

WORLD TRADE ORGANIZATION

TN/MA/NTR/2
15 May 2006

(06-2369)

Negotiating Group on Market Access

Original: Spanish

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Non-Tariff Barriers - Requests

Communication from Cuba

The following communication, dated 10 May 2006, is being distributed at the request of the delegation of Cuba.

NTB BILATERAL REQUEST

Request from Cuba to the United States of America

No.	Tariff item [(HS96)] [(HS2002)]	Description of product	Non-tariff measure on which action is requested	Specific action requested	Remarks
1	2	3	4	5	6
	All subitems of the Harmonised System	All subitems of the Harmonised System	<p>1. The 1961 Foreign Assistance Act. (Sec. 620 of Pub. L. 87-195, pt. III, Sec. 20, Sept. 4, 1961, 75 Stat. 444 (22 USC Sec. 2370)).</p> <p>It authorized the US President to establish and maintain a total embargo on all US-Cuban trade. Presidential Proclamation 3447 which imposed the trade blockade on Cuba in 1962 was issued under this Act.</p>	Repeal of the law.	Contrary to Articles I, III, XI and XIII of the GATT.
	All subitems of the Harmonised System	All subitems of the Harmonised System	<p>2. Tariff Classification Act of 1962. (Sec. 401. of Pub. L. 87-456, title IV, May 24, 1962, 76 Stat. 78 (19 USC 1351 Notes)).</p> <p>It denied Cuba Most-Favoured-Nation status.</p> <p>Under the title "Tariff Treatment of Cuban Products", it prescribes that:</p> <p>"(a) <u>Cuba is hereby declared to be a nation</u> described in section 5 of the Trade Agreements Extension Act of 1951, as amended</p>	Elimination of the measure.	<p><u>Article I of the GATT 1994.</u></p> <p>There has never been nor is there any truth to the view of the United States in 1962 that Cuba was a nation dominated or controlled by a foreign government or by the world communist movement. According to the United States itself, the Cold War ended in 1989, whilst 1991 witnessed the disappearance of the country on which Cuba had allegedly been dependent; communism was declared defeated as a philosophy and a form of government in the world. How</p>

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			<p>(19 USC 1362, relating to imports from nations and areas <u>dominated or controlled by the foreign government or foreign organization controlling the world Communist movement</u>)."</p> <p>It further provides that articles which are:</p> <p>"(1) the growth, produce, or manufacture of Cuba, and</p> <p>"(2) imported on or after the date of enactment of this Act (May 24, 1962), <u>shall be denied the benefits of concessions contained in any trade agreement entered into under the authority of section 350 of the Tariff Act of 1930</u>, as amended (19 USC 1351).</p>		<p>therefore can the sanctions be maintained against Cuba on the basis of a defunct argument?</p> <p>Section 350 of the 1930 Act granted the preferences referred to in Article I:2(c) of the GATT 1994, but not the remaining concessions granted by the USA to Cuba under Article I.1 of the GATT. The Tariff Classification Act of 1962 cannot therefore afford a basis for the withdrawal of MFN treatment following the establishment of the WTO.</p>
	All subitems of the Harmonised System	All subitems of the Harmonised System	<p>3. Trading with the Enemy Act, Section 5(b) (Title 50, App. 5 of the UCC – War and National Defense).</p> <p>It empowers the President during time of war, through any agency that he may designate, to investigate, regulate, or prohibit transactions, transfers, etc., under such rules and regulations as he may prescribe. It underpins the authority vested in the President to impose the other laws relating to the blockade against Cuba.</p> <p>The 1963 Cuban Assets Control</p>	Elimination of the measure.	Contrary to Articles I, III, XI and XIII of the GATT.

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			<p>Regulations (Title 31, Part 515 of the Code of Federal Regulations, under the Trading with the Enemy Act), established the regime applicable to all Cuba-related financial and trade operations and blocked Cuban assets in the US; it made it impossible to use the US dollar in commercial transactions, and established a list of Specially Designated Cuban Nationals, prohibiting US nationals from entering into transactions with those on the list.</p> <p>Cuba and the United States are not at war. Never has a state of war been declared between the two countries; on the contrary, various statements by eminent persons and reports by agencies and armed institutions in the United States have confirmed that Cuba does NOT pose a military threat to that country; therefore, no measure taken under that law is warranted.</p>		
			<p>4. The 1988 Omnibus Trade and Competitiveness Act, which reinforced the restrictions on imports from Cuba. "Reinforcement of the restrictions on imports from Cuba ".</p>	<p>Elimination of the measure.</p>	<p>Contrary to the basic principles of the GATT, and to GATT Articles I, III, XI and XIII. Contrary to the provisions of other WTO Agreements such as those on Agriculture and on Import Licensing Procedures.</p>

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			<p>Requires "the US Trade Representative to request relevant agencies to prepare recommendations for improving the enforcement of import restrictions on articles from Cuba. Such recommendations will include but not be limited to appropriate action to forestall indirect shipments or other means of circumvention.</p>		
			<p>5. Cuban Democracy Act of 1962. Title XVII, Pub. L. No. 102-484, Section 1701 et seq.; 106 Stat. 2575). (known as the Torricelli Act)</p> <p>Section 1706(b) - Prohibitions on vessels, places a ban on vessels engaging in trade with Cuba. To that end, it stipulates, <i>inter alia</i>, that:</p> <p>(1) Vessels engaging in trade. [...] a vessel which enters a port or place in Cuba to engage in the trade of goods or services may not, within 180 days after departure from such port or place in Cuba, load or unload any freight at any place in the United States, except pursuant to a license issued by the Secretary of the Treasury.</p> <p>The policy being applied is therefore the denial of licenses.</p>	<p>Repeal of the law.</p>	<p>Contrary to the basic principles of the GATT. Infringes GATT Article V:2 and the objectives of the current negotiations on Trade Facilitation.</p>

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			<p>(2) Vessels carrying goods or passengers to or from Cuba. Except as specifically authorized by the Secretary of the Treasury, a vessel carrying goods or passengers to or from Cuba or carrying goods in which Cuba or a Cuban national has any interest may not enter a United States port.</p> <p>It prohibited subsidiaries of US companies located in third countries from trading with Cuba.</p> <p>It prescribed that the President should encourage the governments of countries that conduct trade with Cuba to restrict their trade and credit relations with Cuba.</p>		
			<p>6.- Helms-Burton Act or Cuban Liberty and Democratic Solidarity Act of 1996.</p> <p>This Act codified all the laws, regulations and presidential orders relating to the blockade adopted since 1962.</p> <p>It reaffirmed that the President should "encourage" other countries to restrict their trade and credit relations with Cuba; it provided for withholdings from payments to international financial institutions that approve loans to Cuba; it</p>	<p>Repeal of the law.</p>	<p>Violates the spirit, principles and rules of the GATT.</p> <p>Establishes sanctions for countries that aid Cuba. It is extraterritorial in effect.</p> <p>This Act infringes, <i>inter alia</i>, Articles I, II, III, V:2, XI, XIII and XXIV of the GATT.</p> <p>It infringes the Marrakesh Agreement and the Multilateral Agreements in Annex 1A concerning Trade in Goods.</p>

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			<p>created the power, exercised in some cases, to deny entry to the USA for executives from third-country companies with investments and business in Cuba involving former US properties or properties of current US citizens that were nationalized, as well as the possibility to sue entrepreneurs who invest or conduct business in Cuba on such properties, which were nationalized by Cuba in accordance with international law.</p>		
