

WORLD TRADE ORGANIZATION

TN/MA/W/71

15 May 2006

(06-2362)

Negotiating Group on Market Access

Original: English/
Spanish

MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Non-Tariff Barriers Imposed by the United States Impeding and Prohibiting Cuba's Trade

Communication from Cuba

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

I. INTRODUCTION

1.1 The economic, commercial and financial blockade imposed on Cuba by the United States is the longest-lasting and cruellest known to date, and is an essential element in its policy of hostility and aggression directed against the Cuban people. Its aim, made explicit on 6 April 1960, is to destroy the Cuban Revolution: "(...) through disillusionment and discouragement based on dissatisfaction and economic difficulties (...) withholding funds and supplies from Cuba, in order to decrease real and monetary salaries so as to cause hunger, desperation and the overthrow of the government (...)".¹

1.2 Likewise, the blockade is a fundamental component of the policy of State terrorism which silently and systematically, bit by bit, in an inhuman and pitiless manner, affects the entire Cuban population, regardless of age, sex, race, religious belief, or social status. Moreover, it qualifies as a genocidal act under Article 2(c) of the Geneva Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, and is therefore a crime under international law.

1.3 The blockade against Cuba is also an act of economic warfare. There is nothing in international law that can justify it in times of peace.

1.4 Nor can the United States blockade of Cuba be justified under WTO rules. None of the situations listed in Article XXI (Security Exceptions) apply between the two nations, and yet this has been the only argument adduced to justify such violation. Cuba and the United States are not at war, nor is there any question of serious international tension.

1.5 The blockade is a complex set of measures, based solely on political criteria, which significantly disrupts economic, commercial, financial, scientific, cultural, diplomatic and other activities, as well as all sectors of the country's social life. The fact that the document contains a set

¹ Secret report by I.D. Mallory, a State Department official, declassified in 1991. In Department of State: Foreign Relations of United States, volume VI, 1991, p. 886.

of government provisions and regulations that are presented as non-tariff barriers (NTB) cannot be construed to mean that the blockade is restricted exclusively to such measures. This is due only to the nature of the Negotiating Group on Market Access for Non-Agricultural Products. Thus, we shall provide below some examples that may not refer strictly to *non-agricultural products*, but because of their systematic impact on Cuba's economy and on the multilateral trading system, and because they deviate so sharply from the minimum standards of respect for the international instruments governing relations between nations, we must point them out.

1.6 Cuba and the United States are founding members of the General Agreement on Tariffs and Trade (GATT) 1947. Both nations formalized their entry into the WTO immediately after the signing of the Marrakesh Agreement, accepting its provisions in full.

1.7 In the Marrakesh Agreement, as in many other WTO agreements, the parties recognize that all their trade and economic activities must raise "standards of living ... that it is necessary to make positive efforts designed to ensure that the developing countries ... secure a share in the growth in international trade commensurate with the needs of their economic development", and that they are "determined to preserve the basic principles and further the objectives underlying [the] multilateral trading system."

1.8 In Article II, paragraph 2, the Agreement states that "[t]he agreements and associated legal instruments included in Annexes 1, 2 and 3 (hereinafter referred to as 'Multilateral Trade Agreements') are integral parts of this Agreement, binding on all Members."

1.9 The non-application of any trade agreement in Annexes 1 and 2 is regulated in paragraph 1 of Article XIII of the Marrakesh Agreement, which states that the Marrakesh Agreement and the trade agreements "shall not apply as between any Member and any other Member if either of the Members, at the time either becomes a Member, does not consent to such application." It adds, moreover, that original members may invoke this paragraph where Article XXXV of the GATT 1947 had been invoked earlier and was effective as between the two parties at the time of entry into force for them of the Marrakesh Agreement. This is not the case for Cuba and the United States, and consequently, the United States is in violation of WTO agreements when it refuses to accept that Cuba has the right to the same treatment as other Members under those agreements.

