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TRADE POLICY REVIEW MECHANISM

Statement by the Delegation of Cuba

The delegation of Cuba has requested that the following statement, made by it on 14 December 1989 during the Trade Policy Review of the United States, be circulated to delegations invited to that meeting.

Comments by the Cuban Delegation on the USA Report in the Context of the Trade Policy Review Mechanism of the GATT Council, 12-14 December 1989

The delegation of the Cuban Republic wishes to make some comments and observations on the report on the United States of America (documents C/RM/S/3, C/RM/G/3 and C/RM/G/3 Appendix).

Trade relations between the Cuban Republic and the United States of America date back to the end of the 18th century. Since 1948 and until the unilateral imposition of the economic and trade embargo in 1962, those relations were basically governed by the General Agreement on Tariffs and Trade (GATT) and the exclusive supplementary agreement thereto, both countries being founder members of GATT.

With the triumph of the Cuban revolution, 1 January 1959 marked the opening of a new stage in trade relations between Cuba and the United States which has been characterized by aggressions of all kinds, inter alia numerous coercive actions and measures of an economic character directed against the Cuban people for political purposes.

Since the beginning of the 1960s and to date, United States trade policy towards Cuba has been aimed at hampering, halting and preventing the economic development of the Cuban people through measures designed to that end. The first embargo against Cuban exports was imposed in July 1960 under Presidential Order 3355 which reduced the Cuban sugar quota by 700,000 tonnes, representing 95 per cent of the balance intended for export to the United States market in that year. Thereafter, under successive presidential orders, Cuba's sugar quota was suspended. These measures have affected Cuba's principal industry and ultimately its principal export commodity.

In parallel, in October 1960, trade embargo measures were imposed in order to prohibit exports to Cuba with the exception of foodstuffs, medicaments and medical equipment.

On 3 February 1962, under the Foreign Aid Act of 1961, the President of the United States issued Presidential Order 3447 imposing an embargo on trade with Cuba, prohibiting imports into the United States of all products of Cuban origin, in addition to all goods imported from or via Cuba, and ordering a continuing prohibition on all exports from the United States to Cuba.

On 24 March 1962, the Treasury Department prohibited the entry into the United States of all goods entirely or partly manufactured from Cuban products, even if manufactured in third countries.

In addition to the total embargo imposed a few months earlier, and on grounds of national security considerations, the United States Government, acting in breach of its international commitments, unilaterally suspended the most-favoured-nation and preferential treatment which the two countries had been granting each other under bilateral agreements and the GATT.

The suspension of m.f.n. and preferential treatment was made effective under Treasury Decision 55638, under the legal authority of Section 401 of the 1962 Tariff Act, declaring a suspension in respect of Cuba of the m.f.n. and preferential status as provided for in Section 5 of the Extensions and Trade Agreements Act of 1951. In September 1962 the United States called on governments whose merchant ships were travelling to Cuba in peaceful commercial traffic to observe the embargo and suspend such voyages, under the threat that such ships would be placed on the "black list" and would not be allowed to enter United States ports.

In February 1963, the United States Government announced that goods acquired with United States government funds must not be transported in ships flying the flag of countries maintaining trade relations with Cuba.

In June 1963, regulations were issued for the control of Cuban assets, prohibiting all transactions of the Cuban State, its agencies and citizens, with consequent effects on all credit and payment transfers, goods transactions in foreign exchange, etc., between the United States and Cuba by any natural or legal person. All bank accounts and assets of any kind owned by a Cuban national in the United States were frozen, so that no operations could be carried out in respect of them.

Those regulations were issued under the legal provisions concerning direct or indirect trade with countries deemed enemies, among other aspects by freezing the assets of such countries.

In May 1964, the Commerce Department imposed a total restriction on shipments of foodstuffs and medicaments to Cuba.

Although m.f.n. and preferential treatment had been suspended under the legislation already mentioned, the prohibition has since then been reinforced through additional provisions, among which one may mention the Trade Act of 1974, which withheld m.f.n. treatment for any country which, like Cuba, was not receiving it when that Act was promulgated. The Trade Agreements Act of 1979 and the Trade and Tariff Act of 1984 maintained the earlier measures in force, with no amendments to their character and coverage.

Since 1986, sugar exports to third countries that trade with the United States have been affected by Section 902 of the Food Security Act of December 1985, which requires those countries to certify, as a condition for being included in the United States import quota system, that their re-exports to the United States do not contain any sugar of Cuban origin.

