

International Law Studies—Volume 56

MODERN ECONOMIC WARFARE

(LAW AND THE NAVAL PARTICIPANT)

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The thoughts and opinions expressed are those of the authors and not necessarily of the U.S.

Government, the U.S. Department of the Navy or the Naval War College.



## CHAPTER II

### LEGAL STRATEGY IN DEFENSIVE ECONOMIC WARFARE

#### THE SUGAR ENCOUNTER

##### INTRODUCTION

The "Sugar Encounter" between the United States and Castro Cuba was a step in a progression of events leading to naval participation in such transactions as the Cuban Quarantine of 1962 and the Cuban land blockade of the Guantanamo Naval Base. As with most forms of economic warfare, the "Sugar Encounter" evolved towards mutual political postures in which naval sea and air power became logical instruments of coercive economic policy.

But apart from this demonstration from subsequent events of the need for an understanding by naval participants in economic warfare of prior economic warfare postures, the "Sugar Encounter" demonstrated dramatically, if not for the first time, the economic warfare potential of the Soviet and Sino Communist Blocs, acting singly or in unison, and the kinds of defensive legal problems the United States would have to solve to meet this emerging economic warfare threat.

In the "Sugar Encounter," the United States attempted to meet an "economic sortie" mounted by Castro Cuba by manipulating the Cuban sugar imports permitted into the United States and by supplementary measures in the form of "protracted harassment." This Cuban economic sortie was mounted to divide opinion in the United States and prevent decisive action as communization of the Cuban state became increasingly apparent.

As a delaying tactic, this economic sortie was effective. The United States defensive measures proved comparatively fruitless.

The description of the evolution of this defensive sugar policy in this Chapter serves to develop three features without which contemporary international law concerning economic warfare and legal strategy as a feature of economic warfare policy cannot be fully understood.

The first feature is the posture of the monolithic state trader,

particularly the Communist monolithic state trader, and the impact of this economic institution upon economic warfare and upon international law.

The second feature is the national law of the United States bearing upon economic warfare and the major problems in its administration. No international legal problems concerning economic warfare can be fully understood by naval officers unless relevant national law is first appreciated.

The third feature is the continuing chain of economic coercion and the ways in which this chain is affected by community intervention. The Chapter thus considers not only the "Sugar Encounter" as such, but also major economic measures put into operation upon initial failure of the United States defensive manipulation of the sugar quota. The interests affected by this complicated process were varied, and a naval officer in conducting economic warfare must become accustomed to identifying interests affected by his action and how the parties interested are likely to respond.

The materials in the Chapter are essentially descriptive. They provide the basis for a detailed analysis of both national and international legal problems in Part II of this book.

## **A. THE MONOLITHIC STATE TRADER IN ECONOMIC WARFARE**

Within the past fifty years there has been an increased emphasis upon elements of timing and speed in executing economic warfare plans and a similar increased emphasis upon the need for accurate aim and careful direction of offensive economic action. If offensive economic action is aimed accurately, directed carefully, executed decisively and swiftly, and terminated when the desired psychical effect is achieved, by-products of possible disadvantage to the sponsoring state are likely to be avoided. The increased emphasis upon these elements results partly from the presence of the monolithic state trader in commercial channels.

### **1. Competitive Advantages and Disadvantages of the Monolithic State Trader in Economic Warfare**

The foreign trade of the Soviet Union was one of the first private enterprises nationalized after the Revolution of 1917. The internal economy of the Soviet Union is now centrally and rigidly controlled. Its controlled economy has been substantially duplicated in the satellites, and by Red China; and while the efficiencies of the Bloc systems, the details of their organization, and the capacities

of the various Bloc states to engage in economic warfare differ, the advantages and disadvantages of the monolithic state-trading system are the same for all Bloc states.

Centralized control of domestic processes for distributing consumer goods tends to instill "use discipline" in the population. A low standard of living is either unwittingly accepted or grudgingly tolerated. Supplies required for domestic consumption are thus low and limited in variety. Imports are less, depending upon the efficiency of the local productive processes, than they would be if there was no "use discipline" or a higher standard of living.

"Surpluses" can be generated to be marketed or donated abroad to support foreign policies. The Soviet Union, for example, despite the agricultural dislocation of World War II, could export 400,000 tons of wheat to France in 1946.

Manufactured goods available for export are likely to be for industrial rather than for consumer use. This tends to concentrate Bloc markets in areas with a low consumer demand. Bloc products cannot compete effectively with Free World consumer goods in higher consumer demand areas. To the extent consumer demand can be stimulated in low demand areas, local resources channeled into Bloc trade can be progressively restricted.

Labor unrest, actual or potential, is a source of weakness even in a heavily policed Bloc community. Bloc populations, already on a low standard of living, are especially sensitive to disturbances in their food supply, either by interfering with their agricultural production or by blocking imports of food.

As there are no major private entrepreneurs to protect, tariffs, quotas and exchange controls to limit the flow of imports are unnecessary, and this places the State Trader in a desirable bargaining position with "free-enterprise" states. A Bloc state may import foreign products in excess of local needs simply to develop a foreign market for future political leverage. Purchases, clearly in excess of Soviet or satellite needs, have been made of cocoa from Ghana, cotton from Egypt and the Sudan and rubber from Ceylon.

The absence of a "profit concept" in the "free-enterprise" sense also has advantages for the Bloc state. While the quality of industrial goods has been low in many instances, prices and credit terms offered, together with opportunities for barter, have tempted countries with low reserves of convertible foreign exchange. Italian firms selling chemicals and synthetic fibers to the Soviet Union have accepted oil, cotton and coal in payment. To the extent that Bloc trade presents a competitive threat in a Free World country,

it is difficult to deal with Bloc competition with laws keyed to profit concepts. In the words of Samuel Pizar:<sup>1</sup>

\* \* \* Western antidumping laws \* \* \* cannot adequately cope with the possibility of Communist dumping or underselling. For example, there is no effective way of determining the 'fair value' of Communist products under the present terms of our Antidumping Act as amended in 1958.<sup>2</sup> 'Foreign Market Value' is a useless criterion because there is no free home market in a Communist country. 'Constructed value' is equally useless because Communist cost of production is an outlandish notion which has no relation to normal Western cost accounting or pricing principles. \* \* \*

### *Soviet Trade Control Structure*

But by far the most important basis of competitive advantage in economic warfare of the Bloc state is the governmental structure of trade control. This stands as a barrier to economic attack by the traditional forms of "protracted" economic harassment and provides machinery for incisive economic warfare direction.

The foreign trade of the Soviet Union is coordinated by the Ministry of Foreign Trade. The Minister is a member of the Central Committee of the CPSU. Four geographic divisions within the Ministry, two concerned with Bloc and two concerned with non-Bloc countries, deal with trade on a country-by-country basis. Other divisions within the Ministry deal with particular types of goods and with particular functions, such as finance, law, transport and personnel.

Trading is done by 25 government owned corporations. Some specialize in trade in particular items. Others specialize in trade with particular areas. The corporate organizations differ depending upon the conditions under which they work. AMTORG, the corporation specializing in trade with the United States, is a New York commercial corporation, owned by the Bank for Foreign Trade in Moscow.

The Ministry of Foreign Trade is represented abroad by trade delegations. The members of these, unlike the officers of the corporations, such as AMTORG, belong to the embassy staff and enjoy diplomatic immunity. The trade delegations collect economic intel-

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<sup>1</sup> Pizar, *A New Look at Trade Policy Towards the Communist Bloc*. (Material prepared for the Subcommittee on Foreign Economic Policy of the Joint Economic Committee, U.S. Congress, Doc. 76695, 1961) 24-25.

<sup>2</sup> Antidumping Act of 1921, 42 Stat. 11 (1921), 68 Stat. 1138 (1954), 72 Stat. 583 (1958), 19 U.S. Code 160 *et seq.*

ligence and serve as agents for those trading corporations which are not domesticated in the country with which business is to be done.

If the country concerned does not have diplomatic relations with the Soviet Union, the functions of the trade delegation may be performed by a special group. This may be headed by the Minister of Foreign Trade if the political importance of the mission justifies his participation.

Paralleling in some respects the functions of the Ministry of Foreign Trade is a state committee, GKES. This committee plans foreign economic operations and supervises execution of these plans. The Ministry of Foreign Trade, by contrast, is charged principally with negotiation and completion of trade agreements.

Although little has been published concerning the control and operations of GKES, the committee appears to provide the political direction of trade of the Soviet Union and to coordinate Soviet trade and Soviet aid. It has the characteristics of a highly placed economic warfare staff. Technicians installing an industrial plant or furnishing advice as to its operation in an underdeveloped country—in short, the persons who would be channels for Soviet political influence—are controlled by GKES rather than by the Ministry.

Economic activity of the satellites is coordinated by GKES through the Council for Mutual Economic Assistance (CEMA). CEMA is concerned primarily with intra-Bloc trade but deals also with foreign trade of the satellites. It is a consultative committee with a permanent conference of deputies, who meet weekly in Moscow, a secretariat and a policy body made up of chairmen of the state planning commissions within the respective satellites. Permanent working committees maintain liaison with the state planning committees. CEMA provides a point at which marketing information can be exchanged and satellite programs can be developed to support Soviet political strategies.

The defensive capabilities of this system are impressive. Trade conditions, like military and political plans, are a state secret. A private corporation of a Free World state, a convenient institution for economic action in the past, must do its business in the Bloc state through a government agency. It has no direct contact with its market.

Commercial contracts are “canned.” The contracts contain provisions which are nonnegotiable and which must be accepted by the Free World corporation in order to do business. For example, most of the Soviet contracts stipulate for arbitration of disputes arising concerning their terms before the Moscow Arbitration Court. The inconvenience to the Soviet trading corporation of litigation in the

state in which the private corporation is domiciled is thus substantially avoided. There is a remote chance, of course, that the dispute might be brought before an international tribunal.<sup>3</sup>

The offensive capabilities of the Bloc state trader are as imposing as its capabilities for defense. The highly centralized trade and aid organization probes unremittingly for points of legal weakness.

The Bloc trading policy is basically divisive. Bilateral trade agreements are attempted, specialized to the country with which the agreement is negotiated. Multilateral trade agreements, which might provide a foundation upon which Free World states could confront the Bloc on a common basis, are avoided.

Bloc trade activity can thus be conducted flexibly and opportunistically without the legal impediments which many Western states have accepted in order to obtain reciprocal trade concessions. In writing of the difficulty in regulating trade relations with Communist countries, Mr. Pisar states:<sup>4</sup>

The steady proliferation of bilateral agreements and barter arrangements constitute an increasing obstacle to the assimilation of Communist trade into the multi-lateral framework of world commerce. Existing arrangements such as GATT, the International Monetary Fund, various trade associations and commodity exchanges, as well as more specialized international conventions (e.g., arbitration, patents, copyright), cannot in general be expected to cope with the peculiar phenomenon of Communist trade. Either Communist countries refuse to adhere to such established 'gentlemen's agreements' or, if they do adhere, their obligations assume a distorted meaning in the context of a state-operated market.

A Soviet trading corporation can contact its buyers directly in Free World states. It can circulate catalogs, stimulate demands, take advantage of local patents and glean much economic intelligence.

### *Soviet Bloc Economic Warfare Techniques*

The Soviet Union began to implement its foreign policy by economic measures in 1923 as it recovered from the internal dislocation produced by revolution, famine and blockade. But no major

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<sup>3</sup> Recourse to adjudication will depend upon the willingness of both the state of domicile and the Soviet Union to participate. The corporation would have no special status to appear as a litigant and would have to be represented by its state of domicile or by some other state which might claim the right to extend its protection.

<sup>4</sup> Pisar, *op cit.*, 26.

use of wealth as an offensive weapon was made until after the death of Stalin.

Having removed most of Eastern Europe and mainland China from the aegis of Western political and economic influence, it was Stalin's theory that denial of this market to the West would undermine the economies of Free World nations and stimulate an internecine struggle among them for fragments of the remaining market. Trade with the West remained at the minimum necessary to meet military and domestic requirements of the Soviet Bloc.