1.10 The Doha Declaration of November 2001 and the mandate of the Negotiating Group on Market Access for Non-Agricultural Products provide for the elimination of non-tariff barriers. Even though Cuba considers that the blockade imposed by the United States and steadily and unilaterally intensified over a period of more than 40 years has systematic implications and connotations for the multilateral trading system and the WTO that go beyond the subjects being dealt with by this Group, it is notifying all Members and providing them with information that will demonstrate the negative impact of these measures on the Cuban economy and trade and show that these measures also affect the other Members of this Organization. The blockade is inconsistent with WTO rules and obligations, and violates not only Cuba's rights, but also those of other Members interested in maintaining normal trade relations with Cuba.

1.11 Consequently, the continuing invocation by the United States of GATT Article XXI on Security Exceptions is unfounded. It has been shown time and again in documents issued by various agencies in the US intelligence community that Cuba does not represent any threat to the security of the United States. Indeed, Cuba was never a threat to the United States in the past, much less now. Moreover, the precedents for invocation of this article reveal that a Member may not apply measures under the circumstances permitted by Article XXI where such measures affect other Members. The United States blockade is not justified by the first of these criteria, nor does it fulfil conditions for the second.

II. ECONOMIC EFFECTS

2.1 The economic, commercial and financial blockade by the United States against Cuba includes a set of laws that prohibit, among other things, all goods of Cuban origin from being imported into US territory. These laws also have an impact on Cuba's trade with third countries, and on the WTO's trade disciplines, so that the damage and prejudice to the Cuban economy go beyond the mere export and import prohibition itself, directly and seriously affecting areas of the economy such as foreign investment, transportation and finance, and indeed, all of the social areas. Almost all the sectors and branches of the economy as well as the most important services offered to the population are seriously affected.

2.2 In 2004, the damage to Cuban foreign trade as a result of the blockade is expected to reach an estimated 822.6 million dollars, 57.2 million more than in 2003.

2.3 While most of the damage was found to result from the application of extraterritorial regulations (an estimated 380 million dollars), denial of access to the potential US market continues to be a major factor. In 2004, the loss amounted to 305.2 million dollars, with Cuba forced to resort to third countries for its trading activities, causing insurance and freight costs to increase and resulting in less favourable pricing conditions.

2.4 From a financial point of view, the blockade has had a decisive role in earning Cuba its high country risk rating. Given the strict conditions for access to external financing, this rating has cost the economy an estimated 72.2 million dollars.

2.5 The fact that the current US administration has no objection to the sale of certain food products to Cuba must not be construed as an easing of the blockade policy. On the contrary, the numerous obstacles and stringent restrictions imposed reveal the depth and scope of this illegal policy of unilateral sanctions. These purchases are subject to a licence issued under strict conditions by the Department of the Treasury; payment must be made up front and in cash, with no financing whatsoever, not even private, and transportation is only possible using US or third country ships, but not Cuban ships. In other words, these purchases are still subject to the blockade's numerous restrictions.

2.6 To dispel any remaining doubts, both State Department officials and the US President himself made a point of immediately confirming that the blockade remained in place, entirely unchanged, and that, on the contrary, Cuban policy would be reviewed in the light of the declared objective of tightening the current measures of economic coercion and sanctions.

III. THE EXTRATERRITORIAL NATURE OF THE BLOCKADE

3.1 "The United States considers the embargo to be a bilateral matter which should not be brought before the General Assembly. Clearly, it is not a blockade since we do not interfere with Cuba's trade with other nations." This quote has been repeated many times by US Government representatives, and was included in some conversation points concerning the Cuban Resolution entitled "The necessity of ending the US economic, commercial and financial blockade of Cuba", circulated by Cuba to all other delegations on 18 October 2004 at UN Headquarters in New York.

3.2 For 14 consecutive years, Cuba has submitted this Resolution to the UN General Assembly; and the international community has repeated virtually unanimously that this genocidal policy must end, that it openly violates the principles of the UN Charter and of international law, and that it also violates freedom of trade and navigation, thus demonstrating that this is not an embargo, but a policy that has extraterritorial implications affecting the interests of Cuba and of third countries. In the most

recent vote last year, the Resolution was approved by 182 nations – only the United States and three other members opposed it.

