# Chapter One

# The Embargo

### *History and Overview*

Recent U.S. laws seeking to bring about political change in Cuba by exerting economic pressure are not new. Economic sanctions against the island were adopted in I962 and, other than the ebb and flow of their severity brought on by various gestures toward Castro by intervening administrations, the embargo has intensified in its severity and scope. The bulk of U.S. prohibitions against trade with Cuba are set forth in the regulations of the U.S. Department of the Treasury's Cuban Assets -Control .Regulations (31 C.F.R. Part 515) and the Commerce Department's Export Administration Regulations (15 C.R.F. Parts 770 through 785). Federal law provides that civil penalties may be imposed for any violation of these regulations and that knowing violations are also punishable as criminal offenses, incurring substantial fines and possible prison terms of up to ten years. Property involved in such violations of the U.S. embargo regulations is subject to forfeiture.[1]

The passage of the Cuban Democracy Act (CDA) sponsored by Congressman Robert Torricelli (D-New Jersey) and the Cuban Liberty Act (Helms-Burton) have, in practice, resulted in a severe tightening of the embargo, specifically impacting medicines and medical equipment. The CDA was originally publicized as offering a loosening of the restrictions on trade in these goods through the licensing provisions it included. However, these were more than offset by other aspects of the legislation, creating a net effect that was the opposite of what was claimed.

Since its formalized institution in 1962, the U.S. embargo against Cuba has become ever more comprehensive. The key elements of the embargo, as it now stands, include the following general prohibitions:

Imports: U.S. law prohibits any imports from Cuba into the United States.

Exports: U.S. law prohibits any exports to Cuba from the United States.

Travel: U.S. law severely restricts the freedom of U.S. citizens and residents to travel to Cuba. This is achieved by regulations which prohibit U.S. persons from paying Cuba or Cuban nationals for travel-related expenses such as hotels. There are exceptions for certain persons, such as those visiting close relatives in Cuba, journalists, academics, and persons traveling on official business for the U.S. government, foreign governments, or international organizations. Even persons in these excepted categories are subject to severe restrictions, including a $100 per day limit on travel expenses in Cuba. Special restrictions apply to Cuban-Americans seeking to visit family members in Cuba. Under regulations published in October 1995, persons currently wishing to visit close relatives in Cuba "in circumstances of extreme humanitarian need" must apply for a license from the Treasury Department, and such licenses can be issued only for one trip per year, per person.

Transfer of money or property. The United States prohibits any U.S. person from transferring money or property of any nature to Cuban nationals. There are exceptions for family remittances, but these are limited to $300 every three months to the household of a close relative in Cuba.

Receiving property: U.S. law prohibits any U.S. person from receiving property from Cuba or a Cuban national.

Technical data: The prohibition on transfers of property also includes the transfer of technical data.

Aircraft: U.S. law prohibits any aircraft from departing from the U.S. for Cuba and any aircraft owned or controlled by U.S. persons from departing for Cuba, regardless of departure point.

Vessels: U.S. law prohibits any third-country vessel from entering a U.S. port for a 180-day period following the vessel's entry into Cuba. This provision was included in the CDA and has been one of the most objectionable aspects of the embargo to other nations; as it dramatically impacts foreign nations' freedom of trade.2

Penalties against other nations: The United States may cut off aid and credits to countries which give preferential treatment to Cuba. The United States also maintains veto power within several international financial...institutions over loans and credits to Cuba and nations that trade with Cuba.

MARCH~1960: President Eisenhower approves a plan of covert action and economic sabotage against Cuba. In the first months of 1960 the U. S. government waged a campaign to prevent Cuba from receiving loans and credits from Western European and Canadian institutions. A consortium of European banks, under pressure from the U.S., canceled plans to negotiate a $100 million loan to Cuba.

July -1960: President Eisenhower cancels the unfulfilled balance of the Cuban Sugar Quota to the U. S. for 1960.

AUGUST 1960: Cuba issues Resolution Number 1 under Law 651, which ordered the expropriation of 26 of the largest U.S. companies operating in Cuba.

OCTOBER 1960: In what the media describe as a aquarantine" of Cuba, the Eisenhower Administration bans U.S. exports to that country, except for foodstuffs, medicines and medical and hospital supplies. Companies wishing to sell such goods to Cuba can do so under a "general" license; no specific license is required. Imports from Cuba continue to be allowed.

JANUARY~1961_ The U.S. severs diplomatic relations with Cuba.

APRIL 1961: The Bay of Pigs invasion is launched.

SEPTEMBER~1961 The Foreign Assistance Act of 1961 authorizes the President to establish and maintain a "total embargo upon all trade between Cuba and the U.S."

FEBRUARY 1962: The Kennedy Administration extends the embargo to prohibit Cuban imports into the U.S.

MARCH 1962: Tbe embargo is further tightened to prohibit imports into the U.S. from third countries of goods made from or containing Cuban materials.

AUGUST 1962: In order to dissuade third countries, Congress amends The Foreign Assistance Act of 1961 to prohibit U.S. assistance ato any country which furnished assistance to the Present government of Cuba."

FEBRUARY 1963: President Kennedy prohibits U.S. government -purchased cargoes from being transported on foreign flag vessels which had called at a Cuban port after January 1,1963.

JuLY 1963: The Treasury Department produces the Cuban Assets Control Regulations, which embody the essential features of the U.S. economic embargo against Cuba. These regulations have been in effect ever since, including a freeze of all Cuban-owned assets in the United States, a prohibition on all

nonlicensed financial and commercial transactions between Cuba and the United States and between Cuba and U.S. nationals and a prohibition on the spending of money by U.S. citizens in the course of travel to Cuba.

MAY 1964: The Commerce Department revokes its prior general license policy for export to Cuba of foods, medicines and medical supplies. Instead, it adopts a broad policy of denying requests for such commercial sales and permits only limited humanitarian donations.

JULY1964: The Organization of American States (OAS) passes a resolution obliging its members to enforce a collective trade embargo on Cuba. The resolution excludes sales of foodstuffs, medicines and medical equipment. The United States, however, continues its policy of denying licenses for such sales.

JULY 1974: The Treasury Department liberalizes its Cuban regulations, to allow, among other things, the importation of Cuban books and records and also lessens restrictions on travel to Cuba by scholars and journalists.

JULY 1975: The OAS repeals its regional trade embargo against Cuba, prompting the Ford Administration to end the ban on third-country subsidiary trade with Cuba, instead requiring only that U.S. companies obtain individual licenses for transactions involving their overseas subsidiaries.

MARCH 1977: The Carter Administration removes restrictions on the travel of U.S. citizens to Cuba.

**APRIL** 1992: The Reagan Administration severely restricts the travel of U.S. citizens to Cuba.

OCTOBER 1992: President Bush signs the Cuban Democracy Act (CDA), which outlaws subsidiary trade with Cuba and imposes severe restrictions on foreign ships that visit Cuba before attempting to enter U. S. ports. The CDA also grants to the Treasury Department, for the first time, the authority to levy civil fines of up to $50,000 for violations of the embargo.

**MARCH** 1996: The Cuba Liberty and Democratic Solidarity Act (the aHelms-Burton Act") becomes law. It seeks to impede economic recovery under the present Cuban government by deterring foreign investment. Among other measures, the Helms-Burton Act allows foreign companies to be taken to court in the United States if they are atrafficking" in former U.S. citizen-owned properties nationalized by the Castro government in Cuba. ("Trafficking" is expansively defined to include not only direct investment in such properties, but also any activities involving such properties that benefit the "trafficker.") In addition, the Act codifies the existing Cuban Asset Control Regulations. Henceforth, any modification of those regulations will require an act of Congress.

Following the collapse of the Soviet Union in 1989 and the resulting loss of Soviet subsidies, Cuban trade with U.S. corporate subsidiaries rose dramatically. In the year prior to the October I.992 passage of the CDA, subsidiary sales to Cuba totaled between !$400-700 million.9 With the CDA's tightening of the embargo to include subsidiary sales (which had been licensed on a liberal basis prior to 1992) this growing trade was cut off almost overnight.

Perhaps the most onerous of the CDA's provisions, and that which is the focus of this report, are those restricting the sale of medicines and medical equipment to Cuba. The CDA provides, in . relevant part:

Section 1705(c) ***Exports ofMedicine*** and ***Medical*** supplies -Exports of medicines or medical supplies, instruments, or equipment to Cuba shall not be restricted —

(1) except to the extent such restrictions would be permitted under section 5(m) of the Export Administration Act of .1979 or section 203(b)(2) of. the -International Emergency Economic Powers Act;
(2) except in a case in which there is a reasonable likelihood that the item to be exported will be used for purposes of torture or other human rights abuses;
(3) except in a case in which there is a reasonable likelihood that the item to be exported will be reexported; and
(4) except in a case in which the item to he exported could be used in the production of any biotechnological product.

(d) Requirements for Certain Exports —

(1) On Site Verifications —
(A) Subject to subparagraph (B), an export may be made under subsection (c) only if the President determines that the United States Government is able to verify, by on-site inspections and other appropriate means, that the exported item is to be used for the purposes for which it was intended and only for the use and benefit of the Cuban people.
(B) Subparagraph (A) does not apply to donations to non-governmental organizations in Cuba of medicines for humanitarian purposes.

Licenses -Exports permitted under subsection (c) shall be made pursuant to specific licenses issued by the United States Government.

### *The CDA's Restrictions on the Sale of Medicines*

On its face, the language of the Cuban Democracy Act regarding exports of medicines and medical supplies to Cuba seems to create a liberal policy of granting licenses for such sales. The CDA's literal wording grants exceptions for medical and humanitarian aid. Section 1705 exempts "donations of food to non-governmental organizations MGOsl...[andl individuals in Cuba." The act further exempts "exports of medicines or medical supplies, instruments, or equipment," except where "restrictions would be permitted" under the Export Administration Act of 1979 or the International Emergency Economic Powers Act. The Act also restricts the export of medical materials where there is a "reasonable likelihood' of the Cuban government's misuse of such aid for reexport, human rights violations, or biotechnology.