This "dual" or "parallel" markets theory was repudiated after the death of Stalin. Trade and aid have since been combined to form a cutting edge for the Soviet political wedge. Primacy is given to one or the other as the characteristics of the political target warrant. In almost every instance Bloc trade and aid have been skillfully controlled and coordinated.<sup>5</sup>

Bloc purchases in the West usually have been of raw materials, such as rubber and fats, processed items, such as oils, synthetic fibers, plastics and heavy chemicals; fabricated metals, such as plates and sheets, structural shapes and tubing; machinery, such as machine tools and electrical equipment; and major fabricated devices such as trawlers and locomotives. Interest has been demonstrated in purchasing entire plants with the technical information to operate them. These purchases often involve performances by two or more corporations, some furnishing design and machinery and others technical information and training necessary to operate the plant.

Bloc strategy, as developed in the late 1950's, combined conquest by economic accretion with the "economic sortie" as inviting points of weakness in Free World nations appeared. The trading pattern of the target area is gradually reoriented towards the Bloc by increasing purchases of its products. These purchases usually are

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<sup>5</sup> The most recent comprehensive studies of Soviet economic warfare are Allen, *Soviet Economic Warfare* (1960) and Allen, *Communist Economic Warfare* (1960) (Committee on Un-American Activities, H. R., 86th Cong., 2nd Sess. Doc. 51038). Also suggested are Aubrey, *Co-existence* (1961); Berliner, *Soviet Economic Aid* (1958); Benham, *Economic Aid to Underdeveloped Countries* (1961); Knorr, *Ruble Diplomacy* (1956); Kovner, *The Challenge of Coexistence* (1961); Mikesell and Wells, *The Soviet Economic Offensive* (1959); *The Threat of Soviet Economic Policy* (Department of State Publication 7234) (1961); and *Communist Economic Policy in the Less Developed Countries* (Department of State Publication 7020) (1960). Pisar, *A New Look at Trade Policy Toward the Communist Bloc* (Sub-committee on Foreign Economic Policy of the Joint Economic Committee, U.S. Congress, Doc. 76695, 1961) is a recent and useful reference, although Mr. Pisar's emphasis upon economic warfare is subordinate to broader considerations of trade policy.

in dollars or other convertible currency to provide the initial attraction.

The Free World markets of the target area are restricted at the same time by selling the purchased products at a low price to customers of the target. Egyptian cotton, for example, has been sold by satellites below the world market price.

As dependence upon Bloc trade in the target area increases, the Bloc offers long-term credits at low-interest rates and shifts trade to a barter basis. The use of credit probably stems from a desire to shift to barter rather than from a design to force the debtor into bankruptcy by insisting upon repayment at an awkward time. Yet the credit has coercive possibilities for future action by the Bloc.

The size of the credit and its usual earmarking for "impact" projects generates publicity and conspicuously labels the benefit, such as an industrial plant or dam, as a contribution of the Bloc. Administration of the credit provides an opportunity to establish working relationships with key officials and influential organizations.

As ties of the target area with the Free World are weakened, military assistance and grants in aid are commenced. Military assistance permits the introduction of large numbers of technicians, infiltration of the policy making and security institutions of the area, and neutralization or communization of influential governing groups.

Economic penetration by the Bloc commenced with the aid program to Afghanistan in 1954. The program was extended to India, the UAR, Indonesia, Iraq, Ethiopia and Guinea. Technicians were provided for service in these countries and natives, both civilian and military, were received in Bloc schools.

The Soviet Union, as of 1960, had extended credits or grants to Free World or "Uncommitted Countries" of approximately \$3.1 billion. The European satellites and Red China together had extended credits or grants of slightly over \$1.0 billion, the aid extended by Red China being substantially larger than that of any European satellite. Although the credits have not been utilized fully, twenty-five Free World or "Uncommitted Countries" have received economic assistance from the Bloc.

Bloc assistance may temporarily strengthen the economy of the country aided. This strength may become permanent. The Bloc program is too new to draw hard and fast conclusions about it. But the ultimate effects of Bloc aid and trade may be to disturb the political stability of the area.

Industrial plants and public works have been particularly favored as forms of Bloc aid. Public works, with health and education services, are usually the forms of assistance most needed by under-

developed states to lay the foundation for political stability. But premature industrialization of an underdeveloped state, lacking law and conduct patterns not readily geared to the problems of an industrialized society, may stimulate chaotic conditions in which Communist political doctrines and institutions can obtain a secure foothold. Such chaos, if it can be distinguished from the turbulence usually associated with the creation of a new state, cannot at this stage be said to have resulted from Bloc aid and trade. Nor has the economic orientation of any Free World or "Uncommitted Country," other than Cuba, been changed sufficiently to be used as a base for Soviet political control.

Soviet tugs on the reins of states thought to have been "enveloped" economically, such as Yugoslavia, Egypt and Albania, have not produced the effects one might reasonably expect. The present danger to the Free World is the divisive effect of Soviet Bloc economic warfare which stems from the high degree of flexibility and direction which Bloc economic policies have demonstrated.

Although the Bloc suffers from a disadvantageous disparity in material resources, and has significant weaknesses of its own, it has the advantage of ability to concentrate its economic power at points of weakness in the Free World. It also possesses organization which permits rapidity in decision and execution of policies. The Bloc is equipped to deliver economic sorties in addition to its slower technique of capture by economic accretion.

The economic organization of the "free-enterprise" Free World, in which the United States is the mobilizing force, is by contrast keyed to a defensive policy in economic warfare. The United States policy, furthermore, is one of defense by protracted harassment of the opponent rather than of counterattack by "economic sortie." As Secretary of State Rusk, with specific reference to security controls, testified: <sup>6</sup>

\* \* \* While our policy of control is a selective one and while we cannot expect to cripple Soviet Bloc economic or military power through an export control system, we can accomplish something useful if we recognize that our objective must be a limited one. That objective is to delay the development of Soviet military capability in selected areas where a coordinated denial policy by Western suppliers may have an impact. We

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<sup>6</sup> *Investigation and Study of the Administration, Operation, and Enforcement of the Export Control Act of 1949, and Related Acts.* (Hearings before Select Committee on Export Control, House of Representatives, U.S. Congress, Doc. 77836, 1962) 69.

cannot hope to erect an absolute barrier to Soviet advancements in military production; we can make it more difficult or more time consuming for the Soviets to make certain kinds of progress. From this standpoint, the trade control operation is closely akin to the basic objective of our national defense policies—namely, the preservation and if possible the widening of the margin of advantage in time wherever we enjoy it in military capability. It is this margin in ultimate military power which is the hope of the West in the near term, and whatever contribution the trade control system has made to its maintenance is valuable. \* \* \*

## 2. The United States and the Free World: The Legal Response to Bloc Economic Warfare

The basic laws by which the flow of trade between the United States and foreign countries is controlled for political objectives are the Export Control Act of 1949<sup>7</sup> and the Trading With the Enemy Act of 1917.<sup>8</sup> The Mutual Defense Assistance Control Act of 1951 (Battle Act)<sup>9</sup> establishes the basis for the United States relationship with the Free World system of voluntary controls over the export of strategic goods to the Soviet Bloc and relates this program of trade restriction to the foreign aid program of the United States. Other laws, such as the Johnson Act,<sup>10</sup> prohibiting private loans to countries in default in payment of their obligations to the United States, have some political relevance but are of less importance in economic warfare.

### *Export Control Act of 1949*

The Export Control Act of 1949 is administered by the Secretary of Commerce pursuant to authority delegated by the President. The Secretary of Commerce thus controls all exports except the following: Armaments, aircraft, special airborne equipment and

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<sup>7</sup> 63 Stat. 7 (1949) ; 50 U.S. Code App. 2021 *et. seq.* The act has been extended several times.

<sup>8</sup> 40 Stat. 411 (1917) ; 50 U.S. Code App. 1 *et. seq.*

<sup>9</sup> 65 Stat. 644 (1951).

<sup>10</sup> 48 Stat. 574 (1934). Section 620(c) of the Foreign Assistance Act of 1961, 75 Stat. 424 (1961), prohibits assistance to the government of any country which is indebted to any United States citizen for goods or services furnished, when such citizen has exhausted available legal remedies and the debt is not denied or contested by such government.

helium, which are controlled by the Secretary of State;<sup>11</sup> atomic materials and facilities, controlled by the Atomic Energy Commission;<sup>12</sup> and narcotics<sup>13</sup> and gold,<sup>14</sup> controlled by the Treasury Department.

Pursuant to powers delegated by the President under Section 5(b) of the Trading With the Enemy Act of 1917, the Secretary of the Treasury controls shipments of strategic commodities by foreign subsidiaries of domestic corporations by the Foreign Assets Transaction Regulations<sup>15</sup> and the Transaction Control Regulations.<sup>16</sup> These regulations are enforced by action against the parent company in the United States.

In Section 2 of the Export Control Act of 1949, the Congress expressed its policy to use export controls:

\* \* \* [T]o the extent necessary (a) to protect the domestic economy from the excessive drain of scarce materials and to reduce the inflationary impact of abnormal foreign demand;

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<sup>11</sup> 68 Stat. 848 (1954), 72 Stat. 267 (1958); 22 U.S. Code 1934 *et seq.* The munitions list and licensing regulations appear in 22 CFR, Part 121 *et seq.* Imports as well as exports of munitions are controlled by the Department of State. Arms reduced to scrap, by being rendered useless beyond the possibility of restoration to their former identity, are licensable as scrap by the Department of Commerce. Manufacturers, importers and exporters of the articles on the munitions list are required to register with the Secretary of State. Intransit licenses as well as export and import licenses are required.

<sup>12</sup> 68 Stat. 936 (1954), 70 Stat. 1071 (1956), 72 Stat. 276 (1958); 42 U.S. Code 2034 *et seq.* The controls over transactions in atomic materials are more stringent than any other since these materials are handled by the Atomic Energy Commission in a manner which amounts to a state-trading monopoly.

The exports controlled by the Commission are (a) source material, of which substantially none has ever been exported to the Soviet Bloc, (b) by-product material of which small medicinal quantities have been licensed for export, (c) special nuclear material, such as plutonium, which can only be exported by the Commission and is not subject to licensing and (d) facilities for producing and utilizing special nuclear materials, such as gaseous diffusion plants.

Nuclear materials of a special character and production and utilization facilities may be transferred only to nations or organization with which the United States has agreements for cooperation under the Atomic Energy Act. There are no such agreements with the Soviet Bloc but there is such an agreement with the International Atomic Energy Agency to which Bloc countries belong. These countries could obtain these items through the Agency, in which case Agency controls would apply to assure that the items were used only for peaceful purposes. No such case has arisen, Bloc countries being unwilling to accept the controls required by the Agency.

<sup>13</sup> 21 U.S. Code 171 *et seq.*; 26 U.S. Code 2590, 3230 *et seq.*

<sup>14</sup> Gold Reserve Act of 1934, 48 Stat. 337 (1934), and 12 U.S. Code 95 a (section 5(b) of the Trading With the Enemy Act of 1917).

<sup>15</sup> 31 CFR, Part 500.

<sup>16</sup> 31 CFR, Part 505.

(b) to further the foreign policy of the United States and to aid in fulfilling its international responsibilities; and (c) to exercise the necessary vigilance over exports from the standpoint of their significance to national security.

The Export Control Act has been used to control all commodities and technical data exported to other countries except Canada; to impose selective controls upon products shipped to the Soviet Bloc; and to embargo all shipments to Red China, North Korea, North Vietnam and other Communist controlled areas in the Far East.

The Department maintains a "Positive List" of commodities and data considered critical to the military power of the Soviet Bloc. Validated licenses for listed items are required for each transaction. For items not on this list, general licenses are issued. General licenses authorize conditional export to specified destinations without the necessity of obtaining a special license for each export transaction.

