

HELMS-BURTON: TWO YEARS LATER



HEARING
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL ECONOMIC
POLICY AND TRADE
OF THE
COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES
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Statement of the U.S. Chamber of Commerce

**ON: CUBAN LIBERTY AND DEMOCRATIC
SOLIDARITY ACT OF 1996**

**TO: SUBCOMMITTEE ON INTERNATIONAL
ECONOMIC POLICY AND TRADE OF THE
HOUSE COMMITTEE ON INTERNATIONAL
RELATIONS**

DATE: MARCH 12, 1998

BY: JORGE I. FERNANDEZ

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 71 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business -- manufacturing, retailing, services, construction, wholesaling, and finance -- numbers more than 10,000 members. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 83 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. Currently, some 1,800 business people participate in this process.

Testimony of
Jorge I. Fernandez
Senior Vice President, International
Davel Communications Group
On behalf of the
U.S. Chamber of Commerce
Before the
Subcommittee on International Economic Policy and Trade
House Committee on International Relations
On the
Cuban Liberty and Democratic Solidarity Act of 1996
March 12, 1998

My name is Jorge I. Fernandez, Senior Vice President, International for Davel Communications Group. I appreciate this opportunity to testify on behalf of the U.S. Chamber of Commerce on the Cuban Liberty and Democratic Solidarity Act of 1996. This Act, otherwise known as the Helms-Burton law, was enacted shortly after the Cuban Air Force shot down two civilian U.S. aircraft on February 24, 1996. While the circumstances of that shoot-down remain controversial, there can be no denying that the subsequent enactment of Helms-Burton has had an impact on U.S. foreign economic relations reaching far beyond Cuba and the Florida Straits.

The Helms-Burton Act codified for the first time the nearly four decades-old U.S. embargo against Cuba. Significantly, the Act also established a new right of action by U.S. nationals against persons – including non-U.S. nationals – who “traffic” in expropriated property to which the U.S. nationals own claims. The Act also directs that non-U.S. nationals involved in the confiscation of or trafficking in such property be denied entry into the U.S. except for certain medical reasons or to litigate a claim. In other words, the Helms-Burton Act established in law a process for the imposition of a secondary boycott against third country interests engaged in activities proscribed under the Act (a practice which, by the way, U.S. policy condemns in Arab countries when it is applied to third parties doing business with Israel).

The embargo and the Helms-Burton law are unilateral economic sanctions. No other country maintains comparable policies. While the United States maintains various types of sanctions against many countries, the Helms-Burton law has become perhaps the most well-known example of statutorily-mandated unilateral economic sanctions maintained by the U.S. government for foreign policy and/or national security purposes. But Helms-Burton has come to typify a broader U.S. foreign economic policy approach which not only fails to solve the problems its proponents seek to solve, but also costs as much as \$19 billion a year in lost U.S. exports worldwide.

For many years, the Chamber has strongly opposed unilateral sanctions and embargoes and remains committed to their eventual elimination in all cases except where national security is threatened. Yet these policies remain prominent fixtures of U.S. foreign and economic policy in a wide range of instances having no bearing on our national security

interests. The record is very clear – in a competitive world economy, the U.S. simply does not have the power to make its point of view stick when other major trading countries don't share our goals.

The nearly four-decade U.S. embargo of Cuba has done nothing to accelerate Castro's removal from power. But it has isolated the U.S. from much of the rest of the world. Moreover, the cost of this embargo to the most vulnerable citizens of that country cannot be denied. With respect to food and medicine, for example, many medical products and services – such as incubator parts, life-saving cancer drugs, mammography film, AIDS drugs and many drugs under U.S. patent, are only available in the U.S. Non-U.S. substitution is not an option. And purchasing wheat from Europe costs more than twice as much as purchasing wheat from the United States.