3.3 The US Government does not recognize the extraterritorial scope of this policy and rejects the accusations to the effect that it has implications for third countries. However, the ferocious persecution of any foreign company or commercial or banking institution which establishes or seeks to establish economic, commercial or financial relations with Cuban institutions shows that the opposite is true, taking its toll in all spheres of life in the country. We need only cite a few irrefutable examples, which we include in annex to this document. They clearly show how many countries are being affected by this policy.

IV. THE LAWS OF THE BLOCKADE AND WTO RULES

4.1 The blockade rests on a number of different laws. Without providing an exhaustive list of the instruments by which the United States regulates its blockade policy against Cuba, we shall offer a few examples that demonstrate – although not exhaustively – the inconsistency of the blockade with WTO rules, which constitute obligations for the United States. A detailed explanation of the laws and the relevant WTO provisions is provided in Annex 1 hereto.

V. REQUEST TO THE GOVERNMENT OF THE UNITED STATES

5.1 Cuba asks the Government of the United States to revoke, immediately and unconditionally, all of the legislation currently in force enacted with a view to establishing, maintaining and reinforcing the economic, commercial and financial blockade against the country, not only the legislation specially drafted for that purpose, but also the provisions introduced in the form of appendices to other laws. This is the only possible way to eliminate the inconsistency of US legislation in this area with WTO rules, and would put an end to the most flagrant and long-lasting violation by any Member of the principles of the GATT and the multilateral trading system.

5.2 Cuba repeats that it reserves the right, as a WTO Member, to raise the issue of the blockade in the relevant WTO bodies at any time it sees fit. Even if these measures – which, according to preliminary conservative estimates, have cost the country more than 82 billion dollars and considerably hampered its economic and social growth – continue to be illegally applied, Cuba will not give up its independence, its sovereignty, and its right to self-determination, and will continue to work in a spirit of optimism, fully confident that no blockade will be able to alter its determination to achieve greater economic prosperity and social justice for the Cuban people.

ANNEX 1

1. **Foreign Assistance Act of 1961.** (Sec. 620 of Pub. L. 87-195, pt. III, Sec. 620, Sept. 4, 1961, 75 Stat. 444 (22 USC Sec. 2370)).

Effect of the Act:

It authorizes the President of the United States to establish and maintain a total embargo on all trade between the United States and Cuba. Accordingly, Presidential Proclamation 3447 was issued, imposing a blockade on trade with Cuba in 1962.

Relevant WTO provisions:

Article XI of the GATT: "No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or the exportation or sale for export of any product destined for the territory of any other contracting party."

Article XIII of the GATT: "No prohibition or restriction shall be applied by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation of any product destined for the territory of any other contracting party, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted."

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)).

Effect of the Act:

This law denied Cuba Most Favoured Nation status.

Under the title of "Tariff Treatment of Cuban Products" it is stipulated that:

"(a) Cuba, is hereby declared to be a nation described in section 5 of the Trade Agreements Extension Act of 1951, as amended (19 U.S.C. 1362, relating to imports from nations and areas dominated or controlled by the foreign government or foreign organization controlling the world Communist movement); and

It is established that articles which are:

1. The growth, produce or manufacture of Cuba, and
2. imported on or after the date of enactment of this Act (May 24,1962), 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, as amended (19 U.S.C. 1951).

Relevant WTO provisions:

Article I of the GATT 1994

The US suggestion in 1962 that Cuba was a nation dominated or controlled by a foreign power or the world communist movement was without foundation then and remains without

foundation. According to the US itself, the Cold War ended in 1989 and the country which they claimed controlled Cuba disappeared in 1991; communism was considered to have been defeated as a philosophy and a form of government in the world. How, then, is it possible to maintain these sanctions against Cuba on grounds that no longer exist?

Section 350 of the 1930 Act allows for the preferences mentioned in Article I.2 (c) of the GATT in 1994, but not for the rest of the concessions granted to Cuba by the United States under Article I.1 of the GATT. Consequently, the Tariff Classification Act of 1962 cannot justify the withdrawal of MFN treatment following the creation of the WTO.