The activities of the Department of Commerce in export control are coordinated with those of other departments and agencies through an Advisory Committee on Export Policy (ACEP). Membership is on the Assistant Secretary or Deputy Assistant Secretary level.

The Departments of Agriculture, Defense, Interior, State and Treasury, and the Federal Aviation Agency and National Aeronautical and Space Agency are represented. The Committee Chairman is the Assistant Secretary of Commerce for International Affairs.

Day-to-day coordination is provided by an Operating Committee with representatives from the Departments and Agencies participating in the Advisory Committee plus observers from the Atomic Energy Commission and Office of Economic Planning. The Chairman of the Operating Committee is the Director of the Export Policy Staff of the Office of the Director of the Bureau of International Programs in the Department of Commerce. The Operating Committee meets on call or the members may consult informally.

A third body, established by Executive Order, is the Export Control Review Board, consisting of the Secretaries of Commerce, State and Defense, with the first as Chairman. Policy matters are channeled through all three levels of decision.

These policy matters include such things as additions to or deletions from the "positive list" and control problems affecting particular countries or areas. A question of granting or denying a particular license might or might not involve a broad policy matter. A license, for example, would be considered in the Operating

Committee if a licensing officer was unable to determine readily from the positive list that it should be denied or granted. If all members of the Operating Committee concur, the matter ends there, although if the license is approved, it must go to the Secretary of Commerce for final approval. If a member of the Operating Committee dissents, the matter goes to the Advisory Committee on Export Policy (ACEP).

The same procedure is followed in the Advisory Committee. If a member of the Advisory Committee dissents, the matter is reviewed by the Export Control Review Board. Matters of great importance might be referred by the Board to the National Security Council or to the President. The Secretary of Commerce can make the final determination on the Export Control Review Board. In practice a unanimity rule has been followed.

The major sanction supporting the export licensing system is denial of an export license. This denial may be for a short period or for the duration of the Act. Notice and a hearing are required. Criminal sanctions are also provided but are difficult to apply because much of the evidence must come from foreign sources and is not readily obtainable. Customs officials can seize and condemn goods being exported or about to be exported in violation of the Act and a vessel carrying prohibited goods can be required to return to port and discharge unlicensed cargo.

Information required to enforce the Act is obtained from various sources, including United States Intelligence Agencies, Economic Defense Officers of the Foreign Service in posts overseas, and the F.B.I. The Department of Commerce also has its Commercial Intelligence Division.

### *Trading With the Enemy Act of 1917*

The controls over exports applied pursuant to the Export Control Act of 1949 can also be developed under the Trading With the Enemy Act of 1917. This Act is intended principally as a basis for interdicting private communications between persons in the United States and an enemy or ally of an enemy during a war declared by the Congress. Section 5(b) of this Act, added in 1933, confers broad powers upon the President in time of peace as well.

To bring Section 5(b) into operation, the President must declare an emergency. A declaration of a national emergency was made by the President in 1950 and is still in force. The provisions of Section 5(b) thus continue to operate.

The powers conferred upon the President by Section 5(b) are:  
(1) Investigate, regulate or prohibit any transaction in foreign

exchange, transfer of credit or payment between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities; and (2) Investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power or privilege with respect to, any transaction involving any property in which any foreign country or national thereof has any interest.

The President has delegated his powers under this section to the Secretary of the Treasury. As previously noted, transactions in gold are controlled pursuant in part to these provisions.

Likewise foreign trade transactions in strategic commodities by foreign corporations effectively controlled by domestic corporations are subject to license under 5(b).<sup>17</sup> Enforcement action is against the domestic corporation. The effective control may be through stock ownership or perhaps by patent licenses. Financial controls have been imposed pursuant to this Section to block assets of Red China, North Korea and their nationals in the United States and to impose controls upon imports originating from these countries.<sup>18</sup>

Exceptions can be made by Treasury licenses, but the boycott on Red Chinese and North Korean goods has been total. Section 5(b) of the Trading With the Enemy Act is thus like an accordion which can be stretched or compressed as required to block imports or exports and control financial transactions as determined by the President.

### *Battle Act*

The Battle Act is administered by the Assistant Secretary of State for Economic Affairs. The purpose of this statute is to deny strategic commodities to the Soviet Bloc by bringing pressure upon countries receiving any form of United States aid to embargo these items. The Battle Act lists are revised from time to time to take account of economic and scientific progress within the Bloc. The latest revision was in 1960.

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<sup>17</sup> The restricted transactions are described in 31 CFR 505.10 as “ \* \* \* merchandise \* \* \* included in the Positive List of Commodities set forth in 15 CFR Part 399 and \* \* \* identified on that list by the letter “A” in the column headed ‘Commodity Lists’ or is of a type the unauthorized exportation of which from the United States is prohibited by any of the several regulations referred to in 15 CFR 370.4.” These descriptions include only items of major strategic importance. The Treasury restrictions change as the Positive List is modified.

<sup>18</sup> Transactions are also controlled in property in which either Egypt or the Suez Canal Company has an interest. 31 CFR, Part 510.

The critical features of the Act are: (1) selective controls such as those used in the Export Control Act of 1949; (2) termination of assistance to countries which ship interdicted items to the Bloc, (a) on a mandatory basis if the shipment is on Battle Act List "A," armaments, atomic materials, etc., and (b) on a discretionary basis if the shipment is of materials on Battle Act List "B," the President having authority not to terminate if he finds unusual circumstances indicating that curtailment of aid would be detrimental to the security of the United States; and (3) creation of an administrative center to coordinate the controls of the United States with those of the remainder of the Free World. There have been no terminations of aid under the Battle Act, no items on List "A" having been shipped and the President having found unusual circumstances in shipments of items on List "B."

Although the Act, no doubt, has deterred some Free World shipments of strategic goods to the Soviet Bloc, its important effect has been the development of a coordinating center, the Economic Defense Advisory Committee (EDAC), paralleling in some respects the Advisory Committee on Export Policy (ACEP) which functions in the administration of the Export Control Act of 1949. However, there is no special review board above EDAC.

The Assistant Secretary of State for Economic Affairs, Administrator of the Battle Act, serves as Chairman of EDAC. The Committee contains representatives of the Departments of Defense, Commerce and Treasury, the Atomic Energy Commission and Central Intelligence Agency, and other departments or agencies interested in particular questions subject to consideration.

There is a subsidiary executive committee, dealing with questions not requiring resolution by EDAC as a whole, and two working groups. The first deals with international export control systems, and the second deals with enforcement and transshipment questions having an international aspect.

EDAC is used to reach interdepartmental and agency agreement concerning instructions to field representatives dealing with the international control system for strategic materials and to obtain advice on Battle Act questions. For example, questions concerning the licensing of transactions in strategic materials by foreign corporations effectively controlled by domestic corporations are referred by the Treasury Department to EDAC for recommendation.

#### *International Control Structure for Strategic Trade*

The international control structure with which EDAC maintains liaison existed before passage of the Battle Act. This is the

Consultative Group (CG), an informal voluntary organization of fifteen Free World states, including the United States.<sup>19</sup>

The Group has operating under it a permanent working committee, described as the Coordinating Committee (COCOM) when it deals with exports to the Soviet Union and the European satellites and CHINCOM when it deals with exports to Red China, North Korea and North Vietnam. The unanimity rule applied to all but procedural questions and the obligations of the fifteen participating states are moral only.

Until 1957 a differential existed between embargoed items to the European Soviet Bloc and embargoed items to Red China. This was abandoned because of pressure by a number of Consultative Group members.<sup>20</sup>

There are currently two International Lists (IL). List I contains embargoed items. List IV is a "Watch" list of items which are maintained under surveillance. Lists II and III (quantitative and surveillance control items) were abolished in 1959.

A number of supplementary controls are used. By the Import Certificate-Delivery Verification System (IC/DV) a Consultative Group state, before granting a license to export a controlled item, requires the exporting firm to present an import certificate, executed by the importing firm and certified by the state of destination. The certificate states that the shipment is actually destined for the state indicated and will not be diverted or reexported. The exporting country may also obtain a certificate of delivery verification in which the importing state certifies that the goods were actually delivered to the destination licensed.

Many of the Consultative Group states also require Transit Authorization Certificates (TAC) for goods originating in member states and on the embargo list passing through the territory of another member en route to the Soviet Bloc. The TAC is issued by

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<sup>19</sup> Belgium, Canada, Denmark, Federal Republic of Germany, France, Greece, Italy, Japan, Luxembourg, Norway, Portugal, The Netherlands, Turkey, United Kingdom, United States. The system began with an Anglo-French list established in 1949. Each cooperating country has its own national control list. All the NATO signatories except Iceland belong to the Consultative Group.

<sup>20</sup> On May 18, 1951, the General Assembly of the United Nations recommended that every state apply an embargo on shipments to Red Chinese and North Korean areas of "arms, ammunition and implements of war, atomic energy materials, petroleum," transportation resources, and items useful in arms production. At one time a strategic embargo on these items was applied by 45 states, but after the Korean Armistice in 1953 the restrictions were rapidly jettisoned. CHINCOM was formed within the Consultative Group during this period of general embargo upon items of military use. At one time approximately 200 more items were on the CHINCOM list than on the COCOM list.

the state of export and submitted to the state of transit. Transaction controls, such as those maintained by the United States, are also maintained by several other Consultative Group states. Shipping and bunkering controls were imposed by members for several years to restrict commerce with Red China.

The United States maintains a permanent delegation to COCOM-CHINCOM which is directed by the Department of State with the advice of EDAC. The International Lists are revised annually and the United States delegation participates in this revision.

The tendency has been to reduce the number of embargoed items and to permit freer trade with the Soviet Bloc. This is due in part to the expanding industries of the European Consultative Group members and of Japan, the considerable dependence of these states upon foreign trade, and a shortage of foreign exchange by which supplies, particularly raw materials, can be purchased in the West. These states now receive no economic aid and the Battle Act has not been invoked to press them towards more restrictive controls because this would involve a withdrawal of military aid only. In the words of Secretary Rusk:<sup>21</sup>

\* \* \* The United States has consistently pressed for a somewhat more restrictive policy than most of the other members of COCOM would accept. We have had, therefore, to balance the advantages of maintaining the COCOM system in order that our influence might keep those restrictions as strong as possible, or letting the system disappear and finding that the COCOM controls might gradually wither away. \* \* \*

The Battle Act has been helpful in influencing the policies of states which are not members of the Consultative Group, although the Bloc trade with these states in goods of a strategic nature has been relatively small.

The United States, consequently, has fallen back to a unilateral position with respect to its trade restrictions with the Soviet Bloc. The "Positive List" of the Department of Commerce is based only in part upon the International Lists and contains items which the International List does not embargo. A total embargo and boycott is maintained on trade with Red China, North Korea and North Vietnam, although such restrictions are not imposed by the other Consultative Group states.

Validated licenses rather than Transit Authorization Certificates

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<sup>21</sup> *Investigation and Study of the Administration, Operation, and Enforcement of the Export Control Act of 1949, and Related Acts* (Hearings Before Select Committee on Export Control, House of Representatives, 87th Cong., 1st Sess. Doc. 77836, 1961), 73.

are required for the transit of goods for which validated export licenses are required. American petroleum companies are prohibited from bunkering any vessel bound to or from Communist Far Eastern ports or Macao without a Treasury license and a validated license from the Department of Commerce is required for bunkering vessels or fueling aircraft which have called or will call at Far Eastern Communist ports within stated time periods.<sup>22</sup>

### *Coordination of Aid Program and Trade Controls*

The aid program of the United States is coordinated with the program of trade control through EDAC. The Director of the International Cooperation Administration was at one time Administrator of the Battle Act and participation in the work of EDAC by representatives of the Agency for International Development (AID) created pursuant to the Act for International Development of 1961<sup>23</sup> will no doubt occur. The Secretary of State is responsible under the Act for International Development for continuous supervision and general direction of the assistance programs which the Act authorizes and integrating these at home and abroad so the foreign policy of the United States is best served.

