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Council for Trade in Goods

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CUBA – ARTICLE XV:6**REQUEST FOR AN EXTENSION OF THE WAIVER CONCERNING ARTICLE XV:6
OF THE GATT 1994 CONTAINED IN THE DECISION OF 7 DECEMBER 2016
(WT/L/1003)**

The following communication, dated 14 October 2021, is being circulated at the request of the delegation of the Republic of Cuba.

I have the honour to inform you, in your capacity as Chairman of the Council for Trade in Goods, that Cuba wishes to request the inclusion of an item regarding the extension of the waiver concerning Article XV:6 of the General Agreement on Tariffs and Trade (GATT) 1994 on the agenda of the next meeting of this Body.

Pursuant to Article IX of the Marrakesh Agreement Establishing the World Trade Organization, the Republic of Cuba requests an extension, until 31 December 2026, of the waiver of the provisions of Article XV:6 of the GATT, as is appropriate given that Cuba is not a member of the International Monetary Fund (IMF). The current waiver is due to expire on 31 December 2021.¹ The reason for this request for a further extension of the waiver is that the conditions reported in previous years not only continue to exist, but have intensified.

1 PURPOSE AND BACKGROUND OF THE REQUEST

1.1. The Government of the Republic of Cuba requests a renewal of the extension granted on 12 December 2016 (WT/L/1003). This waiver providing relief from the provisions of paragraph 6 of the above-mentioned Article was granted to the Government of Cuba by the Decision of 7 August 1964, as successively extended on 18 October 1996², 20 December 2001³, 15 December 2006⁴, 14 December 2012⁵ and 7 December 2016.

1.2. The request for a further extension of the waiver is based on the fact that the circumstances that justified the waiver extension granted in 2016 not only remain virtually unchanged, but have also worsened. This applies, in particular, to the economic, trade and financial blockade measures that the Government of the United States of America is continuing to impose on Cuba, which have been aggravated by the impact of the pandemic.

1.3. Following the rapprochement between the Governments of Cuba and the United States of America on 17 December 2014, which set the stage for the reopening of embassies and helped advance the conclusion of various cooperation agreements on issues of mutual interest, the subsequent Republican administration reversed this process, with an escalation of hostilities during

¹ WT/L/1003, Decision adopted in accordance with the Decision-Making Procedures under Articles IX and XII of the WTO Agreement agreed by the General Council on 15 November 1995 (WT/L/93).

² WT/L/182.

³ WT/L/440.

⁴ WT/L/678.

⁵ WT/L/850.

which a range of more than 240 measures were applied over the last two years, taking the application of the blockade to extreme levels.

1.4. The new Democrat administration that entered the White House in January 2021 has, contrary to all predictions, continued to apply the sanctions imposed by the previous administration, and has even reinforced them, thus aggravating the country's economic and social conditions, without in any way taking into account the efforts and sacrifice made by the Cuban people to tackle COVID-19, including the solidarity we have shown with the rest of the world.

1.5. The following set of existing measures have been identified as forming the basic elements of the current escalation of hostilities:

- On 17 April 2019, the Secretary of State issued a statement announcing the full activation of Title III of the Helms-Burton Act as of 2 May 2019.
- On 4 June 2019, the Office of Foreign Assets Control (OFAC) announced a policy of refusing travel licences for passenger transport (cruise ships), recreational vessels and private aircraft.
- On 9 October 2019, restrictions were imposed on remittances to natural persons (capping them at USD 1,000 in any three-month period) and "U-turn" banking transactions⁶ were banned, measures contrary to those applied by the previous Barack Obama administration.
- On 26 February 2020, new regulations entered into force for the US company Western Union, making it no longer possible to send remittances to Cuba from third countries.
- On 10 March 2020, it was announced that charter flights to and from the United States would be suspended throughout the island, with the exception of Havana. This measure entered into force on 13 August 2020.
- On 23 October 2020, OFAC banned persons under US jurisdiction from processing remittances to and from Cuba that involve entities included on the Department of State's Cuba Restricted List, thereby directly impacting remittances sent through Fincimex and AIS.
- On 1 January 2021, the Department of State added the Banco Financiero Internacional to the Cuba Restricted List.
- On 11 January 2021, Cuba was added to the State Sponsors of Terrorism list.