The restrictions the CDA imposes on the delivery of medicines, however, subvert the spirit of such exceptions by making Cuba's access to such materials nearly impossible. The result is a de facto ban on critical medical and other assistance. For example, the medical supplies exemption does not seem so generous when one reads that commercial export of such supplies is subject to the issuance of "specific licenses." Permission for commercial (i.e., nonhumanitarian) export of medical materials also hinges on the President's determination "that the lU.S.1 Government is able to verify by on site inspections" that the items will be put to their intended use to benefit Cuban citizens.

CDA § 1706(a) further limits the shipment of medical supplies to Cuba by prohibiting the issuance of licenses "for any transaction described in section 515.559 of title 31, Code of Federal Regulations"

(part of the Department of the Treasury's regulations). Section 515.559 of the Code states that " no specific licenses [which are always required in this context] will be issued...for [commercial1 transactions between U.S.-owned or U.S.-controlled firms in third countries and Cuba.'[4]

The U.S. government will consider license applications where certain exceptions apply. Commercial "exportation of medicine or medical supplies from a third country to Cuba"[5] is one such exception. However, a U.S.-owned or U.S.-controlled firm must still apply for and receive a special license from the U.S. government. Even then, such exported goods are subject to the same burdensome -verification and on-site inspection- procedure8 as those imposed by the CDA. The result is that Cuban citizens must wait and languish while U.S. companies and/or their subsidiaries endure the lengthy (and often fruitless) license application process, await word as to whether the U.S. government can "verify" that the exported medical items will he put to their intended use, and then submit to on-site inspection procedures.

Finally, the Treasury regulations act in concert with Department of Commerce regulations to require "U.S.-owned or controlled firms"' overseas to obtain Department of Commerce permission to export goods (medical and otherwise) containing U.S.-origin materials. Broad in scope, the Commerce Department regulations encompass foreign firms that are not related to U.S. companies but that merely incorporate "U.S.-origin materials, parts, or components."[8] The Commerce Department will then only favorably consider foreign firms' request for authorization to use "an insubstantial proportion"[9] of U.S.-origin matter in "nonstrategic, foreign-made products."[10] To qualify as insubstantial, U.S.-origin matter incorporated into a foreign-made product can amount to no more than "20 per cent...of the value of the product to be exported from the third country."[11] The likelihood of favorable treatment is doubtful, however, since "ltlhe general policy is to deny all applications or requests to export or reexport U.S.-origin commodities and technical data" to Cuba.[12]

Of the requirements necessary for obtaining a license to sell medicines to Cuba, that of "on-site verification" provides the U.S. Treasury and Commerce Departments with an effective weapon in discouraging and denying requests for licenses. In fact, both of these departments openly state that it is their general policy to deny all applications. For example, in its 1994-1995 Annual Report, the Bureau of Export Administration (BXA) states that "[Alpplications for validated licenses will generally be denied, except on a case-by-case basis for...exports to Cuba of medicines and medical items that satisfy the requirements of the CDA"[13]

Like Commerce, the Treasury Department also uses the authority and discretion granted it by the CDA to discourage and deny requests for licenses to sell to Cuba. Testifying before Congress in 1993 on the one-year anniversary of the passage of the CDA, Richard Newcomb, Director of the Office of Foreign Assets Control, boasted that the CDA had virtually cut off all sales to Cuba and stated that it was the agency's intention to see the number of licenses issued fall to zero:

> The CDA prohibits the issuance of licenses pursuant to section 559 of our regulations allowing offshore transactions by Cuba with foreign subsidiaries of U.S. firms. The prohibition against issuing licenses was softened slightly, however, in that the CDA provides that the provision shall not affect contracts entered into before the enactment of the CDA.. In 1993 [Cuban trade with U.S. subsidiaries] was down to $1.6 million. The $16 million is accounted for by approximately 15 or I.6 licenses which were pre-CDA contracts. We go over these [license applications] very, very carefully and only grant those that absolutely qualify. Frankly, I anticipate the number next year to be even less, falling ultimately to zero.[14]

*In* his statement before Congress, Mr. Newcomb wrongly stated that the CDA only allowed for the completion of pre-CDA contracts. His statement that the number of licenses would ultimately fall to zero either indicated his mistaken belief that once pre-CDA contracts had been completed no further licenses could be issued, or his intention that, notwithstanding the CDA's provisions for the future licensing of medical sales, the agency would not approve any additional licenses. His confusing comments with regard to the CDA's provisions are echoed throughout his agency and in his counterpart agency within the Department of Commerce, the BXA

A phone call to .the -Department-of Commerce, __ Bureau . of Export Administration, sums up the similar confusion encountered in trying to obtain a license from that agency to sell medicine to Cuba. In a telephone interview conducted by the authors of this report, we asked a BXA information officer to provide us with an overview of the licensing procedures for sales of medicine to Cuba. The officer responded, incorrectly, that the BXA does not license sales to Cuba, only donations. We responded that the CDA provides for licensing procedures for sales. The officer then consulted an agency manual and responded that this was indeed correct, but that the requesting company must list on the application "how it will provide for on-site inspection, and also that the goods would be for the benefit of the Cuban people." She then commented, after reading these requirements, 7 doubt very seriously that a license to sell medicines to Cuba would be approved; it would be very difficult to satisfy those two criteria."[15] When asked what the term "on-site verification meant" she was unable to offer an explanation. In short, the reply we received appears quite typical of those given pharmaceutical companies seeking to obtain licenses from BXA or OFAC.

In the course of preparing this report, the authors conducted an informal survey of U.S. pharmaceutical companies to inquire about their efforts in obtaining licenses for the sale of medicines to Cuba. In addition, the authors contacted the Office of Foreign Assets Control with the Department of the Treasury and the Bureau of Export Administration (BXA) within the Commerce Department, the two offices responsible for the processing of applications for licenses to sell medicines to Cuba.

In our interviews with pharmaceutical company representatives, we were told the same thing repeatedly: All inquiries to the U.S. government regarding the possibility of obtaining licenses to sell medicine to Cuba are met with confusing, sometimes hostile replies, all designed to discourage the company from even initiating the licensing process. Of the seven companies that agreed to participate in our survey, only one stated that it had successfully obtained licenses to sell to Cuba since 1992 and then only for a few specific items. This company indicated that it continued to seek to sell medicines to Cuba due to humanitarian concerns, as applying for the licenses "is more trouble than it is worth."[16]

We also filed requests with both the BXA and OFAC under the Freedom of Information Act (FOIA) seeking 'all applications submitted to and approved licenses from" each agency regarding "subsidiary trade and/or sales of medicines, pharmaceuticals and medical supplies to Cuba" during the period 1990-1995. [17] The request for information from the Commerce Department was denied for "national security reasons." The FOIA request to Treasury was also denied, but information was obtained from the Department through other channels.[18]

According to the information provided by the Treasury Department, in the period 19921995, only eight licenses were granted for sales of medicines to Cuba; two licenses were denied. Considering the high volume of such sales pre-CDA enactment, one wonders why these total figures are so low. Based solely on these figures, it would appear that only ten applications were filed with OFAC between 1992 and 1995. Pharmaceutical industry members explained to us the reason why so few companies actually file applications for licenses. As one drug company representative put it, when a company calls to informally discuss the possibility of a license with OFAC, they are given confusing information and are generally discouraged from filing a request. Similarly, a representative of OFAC confirmed this, stating that "companies hate to get a denial from the

government for any kind of license. When they phone and are told how diffult it is to comply with the licensing procedures, and are generally discouraged from applying, they usually don't follow up with filing a written application."[19]

Of the licensing requirements described to would-be applicants, 'perhaps the most discouraging is that of "on-site verification." Several of the pharmaceutical representatives interviewed mentioned this as an "untenable" requirement. As the CDA states, sales of medical supplies to Cuba may be licensed only if "the President determines that the United States government is able to verify, by on-site inspections-and -other appropriate means,. that the exported item is to be used for the purposes for which it was intended and only for the use and benefit of the Cuban people." Besides being an unprecedented requirement in the history of trade embargoes, neither 'Treasury nor Commerce has published any regulations making clear the exact meaning of this requirement or how it is to be carried out As some authors have commented, "[t]hrough the plain language of the Act, the United States is taking upon itself the authority to monitor delivery of medical care [in Cuba]. Carried to its logical extreme, authorities could follow shipments of medicines and medical supplies into the offices of physicians, hospitals and clinics to observe their actual use."[20]

Of the copies of the OFAC licenses that we obtained, three were able to satisfy the on-site verification requirements by making special arrangements with U.N. agencies, three with the Belgian embassy in Cuba and one with the assistance of the Red Cross. Pharmaceutical company representatives interviewed indicated that the U.S. licensing agencies offer no guidance on interpreting the on-site verification requirement. Further, the ad hoc arrangements made with the above-listed bodies are done out of humanitarian concern but are not satisfactory to those involved since international agencies and foreign embassies do not want to get involved in carrying out actions on behalf of the U.S. government or to appear to approve of the U.S. policies under the CDA. Clearly, the lack of clarity of the term 'on-site verification," its political offensiveness to the Cuban government and its undesirability to those bodies which may be able to assist in carrying out the "inspection" all serve as a strong deterrent to pharmaceutical companies interested in selling medicine to Cuba.

An examination of the intent of the key architects of the CDA reveals an express desire to dismantle the Cuban health care system. While the creation of its world-class medical capabilities has been called the "prize of the revolution" and Cuba's leaders have been noted as viewing 'health indicators as measures of government efficacy,"[21] Cuba's advances in medical care have caused Castro's critics to view the system as a political target. During a speech in South Florida in 1995, Richard Nuccio,[22] then Special Advisor to the President on Cuba stated: "During the heyday of its $6 billion annual subsidies from the Soviet Union, the Cuban regime was able to establish a completely government-run, command economy and provide free, universal education and health care. The Government, then, was the only source of everything for the individual, from his job to his home to medicine for his family."[23]

The United States' attitude toward the accomplishments of the Castro government in creating a viable, universal health care system is clear. The inclusion of medicines in the embargo, which has had serious effects in Cuba, as examined below, have also been coupled with an increase in support for humanitarian donations of medicine. In explaining how the CDA has cut off trade with Cuba, CDA supporters are usually quick to point out that the amount of donations to Cuba from groups within the U.S. has increased. Richard Nuccio has commented: "Since the enactment of the CDA three years ago, the U.S. government has licensed over $90 million in private humanitarian aid to Cuba, mostly food and medicine from nongovernmental groups in the U.S. distributed through nongovernmental organizations on the island.[24]

As discussed below in greater detail, no nation can provide adequate medical care for its population through reliance on donations. The quantity of U.S. donated medical supplies to Cuba falls far below the need of Cuba's residents. Further, the instability and unpredictability of

products donated make it impossible for doctors to properly manage the treatment of certain patients, such as diabetics whose treatment necessitates precise potencies of insulin or other medicine.