Prior to the Act for International Development of 1961 and following World War II, the aid programs of the United States emphasized: (1) reconstruction of the economies of wartime allies (as in the Greek-Turkish aid program and the European Recovery Program); (2) increasing military defenses of Free World countries; and (3) encouraging the economic development of underdeveloped countries, now usually described as "less developed" countries. The Military Assistance Program and economic aid to support military defense efforts were the largest aid projects during the 1950's.

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<sup>22</sup> See *The Strategic Trade Control System, 1948-1956: Mutual Defense Assistance Control Act of 1951*, Ninth Report to Congress (1957), 35-37; 15 CFR 371.13(2) and 371.13(3)(b)(2).

<sup>23</sup> P.L. 87-195, Sept. 4, 1961; 75 Stat. 424 (1961), Part I (1961). The entire Act is described as the Mutual Security Act of 1961. Part II of the law has the short title, "International Peace and Security Act of 1961." The Agency for International Development, which administers Part I, was established by Ex. Or. 10973, 26 FR 10469 (1961). The Agency supersedes the International Cooperation Administration and the Development Loan Fund. The functions of the Export-Import Bank relating to loans under section 104(e) of the Agricultural Trade Development and Assistance Act of 1954, 68 Stat. 454 (1954); 7 U.S. Code 1961 *et seq.* (1954), often called "P. L. 480" have also been transferred to the Agency. While the functions of the Agency are more embracing than those of International Cooperation Administration, it continues as part of the Department of State, its Administrator having the status of an Under Secretary of State.

These programs are now superseded in importance by attention to the "less developed" countries—using development loans, grants and technical cooperation; encouraging private investment by Federal guaranties against inability to convert earnings to dollars, foreign expropriation or confiscation, and loss due to war, revolution and insurrection; financing private business surveys; encouraging research; and contributing to the work of International Organizations in "less developed" countries. The Military Assistance program is continued, \$1,700,000,000 being appropriated by the Congress to this purpose for each of the fiscal years 1962 and 1963. The program is administered by the Department of Defense under the general negotiating and coordinating authority of the Secretary of State.

The Foreign Aid program, apart from its military aspects, now seems aimed to achieve global environmental changes. The countries aided are permitted to formulate their individual plans for development. They are given advice as to reforms; but each is encouraged to develop its own image of a "free society."

Unlike earlier programs, which were geared to Soviet Bloc political movements, the current aid trend seems to recognize the menace of Communist action but to divorce substantially the United States aid program from a pattern of response. As stated by the President's Task Force on Foreign Economic Assistance:<sup>24</sup>

It is important that the United States, in its desire to offset these dangers, not engage in a frantic competition to outbid the Bloc's offers of aid or seek to prevent countries from accepting aid that will help them. To react this way would involve us in waste, draw us into an undignified posture, and open us to the charge of not being sympathetic to the economic development of other countries except on our own political terms. The size and effectiveness of the Communist effort are reasons for concern and self-examination but not alarm. They emphasize the need for the United States to make its aid as effective as possible, timely, vigorous, and responsive to short-term as well as long-term considerations. If we do these things and our actions are constructive and politically wise, the aid coming from the Communist Bloc should not worry us. The increasingly effective Bloc effort is a challenge and a reminder to the United States that it cannot afford to make anything less than a major effort, designed and administered in such a way as to achieve maximum results of the right kind.

Broad and flexible authority is conferred upon the President in

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<sup>24</sup> *An Act for International Development, A Summary Presentation, June 1961* (Department of State Publication 7205), 189.

the Acts for International Development and International Peace and Security, including authority to give certain kinds of aid subject to limitations in amounts despite the provisions of the Battle Act.<sup>25</sup> There is also broad authority to give "supporting assistance"<sup>26</sup> from a contingency fund; and authority to use \$50,000,000 for the funds appropriated for purposes which he need not disclose upon certification.<sup>27</sup> Action of a nature which would not be disclosed might be taken in economic warfare by the Central Intelligence Agency or some similar executive institution. However, because of its general object to secure massive environmental changes, the Aid structure does not seem to be readily adaptable for coordination with a program of trade restriction, even though EDAC is available for that purpose.

### *Current Economic Warfare Posture*

The present economic warfare posture of the United States is one of attempting to buy "lead time" by impeding the development of Soviet Bloc economies through use of a program of export and import controls. This "lead time" is used by subsidizing its scientific development; improving the defensive capacity of its allies; and by a massive effort to change the environments of "less developed" and uncommitted countries.

The idea that wealth might be used offensively, or might be carefully focused for political ends, seems not to have been entertained seriously in the program. Congress has retained much control over the trade control and aid programs by reporting requirements and investigations. This control perhaps has discouraged initiative in the offensive use of wealth in situations sensitive in domestic politics.

It is unlikely that this United States defensive structure will undergo more than the slow mutations exhibited since World War II. Thus, any flexibility which can be developed to fend and return skillfully engineered Soviet Bloc "economic sorties" will have to be derived from laws which have never been fully utilized. One of these is Section 5(b) of the Trading With the Enemy Act of 1917. Other treaties and domestic laws remain to be explored by the responsible administrators. There will be a premium upon ingenuity and speed in administrative interpretation of existing laws.

In the past decade of active political application by the Soviet Union and Bloc states of their increasing economic strength in foreign affairs, intervention by the Soviet Union in support of the

<sup>25</sup> P.L. 87-195, Sept. 4, 1961; 75 Stat. 424 (1961), section 614 a.

<sup>26</sup> *Id.*, sections 401, 402, 451.

<sup>27</sup> *Id.*, section 614 c.

Castro regime in Cuba demonstrates the purpose and skill with which Bloc economic power can be brought to bear to support Communist political objectives. The case suggests also the importance of administrative ingenuity and speed in the United States in utilizing hitherto unutilized laws in economic warfare. The perils of defensive, cautious and well-meaning economic policies when opposed to an aggressive, carefully aimed, and coordinated Communist "economic sortie" are amply demonstrated.

## **B. SUGAR ECONOMIES OF CUBA AND THE UNITED STATES: THE LEGAL MILIEU FOR WEALTH BALANCE**

The Cuban economy is based substantially upon the production and export of unrefined sugar. Cuba is the major sugar exporter and is second only to the Soviet Union as a sugar producer. In 1959, the first year of the Castro revolution, Cuba produced 6,577,000 tons. Of this production, 3,437,582 tons, or slightly more than half, was exported to the United States.

The United States is a closed sugar market. This means that both production of sugar within the United States and its possessions and imports into these areas are limited. The limitations are to maintain the domestic sugar price and to develop dependable sources of supply.

### *Sugar Act of 1948*

The production and marketing of sugar within the United States was regulated in 1959 by the Sugar Act of 1948.<sup>28</sup> This Act originated as the Jones-Costigan Amendment to the Agricultural Adjustment Act,<sup>29</sup> and was carried over as the Sugar Act of 1937 when the Agricultural Adjustment Act was held unconstitutional by the United States Supreme Court.

By the Sugar Act of 1948, as in force with amendments in 1959,<sup>30</sup> the Secretary of Agriculture determined in December of each year the probable sugar consumption in the United States for the year following. This tonnage was then divided up among domestic and foreign producers in accordance with a quota system set forth in the statute.

The statute established the basic need of the United States for sugar at 8,350,000 tons. Although the actual sugar consumption at

<sup>28</sup> 61 Stat. 922 (1947).

<sup>29</sup> 46 Stat. 670 (1934).

<sup>30</sup> Amendments at the end of 1961 appear in 65 Stat. 318 (1951); 70 Stat. 217 (1956); 74 Stat. 330 (1960); and 75 Stat. 40 (1961).

the time the statute was passed was greater than this, and ever since has greatly exceeded this figure, domestic and import quotas were computed in relation to this tonnage.

A minimum quota for domestic producers was established in the statute at 4,444,000 tons. This minimum quota was allotted among domestic beet producers (1,800,000), mainland cane producers (500,000) and the remainder among cane producers in Hawaii, Puerto Rico and the Virgin Islands. To this minimum quota was added 55% of the amount by which the probable sugar consumption as determined by the Secretary of Agriculture exceeded the "basic statutory" need of 8,350,000 tons. A quota of 952,000 tons was established for the Republic of the Philippines.

Cuba received 96% of the amount by which the basic statutory need of 8,350,000 tons (or a lesser amount determined by the Secretary as the actual probable consumption) exceeded the minimum quota for domestic producers (4,444,000) plus the quota for the Philippines (952,000). Cuba also received 29.59% of the amount by which the actual probable consumption as determined by the Secretary exceeded the basic statutory need (8,350,000). This additional tonnage has always been substantial.

A minimum Cuban quota was fixed at 28.6% of the total United States consumption estimated by the Secretary if this estimate was 7,400,000 tons or less; and at 2,116,000 tons if the actual consumption was estimated at more than 7,400,000 tons. The quota of domestic producers was to be reduced *pro rata* to make up the minimum Cuban quota, although the Cuban quota has always been well above 2,116,000 tons.

Foreign producers, other than Cuba and the Philippines, received 4% of the amount by which the basic statutory need (8,350,000) exceeded the minimum quota for domestic sugar producers plus the quota of the Philippines. This foreign producer quota was prorated in accordance with a statutory scale.

Of the amount of probable consumption in excess of the basic statutory need (8,350,000) allocated to these less favored foreign producers, the Dominican Republic received 4.95%, Peru 4.33%, Mexico 5.10% and the remaining 1.03% was divided among other foreign suppliers by a formula based upon experience with their tonnage exported to the United States under earlier quota allocations.

If a domestic producer or foreign supplier failed to fill its quota, the deficit was allocated among other quota holders. If a domestic producer or Cuba defaulted, the reallocation was made first to domestic producers. If they would not fill the new quota, the allocation was to Cuba. If the Philippines failed to fill its quota,

Cuba was allocated 96% of the deficit and the other foreign producers received 4%. If any foreign producer other than the Philippines failed to fill its quota, the entire deficit went to Cuba; and if Cuba could not fill the deficit, the Secretary could allocate it.

Under the Sugar Act of 1948, Cuba thus enjoyed marketing privileges comparable to those of domestic producers. Sugar consumption in the United States was rapidly increasing. Assuming continued controls upon the acreage of domestic producers, and no significant breakthroughs in methods of production, Cuba could reasonably expect an expanding and lucrative United States market.

The United States market had special appeal for all foreign suppliers because of its high sugar price. By manipulating his estimates of probable annual consumption, the Secretary of Agriculture, although he could not control prices directly, nevertheless controlled them indirectly by increasing or decreasing domestic and import quotas, subject to the minimum quotas established. By this method, the Secretary maintained the United States price at about 2 cents per pound above the world market.

While all foreign suppliers having quotas enjoyed this price advantage, Cuba also received a 20% tariff preference on sugar imported into the United States. This preference was based on a treaty made in 1902.<sup>31</sup> A tariff of 4/8 of a cent per pound was thus levied on Cuban sugar as compared with 5/8 of a cent per pound on the sugar of all other foreign suppliers except the Philippines.<sup>32</sup> In 1959, this privileged position of Cuban producers enabled them to make approximately \$159,000,000 more upon that part of the crop sold in the United States than if the sales had been on the world market.

The favored position of Cuba stemmed in part from recognition of historic patterns in the sugar trade and in part from the close friendship existing between the two countries. But the favored position of Cuba was founded also upon intensely practical considerations.

There were important business reasons for the Cuban preference. Cuba was a major consumer of United States exports. Approximately 4/5ths of Cuba's visible imports came from the United States and

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<sup>31</sup> 33 Stat. 2163 (1903-5).

<sup>32</sup> By the Philippine Trade Act, 60 Stat. 141 (1946) the Philippine quota is set at 982,000 tons annually for the period 1 January 1946 through 3 July 1974. Until 3 July 1954 the sugar was admitted duty free. For the remainder of 1954 the rate was 5% of the lowest rate charged another country. For 1955 the rate was 10% of the lowest rate charged any other country; and each year thereafter it is increased 5% until it reaches 100% on 1 January 1973.

were principally in machinery, motor vehicles, cotton manufactures, rice, wheat, flour and lard. The Cuban sugar preference supplied dollars which could be used to pay for these products. Investments by United States citizens in Cuba were greater than in any other country in the Western Hemisphere except Canada. These investors benefitted by Cuban trade with the United States which in turn depended largely upon the sugar preference.