1.6. We wish to emphasize that the policy of economic and financial persecution has intensified against third-country banks and firms, thus generating greater obstacles for the Cuban bank in its international operations. The central aspects of this situation are the considerable fines imposed on major European Banks, the implementation of Title III of the Helms-Burton Act and Cuba's inclusion, once again, on the State Sponsors of Terrorism list. This last measure, which is unquestionably illegal, has been widely criticized and rejected by the international community, as reflected in the UN's overwhelming vote against the blockade policy in June 2021.

1.7. The use of US currency continues to be banned in the country's external commercial and financial operations, which generates substantial losses on account of changes in the exchange rates between the US dollar and the currencies of third countries in which receipts and payments are executed, as well as other additional costs. Regarding this aspect, we should point out that the country was obliged to temporarily ban US dollar cash deposits in Cuban banking and financial institutions because of the barriers imposed by the US blockade on the export of this currency when it has been collected in the country.

⁶ Transfers of funds that pass through, but do not originate or terminate in, North American banks.

1.8. Despite having been reincluded on the State Sponsors of Terrorism list, our country continues to fulfil its obligations as part of the Financial Action Task Force of Latin America (GAFILAT), where the results achieved show that, to date, Cuba is among the countries that have obtained the best results at global level, reflecting its context and actual situation, and its aim to become fully integrated into the international network of countries that combat money laundering, the financing of terrorism and the proliferation of weapons of mass destruction has thus been achieved.

2 JUSTIFICATION

2.1. The rigid and hostile blockade policy against Cuba continues to be the main impediment to the country's economic development, by hampering the performance of all sectors of its domestic economy, by substantially increasing financial costs and impeding access to external financial flows, and by obstructing essential imports, mainly food, medicines and fuel, which is a serious obstacle to economic development.

2.2. Consequently, the country's efforts to integrate into the world trading system are being made under particularly difficult conditions - the outcome of a policy that contradicts the principle of free trade.

2.3. The blockade legislation also prohibits loans to Cuba by multilateral and regional financial organizations, thereby denying the country access to sources of long-term financing under favourable conditions and forcing it to resort to short-term loans with high interest rates and supplier financing on a much less flexible basis than credit from financial institutions and official sources.

2.4. The blockade is a blatant violation of international law and the principles of free trade and navigation enshrined in numerous international legal instruments, including the rules of the World Trade Organization (WTO). It runs counter to the purposes and principles of the United Nations Charter and constitutes an infringement of a sovereign State's right to peace, development and security.

2.5. The main laws that allow the blockade to continue are the following:

- The Trading With the Enemy Act (TWEA): originally enacted as a wartime measure in 1917 to restrict trade with nations that were considered hostile, it was on this law that the first regulations of the 1962 blockade against Cuba were based. In September 2015, arguing foreign policy interests, President Obama renewed this Act, which constitutes the cornerstone of the laws and regulations governing the blockade, for one more year.
- The Foreign Assistance Act, enacted by the United States Congress in September 1961, authorizing the President of the United States to establish and maintain "a total embargo on trade between the United States and Cuba". It also prohibits the granting of any aid to the Government of Cuba.
- The Export Administration Act (EAA), adopted in 1979, which empowers the President to control, in general, exports and re-exports of goods and technology, in particular those that are considered detrimental to the national security of the United States.
- The Cuban Democracy Act (CDA), better known as the "Torricelli Act", signed by President Bush Senior in October 1992, reinforcing the economic measures against Cuba and providing a legal basis for the extraterritoriality of the blockade. Among other restrictions it prohibits subsidiaries of North American companies in third countries from doing business with Cuba or Cuban nationals, and prohibits the entry into North American territory for a period of 180 days of ships from third countries that have touched port in Cuba.
- The Cuban Liberty and Democratic Solidarity (Libertad) Act, commonly known as the "Helms-Burton Act", approved by President Clinton in March 1996. Its essential aim is to impede and discourage foreign investment and to internationalize the blockade against Cuba. It codifies the provisions of the blockade, limiting the President's prerogatives to suspend the policy and broadening its extraterritorial scope. It denies entry into the United States of directors of foreign companies (and their family members) that invest in

"confiscated" property in Cuba and provides for the possibility of filing legal action against them in the US courts.