Section 1911 of the Omnibus Trade and Competitiveness Act of 1988 - the most recent legislation of the United States - reinforces the restrictions on imports from Cuba. To this end, the United States Trade Representative is to ask all major agencies to prepare appropriate recommendations for strengthening the restrictions on imports of Cuban goods, including measures to prevent indirect shipments and other means of circumvention. After examining such recommendations, the United States Trade Representative is to inform Congress, within ninety days following promulgation of the Act, of any proposals for administrative measures or legislation deemed necessary and appropriate for strengthening the restrictions on imports from Cuba.

Pursuant to the Act, on 23 November 1988, the Treasury Department issued new regulations for strict control of the activities of persons and firms involved in travel and transfers of funds to Cuba, and restricting the use in Cuba of credit facilities issued by United States' banks. Earlier, on 3 November of that year, the Treasury Department published a list of thirty-two companies specially designated as Cuban nationals with which United States firms are prohibited from engaging in economic activities, under the provisions of the Act on control of Cuban assets which prohibits persons subject to United States legislation from carrying out transactions with any natural or legal persons specially designated as Cuban nationals or involved in any property in which any natural or legal person designated as a Cuban national has an interest.

Thereafter, on 10 April, 20 September and 31 October 1989, additional lists were published of companies and natural or legal persons specially designated as Cuban nationals. On 25 August 1989, the Treasury Department issued new regulations limiting to US\$ 100 per day the amount of money allowed to cover living expenses for anyone travelling to Cuba, and setting a ceiling of US\$ 100 for the purchase of goods in Cuba by way of accompanied luggage. Additional restrictions have been imposed on the amount of money allowed for various specified purposes.

As regards charter flights, on 24 October 1989, the Treasury Department issued regulations establishing new requirements; these include measures designed to intimidate travellers, such as having to read an announcement concerning restrictions on travel to or from Cuba, the first sentence of which reiterates the existence of a total embargo vis-à-vis Cuba.

In August 1975, because of pressure from third countries opposed to restrictions on their trade with Cuba, the United States Government had to agree to allow third-country-based subsidiaries of United States firms to engage in trade with Cuba. This form of indirect trade is subject to the grant of export permits by the Commerce Department or the Treasury Department, as appropriate; each case is examined individually, and a permit is granted solely for non-strategic goods with a US-origin content not exceeding 20 per cent of the total export value. On repeated occasions, there has been reluctance to recognize this exception for the possibility of the purchase by Cuba of products sensitive for its economy, such as those intended for the public health sector, including equipment for the diagnosis of diseases such as cancer. On 20 July 1989, in the context of discussion of the Foreign Aid Act, the United States Senate approved an amendment proposed by Senator Connie-Mack for reinforcing the embargo against Cuba, by prohibiting trade operations between subsidiaries of US companies and Cuba. The extra-territoriality of this action implies the intention of limiting the trade of third countries with Cuba, it affects the legislation and interests of those States, in addition to the economic implications of not completing trade operations. If approved, the Senate proposal would constitute a new aggression with a significant impact on the public health and foodstuff sectors of the Cuban nation.

In recent weeks, it has been announced that the Treasury Department has refused to allow the ABC television network to sign an agreement with the organizing committee of the Pan-American and Caribbean Games regarding transmission rights for this event which is to take place in Cuba in the spring of 1991. Similarly, because of existing restrictions on trade of United States firms with Cuba, it will not be possible for the drug-testing laboratory and bowling equipment to be sent from the United States.

By imposing an embargo against Cuba for more than a quarter of a century and resorting to other coercive and illegal methods of a commercial character for political reasons, the United States Government has tried to prevent a developing contracting party from using its sovereignty to determine the political régime that it considers most appropriate.

The report on the United States of America does not clearly state that that country maintains a full embargo against Cuba, but merely mentions the maintenance of "assets freezes and comprehensive economic embargoes against Cuba" (document C/RM/G/3, page 81).

The US embargo against Cuba is in contradiction with the commitments taken on by the United States Government in its capacity as a GATT contracting party. This unilateral action is illegal, and furthermore inconsistent with the objectives of the Uruguay Round of bringing about "further liberalization and expansion of world trade to the benefit of all countries", as stated in Part A, sub-paragraph (i) of the Ministerial Declaration of Punta del Este, and notwithstanding that according to the report by the United States, that country attaches "first priority" to the Uruguay Round.