United States nationals owned 36 out of the 116 mills producing raw sugar in Cuba. The United States corporations owning these mills also owned much land upon which sugar cane was raised.

The Atlantico del Golfo and Rionda Groups of American Sugar Mills held approximately 500,000 acres each. Cuban-American Sugar Company held 330,000 acres; and the United Fruit Company 226,000 acres. A preference for Cuban sugar meant a preference directly for a substantial number of United States stockholders.

There were important strategic grounds for the Cuban preference. Communist influence had been present in Cuba from the early years of the Depression of 1929. Special privileges for Cuban sugar producers in the United States market created jobs and established a wage level which would not have been possible if all of Cuba's sugar production had been sold on the world market.

Although the standard of living for most Cubans remained quite low, the standard was higher than in most of the rest of Latin America, and would have been lower without the United States market preference. With a decreasing standard of living, Cuba might have become increasingly vulnerable to Communist infiltration, although the pattern of Communist conquest has since suggested that its major appeal is to educated groups with a relatively high living standard.

In addition to its familiar use as food, sugar is also used in the manufacture of plastics, drugs, antifreeze, synthetic rubber, ethyl alcohol and numerous other products important in national defense. About one acre of cane produces the ethyl alcohol needed to manufacture smokeless powder sufficient to propel fifteen five-inch shells.

Cuba has supplied about  $\frac{1}{3}$  of the total sugar needed for food and manufacturing in the United States and has done this at stable prices during periods of international crisis. The geographic position of Cuba simplifies the protection of cargo vessels transporting sugar to the United States. Shipping costs and insurance rates during wartime tend to be lower. Cuba was a relatively secure and dependable source of sugar and the United States was anxious to encourage and protect its reliable foreign supplier.

*World Sugar Market*

The bulk of the world sugar production is sold in closed markets such as in the United States under the Sugar Act of 1948. The most important of these are created by the British Commonwealth and French Agreements, although the sugar sales by Cuba in these markets would under any circumstances be less than in the United States. The trade between the Soviet Union and its satellites has some of the characteristics of a closed market since this trade is in barter or in nonconvertible currencies. For this reason trade in a Bloc market is not desirable for a country which expects to purchase Western goods.

Only about 10% to 15% of the world sugar production is sold in the "world" or "free" market, although it was here that much of the Cuban sugar production was marketed. Sugar prices in the free market tend to be both low and erratic.

The depressed free market price is caused by chronic overproduction of sugar. World sugar production was 64,625,000 tons in 1959. Of this, 7,494,000 was thrown on the free market, although there was a free-market sale of only 6,283,000 tons.

For the ten years between 1950 and 1960, world sugar consumption increased at about 5% per annum. World sugar production increased at about 10% per annum. Per capita sugar consumption is low in many countries—about three pounds per capita in Red China as compared with one hundred and one pounds per capita in the United States. This low consumption in the "under" or "less" developed countries may increase. A parallel increase in sugar production is also forecast. However, the supply is likely to continue to exceed the amount marketable. A number of countries, such as West Germany and India, were finding it difficult to market their sugar surpluses in 1961, although they had experienced no major marketing difficulty in previous years.

The erratic prices on the free market are due principally to weather and world tension. A prolonged drought in Eastern Europe in 1960 raised the price of beet sugar on the free market by reducing the supply.

When the Batista government was overthrown in 1959, the free-market price of sugar was 3.67 cents per pound. This unusually high price for the free market resulted from the threat to the Cuban supply from Castro's burning of cane fields. The price dropped to 3.1 cents per pound in February 1959, when the Cuban supply was thought assured by Batista's overthrow.

In World Wars I and II, the Korean War and the Suez Crisis,

the free-market price jumped appreciably. The price declined with alacrity when tensions were reduced.

Because of fluctuations in the free-market price, attempts have been made to attain price stability by a series of multilateral treaties. Cuba and the United States have joined in all since the first treaty in 1937.

The International Sugar Agreement in force in 1959<sup>33</sup> permits an International Sugar Council to set export quotas in the free market. These quotas may be above or below a basic tonnage for exporting countries which the Agreement specifies.

A minimum desired free-market price is set at 3.25 cents per pound. If the price on the free market dips below this for seventeen successive business days, the Council is required to cut export quotas by 21½% and is permitted to cut quotas by 10%. If the price falls below 3.15 cents per pound, the Council may cut export quotas up to 20%. This is the maximum cut permitted. Exporting countries (such as Cuba) agree to limit production and exports; and importing countries (such as the United States) agree to restrict imports from nonparticipating sources. All important sugar producers, with the exception of Red China, are parties to the Agreement.

The Sugar Council meets periodically to consider quotas. Voting in the Council is weighted. One thousand votes are allocated to sugar exporters (including Cuba) and 1,000 votes to sugar importers (including the United States). The number of votes allocated to each participating country differ. As importers, the United States and the United Kingdom each have 245 votes as compared to 10 votes for Ghana. Cuba has 245 votes as a sugar exporter, compared with 95 votes for the Soviet Union and 10 votes for Haiti.

Provisions are liberal for withdrawing from the Agreement after notice by the withdrawing party. Cuba, for practical purposes, is an essential party to the Agreement. Without Cuban participation the free-market price would be unduly difficult to stabilize.

Cuba has the largest free-market quota. This is 2,415,000 tons, subject to reconsideration in 1962.<sup>34</sup> So long as Cuba desires to sell sugar on the free market, it is probably in her interest to remain a party to the Agreement. If Cuba desires to withdraw from the Agreement and depress the world price by dumping her marketable sugar, there is no way in which this withdrawal can be prevented. But dumping her marketable sugar on the market without a formal

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<sup>33</sup> 10 *U.S. Treaties* 2189.

<sup>34</sup> The Cuban quota was actually reconsidered in December 1961 on a special Cuban request for a quota increase to cover its sales to the Soviet Union. There being no agreement on this increase in the Council, the Sugar Agreement appeared on the verge of collapse.

withdrawal from the Agreement pursuant to its terms would place Cuba in violation of a treaty obligation.

Since 1959, the free-market price has tended to fluctuate below 3 cents per pound. Under these circumstances, parties to the Agreement may take unilateral action to limit exports. Cuba, in 1960, set 3.25 cents per pound as the price for Cuban sugar on the free market and the Cuban Sugar Stabilization Institute made substantial purchases to reduce the amount available for export. Because the cost of production of raw sugar in Cuba was approximately 4 cents per pound in 1959 and 1960 and the free-market price was substantially below this, the 2 cents per pound premium which Cuban sugar brought in the closed United States market was essential to make production profitable.

### **C. CUBAN-COMMUNIST ECONOMIC AGGRESSION AND THE RESPONSE OF THE UNITED STATES IN 1959 AND EARLY 1960**

Despite the clear dependence of the Cuban sugar industry upon the closed market of the United States, the difficulties involved in diversifying agriculture and developing new industries in Cuba, and the evident interest of the United States in continuing Cuban sugar preferences, the Castro regime, sparked by its Communist elements, began a hostile campaign against the United States early in 1959. This campaign was designed ultimately to disrupt relations between the United States and Cuba, neutralize the power of Cuban moderates, and pave the way for Cuban entrance into the Soviet Bloc.

Pending the purge of moderate adherents to the regime and liquidation of the Cuban political opposition, and until a minimum program of Soviet economic assistance to Cuba could be developed, it was important to Castro that Cuban preferences in the United States sugar market be preserved. The preferences were, however, regarded as a fulcrum for political leverage by the United States and thus incompatible with the radical reorientation planned for Cuban political relations. The preferences were desired by Cuba only as an interim device to develop foreign exchange. Cuban holdings of foreign exchange were low due to withdrawals by Batista officials. These holdings were further diminished by the inept management of the Castro government.

Castro thus had to deal with a delicate problem of balance—disturbing relations with the United States sufficiently to justify his Communization of the Cuban government and liquidation of the labor unions and other potential sources of opposition while at the same time keeping the Cuban sugar quota as long as possible to tide

him over the thin years which the revelation of his Communist ties would probably bring.

The Castro regime accordingly commenced an economic offensive. This was designed to disturb the psychical equilibria of officials in the United States and delay the response of the Administration as the Communist ties of the regime received publicity.

Cuban representatives contended, first, that the Cuban sugar quota should be removed from the Act of 1948 and incorporated into a new bilateral treaty between Cuba and the United States. The ostensible purpose of this move was to prevent fluctuations in the Cuban quota by removing it from the influence of domestic politics.

The actual purpose was to develop an international legal argument to assert to forestall future disciplinary cuts in the quota.

Restoration of the Cuban sugar preferences as these existed before 1956 was also sought. The Sugar Act of 1948 had been amended in 1956 to limit Cuba's "deficit quota" to 29.6% of the excess above the basic 8,350,000 tons; 96% of this excess had been allocated to Cuba prior to 1956. While Cuba sold more sugar in the United States after 1956 than before, this increased sale had been due to an increased United States consumption. A return to the earlier formula would greatly increase Cuban sugar sales during 1960.

These demands by the Castro regime fell upon deaf ears both in the Administration and in Congress. Concern as to the nature and direction of the Castro movement had been stimulated during the late winter and early spring of 1959. Earlier hopes for moderation by Castro as the heat of victory subsided, were salted with profound skepticism concerning his personal qualities as a leader and uncertainty concerning the political orientation of many of his principal advisers.

Faced with this gradual loss of sympathy and confidence, and with the negative response to his efforts to secure guarantees of the sugar quota during 1960, Castro announced his Agrarian Reform Law. Agrarian reform had been an objective of the Castro revolution and changes in the Cuban landholding system were clearly needed. This law, however, was aimed principally at the holdings of American sugar companies.

Its terms and timing, by suspending a Sword of Damocles over the ownership of American properties in Cuba, were designed to force a continuation of the sugar preferences at least through the marketing season of 1960. The administrative discretion and flexibility derived from the vague provisions of the law permitted indefinite postponement of action to expropriate the American properties.

The Castro regime could thus publish the law but announce that no action would be taken under it until the close of the 1960 marketing season. The Sugar Act of 1948 was required by its terms to be reviewed in 1960. The threat of expropriation, coupled with the hope instilled in the corporate stockholders that Castro might be made to "see the light," might make Congress reluctant to cut or eliminate the Cuban quota despite the development of closer ties between Cuba and the Soviet Bloc.

The essential elements of the Reform Law were severance of cane grinding from cane production and restriction of ownership of grinding mills either to Cuban nationals or to corporations totally owned by Cuban nationals. Land ownership was limited to 1,000 acres per person or corporation. No cane land could be sold to a foreign national. Ninety days were allowed to convert the stock in mill corporations to Cuban ownership.

Compensation for the expropriated property was to be in 4% Cuban bonds payable in 30 years. The basis of compensation was to be the tax value of the land prior to 10 October 1958. In 1958 the assessed tax value had been a small fraction of the market value. After the Reform Law was published, the market value of cane land promptly dropped from \$16,800 per hundred acres to \$7,800 per hundred acres.

Coupled with the threat by the Castro regime, intended to influence United States domestic commercial interests, 140,000 United States stockholders being affected by seizure of the sugar properties, were restrictions placed upon imports from the United States into Cuba. These restrictions had the dual object of lessening the outflow of foreign exchange from Cuba and bringing home to American exporters the importance of the Cuban market.

These efforts by the Castro regime to influence domestic commercial interests and opinion generally in the United States raised questions concerning Cuba's obligations pursuant to Articles 15 and 16 of the Charter of the Organization of American States. These Articles state:

Article 15: No state, or group of states, has the right to intervene directly or indirectly, for any reason whatever in the internal or external affairs of any other state. The foregoing principle prohibits not only armed force, but also any other form of interference or attempted threat against the personality of the state or against its political, economical and cultural elements.