3. Trading With the Enemy Act Section 5 (b) (Title 50 of the U.C.C. - War and National Defence.)

Effect of the Law:

This grants the President **war-time powers** to investigate, regulate, or prohibit any transactions, transfers, etc. through the federal agency appointed by him and in accordance with such rules and regulations as he establishes. It provides a basis for the President to impose the remaining laws contributing to the blockade of Cuba.

Cuban Assets Control Regulations, 1963 (part 515 of heading 31 of the Federal Regulations Code, supported by the Trading With the Enemy Act). Establishes the rules applicable to all financial and commercial operations relating to Cuba and freezes Cuban assets in the United States; makes it impossible to use the US dollar for commercial transactions; prohibits US citizens from carrying out transactions involving a list of specially designated Cuban nationals.

Cuba and the United States are not at war. Never has there been a declaration of war between the two countries; on the contrary, numerous statements by public figures and reports by military institutions and agencies have confirmed that Cuba DOES NOT pose a military threat to the United States. Consequently, none of the measures taken under this Act are justified.

Relevant WTO Provisions:

Article XI of the GATT. "No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or the exportation or sale for export of any product destined for the territory of any other contracting party."

Article XIII of the GATT. "No prohibition or restriction shall be applied by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation of any product destined for the territory of any other contracting party, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted."

4. Omnibus Trade and Competitiveness Act of 1988, reinforces the restrictions on imports from Cuba. "Reinforcement of Restrictions on Imports from Cuba".

The Omnibus Trade and Competitiveness Act of 1988 stipulates that the US trade representative shall ask all major agencies to prepare appropriate recommendations for **strengthening the restrictions** on imports of Cuban goods. The underlined phrase may appear familiar, since WTO commitments seek to **strengthen** market access while at the same time **strengthening** disciplines in order to avoid discriminatory treatment and trade distortion and to seek to eliminate **restrictions** –

quite the opposite of the objectives and regulations developed by the United States and applied unilaterally to Cuba.

Effect of the Act:

It establishes that the US trade representative shall ask all major agencies to prepare appropriate recommendations for **strengthening the restrictions** on imports of Cuban goods. These recommendations shall include, but not be limited to, appropriate measures to prevent indirect shipments or other evasive measures.

Theoretically, the only imports allowed from Cuba to the US market are informational materials (cultural products), but not without considerable restrictions. The regulations of the Office of Foreign Assets Control (OFAC) stipulate with reference to Cuba (31 CFR 515) that the importation of such products to the United States is authorized only subject to the condition that they have been created or published prior to the transaction. In other words, in the case of Cuba, any substantial transformations or adjustments to such products are prohibited, as is the production or creation of new materials by persons under US jurisdiction.

Relevant WTO provisions:

This provision reinforcing trade restrictions is contrary, *inter alia*, to the following agreements:

The Marrakesh Agreement Establishing the WTO whose preamble reads: "... contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations ..."

The GATT 1994, whose preamble reads: "... contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade, and to the elimination of discriminatory treatment in international commerce."

The Agreement on Agriculture, whose preamble reads: "... developed country Members take fully into account the particular needs and conditions of developing country Members by providing for a greater improvement of opportunities and terms of access for agricultural products of particular interest to these Members ..."

The Agreement on Import Licensing Procedures, whose preamble reads: "... to ensure that import licensing procedures are not utilized in a manner contrary to the principles and obligations of GATT 1994."

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.)

Effect of the Act:

Section 1706 (b) - Prohibitions on vessels: imposes a prohibition on all vessels involved in trade with Cuba. To that end the Act stipulates, *inter alia*, that:

"(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 licence issued by the Secretary of the Treasury."

We note that the policy being applied here is the denial of licences.

- "(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."

Trade with Cuba by US subsidiaries located in third countries is prohibited.

The Act stipulates that the President **of the United States should encourage other countries to restrict their trade and credit relations with Cuba.**

Relevant WTO provisions:

Article V.2 of the GATT. "There shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of the vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or other means of transport."

