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TRADE

Brussels, 10 APR 2019

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The Honorable Michael R. Pompeo
Secretary of State
United States of America

Dear ~~Mr Secretary~~, *Dear Mike,*

The European Union and the United States share the objective of furthering democratic freedoms, human rights and reform in Cuba. In order to advance these goals, EU-US cooperation is important and the impact of our policies is greatest when we are united.

In the past, when our policies diverged with regard to Cuba, we were able to find workable solutions. Since 1998, our cooperation has been framed by an agreement under which the US committed to waive the LIBERTAD Act's Title III, while the EU agreed, among other things, to suspend its WTO case against the US. Predictability leads to trust, which is a cornerstone of the transatlantic partnership.

Recent decisions taken by the US in relation to Title III - namely to depart from the regular six-month extension and to have it partially activated - are raising serious concerns across the EU. The EU considers that the extraterritorial application of unilateral restrictive measures, such as the LIBERTAD Act, is contrary to international law. Any decision to further activate it would have an important impact on legitimate EU (and US) economic operators.

We are writing to respectfully call on the US to adhere to the terms of our agreement and to maintain a full waiver of Title III for EU companies and citizens. Failing this, the EU will be obliged to use all means at its disposal, including in cooperation with other international partners, to protect its interests. The EU is considering a possible launch of the WTO case. Further, the EU Blocking Statute (Council Regulation (EC) No 2271/96) offers protection to individual EU companies, by banning the enforcement or recognition in the EU of foreign judgments based on Title III. It legally empowers EU companies to recover, in EU courts, any losses caused by claims based on Title III filed against them in the US. We would point out that an overwhelming majority of the 50 largest claimants – who together make up more than 70% of the total value of certified claims – have assets in the EU. This means that any claims in US courts would likely be followed by counter-claims by EU companies in EU courts. As a concrete example, if a US hotel chain with a certified claim sued an EU hotel chain in a US court under Title III for alleged trafficking in US property, the EU hotel chain would be able to counterclaim for damages from the EU-based assets of the same US hotel chain in an EU court.

As such, if any of those claimants were to launch cases against EU persons, they would expose themselves to liability for damages in EU courts. Such damages could be recovered through the seizure and sale of assets which US claimants, persons acting on their behalf or their intermediaries hold in the EU, including shares they hold in EU companies. This could trigger a self-defeating cycle of claims that will impair the business climate without bringing justice to holders of claims, or impacting the situation in Cuba in any positive way. Furthermore, other countries, which also have similar legislation in place, have expressed concerns similar to those of the EU.

We believe that the issue of outstanding US claims should not be conflated with the cause of furthering democracy and human rights in Cuba, or by our shared desire urgently to find a peaceful and democratic solution to the crisis in Venezuela. We are fully invested to promote both of these objectives, and are convinced that the emergence of protracted judicial proceedings between US claimants and bona fide EU companies will not further them.

We are committed to work constructively with you to resolve these issues.

Yours sincerely,



Federica Mogherini



Cecilia Malmström

Cc: Mr John R. Bolton, National Security Advisor
Mr Robert Lighthizer, United States Trade Representative