Article 16: No state may use or encourage the use of coercive measures of an economic or political character in order to

force the will of another state and obtain from it advantages of any kind.

While it is doubtful this action by the Castro regime was of an intensity constituting a violation of Article 16 of the Charter, the various measures in their timing and administration seemed designed to force the wills of members of the Executive Branch and Congress. The measures were only partly bona fide agricultural reforms and limitations upon the outflow of foreign exchange.

### *Cuban Sugar Situation in 1959 and 1960*

During 1959, despite a 20% cut in the free-market quota by the Sugar Council, the price dropped to 2.55 cents per pound. The Soviet Union purchased 500,000 tons of Cuban sugar in 1959. However, this purchase was at the free-market price and substantially below the cost of production.

Although a backlog of 1,000,000 tons would probably be carried over by Cuba from 1959 into 1960, the prospect for production during 1960 was poor. Faced with possible expropriation of their mills and land, the sugar operators were reluctant to make the major repairs necessary for the 1960 grinding season. Banks were unwilling to lend to the smaller producers. The wages for many laborers in 1959 were unpaid. Labor unions, which had accepted a moratorium on wage increases during 1959, were preparing to make new claims during 1960. Counterrevolutionary activity, including sabotage of sugar mills and burning of cane fields, was commencing in Las Villas and Oriente Provinces. Refugees from the Castro tyranny were organizing throughout the Caribbean.

These domestic problems with which Castro grappled increased slightly the free-market price of sugar. But the tables could be quickly turned. The sugar which Cuba probably could produce in 1960 plus the carry-over from 1959 would be channelled into the United States quota for 1960. This was estimated tentatively by the Secretary of Agriculture at 3,119,655 tons.

If this quota was quickly reduced in 1959 or early 1960, the rejected tonnage would be thrown into the free market. This would force down the free-market price and the price would quite probably remain low with the prospect of the entire Cuban supply being marketed in a competitive pricing system.

Cuba might or might not go to the International Sugar Council to seek an increase in her free-market quota. If sufficient sugar was produced in 1960 to require this increase and the consent of the Sugar Council could not be obtained, the unsold surplus would have to be carried over into 1961; sold in a new market, such as Red China, from which little foreign exchange could be obtained; sold

in the free market in violation of the Sugar Agreement; or sold in the British or French markets. Neither England nor France might agree to these imports. Sugar sales would not be profitable in any event unless the sugar entered a closed market providing a price premium.

*A Possible Defensive Scheme for the United States  
Employing Economic Sortie Techniques*

The most effective economic defense which the United States could have mounted against the Castro regime in 1959 or early 1960 would have been aimed to disturb the psychological equilibria of key members of the regime elite.

First, the plan to curtail or eliminate the sugar quota should be promptly disclosed. Castro should be notified explicitly what was desired in return for continuation of the quota. Second, if Castro did not respond promptly to this notification, withdrawal of the quota should be executed rapidly. Coupled with this withdrawal should be a clear commitment that the quota would be restored if Castro met the terms proposed. Third, the quota should be restored if Castro met the terms.

To achieve the most intense economic impact upon the Castro regime, manipulation of the sugar quota should be supported by simultaneous economic action of other types. Thus, an embargo, boycott and financial controls should be imposed upon Cuban transactions under Section 5(b) of the Trading With the Enemy Act of 1917.<sup>35</sup> These measures should be hinged upon the same conditions prescribed for restoration of the sugar quota.

A partial embargo, in fact, was imposed in October 1960, under the Export Control Act of 1949. This embargo covered all materials except nonsubsidized foodstuffs, medicines and medical supplies.<sup>36</sup> But the embargo came too late for its pressure to be coordinated with that of withdrawal of the sugar quota.

The action suggested would have invited grave risks in 1959 and early 1960. Castro might not respond by agreeing to negotiate outstanding differences between Cuba and the United States or by conceding other points pressed by the Administration. He might, as he later did, commence a general confiscation of American assets and patently cast his lot with the Soviet Bloc.

If these further actions were taken by the Castro regime, the United States should be prepared to move for *joint* economic sanc-

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<sup>35</sup> See Fn. 8, *supra*, and discussion of the provisions of Section 5(b) in the related text.

<sup>36</sup> 25 *Federal Register* 8638 (1960).

tions imposed by the Organization of American States. Action should be taken to preserve the *status quo* pending a decision by that Organization. This action should probably be, for greatest effectiveness, a naval blockade or quarantine of Cuban ports. Justification could be offered for such a blockade or quarantine based upon its basically defensive nature and upon its international administrative function as a *status quo* maintaining device. Maintaining the *status quo* politically would give the Organization time for mature consideration of the issues and increase the effectiveness of military or economic measures it employed.

The scheme of action here suggested was not followed by the United States in meeting the Castro economic sortie. While perceptive moderate advisers of Castro remained in 1959 and early 1960, a defensive economic sortie might have influenced Cuban policy in a direction desired by the United States.

As the United States delayed its responsive action, in part due to legal problems in organizing its defense, the structure of the Castro power elite began to change. Members of the elite who could make the required decisions became difficult to identify.

An effective defensive economic sortie at this later stage would have imposed a heavy intelligence burden and would have required a period of intense psychological preparation of the target elite. The United States consequently fell into a posture of protracted harassment in economic warfare with Cuba; and due in part to intervention by the Soviet Union became locked in this position.

Problems created by protracted harassment have been discussed in Chapter I. What were the reasons for this delay of the United States in organizing its economic defense?

#### **D. DIFFICULTIES IN ORGANIZING THE UNITED STATES DEFENSIVE POSITION**

##### *Lack of Economic Warfare Professionals*

Apart from the very evident good faith with which the United States commenced relations with Castro Cuba, the major reason why no prompt response was made to the Castro economic sortie lies in the absence of a corps of specialists in economic warfare within the Administration to advise the President.

Had the Castro regime launched a military attack upon the United States, this action could have been met promptly and effectively by professional specialists in military violence. There were no specialists in economic violence. This fact invited the Castro regime to launch its economic sortie.

The foreign economic program of the United States was geared to developing scientific "lead-time," buttressing military defenses, and altering the environments of underdeveloped countries. The domestic economic program was geared to evolution of a dynamic and growing industrial, investment and employment structure. Persons associated with these programs had not developed perspectives enabling them to advise an economic sortie designed to obtain a decision or pattern of decisions from key members of an adversary power elite. The roots of the difficulty reached back to the abandonment of economic violence following World War II and the concepts of foreign assistance which developed in its aftermath.

Various persons in the United States during 1959 suggested the Cuban sugar quota be cut or eliminated, the Cuban premium of 2 cents per pound on the United States market be abandoned, or the tariff preference for Cuba be jettisoned. The Administration nevertheless proceeded cautiously. This caution seems to be justified in view of the facts and law as members of the Administration perceived these at the time.

#### *Intelligence Problem*

Although Soviet Bloc control of the Castro regime *now* appears to have been extensive before and after the Castro success in 1959, this was not equally clear in 1959 and early 1960. The actual state of United States intelligence upon this point will not be publicized. However, it is probably accurate to assume that either little was known at the time concerning the extent of Communist control or, if there was information upon the point, the facts were in much conflict.

#### *International Legal Considerations*

The Administration was anxious to conform to the requirements of international law in its dealings with the Castro regime, had a sincere desire to preserve amicable relations between the countries, and hoped to avoid needless injury to the Cuban people.

During the heated debates in Congress in 1960 concerning the Cuban sugar quota, Secretary of State Herter carried with him constantly Articles 15 and 16 of the Charter of the Organization of American States typed on a filing card so he could refer instantly to them in his discussions with members of the Congress.<sup>37</sup> Article 16, mentioned previously, forbade a state to use "coercive measures of an economic nature to force the will of another state and obtain from it advantages of any kind."

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<sup>37</sup> Reston, *New York Times*, 1 July 1960, p. 24, col. 3.

The Administration was also concerned that action of the United States be consistent with the purposes and principles set forth in Articles I and II of the United Nations Charter. Although no provisions of the Charter expressly obligated the United States to refrain from economic action against a member of the Organization, there was a requirement that members of the Organization settle their international disputes by "peaceful means in such a manner that international peace and security, and justice, are not endangered." This might be used to support an argument that the United States "endangered peace or security" or "denied justice" by terminating an economic privilege upon which Cuba relied.

A more direct difficulty was presented by the General Agreement on Tariffs and Trade (GATT), a multilateral executive agreement, to which the United States and Cuba are parties.<sup>38</sup> As an executive agreement on the part of the United States, GATT has the obligatory effect of a treaty. GATT posed difficulties which might be encountered both in reducing the sugar quota and in eliminating the Cuban tariff preference on sugar, each being moves urged upon the Administration.

By Article XI of GATT, no prohibition or restriction, other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be placed on the imports from or exports to any other contracting party. Restrictions upon imports of agricultural products are excepted from application of the Article when these restrictions support enforcement of domestic restrictions upon like products. Nevertheless, any such restrictions must not reduce the total of imports relative to the total domestic production, as compared with the proportion which reasonably might be expected to rule between the two in the absence of restrictions.

The Article is intended to accommodate a quota system, such as that used by the United States to control imports and production of sugar; but the Article is intended also to preserve the normal pattern of all imports of sugar as against all domestic production of sugar. If the United States eliminated the Cuban sugar quota

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<sup>38</sup> 61 Stat. A5 (1947). GATT originated from tariff negotiations at the Geneva Conference of 1947 while the Havana Charter was in process of drafting. The Havana Charter and the International Trade Organization to be established under it failed because of the decision of the President not to submit the Charter to the Senate. Other states were unwilling to participate without the United States. GATT, however, has served as a point for institutional growth of the demands expressed in part in the Havana Charter, although the scope of GATT is much narrower. The most comprehensive text concerning GATT is V. A. Seyid Muhammad, *The Legal Framework of World Trade* (1958).

and, in its distribution of the deficit, showed preference to domestic producers, thereby altering the pattern of domestic production *vis-à-vis* imports, the United States might violate the Agreement.

By Article XIII of GATT, no prohibition or restriction shall be placed by any contracting party upon imports or exports of any other contracting party unless the prohibitions and restrictions are likewise applied to all third countries importing or exporting like products. Paragraph 2 of this Article states in part:

In applying import restrictions to any product, contracting parties shall aim at a distribution of trade in such produce approaching as closely as possible to the shares which the various contracting parties might be expected to obtain in the absence of such restrictions, and to this end shall observe the following provisions: \* \* \*

(d) In cases in which a quota is allocated among supplying countries, the contracting party applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other contracting parties having a substantial interest in supplying the produce concerned. In cases in which this method is not reasonably practicable, the contracting party concerned shall allot to contracting parties having a substantial interest in supplying the product shares based upon the proportions, supplied by such contracting parties during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product. No conditions or formalities shall be imposed which would prevent any contracting party from utilizing fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate. \* \* \*

An argument may be made under Article XIII that the Cuban quota could not be eliminated by the United States unless the quotas of other foreign suppliers who were parties to the Agreement were eliminated; that Cuba was entitled to a quota based upon historic trade patterns; and that entry duties to compensate for the American market premium should not be imposed to reduce the value of the quota to Cuba.

By Article XXI of GATT, a contracting party may take any action which it considers necessary for the protection of its essential security interests if, among other circumstances, "taken in time of war or other emergency of international relations." Escape from the restrictions of GATT would thus require ability to argue either that a "war" or "an emergency of international relations" existed.

An emergency of the type contemplated by the Agreement possibly could not have been urged convincingly in 1959 or early 1960.

The Cuban-American tariff preferences are expressly excluded from the general "most favored nation" treatment of customs duties and charges set forth in Article I of GATT. These preferences were continued in a separate "Exclusive Agreement" between the United States and Cuba.<sup>39</sup> Although supplementary to GATT, the Exclusive Agreement is not a part of it.