See Article VIII, 1(c) and 4(c). Specific licensing

6. Helms-Burton Act or Freedom in Cuba Act of 1996.

Effect of the Law:

This Act codifies all the rules, regulations, laws and presidential orders relating to the blockade adopted since 1962. The Sections of the Act or parts thereof reproduced below provide the best illustration of the extent of the measures, disciplines and areas that make up the economic, commercial and financial blockade against Cuba, and the blockade's direct and indirect impact on Cuba's foreign trade, violating elementary principles of international law and specific WTO provisions.

Sec. 102. ENFORCEMENT OF THE ECONOMIC EMBARGO OF CUBA

(a) Policy

(i) Restrictions by other countries.

The Congress hereby reaffirms section 1704(a) of the Cuban Democracy Act of 1992, which states that **the President should encourage foreign countries to restrict trade and credit relations with Cuba in a manner consistent with the purposes of that Act.**

(ii) Sanctions on other countries.

The Congress further urges the President to take immediate steps to apply the sanctions described in section 1704(b)(1) of the Act against countries assisting Cuba.

(b) Diplomatic Efforts

The Secretary of State should ensure that United States diplomatic personnel abroad understand and, in their contacts with foreign officials, are communicating the reasons for the United

States economic embargo of Cuba, **and are urging foreign governments to cooperate more effectively with the embargo.**

(c) Existing Regulations

The President shall instruct the Secretary of the Treasury and the Attorney General to enforce fully the Cuban Assets Control Regulations set forth in part 515 of title 31, Code of Federal Regulations.

(d) Trading with the Enemy Act

- (i) Civil penalties.-Subsection (b) of section 16 of the Trading with the Enemy Act (50 U.S.C. App.16 (b)), as added by Public Law 202-484, is amended to read as follows:

"(b)(1) A civil penalty of not to exceed \$50,000 may be imposed by the Secretary of the Treasury on any person who violates any license, order, rule, or regulation issued in compliance with the provisions of this Act."

(h) Codification of Economic Embargo

The economic embargo of Cuba, as in effect on March, 1 1996, including all restrictions under part 515 of title 31, Code of Federal Regulations, shall be in effect upon the enactment of this Act, and shall remain in effect, subject to section 204 of this Act.

Sec. 104. UNITED STATES OPPOSITION TO CUBAN MEMBERSHIP IN INTERNATIONAL FINANCIAL INSTITUTIONS

(b) Reduction in United States Payments to International Financial Institutions

If any international financial institution approves a loan or other assistance to the Cuban Government over the opposition of the United States, then the Secretary of the Treasury shall withhold from payment to such institution an amount equal to the amount of the loan or other assistance, with respect to either of the following types of payment:

- (i) The paid-in portion of the increase in capital stock of the institution.
(ii) The callable portion of the increase in the capital stock of the institution.

Sec. 108. REPORTS ON COMMERCE WITH, AND ASSISTANCE TO, CUBA FROM OTHER FOREIGN COUNTRIES

(a) Reports Required

Not later than 90 days after the date of the enactment of this Act, and by January, 1 of each year thereafter until the President submits a determination under section 203(c)(1), **the President shall submit a report to the appropriate congressional committees on commerce with, and assistance to, Cuba from other foreign countries during the preceding 12-month period.**

(b) Contents of Reports

Each report required by subsection (a) shall, for the period covered by the report, contain the following, to the extent such information is available:

- (1) A description of all bilateral assistance provided to Cuba by other foreign countries, including humanitarian assistance.
- (2) A description of Cuba's commerce with foreign countries, including an identification of Cuba's trading partners and the extent of such trade.
- (3) A description of the joint ventures completed, or under consideration, by foreign nationals and business firms involving facilities in Cuba, including an identification of the location of the facilities involved and a description of the terms of agreement of the joint ventures and the names of the parties that are involved.
- (4) A determination as to whether or not any of the facilities described in paragraph (3) is the subject of a claim against Cuba by a United States national.
- (5) A determination of the amount of debt of the Cuban Government that is owed to each foreign country, including:
 - (A) The amount of debt exchanged, forgiven, or reduced under the terms of each investment or operation in Cuba involving foreign nationals; and
 - (B) the amount of debt owed the foreign country that has been exchanged, forgiven, or reduced in return for a grant by the Cuban Government of an equity interest in a property, investment, or operation of the Cuban Government or of a Cuban national.
- (6) **A description of the steps taken to assure that raw materials and semifinished or finished goods produced by facilities in Cuba involving foreign nationals do not enter the United States market, either directly or through third countries or parties.**

