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Item 39 of the preliminary list\*

NECESSITY OF ENDING THE ECONOMIC, COMMERCIAL AND FINANCIAL EMBARGO  
IMPOSED BY THE UNITED STATES OF AMERICA AGAINST CUBA

Letter dated 11 June 1992 from the Chargé d'affaires a.i. of  
the Permanent Mission of Cuba to the United Nations addressed  
to the Secretary-General

I have the honour to write to you in connection with the item entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba" in order to transmit the following documents, which are annexed to this letter:

(a) A letter dated 27 April 1990 from the Delegation of the Commission of the European Communities addressed to the members of the United States Congress and the Delegation's démarche annexed to that letter concerning the bill known as the "Mack amendment", which would ban all trade with Cuba by subsidiaries of United States companies domiciled in third countries;

(b) A letter dated 7 February 1992 from the Delegation of the Commission of the European Communities addressed to the United States Senator Jack Garn on the same subject.

I request that you arrange for this letter and its annexes to be circulated as a document of the General Assembly.

(Signed) René MUJICA CANTELAR  
Chargé d'affaires a.i.

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\* A/47/50.

Annex I

LETTER DATED 27 APRIL 1990 FROM THE DELEGATION OF THE COMMISSION  
OF THE EUROPEAN COMMUNITIES ADDRESSED TO THE MEMBERS OF CONGRESS  
OF THE UNITED STATES OF AMERICA

[Original: English]

We are writing to you in connection with Bill S.2444, introduced in the Senate by Senator Mack and others and amending the Cuban Assets Control Regime.

Certain elements of that Bill, and of the similar language in the Smith Amendment to H.R. 4445 are objectionable to the European Community and its member States as a matter of principle and of policy. The Community and its member States also believe that several aspects of the bills have no basis in international law.

The objections of the Community and its member States have been stated more explicitly in a démarche which was presented to the United States Department of State on 18 April 1990. We attach a copy of that démarche for your information.

We would urge you not to pass the above legislation as this would be sure to lead to major trade conflict and political argument between the United States and the European Community.

(Signed) Pádraic MACKERNAN  
Ambassador of Ireland

(Signed) Andreas van AGT  
Head of Delegation

Appendix

DEMARCHE

[Original: English]

The Delegation of the Commission of the European Communities and the Embassy of Ireland present their compliments to the Department of State and wish to refer to the Smith amendment incorporated in Bill HR 4445, entitled "The Emerging Democracies Act of 1990", as well as to similar language included in Bill S.2444 introduced in the Senate by Senator Mack and others.

The amendment and the Bill contain three objectional elements.

Two of these would inevitably lead to conflict and argument over the extraterritorial application of United States laws. The European Community and its member States have repeatedly expressed their concerns on extraterritorial requirements attached to United States foreign-policy measures. The amendment and the Bill would also have a significant impact on the trade interests of the Community and may create conflicting legal requirements for non-United States companies, to the extent that they may violate United States law while acting in perfect conformity with the law of the country in which they are incorporated.

As regards the proposed prohibition on certain transactions between subsidiaries of United States firms incorporated outside the United States and Cuba, the bills would have the effect of repealing Section 515.559 (Title 31) of the Code of Federal Regulations, which provides for the issue of licences to allow so-called United States-owned or controlled firms in third countries to do business with Cuba. The European Community would like to recall the démarche presented to the Department of State on 25 September 1989 in relation to the same Section (amendment 333 to the Senate version of the Foreign Relations Authorization Bill, repealing Section 515.559), since the Community is still of the view that the United States has no basis in international law to claim the right to license non-United States transactions with Cuba by companies incorporated outside the United States, whatever their ownership or control.

As regards the proposed seizure, forfeiture and sale by the United States of vessels which entered Cuban ports and subsequently United States ports, the European Community considers that this measure, which even in wartime would be an infringement of the international law on neutral shipping, is completely unacceptable in peacetime.

In addition, the amendment contains measures to withhold assistance from countries importing sugar from Cuba. The European Community considers this a measure with potentially damaging and disturbing effects on international relations for a number of third countries, including from the European Community and some of the States to which both the United States and the European Community and its member States give aid within the framework of the C-24 process.

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The European Community and its member States therefore urge the Department of State to do all that it can to prevent the enactment of Bill HR 4445 in its current version and of Bill S.2444.

Annex II

LETTER DATED 7 FEBRUARY 1992 FROM THE DELEGATION OF THE  
COMMISSION OF THE EUROPEAN COMMUNITIES ADDRESSED TO  
SENATOR JACK GARN OF THE UNITED STATES OF AMERICA

[Original: English]

We are writing to you in connection with S.320 and HR.3489, Bills to reauthorize the Export Administration Act (EAA) of 1979.

The European Community and its member States continue to be very concerned about a provision contained in both House and Senate versions of the Bill (the "Mack amendment") which would have the effect of prohibiting United States-owned subsidiary companies domiciled outside the United States from trading with Cuba.

As was made clear in letters sent by the Embassy of the Netherlands and the Delegation of the Commission of the European Communities to Congress on 6 September 1991, such an extraterritorial extension of United States jurisdiction is unacceptable as a matter of law and policy to the European Community and its member States. Indeed, we consider the Mack amendment to be a measure with the potential to cause damaging effects to transatlantic relations in general and to bilateral European Community/United States trade relations in particular. This would be all the more regrettable in the light of the new climate of reinforced transatlantic cooperation.

Our concerns about the Mack amendment are such that some States members of the Community have decided to invoke their blocking statutes if this legislation comes into effect. This would have the result that United States companies would be subjected to conflicting requirements, a state of uncertainty which can only be damaging for trade. Measures such as the Mack amendment are also prompting debate within the Community about whether it would be desirable to have a blocking statute at Community level in order to defend the interests of companies lawfully established in Europe.

In the light of the above considerations, we would urge you to oppose this provision when it comes before the Conference on renewing the Export Administration Act.

(Signed) Andreas van AGT  
Head of Delegation

(Signed) Francisco T. KNOPFLI  
Ambassador of Portugal

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