The Exclusive Agreement was a potential impediment to manipulating the Cuban tariff preference. This was one of the measures proposed to the Administration. The Agreement contained no provision for termination other than withdrawal of either Cuba or the United States from GATT. Under the Protocol of Provisional Application of GATT, which remains operative, any party to the Agreement can withdraw by giving 60 days' notice. This satisfies the requirement of a termination provision in trade agreements made in the Reciprocal Trade Agreements Act.<sup>40</sup>

But unless either Cuba or the United States was prepared to withdraw from GATT, the only other mode of termination would be by mutual agreement. A United States withdrawal from GATT would forfeit the tariff and trade privileges which this Agreement confers. This would be a heavy price to pay in order to manipulate the Cuban tariff.

The Exclusive Agreement was not subject to the important security exception set forth in Article XXI of GATT. Furthermore, even if the Exclusive Agreement was terminated, other agreements came into operation which contained statements of termination time and would delay the tariff manipulation.

The Exclusive Agreement suspends operation of the Reciprocity Convention between the United States and Cuba of 1902<sup>41</sup> and the Reciprocal Trade Agreement between the United States and Cuba of 1934.<sup>42</sup>

The Reciprocity Convention conferred the 20% tariff preference upon Cuban products. Article XI of this Convention contains a termination provision one year after notice by either party.

The Reciprocal Trade Agreement of 1934 suspends the Reciprocity Convention, continues the 20% preference, and provides for termina-

<sup>39</sup> 61 Stat. 3700 (1947).

<sup>40</sup> 48 Stat. 943 (1934), Section 2(b). The trade agreements must be subject to termination not more than three years after the time the trade agreement comes into force; and if not then terminated, shall be terminable on not more than six months' notice.

<sup>41</sup> 33 Stat. 2163 (1903-5).

<sup>42</sup> 49 Stat. 3559 (1935-6).

tion upon six months' notice. An exchange of letters between the heads of the United States and Cuban delegations after the Exclusive Agreement was made clarifies the point that the United States can terminate either the Reciprocal Trade Agreement or the Reciprocity Convention while the Exclusive Agreement is in force.<sup>43</sup> But the time limitations in the earlier agreements still apply.

Thus, pursuant to the exchange of letters, the United States can give notice of its intention to withdraw from GATT (60 days), thereby negating the Exclusive Agreement, and notice of its intention to terminate the Reciprocal Agreement and Reciprocity Convention. The time limit of the Reciprocity Convention (1 year) would be the time which must expire before the tariff could be manipulated.

#### *Threat to American Assets*

In addition to the international legal complications which action pertaining to Cuba potentially invited, approximately a billion dollars in American assets were at stake. It was amply clear from enactment of the Agrarian Reform Law and from the preparedness of the Castro regime to make *ad hoc* changes in the Cuban laws, that a campaign against American property would commence if the Cuban sugar quota was reduced or eliminated.

Import restrictions applied by Cuba to American products would damage exporters of machinery and textiles and producers of wheat, rice and lard, all of these items having been in heavy demand in the Cuban market. If the Administration proceeded to "wield the axe" without the participation of Congress, the reaction from the economic losses suffered by voters might be reflected in the alignment of votes in the approaching elections.

#### *Domestic Legal Problems*

While the President probably possessed emergency powers to block imports of Cuban sugar and perhaps take other action, such powers being implied from his authority as Commander in Chief and from his responsibility for the conduct of foreign affairs, the scope of these implied powers was not beyond debate. The existing statutes under which he might act also required findings of fact which would be difficult to make or required action of a more precipitate nature than the Administration was prepared to take unilaterally in view of the approaching election. The latter was probably the reason for the hesitancy of the Administration in invoking the Trading With the Enemy Act of 1917, although

<sup>43</sup> 61 Stat. 3705 (1947).

invoking this Act might also lead to action in the Organization of American States in which the Administration did not appear ready to proceed.

Pursuant to the Trade Agreements Extension Act of 1951,<sup>44</sup> the President can terminate a customs preference or end a quota of "any nation or area dominated or controlled by the foreign government or foreign organization controlling the world Communist movement." In early 1960, action under this statute would require a determination by the President that Cuba was Communist controlled. This determination might be difficult to support in view of the intelligence apparently available.

Under the Tariff Act the President can impose additional duties not to exceed 50% *ad valorem* of the property concerned or forbid the importation of property when a foreign country discriminates in fact by law or administrative regulation against the commerce of the United States. The President must find the public interest will be served.<sup>45</sup>

Although there had been some discrimination against United States commerce at this time, there had not been a great deal. The position of the Castro regime concerning United States commerce had been limited to extravagant threats of action.

Action under either the Trade Agreements Extension Act or the Tariff Act might support an argument that the United States had breached a current executive agreement, such as GATT. Determination when the facts were still equivocal of either Communist control of Cuba or discriminations against United States commerce might damage the moral position of the United States, especially in the Organization of American States.

Unilateral action by the United States against Cuba might solidify the impression in Latin America, assiduously cultivated by Castro, that Cuban-American difficulties were derived from an effort by the United States to "retain" Cuba in "economic bondage." Castro could portray his regime as engaged in a heroic struggle against greater power and odds; mobilize the support of anti-United States elements throughout Latin America; engage the sympathy of Latin American governments, which in earlier years had struggled with the problem of land reform; and palm off his difficulties with the United States as an affair in which he was entitled either to Latin American support or to Latin American neutrality.

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<sup>44</sup> 65 Stat. 72 (1951), Section 5; 19 U.S. Code 1362.

<sup>45</sup> 46 Stat. 704 (1930); 19 U.S. Code 1338.

The United States was committed to joint action in Latin America in economic and security matters, and the Administration understandably took the view that the problems created by Castro were of such a nature that all American states should assist in solving them. It was important that a purely bilateral dispute between the United States and Cuba not be allowed to develop.

*Sequence of Events in 1959 and Early 1960*

Throughout the first half of 1959 there was justification for the belief that differences between the United States and Cuba were amenable to settlement by negotiation. An Agrarian Reform Program was clearly within the general authority of the Cuban government. It seemed equally clear under international law that the method, time and amount of compensation were inadequate.

The seizure of several American owned mills in the latter part of 1959 for sabotage of the 1960 sugar crop (failure to plant or maintain machinery) was arbitrary and without warrant under Cuban law, no hearings being given to the owners or receipts being tendered. These issues were fairly clear-cut, and there was no reason to suppose that a settlement could not be reached when the emotion of the revolution had subsided.

During the latter half of 1959, however, the economic and political ties of Cuba with the Soviet Bloc became increasingly apparent and the hope of a settlement of claims by negotiation more remote. Moderate, or potentially anti-Communist, members of the Castro regime were purged and replaced by officials with a Communist record or Communist bias. Judges and lawyers fled the country in large numbers. No move was made by the Castro regime to secure economic aid from the United States, although aid would have been forthcoming if requested.

When the Congress met in 1960, the Administration was prepared to seek standby authority in the President to reduce the sugar quota of any foreign country except the Philippines when he found and proclaimed that a reduction was necessary to protect the national interest. No cut in the quota by the Congress was sought.

The request was limited instead to a grant of flexible executive power so the quotas could be manipulated if the need arose. This would avoid action under the Tariff law and the legal complications that might arise under GATT and the separate Cuban agreements.

The President or Secretary of Agriculture could not vary the minimum quota as the Sugar Act then stood. Variations in the quota above this minimum would require changes in the Secretary's estimates of probable annual consumption. These changes would

certainly disturb radically the price structure and producer and consumer interests within the United States.

The request for authority by the Administration, unfortunately, came too late. Much time was to elapse before Congress could change the law. Although the President then took action promptly, the Soviet Union had, in the meantime, launched its economic sortie, cut away the remaining ground supporting the moderate opposition to Castro in Cuba, and lashed Cuba securely to the Bloc economy and political structure.

No amendment to the Sugar Act of 1948 was passed by Congress until 3 July 1960. Then shortly before the recess of both Houses for the National Conventions, and after bitter debate, a standby power different from that requested by the President was granted. In the interim, tension between Cuba and the United States increased and Cuba succeeded in harvesting and shipping most of its 1960 sugar crop.

Initial caution by Congress seems to have stemmed from the surge of threats from the Castro regime that the property of American nationals would be confiscated if the sugar quota was reduced. The effect of these threats apparently became less as the policy of the Castro regime became clearer eventually to confiscate this property no matter what was done with the sugar quota. In the late spring of 1960 the Castro threats appeared to induce action by Congress rather than instill caution.

#### *Problem of Allocation of the Sugar Deficit*

A perplexing problem woven in and out of the debates was the mode of disposition of the sugar deficit if the Cuban quota was vacated. Just as the Administration proceeded gingerly in its action against Castro through apprehension of the effect of confiscations of American property upon the forthcoming elections, so Democratic members of Congress feared the President might re-allocate the Cuban sugar quota to influence domestic sugar beet and cane growers to vote in favor of his party during an election year. Lobbying was intense by both domestic and foreign producers who desired a slice of the Cuban share.<sup>46</sup>

A long-term problem concerned the possible effect of vacation of the Cuban quota upon the regulatory system of the Sugar Act of 1948. Administrative practice had been developed to support the quota system. Prices were controlled indirectly in a manner which

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<sup>46</sup> An interesting account of the tribulations of both Houses shortly before the amendment was passed, including a description of the lobbying activities, appears in *New York Times*, 4 July 1960, p. 2, col. 1.

seemed generally satisfactory. The quota system meshed nicely with acreage controls upon domestic producers imposed under other statutes.

If Cuba no longer furnished a large part of the United States requirements, then the quota system, for foreign suppliers at least, made little sense. A major reduction in the Cuban sugar quota would quite probably require reconsideration of the policy underlying the 1948 Act.

The Amendment, as finally passed, extended the Sugar Act until 31 March 1961 and empowered the President to set a new Cuban sugar quota for 1960 and for the first quarter of 1961.<sup>47</sup> The President was authorized to reallocate to domestic producers 160,000 tons which Cuba in turn had been reallocated from a deficit by Hawaii and Puerto Rico. Portions of the regular Cuban quota, if the quota was reduced, were to be reallocated in stipulated proportions among foreign suppliers.

The Amendment was viewed as a temporary expedient until the Sugar Act of 1948 could be considered by Congress in greater detail either after the recess for the National Convention or in the new session of Congress following the Presidential elections.

When it became evident that an amendment would pass before Congress recessed, passage of the amendment having been for some time in doubt, Cuban suppliers hastened to load ships under the existing quota. By the time the Secretary of Agriculture suspended Cuban sugar imports, pending action by the President pursuant to the Amendment, and despite a prompt increase in ocean shipping costs, only 740,000 tons of the 1960 Cuban quota remained unfilled. This balance was reduced by the President by 95% on 6 July 1960.<sup>48</sup>

While the Fabian strategy of the Castro-Communist regime, with the other factors hitherto noted, had contributed to a delay in Amendment of the Sugar Act until the Cuban quota for 1960 had been substantially filled, it was virtually certain that the Cuban quota for the first quarter of 1961 would be eliminated. It was also generally considered that Congress would extend the power of the President to set the Cuban sugar quota through 1961. Since the Castro regime could not survive indefinitely on the dollars acquired during 1960 and upon confiscated American assets, its survival depended upon the speed and freedom with which Soviet Bloc assistance could be provided.

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<sup>47</sup> 74 Stat. 330 (1960).

<sup>48</sup> 25 *Federal Register* 6414 (Proc. 3355, 1960). Reduced to 39,752 short tons raw value plus sugar certified prior to 3 July 1960 but not yet entered or withdrawn from warehouse for consumption.

## E. THE SOVIET BLOC "ECONOMIC SORTIE" AND TERMINATION OF UNILATERAL POLICY BY THE UNITED STATES

The gap widening between the United States and Cuba in late 1959 and early 1960 provided a convenient entrance for a practiced and adroitly directed Soviet economic wedge. The groundwork had been laid during the Batista regime. The major Soviet problem was one of timing in order to complete the breach and smash Cuban internal opposition to Castro.

