refer to paragraphs 63-64 of our presentation at the first meeting with the Panel. The fact that a trademark is the same or similar to a trademark that has been confiscated in another country cannot render it immoral or against public order with the effect to deceive the public.

4.2. Sec. 211(a)(2) and (b) OAA

61. In relation to the discussion on Arts 16(1) and 17 TRIPs the EC would refer to paragraphs 70-72 of its presentation at the first meeting with the Panel. The owner of the registered trademark is completely deprived through the operation of Sec. 211(a)(2) and (b) of his exclusive rights granted by Art. 16(1) TRIPs. Under no circumstance can such a complete deprivation be considered a "limited" exception under Art. 17 TRIPs. As to the violation of Art. 42 TRIPs by denying judicial procedures concerning the enforcement of trademarks and tradenames, we would like to refer to paragraphs 73-74 of our presentation at the first meeting with the Panel. In relation to the violation of Art. 6 bis Paris Convention[20] as far as well-known trademarks are concerned, we would simply repeat that Sec. 211(a)(2) and (b) OAA, covering all sorts of trademarks, equally denies protection to the lawful owner of well-known US trademarks.

62. The EC would like to take this opportunity to underline the importance it attaches in this procedure to the TRIPs deficient protection (in particular violation of Art. 8 Paris Convention) in the US of tradenames and commercial names as a consequence of the operation of Sec. 211(a)(2) and (b) OAA, because a great number of such – often very valuable – US tradenames are potentially affected by the curtailments

[20] See paragraph 75 of the Presentation at the first meeting with the Panel and reply to Question 64 from the Panel.

introduced by Sec. 211(a)(2) and (b) OAA (see our reply to Question 63 from the Panel).

63. This economic importance is further highlighted by the fact that the Federal Circuit Court[21] has indeed applied Sec. 211(b) OAA to the Havana Club tradename and denied protection.

64. We have pointed out in detail why it is that Sec. 211(a)(2) and (b) operate at two instances violations of the US national treatment obligations under TRIPs and the Paris Convention[22] as well as a violation of Art. 4 TRIPs (MFN). Trademarks and tradenames covered by Sec. 211 OAA are only curtailed if the lawful owner is a designated national, which means Cuba or a Cuban national. US owners or other non Cuban owners are not concerned and can enjoy their ownership rights to the same trademarks and tradenames fully. On the level of the successors-in-interest the statutory language only singles out foreign successors-in-interest for the curtailment of their rights, while allowing US successors-in-interest full enjoyment of their rights.

65. While the US accepts that there is a "superficial difference in how Section 211 discusses US nationals"[23], its defence is limited to saying that a US national can practically not be the owner. As pointed out above[24], this assertion is inaccurate.

66. US trademarks and tradenames targeted by Sec. 211(a)(2) and (b) OAA can exist perfectly independently of the assets associated with a confiscated Cuban business. The reference to the Cuban Assets Control Regulation is not in point because its scope is limited to assets legally owned by Cuban nationals. We have mentioned above cases where trademarks covered by Sec. 211 OAA are indeed owned by US companies. Given the wide scope of Sec. 211 OAA there may exist hundreds if not thousands of such cases.

67. As we have pointed out in reply to question 62 from the Panel, we consider that in particular Arts 3, 4 and Part III of TRIPs do also apply to common-law trademarks. Therefore the curtailments operated by Sec. 211(a)(2) and (b) OAA to US common law trademarks is also relevant for our case.

68. In this situation there can in the view of the EC, be no reasonable doubt that Sec. 211(a)(2) and (b) OAA are at variance with the US obligations under Art. 3 TRIPs

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21 See Exhibit EC-16 at pp. 28-31

22 See paragraphs 56-64 of our first written submission, as well as paragraphs 76-79 of our presentation at the first meeting with the Panel.

23 See reply to question 12 from the Panel

24 See paragraphs 41-44 above.

and Art. 2(1) TRIPs together with Art. 2(1) Paris Convention as well as Art. 4 TRIPs.

69. For the sake of completeness the EC would like to mention that the conclusion reached under paragraph 67 would also be valid if one were to qualify Sec. 211 OAA as a measure to address the issue of foreign expropriations. Given that such a measure would undoubtedly affect the "acquisition, maintenance, enforcement and use"[25] of intellectual property rights covered by TRIPs, such measures have to comply with Arts 3 and 4 TRIPs, even if one were to argue that they are exempt from the specific obligations under Part II of TRIPs.

5. CONCLUSION

70. In light of the preceding and the arguments made in our earlier submission and the presentation of the first meeting with the Panel, the EC would like to respectfully request the Panel to find that the US has violated its obligations under Articles 3(1), 4, 15(1), 16(1) and 42 TRIPs as well as Article 2(1) TRIPs together with Articles 2(1), 6 bis (1), 6 quinquies A(1) and 8 of the Paris Convention and should bring its domestic legislation into conformity with its obligations under the TRIPs Agreement.

[25] As mentioned in footnote 3 to Art. 3 TRIPs.

LIST OF EXHIBITS:

EC-21 - Trademark "Havana Club" – Copy from TARR web server USPTO

EC-22 - List of "Havana Club" trademarks owned by Havana Club Holding SA

EC-23 - Trademark "Partagas" - Copy from TARR web server USPTO

EC-24 - Trademark "Punch" - Copy from TARR web server USPTO

EC-25 - Trademark "Cohiba" - Copy from TARR web server USPTO