### *The United States' Role as Leader in World Pharmaceutical Development and its Impact on Cuba*

U.S. pharmaceutical corporations' large-scale -acquisitions of foreign drug companies, which are taking place at an unprecedented rate, are worsening Cuba's ability to obtain critical pharmaceuticals and medical equipment. These acquisitions trigger a broadening of the reach of U.S. patent protection and the 1992 Cuban Democracy Act's preemptive embargo provisions.

Cuba's ongoing shortage of certain medical materials is linked to the much-heralded globalization of the world economy. Yet in terms of Cuba's access to world-class drugs and high-end medical technology, such globalization is less a result of neighborly cooperation than it is a byproduct of U.S. pharmaceutical companies' mergers and acquisitions and the resulting international reach of U.S. patent and trade law.

For Cuba, pharmaceutical megamergers and the correspondingly broadened scope of U.S. patent law provisions combine with the 1992 Cuban Democracy Act to place top-tier, often unique, medical products out of Cubans' reach. The results are obvious: critical shortages of even the most basic medicines and medical hardware and a serious threat to ordinary Cuban citizens' health and medical care.

Analyzing just how Cuba's medical supply crisis stems from the interrelationship between U.S. patent law, the Cuban Democracy Act, and pharmaceutical industry mergers requires an holistic overview.

### *An Overview of U.S. Patent Law: Protecting Proprietary Interests*

U.S. patent law, codified by the 1952 Patent Act (the Act)[25], provides this country's highest level of intellectual property protection. It grants the patentee and his or her successors in title[26] a 17-year exclusive right over a patented invention's or process's[27] manufacture, use, and sale.[28] The Act also bars nonpatentees from actively inducing patent infringement;29 engaging in contributory infringement,[30] selling essential components to induce foreign production of a patented invention, [31] and importing into the United States, or selling or using within this country, any product created through a patented process.22

In the pharmaceutical arena, an ingenious chemical composition devised to produce a salutary medical result would be patentable, as would the process or processes invented to created such composition.33 The underlying chemicals themselves may or may not be patentable: man-made chemicals contained in the composition might receive patents, while naturally occurring substances such as oxygen could not.

Of course, different people may hold the respective patents involved in pharmaceuticals. Theoretically, a lone scientist could hold a patent for the process by which a drug is created. Someone else may hold the patent on the drug's actual composition, while a third person may hold a patent for an improved version of the drugs production process, use, or composition.

### *Drug Patents and the FDA Approval Problem*

Drug patents are valid for 17 years. Yet drug manufacturers must get FDA approval after patent issuance and before full-scale marketing. Because FDA approval can take seven to ten years, a manufacturer may only have ten to seven years left on the patent term. Driven to recoup investments and realize maximum profits, the manufacturer must adjust supplies and prices accordingly to compensate for the marketing and sales opportunities lost to the shortening of the patent's useful -life. To address this, .Congress used Patent Act § I.56 to permit patent term extensions for certain products requiring FDA approval before sale.[34]

### *U.S. Patents and the International Arena*

The Paris Convention. U.S. patent rights are viable only within U.S. borders. Inventors desiring patent protection overseas can use the Paris Convention for the Protection of Industrial Property (the Paris Convention) to obtain intellectual property rights in member countries.

With over 100 members, the Paris Convention provides that "[nlationals of any country of the Union shall...enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals."[35] This means that all patents within the same country receive the same rights. 36 Thus, an inventor who patents his or her product in a member country receives the same patent protection as that country's citizens.

Convention Article 4 states that "[alny filing...equivalent to a regular national filing under...[any Union member's I.. .domestic legislation.. . shall be recognized as giving rise to the right of priority."[37] Under the Convention the priority right for patents is I2 months.36 Working in conjunction with Patent Act 5s 119[39] and 365, this means that one who files a patent application in one member country within 12 months of filing for the same invention in another member nation can assign the earlier filing date to the second application. The inventor thus gets the benefit of the earlier filing date in the event of patent disputes.

**The Patent** Cooperation **Treaty** The Patent Cooperation Treaty (PCT), adopted by the United States through Patent Act §§ 351376, attempts to streamline international patent procedures. Under the PCT, a patent applicant files an international application with a member country's Receiving Office (usually that country's domestic patent review office). The applicant indicates on the application the member countries from which he or she seeks patent protection.[40] Each signatory's Receiving Office ensures that the applications it receives satisfy all formalities. Receiving Offices then send copies of the applications to an International Searching Authority (ISA) and the International Bureau (IB) (the latter serving as an application storehouse). At present, the U.S. Patent Office (PTO) and other nations' patent offices serve as ISAs. The current IB is the World Intellectual Property Organization in Switzerland.[41]

After an ISA receives an application, it "conducts an international search aimed at discovering prior art that may be relevant in determining whether the invention is new and nonobvious."[42] The ISA then submits a Search Report to both the applicant and the IB. The applicant can then request the IB to forward the application and the Search Report to all countries listed on the application. If so, these countries then assess patentability according to their respective laws.[43]

The applicant can opt instead to have the IB send the application to an International Preliminary Examining Authority (usually a state party's domestic patent office). The Authority then performs an International Preliminary Examination culminating in "a written opinion as to whether each claim is novel, involves an inventive step, and is industrially applicable."[44] The Authority sends the opinion to the IB, the applicant, and each listed nation's patent office. Because every patent

office is free to disregard the opinion, each will apply its own country's law in assessing patentability.

### Patent Infringement

A patent is a 17-year,[45] exclusive right to manufacture, use, and sell the patented product in the United States. According to Patent Act § 271, anyone exercising that right without the patentee's permission is guilty .of infringement.46 A.patentee, however, also has a cause of action against anyone inducing patent infringement[47] and anyone contributing to another's infringement in the United States.[48] Patentees may also act to bar importation of goods into the United States that were made using a U.S.-patented process.[49] Finally, a patentee can recover for another's distribution of parts for overseas assembly of a U.S.-patented product.[50]

### Use Infringement for Drug Testing

Adrugpatent, valid for 1'7 years, grants an exclusive right over domestic use, manufacture, and sale. Of course, a patented drug manufacturer's competitors will use that 17-year period to analyze, test, and replicate the drug to ready themselves to market the drug once the patent expires.

Under ***Roche Products, Inc. v. Bolar Pharmaceuticals Co., Inc.,***51 however, a company (or person) infringes a drug patent if it fails to obtain a patent license before engaging in "testing and investigation strictly related to FDA drug approval requirements during the...patent [terml."[52] Such unlicensed testing and investigation constitutes infringing use in violation of Patent Act § 271 by clearly being geared toward generating future profits from the sale of the tested drug following patent termination.[53] Such profit-oriented use falls outside the traditional experimental use exception and therefore gives rise to a cause of action.[54]

Congress partially nullified the ***Bolar*** decision's effect by enacting Patent Act § 271 (e). This section states that "it shall not be an act of infringement to make, use, or sell a patented invention...primarily manufactured using.. .processes involving site specific genetic manipulation...solely for use reasonably related to the development and submission of information under a Federal law...regulat[ingl the manufacture, use, or sale of drugs . . . . "[55] Although the Supreme Court extended this exemption to "medical device[s] requiring FDA approval,"[56] the wording of § 271 (e)'s affords relatively limited application. ***Thus, the Bolar*** decision holds for drugs outside 271 (e)'s boundaries and for medical devices not needing FDA sanction.

### U.S. Patents and the CDA: Merging with Megamergers to Fuel Cuba's Medical Shortages

Worldwide mergers among large-scale pharmaceutical companies, particularly between U.S. and foreign corporations, make first-rate drugs and medical technology progressively less accessible to Cuba's needy population. U.S. drug companies' acquisitions of foreign counterparts extend the reach of U.S. patent protection and bring acquired companies under the CDA's discouraging, time-consuming, and often bewildering licensing requirements.

In medicine, time is critical where lives are at stake. For Cuba's medical establishment, precious time is lost trying to identify a shrinking number of sources for alternatives to the drugs and technology made increasingly out of reach due to megamergers that only lengthen the shadow cast by U.S. patent protection and CDA restrictions.

### *The Megamerger Trend among U.S. and Foreign Pharmaceutical Companies*

The past few years have witnessed large-scale pharmaceutical industry mergers and acquisitions. These include drug company purchases of competitors as well as strategic pharmaceutical buys of key drug distributors.