Similarly, in the Ministerial Declaration adopted on 29 November 1982, the CONTRACTING PARTIES undertook "to abstain from taking restrictive trade measures, for reasons of a non-economic character, not consistent with the General Agreement" (paragraph 7(iii)), which is in contradiction with the measures applied to Cuba by the United States.

The embargo imposed by the United States against Cuba is undoubtedly in breach of the principles laid down in the General Agreement, from the preamble, which mentions the "elimination of discriminatory treatment in international commerce", to Part IV concerning principles and objectives aimed at promoting the trade and development of less-developed contracting parties (Article XXXVI). It is also in breach of the commitment by developed contracting parties to "refrain from introducing, or increasing the incidence of, customs duties or non-tariff import barriers on products currently or potentially of particular export interest to less developed contracting parties" (Article XXXVII).

For imposing this embargo, the United States in its report cites considerations of "wartime" and "national emergency" for the maintenance of "assets freezes and comprehensive economic embargoes against Cuba" (document C/RM/G/3, page 81). It used the same justifications in 1974 (document MTN/3B/4), when it invoked Article XXI of the General Agreement, citing individual and collective defence and promotion of national security and security within the hemisphere. In this regard, what is stated in the report on the United States is not appropriate and is inconsistent with Article XXI. Since Cuba has not provoked any "national emergency", there is no "wartime" nor any serious international tension.

The report on the United States indicates that most-favoured-nation treatment is not granted to Cuba (document C/RM/S/3, page 139), but it does not mention the fact that that country has unilaterally suspended the application of Article I(c) of the General Agreement, concerning preferences in force exclusively between these two countries, and, consequently, is also infringing Article II, since Part II of the US schedule is not being applied to Cuba (Schedule XX).

In this connection, we would also point out that the United States under-estimates the importance of its failure to grant m.f.n. treatment by stating that "only a few GATT contracting parties are denied m.f.n.

treatment"; in fact, however, what is important is that the application of such measures, even to only a few countries, is in breach of the principle of non-discrimination that should govern the multilateral trading system. Similarly, the US embargo against Cuba constitutes a violation of commitments entered into by that country under Article XIII:1 of the General Agreement, stipulating that "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".

Another example is the fact that the United States brings pressure to bear on its trade partners not to market Cuban products and tries to prevent subsidiaries based outside US territory from trading with Cuba; this is in contradiction with paragraph 2 of the Decision of 30 November 1982 (L/5426) which states that "when action is taken under Article XXI, all contracting parties affected by such action retain their full rights under the General Agreement". And yet, under the Food Security Act of 1985 (L/5980), the United States Government refuses to grant import quotas for sugar to countries that could have purchased Cuban sugar; and, in addition to causing injury to Cuba, this adversely affects third contracting parties, including some developing ones. This is inconsistent with the intention of developing "a more open, viable and durable multilateral trading system", as set forth in the Ministerial Declaration on the Uruguay Round.

Furthermore, the restrictions on sugar imports under the United States import quota system have a negative effect for all developing countries which are producers and exporters of sugar, because of the market impact of this measure; and they are particularly harmful for those countries which have been the subject of the discriminatory policy applied by the United States in determining and allocating quotas.

This measure is inconsistent with the GATT rules and disciplines, it is in breach of Article XI:1 of the General Agreement and is inconsistent with Article XXXVI:4 in Part IV of that Agreement, as regards the priority which, under that Article, should be attached to lowering existing barriers to the trade of developing countries.

As regards eligibility, this quota system has been used as an instrument of political coercion against some developing countries. As regards allocation, the system is in breach of the principles laid down in Article I:1 of the General Agreement concerning general most-favoured-nation treatment.

The fact that in the period 1982-87 United States sugar production increased by slightly more than 7 per cent, that the self-sufficiency level has risen from 66 per cent to 81 per cent, that imports have fallen by more than half and that exports have doubled - this is an eloquent reflection of a trade policy that is also contrary to the standstill and rollback commitments.

In summary, the unilateral, arbitrary and unlawful measures that the United States, the leading world economic power, has been applying against a developing contracting party for more than twenty-seven years, are in breach of the most elementary principles of international law and are inconsistent with the GATT rules, more particularly the so-called golden rule of non-discrimination. For this reason, the statement in document C/RM/G/3, page iii, to the effect that "successful completion of the Uruguay Round should strengthen the multilateral system, improve the GATT as an institution, expand access to all countries' markets for goods and services ..." lacks credibility.

These trade policy objectives of the United States will only be valid if the restrictions which that country applies in flagrant violation of multilaterally-agreed rules are eliminated.