- The Export Administration Regulations (EAR), which regulate the exceptions to the Export Administration Act or those that are authorized under licences issued by the Bureau of Industry and Security of the Department of Commerce. They come under the Trading With the Enemy Act and the Export Administration Act.

2.6. This body of legislation, applied over almost six decades, has caused the Cuban nation severe economic damage estimated at 147,853 million dollars at current prices, and amounting to 1,377,998,000 dollars by the end of 2020, taking into account the depreciation of the dollar against the value of gold in the international market.

2.7. Moreover, the economic, commercial and financial siege that has been kept in place unchanged by all of the US administrations since 1961 imposes extraterritorial restrictions on Cuba that also affect other WTO Members.

2.8. The effects of the economic, commercial and financial blockade are compounded by the adverse impact on the Cuban economy of the continuing global economic and financial crisis and the pandemic. The host of difficulties mentioned above prevent the signing of a special exchange agreement with WTO Members.

2.9. 2020 was a very difficult and complex year for Cuba, one characterized by severe economic and financial tensions stemming from the US blockade, monetary instability, price volatility in the international market, and the effects of the global financial crisis. All this was compounded by the impact of the SARS CoV-2 (COVID-19) pandemic, which generated additional costs for the country because of the need to implement lockdown and physical distancing policies, measures to shut down production activities and other actions related to the prevention and containment of the disease.

2.10. As a result of the foregoing, Cuba recorded a 10.9% drop in GDP for the second time in 27 years, which was much higher than 0.2% fall recorded in 2019. The production of goods fell by 15.1% due to a decline in all economic activities other than those related to mining and quarrying, while services fell by 10.1%, amounting to 85.1% of total GDP.

2.11. In the midst of this adverse scenario, it was necessary to adjust both the Plan for the Economy and the state budget, which required an increase in the fiscal deficit initially provided for in the State Budget Law, in order to support the costs generated by COVID-19, as well as the rise in costs associated with the general reform of wages, pensions and social security benefits, as a step prior to the monetary and financial ordering process, the implementation of which began on 1 January 2021. As a result, the fiscal deficit tripled in relation to that recorded in 2019, amounting to 17.7% of GDP.

2.12. Economic measures were also taken to promote work in the non-state sphere, which involved 1,549,000 people at the end of the year. This figure is expected to continue to rise as activities included in the new forms of non-state management expand.

2.13. Likewise, non-agricultural or services cooperatives continued to grow as a new form of economic management; most of them operate in the areas of trade, catering, transport and construction, which are expected to help raise the quality of services in the country. By the end of 2020, 17,200 people were working in this type of non-state management, 3.0% more than in the previous year.

2.14. In spite of the economic decline, the country made huge efforts to mitigate the impact of the blockade and the COVID-19 pandemic on the Cuban people and to prevent the deterioration of social indicators, which reflect the gains made in this area. The most relevant indicators performed as follows:

- The infant mortality rate fell from 5.0 per thousand live births in 2019 to 4.9 in 2020, while the under-five mortality rate fell from 6.6 to 6.2 per thousand live births, which is lower than the rate in South American and Caribbean countries; this rate has remained at or below 5.0 for the past 13 years.
- Life expectancy at birth continues to be 78 years.
- The country has one doctor per 108 inhabitants and one dentist per 544 inhabitants.
- The unemployment rate rose slightly from 1.2% in 2019 to 1.4% in 2020. The economic crisis brought on by the coronavirus pandemic had an impact on the labour market because of the measures implemented to contain the spread of the virus. These measures provided for, *inter alia*, the temporary limitation of operations in non-essential economic activities and restrictions on freedom of internal transit in the country. The same measures were accompanied by the introduction of support programmes for workers (teleworking and remote working) and mothers with children of school age, so as to prevent concentrations of people in the workplace and to safeguard jobs.
- A total of 345,764 students graduated from the education system at the end of the 2019-20 academic year, of whom 35,739 from higher education institutions, which represents an increase of 56.7% over the previous year.
- Primary and secondary education for all has been guaranteed, as has school retention at primary and secondary level.
- Total registration for the 2019-20 academic year stood at more than 2,000,000 students at all levels (pre-school, primary and secondary education, special education, tertiary education, vocational and skills training and adult education), despite representing a drop of 14.9% over the previous year.

2.15. At the international level, Cuba continued to provide valuable support to developing countries. In 2020, with the arrival of the COVID-19 virus, the Cuban nation began to send medical teams to countries that were requesting humanitarian aid. By the end of April 2021, more than 50 teams including specialized professionals from the Henry Reeve Brigade had been sent to treat coronavirus patients in 40 countries. This medical brigade was nominated for the Nobel Peace Prize in 2021 for the extraordinary work and efforts of Cuban doctors and healthcare workers in countries experiencing disasters and serious epidemics, in the 15 years since the brigade was founded.

2.16. The years 2020 and 2021 marked a milestone in the field of Cuban public health. Faced with the challenge of the COVID-19 pandemic, and in the midst of severe shortages and the unlawful escalation of the US blockade, our scientific community created three vaccines and two candidate vaccines, with satisfactory results, the aim being to fully immunize all Cubans by the end of 2021. These biotech products are the result of a government policy aimed at enhancing not only technological infrastructure, but also the capacity and talent of Cuban scientists, which throughout the years has required major investment efforts in the fields of education, science, technology and innovation.

ANNEX

CUBA – ARTICLE XV:6

DRAFT EXTENSION OF WAIVER

Decision of [...] 2021⁷

Noting the request by the Government of Cuba for an extension of the waiver relieving it from the provisions of paragraph 6 of Article XV of the General Agreement on Tariffs and Trade 1994, which provide that any Contracting Party which ceases to be a member of the International Monetary Fund shall enter into a special exchange agreement with the WTO;

Considering once again that, owing to special circumstances, the application of the provisions of paragraph 6 of Article XV to Cuba would raise a number of legal and practical difficulties;

Noting the assurances given by the Government of Cuba that it will use the waiver with the purpose of continuing to promote trade and investment with Members;

The Members, acting pursuant to the provisions of paragraph 3 of Article IX of the Agreement on the WTO,

Decide:

1. Without derogation from any other provisions of Article XV and subject to the terms and conditions set out below, to extend the waiver granted to the Government of Cuba by Decision of 7 August 1964, as extended on 18 October 1996, 20 December 2001, 15 December 2006, 14 February 2012, and 12 December 2016, relieving it from the provisions of paragraph 6 of the said Article from 1 January 2022 to 31 December 2026.
2. The extension shall be subject to the Government of Cuba satisfying the WTO that it has complied with its undertaking to make use of the waiver without thereby affecting the objectives of the General Agreement or harming or impairing the rights of the other contracting parties.
3. The Government of Cuba will submit to the General Council an annual report on the implementation of this waiver with a view to facilitating the annual review provided for in paragraph 4 of Article IX of the WTO Agreement.
4. The Government of Cuba will, upon request, promptly enter into consultations with any interested Member with respect to any difficulty or matter that may arise as a result of the implementation of this waiver, where a Member considers that any benefit accruing to it under the GATT 1994 may be or is being impaired unduly as a result of such implementation. Such consultation shall examine the possibility of action for a satisfactory adjustment of the matter. This decision does not affect Members' rights as set forth in the Understanding in Respect of Waivers of Obligations under the GATT 1994.

⁷ Adopted in accordance with the Decision-Making Procedures under Articles IX and XII of the WTO Agreement agreed by the General Council on 15 November 1995 (WT/L/93).