In 1993, for example, Merck & Co., an industry giant, acquired distributor Medco Containment Services, Inc.[57] On May 2, 1994, Boche Holding Ltd., another main industry player, agreed to pay $5.3 billion for Syntex Corp., a commercial counterpart. 58 Just four years earlier, Roche purchased 66% of Genentech, Inc., a leading biotechnology concern.59 Around the time of the Syntex acquisition, SmithKline Beecham PLC outlined an agreement to buy distributor Diversified Pharmaceutical Services, Inc. for $23 billion "and to ally with Diversified's parent, powerhouse health maintenance organization United HealthCare Corp."[60]

In 1995, Upjohn Co. and Swedish firm Pharmacia, two respected pharmaceutical entities, engaged in a 7 billion-dollar stock-swap merger.[61] That same year, Britain's Glaxo Holdings PIC paid $14 billion for Burroughs-Wellcome, and Hoechst acquired Marion Merrell Dow for $7.1 billion.[62]

In February 1996, Johnson & Johnson acquired cardio-technology manufacturer Cordis Corp. for $1.8 billion.63 Finally, St.. Jude Medical, Inc., looks forward to a 1996 finalized acquisition of Daig Corporation and Cyberonics, Inc., companies that will "'provide St. Jude Medical entry into two additional therapeutic markets-interventional cardiology and interventional neurology. "[64] Early in 1996, speculation regarding future acquisitions included Bristol-Myers Squibb Co. and Eli Lilly & Co. as possible buyers of such companies as Searle & Co. and Warner-Lambert Co.65

### *Mergers and Broadened U.S. World Market Share*

Industry mergers and acquisitions are radically reshaping the medical product landscape "as giant multinational producers search for new products and wider distribution."[66] In time, "the way pharmaceuticals are invented, made, and sold will bear little resemblance to the methods of a decade ago. "[67] While industry consolidation will slow in pace, "the merger trend among drug companies.. .[is not] over.. . . [C]ombinations...[willl continue until only 10 or 15 giants are left."[68]

U.S. pharmaceutical companies are rapidly growing in their percentages of global market share. For example, Merck, one of the industry's largest members, "controls about 5% of the worldwide market."[69] Glaxo Wellcome, the largest pharmaceutical manufacturer formed by the mer er of Glaxo Holdings and Burroughs Wellcome, held 6% of the world market as of January 1996.[40] Yet during 1975-1989,47 of 97 world-class drugs originated in the United States.[71] And in 1994 alone, U.S. patents accounted for 78% — 109 out of 140 — of "new genetic engineering patents for health-care products issued by the U.S. Patent and Trademark Office."[72]

U.S. pharmaceutical megamergers give U.S. corporations and their exclusive patents greater control of global market share. Roche's acquisitions, for example, "will give...[the company] a broader product line to sell [to] big customers in the U.S. "[73] and presumably abroad. Johnson & Johnson's purchase of Cordis has already yielded J&J "about one-third of the worldwide market for heart intervention products."[74]

To secure global market control and increase revenue, "the big [pharmaceutical] producers are scrambling to build market share by selling more products. To fight the growing might of [pharmaceutical] distributors, they're buying the distributors."[75] The acquisition of distributors will eliminate "the middlemen that have forced...[drug companies' profit] margins down."[76]

That will affect pricing, market distribution, gross sales, and even health-care plan administration, including insured individuals' drug choices.[77]

### Joining Forces: Megamergers, U.S. Patents, and the CDA

Megamergers mean the global marketplace features fewer, bigger, and more powerful providers of world-class drugs and technology. Fewer competitors may mean higher prices, less consumer freedom of choice, and less industry scrutiny -or accountability. More importantly, because many of these commercial titans are U.S. companies, the extraterritorial reach of U.S. patent protection and CDA trade restrictions removes the beat medicines and medical equipment from Cuba's reach.

The reasons are clear: as foreign pharmaceutical firms and distributors become part of U.S. entities, they fall under the Cuban Democracy Act's burdensome licensing provisions. Prospective targets of acquisition thus face a difficult choice. They can pursue sales contracts with Cuba and forgo a potentially lucrative merger with a U.S. company, or they can complete a merger and sever possibly profitable ties with Cuba. Once acquired by a U.S. firm, the formerly independent foreign corporation must avoid, cancel, or decline to renew commercial sales contracts with Cuba. Megamergers are therefore quickly shutting off Cuba's access to non-U.S. sources of important drugs and medical technology.

As importantly, acquired companies are likely to work with the patented drugs and technology of their U.S. parent company. Respecting the parent company's U.S. patents would mean not competing with or illicitly pirating such patents. Additionally, powerful U.S. pharmaceutical companies, made even larger through mergers and acquisitions, would have the resources to seek patent protection in as many countries as possible. Because U.S.-patented items fall under the Cuban Democracy Act's licensing provisions, the effect is to cut Cuba off -company by acquired company -from its non-US. medical suppliers.

Goods under exclusive U.S. patents are only available from U.S.-owned or -controlled sources and thus are inaccessible to Cuba. Alternative, parallel products available from third countries are often inferior or (in the case of drugs) inflict undesirable side effects.[78] Finally, because some Cuban medical professionals deem other countries' pharmaceutical testing standards to be lower than those of the U.S. Food and Drug Administration, Cuban doctors have less confidence in the quality, safety, and effectiveness of third-country drugs and other goods.[79]

Lack of drugs of guaranteed reliability may ultimately degrade patient care and damage the Cuban medical system's world-renowned reputation. It may also erode the faith of Cuban citizens' in the adequacy of their country's health care, prompting both ill and healthy Cubans to forgo preventive and diagnostic care by shying away from a medical system the competence of which they may have come to doubt.[80] Obviously this would lead to greater health problems among the Cuban populace.

With fewer options and sources for the best medical goods, Cuba must resort to non-U.S. products, whether under foreign patents or pirated abroad or in Cuba. Resorting to pirated products (inexpensive copies of patented drugs, produced without patentees' permission), however, would only compromise already strained political relations between the United States and Cuba, making political and economic rapprochement less likely.[181]

### The Effort to Protect U.S. Patent Interests

---

U.S. pharmaceutical companies are, of course, actively seeking to confirm treaty-based patent extensions and to secure greater worldwide protection against foreign pirating of U.S.-origin items patented in the United States and elsewhere. Patent extensions are under debate as drug companies and legislators ponder whether the 1994 General Agreement on Tariffs and Trade (GATT) trumps a 1984 law regulating Food and Drug Administration (FDA) approval of generic drugs.

Under GATT, U.S. patent terms are 20 years from the initial filing date rather than 17 years from the date on which the patent is granted.[82] That effectively grants months — and in some cases, years — of extended patent protection against generic-drug manufacturers.[83] An exception under GATT, however, permits a competitor to "introduce a competing product on the original patent expiration date if the company had made significant prior investments and if it paid the patent holder a royalty or some other form of 'equitable remuneration.'"[84] The 1984 law, however, bars FDA approval of generics until a name-brand patent expires. According to some U.S. drug companies, the GATT exception should not apply to pharmaceuticals because of conflict with the 1984 law. If these companies prevail, patent extensions will delay the domestic and overseas production and marketing of generic and alternative drugs. That can only impede Cuba's access to these often-critical products.

Members of the U.S. pharmaceutical industry also actively oppose foreign patent pirac According to some industry members, foreign "copying [ofl patented drugs without permission[85] steals "billions of dollars worth of intellectual property a year from pharmaceutical firms."[86] Such "losses to patent piracy discourage [patent holders'] investment in research and development."[87] Industry members making these claims assert that foreign governments permitting such piracy "discourage the development of indigenous research-based drug industries...[andl...endanger the health of their own people by creating an environment conducive to the production of substandard or counterfeit drugs."[88]

To address the piracy problem, a number of U.S. pharmaceutical companies support "appropriate worldwide protection of intellectual property, hoth through international agreements and unilateral action."[89] The North American Free Trade Agreement (NAFTA) is one such international accord. NAFTA bars signatory states from discriminating against other signatories in granting government contracts.[90] It also requires signatories to afford equal treatment to both forei and domestic companies that make pharmaceutical investments in those signatory countries.[91] NAFI'A also restricts compulsory licensing and affords protection to products "patented in one country but not [as] yet in another.*[92]

Appropriate U.S. unilateral actions include "withdrawing trade concessions and placing duties and other restrictions on goods and services from offending nations."[93] The United States could also use the threat of suspending foreign aid and technology agreements to demand from offending nations greater intellectual property safeguards and adherence to existing intellectual property norms and accords.[94]

## NOTES

1 50 U.S.C. app. &16.
2 As is discussed elsewhere in this report, this provision also causes grave impact on the price of any goods imported into Cuba, as ships from as far away as Europe and Asia are prohibited from visiting the U.S., and thus, the increased shipping costs are passed on to Cuban consumers.
3 U.S. Government -officials have -cited various figures. In a Special Report, An Analysis of Licensed Trade with Cuba by Foreign Subsidiaries of U.S. Companies, July 1993, published by the Office of Foreign Assets Control, U.S. Dept. of the Treasury, the figure of $407 million in subsidiary trade for 1992 is cited. Peter Tarnoff, Undersecretary for Political Affairs, has cited the amount as over $700 million in 1992. See testimony before the Foreign Relations Committee, Western Hemisphere Subcommittee, U.S. Senate, May 22, 1995. Richard Newcomb, Director of the Office of Foreign Assets Control, Dept. of the Treasury, has put the 1992 figure at $336 million. See testimony before the Committee on Foreign Affairs, U.S. House of Representatives, November 18, 1993.
4 31 C.F.R § 515.559 (a) (1993).
5 *Id.* at § 515.559 (a) (2).
6 Id. at § 515.559 (a) (2) (v).
7 1d. at § 515.559 (a). The Department of Commerce Regulations do not clearly state which entity (the U.S. parent or the foreign subsidiary) must obtain Commerce permission to export materials containing U.S.-origin matter to Cuba. Section 515.559 of the Treasury regulations covers "transactions between U.S.-owned or controlled firms in third countries and Cuba" and specifically states that, given other factors listed in § 515.559 (b), licenses will issue for goods containing 'U.S.-origin parts and components" where "such inclusion has been authorized by the Department of Commerce" (§ 515.559 [b] [1] [iii]). Reading the Commerce regulation (15 C.F.R. § 785.1) in tandem with 31 C.F.R § 515.559 (a), we can reasonably conclude ***that the subsidiury*** must obtain Commerce permission.
8 15 C.F.R § 785.1 (c).
9 Id.
10 Id.
11 Id.
12 Id. at § 785.1 (a) (1).
13 Bureau of Export Administration, U.S. Dep't Corn., 1994 Export Administration Annual Report and 1995 Report on Foreign Policy Export Controls 111-18.
14 Richard Newcomb, Director, Off. of Foreign Assets Control, U.S. Dep't of the Treasury, testimony of November 18,1993, before a joint hearing of the Subcomm. on Econ. Pol'y, Trade and Env't, W. Hemisphere Aff and Int'l Cooperation of the Comm. on Foreign Aff, U.S. House of Representatives, at 21,37.
15 Telephone interview with Tracy O'Donald, Dept. of Commerce, Bureau of Export Admin., Feb. 20,1996.
16 A list of companies surveyed is attached at Exhibit XX. At the request of those interviewed, we are not providing names of individuals quoted.
17 The FOIA requests were filed by the National Security Archives, an independent nongovernmental institute and library located in Washington, D.C.
18 The department provided information regarding licenses it had granted for medical sales in the 1992-1995 period to the office of Rep. Charles Range1 (D-NY) upon his request.
19 Interview with Clara David, OFAC, April 18, 1996.
21) Anthony F. Kirkpatrick, M.D., Ph.D., et al., ***The Time Has Come to Lift the Economic Embargo Against Cuba,*** 81 J. Fla. Med. Ass'n 681(1994).
21 Julie Feinsilver, HeaIing the Masses: Cuban Health Politics at Home and Abroad -(1993).
22 During the same 1995 address, Nuccio, one of the drafters of the CDA stated, "Immodestly, I believe that the most effective role for the United States in promoting a democratic transition in

Cuba is outlined in the Cuban Democracy Act, legislation I helped draft as an advisor to Congressman Bob Torricelli in 1992 and which President Clinton endorsed when he was still a candidate for office."