Enacting legislation to lift the food and medicine embargo against Cuba is an important first step. But it should not be the last step. Not only is it time to get away from the fallacious notion that there is or has to be conflict between business and humanitarian interests. It is clearly in the broad U.S. national interest to end the embargo – including the Helms-Burton law – completely.

What criteria should govern U.S. economic sanctions policy?

Recent history is replete with examples of U.S. unilateral economic actions with the stated purpose of penalizing various other countries to advance U.S. foreign policy interests. And in virtually all meaningful instances, those actions failed to alter materially the target countries' objectionable behavior. Instead, erstwhile "allies" castigate U.S. foreign policy, while the regimes we target gain support and U.S. businesses and their workers bear the burden of market opportunities lost to Asian and/or European competitors, whose own countries have wisely chosen not to embark on similar unilateral courses of action.

America's values and interests are best advanced by sustained involvement in world affairs by both the public and private sectors. The expansion of free market economies and rising living standards are crucial ingredients of political freedom and respect for human rights. Challenges to U.S. interests and the rule of law should be addressed as much as possible in concert with our allies and trading partners. The U.S. government should adopt a standard of ongoing accountability, so that unilateral foreign policy sanctions are evaluated by:

1. Whether they achieve their intended results
2. The costs imposed upon Americans in terms of lost jobs and reduced incomes.
3. The potential sacrifice of other national interests.

Helms-Burton's Purposes

To paraphrase and summarize section 3, the Helms-Burton law's purposes include (but are not limited to): (1) assistance to the Cuban people in regaining their freedom; (2)

strengthened international sanctions against Castro; (3) provision for the continued U.S. national security; (4) encouragement of free and fair elections in Cuba; (5) provision of a "policy framework" to the Cuban people in response to the formation of a transition or democratically elected Cuban government; and (6) to protect U.S. nationals against trafficking in expropriated property. Some of these purposes thus provide a useful benchmark against which changes in Cuba, and in Cuba's relationship with the U.S. and other countries, can be measured.

First, are Cuban people freer as a result of the Helms-Burton law's enactment?

Embargo supporters frequently look to the removal or withdrawal of Fidel Castro from power as a necessary precondition for greater freedom in Cuba. That may be true. But last October, at the fifth Cuban Communist Party Congress, Castro was reaffirmed as head of the party. And on February 24, Castro was "re-elected" as President of Cuba in the usual mechanical fashion. Moreover, there has been as yet no change in the makeup of the Cuban governmental system that would suggest any new departure from Castro's long-standing mode of governance. After four decades, Castro's governmental and security apparatus remain largely in place. Despite clear evidence of the freedom-enhancing effects of U.S. engagement in other authoritarian countries such as China, no such opportunity yet exists in Cuba.

Second, are there strengthened international sanctions in place? On the contrary, not only are our major trading partners/competitors not emulating U.S. policy, but some of them – Canada, the European Union, Mexico – have actually put in place laws that make it illegal to comply with Helms-Burton in their own countries. This international sentiment in opposition to U.S. policy was again demonstrated just last week when (1) on March 5, the Mexican parliament called for an end to the U.S. blockade of Cuba at the opening of a joint meeting of Mexican and Cuban legislators, and (2) on March 6, Canadian Foreign Minister Lloyd Axworthy told the Organization of American States' Conference on the Americas that it should consider whether Cuba should once again be seated at the Organization of American States. All of this serves to supplement long-standing, widespread international refusal to emulate the U.S. embargo. All of the other large "G-7" industrial economies are well represented among an estimated 4,500 non-U.S. foreign companies commercially active in Cuba. The U.S. – Cuba Trade and Economic Council estimates that, as of December 1997, announced foreign investment in Cuba since 1990 exceeds US\$5.55 billion, with actually committed or delivered investment exceeding US\$1.24 billion.