Section 110 (Importation Safeguard against Certain Cuban Products) states the following:

(a) Prohibition on Import of and Dealings in Cuban Products. -The Congress notes that section 515.204 of title 31, Code of Federal Regulations, prohibits the entry of, and dealings outside the United States in, merchandise that:

- (1) Is of Cuban origin;
- (2) is or has been located in or transported from or through Cuba; or
- (3) is made or derived in whole or in part of any article which is the growth, produce, or manufacture of Cuba.

(b) Effect of NAFTA.-The Congress notes that the United States accession to the North American Free Trade Agreement does not modify or alter the United States sanctions against Cuba. The statement of administrative action accompanying that trade agreement specifically states the following:

- (1) "The NAFTA rules of origin will not in any way diminish the Cuban sanctions programme ... Nothing in the NAFTA would operate to override this prohibition."
- (2) "Article 309(3) [of the NAFTA] permits the United States to ensure that Cuban products or goods made from Cuban materials are not imported into the United States from Mexico or Canada and that United States products are not exported to Cuba through those countries."

(c) Restrictions of Sugar Imports. -The Congress notes that section 902(c) of the Food Security Act of 1985 (Public Law 99-198) requires the President not to allocate any of the sugar import quota to a country that is a net importer of sugar unless appropriate officials of that country verify to the President that the country does not import for reexport to the United States any sugar produced in Cuba.

(d) Assurances Regarding Sugar Products. -Protection of essential security interests of the United States requires assurances that sugar products that are entered, or withdrawn from warehouse for consumption, into the customs territory of the United States are not products of Cuba.

Relevant WTO provisions:

This section, "Prohibitions of Imports of and Dealings in Cuban Products", violates:

Article XI of the GATT "No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or the exportation or sale for export of any product destined for the territory of any other contracting party. "

Article XIII of the GATT "No prohibition or restriction shall be applied by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation of any product destined for the territory of any other contracting party, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted."

Article V.2 of the GATT "There shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of the vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or other means of transport."

Article XXIV.4 of the GATT Regarding administrative action accompanying NAFTA, there is clearly a violation of this article, which states that "... the purpose of ... a free trade area should be to facilitate trade between constituent territories and not to raise barriers to the trade of other contracting parties with such territories."

Agreement on Technical Barriers to Trade The regulation of the prohibition on imports of merchandise that is made or derived in whole or in part of any article that is the growth, produce, or manufacture of Cuba, coupled with the requirement to present certificates of non-Cuban origin, is a

violation of the Agreement on Technical Barriers to Trade. Even if the Code of Federal Regulations was not issued by the recognized institution for the drafting of technical regulations or standards in the United States, the definition is made very clear in Annex 1 of the WTO Agreement on Technical Barriers to Trade, which describes a *Technical Regulation* as a "document which lays down product characteristics ... including the applicable administrative provisions, with which compliance is mandatory." Article 2.2 of the same Agreement states that Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade.

The relationship established between US security interests and the possible consumption of Cuban sugar is solely and clearly intended to damage the country by targeting what used to be its main export, a product which accounted for the bulk of its export revenues.

Any transaction carried out from or to Cuba involving US companies requires specific licences, even in the case of shipments of products for which the United States has not notified an import licensing requirement. These licences must be approved by several government agencies, a cumbersome process which is at odds with the practice in other countries. Thus, all trade to or from Cuba violates Article 1.2 and 1.3 of the Agreement on Import Licensing Procedures.

Finally, all of these laws and measures are contrary to Articles XXXVI and XXXVII of Part IV of the GATT (Trade and Development), which establish principles and objectives to ensure a rapid and sustained increase of the export earnings of the less-developed contracting parties, and commitments on the part of the developed contracting parties to comply with those provisions. The measures taken by the United States against Cuba are diametrically opposed to what is intended by these GATT disciplines.