23 Richard A. Nuccio, Prospects for a Peaceful, Democratic Transition in Cuba: A U.S. Perspective, Remarks to the West Point Society of South Florida (Sept. 8, 1995) [hereinafter Nucciol.

24 Nuccio, *supra* note 23.

25 *35* U.S.C. §§ l-376.

26 Id. at § 100 (d).

27 See Id. at § 100 (a), (b).

**28 *Id.* at § 271 (a).**

29 Id. at § 271 (b).

30 Id. at § 271 (c).

31 Id. at § 271(f).

32 *35* U.S.C. § 271 (g).

33 This assumes the Patent and Trademark Office determines that the product or process meets the statutory standards for novelty, utility, nonobviousness, and originality.

34 R. Dreyfuss & R Kwall, Intellectual Property 247 (Foundation Press 1994); see also 35 U.S.C. § 156.

35 Paris Convention for the Protection of Industrial Property, art. 2, § 1 Ihereinafter Paris Conventionl.

36 Dreyfuss & KwaIl, *supra* note 34, at 16.

37 Paris Convention, *supra* note 35, at art. **4,** § A (2).

**38 *Id.* at art. 4, § C (1).**

39 35 USC. § 119 reads: "An application for patent for an invention filed in this country by any person who has . . . previously . . . filed an application . . . for the same invention in a foreign country . . . shall . . . [retain] the date on which the application . . . was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed."

40 Dreyfuss & KwaIl, *supm* note 34, at 18.

41 Id.

42 Dreyfuss & Kwall, *supm* note 34, at 18.

43 ***Id.***

44 ***Id.***

45 Design patents, lasting only 14 years, are an exception.

46 *35* U.S.C. § 271 (a); ***see also*** Dreyfuss & KwaIl, ***supra*** note 34, at 203.

47 ***Id.*** at § 271 *(b);* ***see also*** Dreyfuss & KwaIl, ***supra*** note 34, at 203.

48 *35* U.S.C. § 271 *(cl;* ***see also*** Dreyfuss & Kwall, ***supm*** note 34, at 203.

49 ***Id.*** at § 271 (g); see also Dreyfuss & Kwall, ***supra*** note 34, at 203.

50 ***Id.*** at § 271 (f) see also Dreyfuss & Kwall, ***supra*** note 34, at 203.

51 ***Roche Products, Inc. v. Bolar Pharmaceuticals Co., Inc., 733*** F.2d 858 (Fed. Cir. 1984) [hereinafter ***Roche].***

52 ***Roche, supra*** note 51, at 861.

53 Dreyfuss & Kwall, ***supra*** note ***34,*** at ***243-245; see also Roche, supra*** note 51, at 863.

54 ***Roche, supra*** note 51, at 863.

55 *35* U.S.C. § 271 (e).

56 Dreyfuss & Kwall, ***supra*** note 34, at 247 (citing ***Eli Lilly & Co. v. Medtronic, Inc., 496*** U.S. 661, 110 S.Ct. 2683,110 L.Ed.2d 605 (1990))

57 Joseph Weber ***et*** al., ***Drug-Merger Mania,*** Bus. Wk., May 16, l994 thereinafter ***Drug Merger Manial.***

58 ***Id.***

59 ***Id.***

60 ***Id.***

61 Joseph Weber, Robust and ***Ready to*** Brawl, Bus. Wk., Jan. 8,1996 Ihereinafter ***Robust and Ready to Brawl].***
62 ***Id.;*** see ***also*** Joan Warner & Heidi Dawley, ***Drug Stocks to Watch in '96,*** Bus. Wk., Jan. 22, 1996.
63 Richard Jacobson, Reuters, Apr. 16,1996.
64 PRNewswire, Apr. 17,1996.
65 ***Robust and Ready to Bmwl, supm*** note 61.
66 ***Drug-Merger.Mania, supra*** note 57.
67 Id.
68 Warner & Dawley, ***supra*** note 62.
69 ***Drug-Merger Mania, supra*** note 57.
70 Warner & Dawley, ***supra*** note 62.
71 Pharmaceutical Research and Manufacturers of America, World Class Drugs: Origin of 97 "Globalized" Drugs 1975-1989 (citing P. E. Barral, ***Fifteen Years of Results of Pharmaceutical Research in the World,*** Perspective et Sante Publique, (Paris: 1985; updated 19901.
72 Pharmaceutical Research and Manufacturers of America, 1.994 Patent Analysis Results: U.S. Pharmaceutical Industry Continues Leadership in Biotechnology Research (Mar. 1995).
73 ***Drug-Merger Mania, supra*** note 57.
74 Jacobson, ***supm*** note 63.
75 ***Drug-Merger Mania, supra*** note 57.
76 Id.
77 Id.
78 Aff. of Anthony F. Kirkpatrick, M.D., Ph.D., at 2-3, 4, 8, in Anthony F. Kirkpatrick, M.D., Ph.D., Adverse Effects of the U.S. Economic Embargo on the Health of Cuba's Children (Feb. 3, 1995) (presented before the Inter-Am. C.H.R.); see also Emergency Petition Requesting a Declaration that the U.S. Trade Embargo against Cuba Has Resulted in a Medical Crisis in Cuba and Requesting a Declaration that Said Embargo Violates International Human Rights Laws 6-7 (Oct. 4, 1994) (filed with the Inter-Am. C.H.R); interview with Senovio González de León, Director of Public Relations, Hospital Nacional Hermanos Ameijeiras, Centro Habana, Havana, Cuba (Mar. 27, 1995).
79 Interview ***with*** Senovio Gonzalez de León, ***supra*** note 78.
80 Id.
81
82 John Carey, ***A Patent Medicine Called GATT,*** Bus. Wk., Apr. 5, 1995.
83 Id.
84 Id.
85 Pharmaceutical Research and Manufacturers of America, Intellectual Property (July 1, 1995) thereinafter Intellectual Property].
86 Intellectual Property, ***supra*** note 83.
87 Id.
88 ***Id.***
89 ***Id.***
90 ***Id.***
91 ***Id.***
92 ***Id.***
93 Intellectual Property, ***supra*** note 83.
94 Id.

### 35 Years of U.S. Economic Sanctions

Since 1961, the United States has imposed a virtually complete economic embargo on commercial relations with Cuba. The immediate impact of these extensive sanctions was the loss of Cuba's traditional trading partners. In 1959, Cuba did more than 75% of its trade with its closest and most natural trading partner, the United States. The magnitude of this rupture to the Cuban economy has been widely held responsible for Cuba's resulting economic dependence on the Soviet Union and the Eastern European socialist market.

Prom the beginning, the U.S. sanctions not only prohibited all trade between Cuba and the United States with minimal exceptions, but also significantly impeded Cuba's exports to third countries, because no product produced in a third country which has any Cuban-origin content, even a trace amount, may be imported into the United States. Furthermore, U.S. regulations prohibit the re-export of U.S. products to Cuba from a third country, and even the export of third-country products to Cuba if those products are composed of more than 29% U.S.-origin components. In addition, the regulations during most of the past 35 years have closed U.S. ports to vessels carrying goods to or from Cuba.

The intent and natural consequence of these measures have been to impede the development of the Cuban economy. Our findings show that the impact has been particularly harsh in the areas of food security and public health. The United States was by far the largest supplier of food products to Cuba before 1959. Its proximity and close commercial relations provided significant cost and trade advantages. Also of great importance is the fact that United States pharmaceutical companies and their subsidiaries were the sole source for many critical medical supplies. Moreover, spare parts for equipment purchased prior to the U.S. embargo were no longer accessible, increasing the cost of maintenance and in many cases forcing substitution.

Despite the hardship caused by these measures, Cuba's economic relationship with the former Soviet Union and the former socialist market, known as the Council for Mutual Economic Assistance (CMEA), enabled the island to develop its own agricultural resources and import suflicient quantities of food to provide an adequate diet for its population by the 198Os, and to develop an internationally recognized and universal public health care system. However, the collapse of the former Soviet Union in 1989 and the dissolution of CMEA triggered an economic crisis in Cuba of profound proportions, which put in jeopardy the lives and health of Cuban citizens. Although U.S. government sources cite the Cold War as the primary and most consistently upheld justification for sanctions against Cuba, the U.S. did not relax the economic pressure when the Cold War ended, but rather tightened and expanded the sanctions. Our research indicates this only deepened the hardships for the Cuban population.

### Roots and Extent of Cuba's Current Economic Crisis

Of all the countries tied to the former socialist camp, observers believe Cuba was hit the hardest with the collapse of the Soviet Union-largely because it did not have the option of turning to its closest and most obvious trading partner, the United States. As a result of this impact, Cuba's economy tumbled in a free fall that hit bottom in 199394. This crisis rocked the economic foundations of the island, sparing no industry or productive sector. The socialist countries of Eastern Europe had accounted for over three fourths of Cuban trade and development assistance. With the disappearance of these vital commercial relations, the U.S. embargo and domestic inefficiencies became a graver threat to Cuba's economic survival.