Third, does Helms-Burton enhance U.S. national security? Suffice to quote General John J. Sheehan, former Supreme Allied Commander of Atlantic Forces who was once responsible for the Cuban migrant camps at Guantanamo Bay, who at a January 13 press conference at the U.S. Chamber of Commerce stated simply that Cuba "does not present a military threat to the United States." But despite that lack of a threat, the U.S. embargo against Cuba imposes harsh restrictions in areas such as food and medical sales that are not applied to countries – such as Iraq and North Korea – whose regimes are no less harsh and whose agendas clearly pose a much greater threat to vital U.S. interests.

Fourth, has Helms-Burton encouraged free and fair elections in Cuba? As noted above, Castro's hold on power in Cuba remains strong despite two years of "leverage" intended to release his grip on power. Such leverage cannot succeed through forced unilateral isolation, particularly when other nations do not engage in same. Throughout the U.S. and around the world, individual liberty and free enterprise go hand in hand. Each fosters the other. By their very presence and operations, American companies and expatriate communities take second place to no one in their contributions to economic and political freedom in their host countries. Continuing U.S. company presence and engagement abroad are critical to the inculcation of these values.

Fifth, does Helms-Burton provide a viable "policy framework" to the Cuban people in response to the formation of a transition or democratically elected Cuban government? Title II of Helms-Burton spells out such a framework which, if implemented, could justify suspension of the U.S. embargo, to the extent that such steps would contribute to a "stable foundation" for a democratically-elected government in Cuba. However, such conditionality is fruitless if continuing non-U.S. foreign engagement in the Cuban economy and society eclipses U.S. efforts to isolate that country.

Sixth, does Helms-Burton protect U.S. nationals against trafficking in expropriated property? Such property was expropriated as far back as the early 1960s. Shortly thereafter, the U.S. government established a Cuban Claims Program, administered by the Treasury Department. Today, two years after Helms-Burton's enactment, and putting international legal issues aside, there is little or no evidence that the statute has contributed materially to any resolution of the claims arising from the expropriation of nearly forty years ago.

Helms-Burton and U.S.-European Relations

With respect to Cuba, it is clear that Helms-Burton has not served the purposes for which its sponsors worked. While Cuba's market is itself not large by global standards, Helms-Burton has clearly strained our economic and political relations with other, far more significant trading partners, while failing to achieve its stated purposes.

Some are suggesting that negotiations between the U.S. and the European Union regarding differences over Helms-Burton should be scrapped because the EU has not demonstrated sufficient commitment toward the advancement of democracy in Cuba. These negotiations have been linked to the Administration's repeated waiver of the Helms-Burton "Title III" provisions which, if not waived, would allow U.S. persons to sue European and other entities that "traffic" in once-U.S.-held property that was expropriated by Castro's regime.

This logic is fundamentally flawed. Negotiations conducted pursuant to a fundamentally flawed and ineffective policy – executed, by the way, from a position of weakness, not of strength – cannot be expected to succeed. The cause of democracy in Cuba will be best

served by allowing Americans to travel to and do business in Cuba – and in so doing, help export our democratic values to that country. Even if the EU was not actively promoting democratic change in Cuba, it makes no sense to impose or threaten sanctions against the EU when our own law effectively prevents us from doing it ourselves.

Conclusion

It is fair to say that the only material contribution arising from the continuing unilateral U.S. embargo of Cuba -- which was codified and expanded with the 1996 enactment of the Helms-Burton legislation – was to confer quasi-martyr status on Castro's regime by permitting its subjects to focus on an external enemy, namely, the United States. With the enactment of Helms-Burton, the Cuba embargo has mutated into a secondary boycott of a variety of Canadian, European and other interests – thereby compelling these far more important allies and trading partners to protect their own interests by enacting blocking statutes and otherwise backing into an implicit alliance with Castro's regime. If the United States hopes to contain and eventually reverse this damage – and at the same time enhance commercial and democracy-building opportunities for Americans and Cubans alike – it has no real choice but to end the embargo and work toward normal relations with a small, non-threatening nation only ninety miles offshore.

I appreciate this opportunity to testify before this Subcommittee. I will be happy to try to answer your questions.