Prior to 1989, Cuba's economy registered a national average growth rate of 4.3% annually. The Soviet Union and the CMEA had evolved over three decades into Cuba's number one trading

partners, accounting by 1989 for 85% of Cuba's $13.5 billion trade. This preferential trade relationship ceased when the Soviet Union collapsed, abruptly ending some $21 billion in aid and trade credits the Cuban government reports it received from the Soviet Union from 1960 to 1989. By 1990, between 50 and 75% of Cuba's industrial output had been paralyzed

| CMEA Trade Losses to the Cuban Economy (1989-1991) | |
|---|---|
| Food and Raw Material imports | 63% |
| Machinery and Equipment imports | 80% |
| Fuel Imports | 98% |
| Sugar Exports | 63% |
| Nickel Exports | 73% |
| Citrus Exports | 95% |

**Source***: Osvaldo Martínez, Director of the Center for the Study of the World Ewnomy. November, 1995.*

The loss of Soviet trade took an immediate toll on both the economy and quality of life. Between 1989 and 1994, the GNP plunged 35%. In 1994, even with a 7.6% increase in industrial production and a GNP growth of 0.7%, the GNP remained at just 60% of 1989 levels.

| CUBA'S GROSS NATIONAL PRODUCT | | |
|---|---|---|
| **Year** | **Billions of Pesos (at constant 1981 prices)** | **Growth/Decline** |
| **1989** | **19.6** | 0.7% |
| 1990 | 19.0 | -2.9% |
| 1991 | 17.0 | -10.7% |
| 1992 | 15.0 | -1 1.6% |
| 1993 | 12.8 | -14.9% |
| 1994 | 12.9 | 0.7% |
| 1995 | 13.2 | 2.5% |

***Source: Cuba: Inversiones y Negocios,*** WNAS, ***Havana, 1995.***

A critical loss to the Cuban economy included some 13 million tons of Soviet fuel, received each year in a barter agreement for sugar and used primarily for domestic industry, national transport and electricity, with a portion being sold on the world market for significant hard currency returns. At the same time, sugar-Cuba's main industry and key export crop-suffered from a lack of inputs (fertilizers, pesticides, spare parts and machinery for the highly-mechanized harvest) that had traditionally arrived from Eastern Europe. The result was a sharp drop in raw production from average levels of 7.5 million tons between 1987-1991 to 4 million tons in 19931994, and 3.3 million tons in 1994-95. Non-sugar agriculture suffered much the same fate, and together with hunting, forestry and fishing, declined 55% between 1989 and 1994. Construction dropped 72% in the same period; passenger transportation declined 79.3%; freight transportation, 60%; electricity, gas and water dropped 23%.

Inefficient organization of many Cuban facilities added to problems caused by the abrupt disappearance of imported inputs for industries geared for export to the socialist bloc, with no time and often no domestic raw materials to convert production to other uses. Locked in an acute hard currency shortfall, both import and export trade were severely curtailed. The social consequences of the recession have been harsh, producing widespread unemployment and under-employment for the first time in thirty years, lengthy power cuts, reduced public transport, stringent food rationing and shortages of medicines and medical equipment.

The U.S. embargo has seriously impeded Cuba's ability to find substitute markets and sources of essential goods and has severely limited access to financing and commercial credit, critical for recovery. Moreover, in 1992, with the express intent of preventing Cuba's recovery, the United States imposed new measures to further extend the territorial reach of its economic sanctions against Cuba and to tighten its enforcement mechanisms. Thus, the Torricelli Act (Cuban Democracy Act) of I992 prohibited trade with Cuba by subsidiaries of United States companies, incorporated and located in third countries. In addition, the prohibitions on access to U.S. ports by third-country vessels carrying. products to and from -Cuba were made more rigid. The law also denies U.S. aid to any third country that extends loans or credits to Cuba. And finally, in March 1996, President Clinton signed into law the Helms-Burton Act which, among other things, provides for punitive measures against third-country companies that invest in Cuban property formerly owned by U.S. citizens.

To deal with the crisis, the Cuban government reorganized its foreign commerce and undertook a variety of economic reform measures. By the end of 1994, Cuban government figures were registering a modest, tentative recovery for the country's state-oriented economy. Planners predicted the process would be slow and tedious and cautioned the nation to brace itself against upheavals yet to come for an open economy beset by evolving market influences and challenged to attract foreign investors and trade partners.

### *Recovery Plan*

In November 1990, the Cuban government officially enacted an economic state of emergency known as 'Special Period in Peacetime," initiating a series of structural reforms aimed at amending its economic model. The long-term recovery strategy aimed to boost the island's access to hard currency, put national industries back on track, generate new areas of employment and preserve Cuba's social programs.

Major reforms enacted after 1992 modified the following aspects of the Cuban economy, its internal mechanisms and its productive structure:

July 1992 — Cuban Parliament enacts important modifications to the Cuban Constitution permitting new forms of property relations.

July 26,1993 — Cuban Parliament enacts law #140, legalizing the holding and use of hard currency on the domestic market. The measure has three principal objectives: to surface the dollars circulating in the informal market, expand the country's hard currency reserve, and give Cuban consumers access to imported products.

September 8,1993 — Cuban Council of Ministers approves law #141, legalizing self-employment except in the health and education sectors. By 1995, some 203,009 Cubans were self-employed in l60 types of licensed jobs, including small family businesses.

September 15,1993 — The government restructures state farms aiming to increase agricultural output and stimulate private initiative. A measure is enacted to approve subdividing the country's huge state farms into small cooperatives. By 1995, this had radically changed patterns of land use: 5% of the land was cooperativixed (compared to 10% in 1992); 33% remained in state hands (compared to 75% in 1992); and 15% belonged t;o small, private farmers. In

1995, agricultural production also registered its first growth since 1990, at 4%.

| | |
|---|---|
| April21,1994 | Law #147 is enacted, drastically trimming and restructuring the state apparatus, with greater autonomy in decision-making for ministries and state enterprises. The number of government bodies is reduced from, 50 to 33, with significantly fewer employees. (Those laid off, as in other state agencies, receive 60% of monthly salary, until such time as they are offered three-new- job .possibilities, which they may choose to accept or to decline without compensation.) This measure gave additional impetus to the decentralization of foreign trade: in 1989, 50 state corporations were authorized to trade abroad; by 1995, 250 state companies, corporations and joint ventures carried on foreign commerce.* |
| May 2,1994 | In an emergency session, Parliament adopts a packet of economic reforms designed to absorb excess money circulating in the market and to reduce the national budget deficit. Measures include new taxes on the self-employed and corporate hard currency earnings; reducing or eliminating government subsidies to state companies and enterprises; price hikes for electricity, water, transport and non-essentials such as tobacco, liquor and gasoline; and stiff penalties for illicit profiteering. |
| August 4,1994 | Parliament approves a sweeping income tax law, as well as taxes on sales and certain properties, slated to go into effect the following year. |
| October 1,1994 | The government opens free farmers markets, where both private and state farmers are authorized to sell produce and meat at unsubsidized and unregulated prices. This measure both alleviates food shortages and collects millions of excess pesos circulating in the country. For instance, during the first six months of operation, consumers spent some 904 million pesos, and the government brought in approximately 64 million pesos from tax revenues and service charges. |
| January 23,1995 | A new mining law is enacted, giving guarantees to foreign investors and bringing Cuban mining regulations in line with international standards. National Office of Mining Resources is established with the authority to engage in transactions with foreign partners. |
| July, 1995 | Government opens official peso-dollar exchange centers. |
| September 5,1995 | Parliament approves new Investment Law, opening all sectors of the Cuban economy to foreign investment with the exception of defense, health services and education. Allows up to 100% foreign operation and ownership. |
| November 25,1995 | The government announces a new tax on all personal dollar income, exempting dollar remittances sent from families and friends abroad.* |

According to Cuba's Ministry of the Economy and Planning, the government undertook this series of calculated reform measures in order to liberalize Cuba's state-run economy, encourage foreign investment and ease social hardship. It appears that the measures have worked to some degree: the economy clearly hit bottom in 1994, but modest economic growth has resumed since then, registering a 2.5% increase in I.995 and 7.8% in 1996. The Ministry announced its view on February 4, 1996: the reforms have taken hold and successfully revived all key industrial sectors, except sugar production, which nevertheless grew modestly, reaching 4.4 millions tons in 1995-96.

Speaking before the World Economic Forum in Switzerland, Jose Luis Rodriguez, the Cuban Minister of the Economy and Planning, stated, 'It will take a certain period to re-establish a normal situation, but we have put the worse behind us and are now on the right path." He verified that foreign investors have pledged some $2.1 billion over the last three years. In addition, the Cuban peso's purchasing power has grown and strengthened against the U.S. dollar in the informal domestic market, averaging 32.1 pesos to the dollar in 1995 and 19.2 in 1996. The boost in domestic production gave a well-needed nudge to overall trade: 1995 exports increased some 20%-from $1.3 billion (U. S.) in.1994 to-$1.56billion, and imports grew 21%-from $1.9 billion to nearly $2.3 billion (still just 30% of 1989 levels). In 1996, figures were 33% and 33.3% respectively.

At the same time, strengthened were the Cuban peso and the purchasing power of government salaries. The average wage grew some 3.8% in 1995, to 193 pesos a month while prices of non-rationed food products declined some 10%. In addition, production bonuses in both Cuban pesos and U.S. dollars have been extended to growing numbers of government workers--from 100,000 in 1994 to 600,000 in 1995. In 1996, an estimated one million out of Cuba's 3.5 million government workforce became part of the bonus program. Furthermore, Minister Rodriguez asserted that the number of Cubans with some type of access to U. S dollars rose from 21% in 1994 to 45% in 1995.

The Cuban Parliament also forecast a 5% increase in the Gross National Product in its "1996 Social and Economic Plan" adopted in December 1995.' It was the first such plan developed in five years, and is based on a 35% increase in sugar production-a goal met by the 1995-96 harvest. The Parliament predicted a 27% increase in foreign investment-chiefly in tourism, nickel, fishing and energy. Exports were expected to increase more than 20% and imports some 15%. Nickel production, which grew from 27,900 to 43,500 tons in 1995, was foreseen to increase an additional 25%; tourism, 20% (similar to 1995); steel production, 50% (as compared to 45.7% in 1995); cement, 24%; rice, 100%; tobacco, 50% (52% in 1995); power, 10%; oil, 7% (16.7% in 1995); and agriculture somewhat above 1995's 4.2% spurt'

In June 1995, Cuba's National Bank released the first comprehensive economic round-up since the crisis began. Prepared for western creditors, the CNB report illustrates official optimism that economic recovery is underway while underscoring the need to find a solution to lingering problems such as Cuba's national deficit, import shortfalls, foreign debt and the U. S trade embargo, if recovery is to proceed. The report illustrates diversification of exports and trading partners. Sugar, nickel, sea food products and tobacco constituted Cuba's principal exports in 1989. In 1994, they were replaced as the island's top currency earners by tourism, sugar, nickel and biotechnology products.

Trade, long directed almost exclusively towards the Soviet Union and Eastern Europe, has been redirected towards Western Europe, Latin America, and Canada. Cuba's former trading partners accounted for less than 20% of trade in 1994, while Western Europe and Latin America garnered over 30% each; China and Canada combined to some 20%, and the remaining 20% was accounted for by other regions, principally in Asia.

Hard Currrecy: Despite the slight recovery and increased export earnings, Cuba continues to suffer from severe shortfalls in hard currency, restricting imports to 30% of 1989 levels. The U.S. embargo increases this difficulty, by denying credits to Cuba through U.S. veto power in major international lending institutions. Further, as the Cuban Democracy Act and the Helms-Burton Act require the United States to deny aid to any country which trades with Cuba on the basis of credits or even long-term payments, Cuba is forced to pay cash for imports, thus putting the country in a uniquely disadvantaged position with respect to international trade.

| CUBAN TRADE (Billions Of U.S. Dollars) | | | |
|---|---|---|---|
| Year | Imports | Exports | Total Trade |
| 1989 | 8.1 | 5.4 | 13.5 |
| 1990 | 7.4 | 5.4 | 12.8 |
| 1991 | 4.2 | 3.0 | 7.2 |
| 1992 | 2.3 | 1.8 | 4.1 |
| 1993 | 2.0 | 1.1 | 3.1 |
| 1994 | 1.9 | 1.3 | 3.2 |
| 1995 | 2.1 | 1.5 | 3.6 |

The hard currency shortage has restricted Cuba to the most essential purchases. For example, although fuel imports accounted for 40% of the island's total purchases in 1994, they barely met 50% of the nation's basic energy needs. This, coupled with difficulties in other foreign inputs, has kept much of the island's industry paralyzed. The CNB report states:

> Although foodstuffs and fuel in 1990 accounted for 39% of imports, they jumped to 63% in 1994. Raw materials hold little weight in the total (2.5%), illustrating how import shortages are adversely affecting the country's productive capacity. Likewise, the significant decline in imports of machinery and equipment (from 37% in 1990 to 6% in 1994) reflects the sharp reduction in new, renovated or expanded investments.

| CUBAN IMPORTS | | | | | |
|---|---|---|---|---|---|
| | 1990 | 1991 | 1992 | 1993 | 1994 |
| in billions of U.S. dollars | 7.4 | 4.2 | 2.3 | 2.0 | 1.9 |
| Percentile Breakdown by Sector: | | | | | |
| Foodstuffs | 12 | 20 | 25 | 26 | 23 |
| Raw Materials | 4 | 3 | 2 | 3 | 2 |
| Fuels & Lubricants | 27 | 30 | 36 | 37 | 39 |
| Chemicals | 6 | 7 | 9 | 10 | 7 |
| Machinery & Equipment | 37 | 31 | 19 | 12 | 6 |
| Other Products | 14 | 9 | 9 | 12 | 23 |

**The Budget** Deficit: Cuba's deficit ballooned to 5.05 billion pesos in 1993, but was reduced sharply by 1994 to 1.4 and in 1995 to .7 billion pesos. According to the Finance Ministry, Cuba's budget deficit represented some 4% of the Gross Domestic Product in 1995. The Ministry states that the steady reduction since I994 is due in large measure to revenues from higher sales and profit taxes, a severe reduction in subsidies covering state company losses, and reductions in state subsidies for consumer goods. Since June 1994, a restrictive monetary policy has been in effect-aimed at both strengthening the peso and lowering the national deficit.

Foreign Debt: A great obstacle to economic recovery is Cuba's hard currency foreign debt. The most recent figures released by the CNB indicate the debt at the equivalent of $9.1 billion for 1994, up $298 million from the year before and some $2 billion over I989 figures (the only previous ones available). The debt is projected to rise somewhere between l-3% in 1996 or between $91 and $270

million. (The CNB figures do not include debts owed to the former Soviet Republics, Russia, China, Vietnam or North Korea.)

Official creditors are owed 49.5% of the debt and private lenders 50.5%. Some 77.6% ($7.1 billion) is principal owed, while 22.4% ($2 billion) is interest. Japan is Cuba's largest creditor, at 25% of the total debt; Spain follows with 13%; France, 12%; Argentina, 9%; United Kingdom, 8%; Italy, 5%; Switzerland, 2%; Germany, 2%; Austria, 2%; and others, 22%.

Over the last two years, Cuba has sought to resolve its obligations with a number of Latin American countries through equity swaps and payment through furnishing a percentage of new trade. For instance, Cuba liquidated most of a $500 million debt to Mexico largely through telecommunications and cement deals. Havana has also negotiated a settlement on a $50 million debt to Colombia by redirecting 10% of export earnings with Bogota to debt payments.

Cuba's foreign debt is an issue that must be resolved to the satisfaction of Western creditors before the island can be granted any substantial medium or long-term financing-a key to sustained economic recovery. The Cuban government argues that external factors, principally the 35-year U.S. trade embargo, are largely to blame for the country's debt problems, including the fact that Cuba canceled principal and interests payments in I996 and broke off formal talks with creditors three years later. By virtue of the U.S. embargo, the country has been barred from membership in both the International Monetary Fund and the World Bank. Moreover, and as we have noted, recent United States legislation also targets for reprisals countries which engage in debt swaps and other credit arrangements with Havana.

### *Obstacie to Recovery: U.S. Trade Sanctions on Cuba*

Despite this modest recovery in the face of serious odds, observers warn that the persistence of U.S. trade sanctions hampers Cuba's continued economic recovery. Jose Luis Rodriguez, Cuban Minister of the Economy, told the World Economic Forum in Switzerland on February 4, 1996:

> The embargo is a major obstacle to our development and causes additional difficulties because it creates risk factors that make the credits we need more expensive... People who want to invest encounter hostility from the U. S... .But all signs are that this is a policy that will remain. We do not expect it to change, and in our strategic planning, we are not counting on the embargo being lifted in the short run.

For the past seven years, the Cuban government has actively pursued Western investment and trade credits to fill the void left by the Soviet Union. The Cuban Ministry of Foreign Trade reports that 613 foreign firms were operating in Cuba by 1995. By early 1996, there were 230 economic associations, including joint ventures, between foreign partners and Cuban state-run companies, according to Minister of the Economy Rodriguez. In addition, these joint ventures have somewhat eased Cuba's unemployment problem by providing jobs to over 250,00O skilled and professional workers.

The recently enacted Helms-Burton Act seeks to prevent foreign investment in Cuba and, thus, to scuttle Cuba's reconstruction program. The law tightens the embargo by enhancing enforcement mechanisms and permits presidential authorization for private claims in U.S. courts against third-country firms that invest in property in Cuba which was formerly owned by U.S. citizens. It also denies entry into the United States of the officials of such firms, their spouses and minor children. And finally, it imposes stringent requisites for any future moderation of the embargo, thus signaling to would-be investors that the U.S. market will not be open to trade with Cuba for many years to come.

The Helms-Burton Act came on the heels of another embargo-tightening piece of legislation. Enacted in 1992, the Cuban Democracy Act (CDA) precluded U.S. subsidiary trade with Cuba. Such trade was fast becoming vital to the Cuban economy, most notably as a lever to ease some of the island's severest shortages during the first years of the 'economic crisis, when Cuba was scrambling to find new trade partners. In 1990, for instance, U.S. Treasury Department figures illustrated that U.S. subsidiary trade with Cuba had more than doubled in the two brief years after the disbanding of the Soviet Union-up from $332 million in I.989 to $705 million during 1990. The increase continued through 1991, with U.S. subsidiary sales to Cuba registering $718 million.

It was for this precise reason that the bill's sponsor, Representative Robert Torricelli, argued to extend the trade embargo beyond U.S. shores and companies:

> Several measures in the bill discourage other countries...from filling in the gap in Cuba's trade and investment requirements. Inclusion of the so-called Mack amendment shuts off the previously permitted trade of U.S. foreign subsidiaries with Cuba. Over the last three years, foreign subsidiary trade with Cuba has grown dramatically. This provision will place foreign subsidiaries under the same prohibition on trade that applies to their parent corporations.

**Licensed U.S. Foreign Subsidiary Trade With Cuba**

| | 1980 | 1985 | 1988 | 1989 | 1990 |
|---|---|---|---|---|---|
| Number of Approved License Applications | 164 | 256 | 215 | 233 | 321 |
| Total Exports to Cuba (millions of U. S dollars) | 206 | 162 | 97 | 169 | 533 |
| Total Imports from Cuba (millions of U. S dollars) | 86 | 126 | 149 | 162 | 172 |
| Total Exports & Imports (millions of U. S dollars) | 292 | 288 | 246 | 331 | 705 |

*Source: New Opportunities for U. S-Cuban Trade, Donna Rich Kaplowitz* and Michael *Kaplowitz Johns Hopkins University, 1992,*

**U.S. Subsidiary Goods Purchased by Cuba (Millions of U. S dollars)**

| | 1980 | 1985 | 1988 | 1989 | 1990 |
|---|---|---|---|---|---|
| Grain, Wheat and other Consumables | 192 | 109 | 56 | 114 | 500 |
| Industrial and non-Consumables | 14 | 53 | 41 | 55 | 33 |
| Percentage of Consumables in Subsidiary purchases by Cuba | 93.20 | 67.28 | 57.73 | 67.46 | 93.81 |

*Source New Opportunities* for *U. S-Cuban Trade, 1992.*

Both the Cuban Democracy Act introduced by Congressman Torricelli and the Helms-Burton Act extend the extraterritorial application of U.S. embargo policy. Serious protests over this extension

have been voiced by the European Union and other U.S. allies in numerous communications with the U.S. government and at the World Trade Organization.

The CDA has taken its toll on the Cuban economy. A list published by Cuba's Ministry of Foreign Trade asserts that, during the CDA's first two years on the books, 'Cuba's bilateral trade with some 26 countries other than the United States was adversely impacted. They were: Antigua, Argentina, Belgium, Brazil, Canada, Czechoslovakia, Chile, China, Colombia, France, Germany, Guyana, Holland, Italy, Jamaica, Japan, Mexico, New Zealand, Nicaragua, South Africa, Spain, Sweden, Switzerland, Trinidad & Tobago, the-united Kingdom and Venezuela.

Because of fear of U. S. government reprisals under the CDA, dozens of U.S. subsidiaries canceled trade deals with Cuba, especially in the months following the signing of the new embargo regulations. A large portion of these were important to Cuba's public health program (see chapters on Medical Exports to Cuba and Selected Aspects of Health & Welfare, Nutrition). In the realm of public health, Cuba's Public Health Ministry calculates that the CDA embargo restrictions claim some 30 cents on every dollar's worth of medicines and medical supplies the country purchases abroad.

## *The U.S. Embargo: Shipping Costs and Shortages*

One of the greatest burdens imposed by the Torricelli regulations is to impede normal commercial shipping to the island. Under CDA provisions, all ships docking in Cuban ports or carrying Cuban nationals and/or goods are prevented from trading in U.S. ports for six months or face a $50,000 fine. This risk factor causes some shippers to charge Cuban buyers significantly more than the World Scale rate, exacerbating shortages on the island. Considering Cuba's hard currency limitations, every extra dollar paid towards shipping is one less dollar for imported food, medicines and basic supplies.

Before becoming law, these specific restrictions ran into considerable opposition from the international maritime community. For instance, on October 19, 1992, the Maritime Federation of Canada distributed CIRCULAR #5383, which warned that the proposed U.S. law would clearly increase the cost of Canadian shipping to Cuba, limit the selection of ships available to Canadian merchants exporting to the island and, in turn, make Canadian exports to Cuba generally more difficult.

Another objection was logged by the Union of Greek Ship Owners in the summer of 1992. In a demarche addressed to the U.S. State Department and a letter sent to the Council of European and Japanese National Shipowners' Associations, the Union contended that the bill would create serious operational, problems and consequences for ships trading with Cuba and therefore interfere with right of free trade. The Canadians as well as the European Community also filed official protests with the U.S. government.

As the U.S. government began enforcing the CDA late in 1992, the Cuban Ministry of Foreign Trade began experiencing the following shipping-related difficulties:

- Some shippers flatly refused to consider sailing to Cuba.
- Other shippers refused to send any freighter to Cuba which meets U.S. Coast Guard and Federal Maritime Certificate of Financial Responsibility requirements and, thus, is acceptable for docking in U.S. ports. That leaves just 12 to 15 of the world's tankers able to call at Cuban ports.
- Shipping charges to the island fluctuated between 15 and 30% above World Scale rates between shipping regions.

- Some suppliers eliminated the shipping clauses from their sales contracts with Cuban importers, thereby making the client the responsible party for shipping the merchandise. Other suppliers refused credit to Cuban importers unless Cuba either shipped the merchandise itself or found a shipper willing to transport the cargo.

In general, all the shipping problems **have** led to frequent delivery delays.

### *The CDA and Critical Imports to Cuba*

Problems with the following commodities began just weeks after the Torricelli bill became law:

**Soap:** In late 1992, Cuba tried to import 1,500 metric tons of tallow from Argentina Normally under these contracts, the supplier arranges shipping. But this contract was subsequently canceled after the Argentinean company failed to find a tanker willing to sail to Cuba. This in turn, sparked severe soap shortages on the island for several months.

Fuel **and** Fuel Products: When Cuba asked for bids to ship 15,000 metric tons of gasoline from Marc Rich & Co. of Antigua in January, 1993, the country received just one offer. The company would ship at $309,000, even though the World Scale rate should not have exceeded $210,000. For this particular fuel shipment, the country paid 43% over the World Scale, and for 1992 post-Torricelli fuel transport, Cuba paid average rates of more than 25% over World Scale. By 1993, Cuban importers were paying an additional 35 cents a barrel for transporting fuel and fuel products.

**powdered Milk:** The Cuban ration system assures a liter of milk a day to all children through agesix, and to pregnant women every other day. When Germany canceled the powdered milk contracts with Cuba signed by the former GDR, the island became a regular customer of the New Zealand Dairy Board. The milk was delivered to Cuban ports on board Greek Armada freighters, under contract to the Dairy Board. However, in December 1992, Armada refused to take aboard some 1,500 metric tons of powdered milk bound for Cuba, and the New Zealanders canceled the contract with the Cubans. The island then found alternative milk supplies in Europe, but that supplier also refused to take responsibility for shipping the merchandise. Eventually the Cubans found a shipper but paid dearly for both the transportation and the milk. In addition, back in Cuba, the delay caused milk shortages for more than a month.

Basic Foodstuffs: Before the ink had dried on the new Torricelli law, the captain of a freighter at an Italian port was refusing to load 9,009 metric tons of soy oil Cuba had purchased from the Italgrani Company. It took two more months before the exporters could find a replacement tanker willing to sail to Cuba. The additional shipping costs were passed on to Cuba. Similar scenarios were unfolding elsewhere: first, at a French port where the Souflet Company was attempting to ship 25,000 metric tons of wheat to Cuba; and second, at a Chinese port ready to load 20,000 metric tons of beans that finally arrived 6 months later, in late April.

As a freighter from the MN Trade Master Company was crossing the oceans with 16,660 metric tons of China Cereal Foods rice, the company changed their minds and decided they didn't want to risk going to Cuba. For .15 days, while the ship sat at sea, the Chinese exporters renegotiated the contract and agreed to the following terms: (1) the Chinese would compensate the shipper for any damages (fines) it might incur as a result of traveling to a Cuban port; (2) shipping costs would be increased to $600,000; (3) the demur-rage or delay charges of $8,000 daily would begin on day six after arrival even though the actual unloading time was estimated at 15 days. As a result, an additional $72,000 was paid to the shipper.

**Kraft Cardboard** Liner: When the Canadian office of the Dutch Shipper, Spliethoff Bevrachtingskantoor B.V., agreed to transport 3,960 metric tons of Kraft cardboard liner to Cuba, the bill included an extra $50,000 in the event that the vessel might need to enter a U.S. port within the Torricelli-imposed 180-day limit and might be fined by the U. S government. The Cuban importers finally accepted these conditions on their purchase from Eurocan Pulp and Paper Co. of Canada, since the goods were urgently needed.

## Conclusion

Although Cuba's economic reform program designed to reconstruct its economy has stemmed the economic decline experienced between 1989 and 1994, recovery is seriously hampered by the continuation of the U.S. embargo and its extraterritorial extension through the Cuban Democracy Act of 1992 and the I996 Helms-Burton legislation. The sweeping effect of these measures denies Cuba access to important markets, increases Cuba's cost of trade to well above international market prices, and prevents Cuba from obtaining needed hard currency to invest in its domestic recovery. This, not to mention denying the country access to its most natural trading partner for over 35 years.

Even aid to Cuban families struggling to meet basic needs such as food and clothing is severely restricted. In September 1994, President Clinton cut off the limited remittance individuals in the U.S. could send to relatives in Cuba. Until that time, a modest $500 was permitted to be sent by close U.S. relatives every three months to a family unit in Cuba.

The U.S. sanctions have had a particularly harsh impact on the Cuban government's ability to provide food to its population and to maintain health services at an adequate level. Even when Cuba faced a serious neuropathy epidemic in 1993, the cause of which was related to dietary deficiencies, the U.S. took no steps to ease its restrictions Sales of foodstuffs remain strictly prohibited for U.S. companies and their subsidiaries, and sales by third-country companies may run afoul of U.S. legislation if they contain U.S. components or are sold to Cuba on credit. In addition, exports of medicine and medical equipment remain tightly restricted, so much so that pharmaceutical and medical supply manufacturers in the USA themselves consider the embargo the main obstacle for sales to Cuba.

The application of the embargo to foodstuffs and medicines make the U.S. -measures more restrictive than any other international trade sanctions, since no others deny access to such humanitarian goods. The UN Security Council has recently decided to relax some multilateral trade sanctions against the government of Iraq. Yet, no such moves have been forthcoming from Washington with respect to its bilateral embargo on Cuba. Just the opposite has been the case.

## *NOTES*

Comments by Jose Luis Rodriguez, Minister of the Economy and Planning, comments to visiting delegation, June l2,1996.

[2]Sources for this section: Osvaldo Martinez, Director, Center for the Study of the World Economy, November, 1995; Cuba, hechos y cifras, published hy the Institute for European-Latin American Relations, of the European Commission in cooperation with the Spanish Presidency of the Council of the European Union, December 1995; and Minister of the Economy and Planning Jose Luis Rodriguez, April 3, 1996.

[3]The main, and until recently, the only employer in Cuba is the government.

[4]Cuban think tanks also assert that recovery has taken hold. Juan Triana Cordoví, director of Havana University's Center for the Study of the Cuban Economy, foresees between 5 and 8% overall growth in 1996. His remarks at a news conference, Havana, Jan. 23, 1995.

‘Minister of the Economy and Planning, Jose Luis Rodriguez figures, and La Gaceta Oficial de la Republica references to parliamentary proceedings, January 15, 1996.

‘Testimony of Rep. Robert Torricelli (D-NJ) on August 6, 1992 before the Subcommittee on Western Hemisphere and Peace Corps Affairs of the Committee on Foreign Relations, U.S. Senate.

[7] Afectaciones por el bloqueo y la puesta en vigor de la Ley Torricelli, Informe 4, Ministry of Foreign Trade, June, 1994.

‘Comments by Ramón Díaz Vallina, Vice Minister for Economics, Ministry of Public Health, I995