Soviet sugar purchases from Cuba—made for political reasons since the Soviet Union was then a major sugar producer—commenced with an order for 500,000 tons in 1954. These orders were reduced gradually during the Batista regime to a low of 182,148 tons in 1958.

These transactions enabled the Soviets to make contact with the Cuban sugar industry and officials in the Cuban government with economic functions even though diplomatic relations between the Soviet Union and Cuba were not maintained. By 1958, however, Cuban trade had not been reoriented towards the Soviet Bloc.

After the Castro revolution in 1959, a Soviet order for Cuban sugar was announced. This was of 170,000 tons at 2.58 cents per pound. The sale was from holdover sugar owned by the Cuban Sugar Stabilization Institute. Payment was in dollars and furnished badly needed foreign exchange to the Castro government. An additional purchase of 330,000 tons was made in October at 2.905 cents per pound. A total of 500,000 tons was thus purchased during 1959.

The visit of Mikoyan and a Soviet Trade Delegation to Cuba coincided with the beginning of consideration of the Sugar Act of 1948 in the United States Congress. During Mikoyan's visit a cabled order for 345,000 tons at 2.78 cents per pound was received from the Soviet Union; and on 13 February 1960, a trade agreement between Cuba and the Soviet Union was announced. The Soviets agreed to purchase 5,000,000 tons of Cuban sugar over a period of five years and to extend Cuba credit to \$100,000,000 repayable in goods or dollars in twelve equal installments at 2½% interest.

Of the 5,000,000 tons which the Soviets agreed to purchase, 1,375,000 tons were to be paid for in dollars at the free-market price prevailing at the time of purchase. The remaining tonnage was to be paid for in Soviet goods.

The Agreement listed crude and refined petroleum, wheat, metals and newsprint, caustic soda and unspecified types of machinery as the articles of Soviet barter. Dollar values of the goods and the quantities of each to be delivered were not specified, these matters being left to supplementary bilateral agreements. In addition to her

sugar, Cuba was to export fruits and juices, vegetables, fibers and hides to the Soviet Union.

Cuban spokesmen stated the agreement prohibited resale in Cuban markets of the sugar sold to the Soviet Union. This prohibition would not prevent the Soviets from selling their domestic production in Cuban markets and replacing this deficit with Cuban sugar, nor would it prevent sale of sugar by the Soviet Union to the satellites and resale by the satellites in Cuban markets.

If the Soviets followed either of these courses, they might be able, despite the efforts of the International Sugar Council, to disturb the world market, force down its price and destroy the traditional Cuban markets. This would increase the dependence of Cuba upon markets behind the Iron Curtain.

When the Mikoyan Agreement was announced, Cuban representatives stated they were assured of markets for 700,000 tons in Japan, 200,000 tons in Morocco and 500,000 tons in Red China. The Japanese and Moroccan markets would be within the free-market quota held by Cuba. The Red Chinese market was a "new" market and not subject to the restrictions which the International Sugar Council might impose.

The publicity received by these manifestations of accord between Cuba and the Soviet Bloc gave new hope to those in the United States and abroad who desired shares in a reallocated Cuban sugar quota. Pressure for a quota cut was increased upon both Congress and the Administration.

Considering himself adequately supported in view of the public announcements by his Soviet allies, Castro was emboldened to increase his attacks upon the United States and elaborate his threats to United States property in Cuba. He reinforced his threats by seizure of the Santiago de Cuba Oil Refinery of Texaco, Inc., on 29 June 1960 after refusal by its management to refine Soviet crude oil imported under the Mikoyan Agreement. On 2 July 1960, he seized for the same reason the remaining two refineries in Cuba, Esso (Cuba) Inc., a subsidiary of Standard Oil Company (New Jersey) and Shell Petroleum Corporation of Cuba, owned by Canadian Shell Ltd., a subsidiary of the Royal Dutch Shell Group.

After Congress passed its amendment to the Sugar Act of 1948 on 3 July 1960, and about fourteen hours before the President announced his reduction of the Cuban sugar quota, the Cuban Council of Ministers amended the Cuban Constitution to permit nationalization of property of United States citizens, confiscation of property of persons found guilty by special courts of antirevolutionary activities, and confiscation of property of those who fled the

country to escape trial and “who are conspiring abroad” against the regime.

Having anticipated Castro would probably carry his threats against American property into execution when his Soviet allies were publicly committed to his support, the United States, as its first step in multilateral action, submitted on 20 June 1960, a detailed memorandum to the Inter-American Peace Committee on the Organization of American States. This memorandum, entitled “Provocative Acts of the Government of Cuba Against the United States Which Have Served to Increase Tension in the Caribbean Area,” set forth in detail the facts of Cuban-American relations since the Castro revolution. The Committee was informed that the United States would continue to provide other information relevant to the Committee’s studies.<sup>49</sup> Submission of the Memorandum was a prelude to presentation of the case of the United States to a meeting of the Council of Foreign Ministers of the Organization of American States.

In the interim, Minister for External Affairs Roa of Cuba, on 11 July, charged before the Security Council of the United Nations that the United States had intervened in Cuban internal affairs and had committed acts of economic aggression.<sup>50</sup> The acts of economic aggression cited were “continued threats of economic strangulation,” influencing Cuban oil refineries to refuse to process crude oil owned by the Cuban government (the oil in question being that imported under the Mikoyan Agreement) and the extraordinary power granted the President by Congress which he had exercised to reduce the sugar quota.

By a formula devised by the two Latin American members of the Security Council, Ecuador and Argentina, the Cuban complaint was inscribed in the Agenda of the Security Council without objection by the United States. It was understood by Cuba, the United States and the remaining members of the Security Council that when Cuba had its hearing, the Council would adjourn consideration of the dispute pending a report by the Organization of American States. Such a resolution was adopted by the Council on 18 July 1960. Other countries were urged by the Resolution to refrain from action which might increase tension between Cuba and the United States.<sup>51</sup>

Tension was stimulated rather than reduced. During July 1960, Castro frantically tightened his economic and political ties with

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<sup>49</sup> *U.N. Doc.*, S/4388, 20 June 1960.

<sup>50</sup> *U.N. Doc.*, S/4378, 11 July 1960.

<sup>51</sup> *U.N. Doc.*, S/4395, 19 July 1960.

the Soviet Bloc. Chairman Khrushchev had been quick to condemn the cut in the Cuban sugar quota as "aggression"; and the Soviets agreed to purchase from Cuba the unfilled part of the United States quota for 1960 for dollars. The price was below the cost of production but furnished Cuba with needed foreign exchange.

On 14 July 1960 a Red Chinese trade delegation arrived in Cuba and contracted for sugar purchases of 500,000 tons per year for five years. Twenty percent of the deliveries in the first year were to be purchased in pounds sterling. Payments for the remainder of deliveries during the first year and all payments in subsequent years were to be in goods.

The Red Chinese sale was in a new market, and consent of the International Sugar Council to an increase in Cuba's free-market quota was not required. The consent of the Council was required for that part of the United States quota for 1960 sold to the Soviet Union which exceeded the free-market quota of Cuba. The United States was not active in opposing the Cuban request for an increase.<sup>52</sup> This inaction probably marks an abandonment of hope by the Administration that purely unilateral measures by the United States in reducing or eliminating the sugar quota would affect significantly either the policies or the stability of the Castro regime.

Not only were Cuban requests for quota increases usually treated with deference by the Sugar Council because of Cuba's importance as a party to the International Sugar Agreement, but any action by the United States to oppose the quota increase would have been substantially without support. Only those Latin American states which had begun to appreciate the danger of Communist direction of the Castro regime and which had no significant economic stakes in Cuba would wholeheartedly support the United States position. Most of these were not parties to the Agreement or had few votes in the weighted voting system.

Canada, Japan, the United Kingdom and the allies of the United States in Western Europe viewed the contest with detached interest and could appreciate the potential market which Cuba might offer as its imports from the United States declined. None of these countries had reduced their purchases of Cuban sugar and it is most unlikely that any would have been prepared to alienate Castro by supporting a United States effort to block a sale of several hundred thousand tons.

From the point of view of the United States, the possible effect to be obtained upon the Castro regime by frustrating the sale of the remainder of its 1960 U.S. quota probably was not worth the

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<sup>52</sup> See *New York Times*, 20 July 1960, page 7, col. 3.

diplomatic effort which would have been required to secure the necessary backing in the Council.

The Council also considered the Cuban request after the United States had submitted its memorandum of 20 June 1960 to the Inter-American Peace Committee and the Security Council had made its Resolution of 18 July. With the United States policy reoriented to multilateral action in the Organization of American States, unilateral pursuit of Cuba into the Sugar Council would lend credence to a Cuban argument that the United States rather than Cuba was the aggressor in the conflict.

Unilateral action was taken by the United States after the Security Council Resolution of 18 July. But these measures can be considered little more than an effort to minimize the disruptive influence of the Castro regime in other Latin American countries by denying to it a supply of dollars and to preserve the *status quo* to the extent possible until the Organization of American States could consider the dispute.

In a strategic sense, these additional economic measures were delaying actions in a retreat from an unsuccessful economic defense. The United States, for example, prohibited the use of International Cooperation Administration funds to purchase Cuban sugar.<sup>53</sup> Morocco, Iran and South Vietnam had been substantial Cuban customers. This move tended to shift the trade from dollars to barter. Morocco, for example, agreed to ship phosphate, sardines, trucks and other items to Cuba in return for sugar. In October 1960, the President placed an embargo upon export from the United States to Cuba pursuant to powers granted by the Export Control Act of 1949.<sup>54</sup> Excepted from the embargo were unsubsidized foodstuffs, medicines and medical supplies.

The embargo was supported by uncoordinated private action by creditors of Cuban importers or of the Cuban government. There being many unpaid Cuban accounts in the United States, sales of unembargoed items were for cash in advance. Creditors levied upon a number of items earmarked for export to Cuba, such as lard and diesel engines. They also blocked export of these items.<sup>55</sup>

As the United States took its action supplemental to reduction of the sugar quota, Castro commenced his expropriation of American property in Cuba. The Delicias and Chaparra Mills of American

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<sup>53</sup> See *New York Times*, 20 August 1960, page 1, col. 2.

<sup>54</sup> 25 *Federal Register* 8638 (October 1960).

<sup>55</sup> See, *Trade with Cuba* (Hearings Before the Committee on Interstate and Foreign Commerce, U.S. Congress, House of Representatives, 87th Cong., 1st Sess. Doc. 75553, 1961) 25.

Sugar Company were seized on July 20th and the Mercedita Mill on July 22nd. On August 9th the general confiscation began. By the summer of 1961, approximately a year later, an estimated ten to fifteen million dollars out of an original billion dollars in American assets in Cuba remained in American hands. The reimbursement promised by the Castro regime was to be in fifty year Cuban bonds, payable from 25% of the receipts from all Cuban sugar sold in the United States in excess of 3,000,000 tons per year at a price of not less than 5.4 cents per pound. The expropriations were accompanied by the imposition of discriminatory licensing requirements upon United States goods, discriminatory duties, and reallocation of the United States rice quota to the Soviet Bloc.

While this action by the Castro regime provided a legal basis for the abrogation of trade treaties with Cuba and an additional basis for complaint concerning Cuban actions before the Organization of American States, it also increased the dependence of the Castro regime upon the Soviet Bloc for markets and for technical assistance in operating expropriated American businesses and industries.

By 1961, approximately 70% of the trade with Cuba was with the Soviet Bloc and the remaining 30% with other European or American states. The Soviets agreed in September 1960, to purchase all of the sugar which Cuba had formerly sold to the United States. The International Sugar Council was persuaded to increase Cuba's free-market quota by 3,000,000 tons to compensate for loss of the United States market.

By the winter of 1960, the Soviet Union and satellites had commenced their destruction of Cuban markets through dumping. Quantities of Soviet sugar were offered on the London market below the prevailing market price.<sup>56</sup> Poland and Czechoslovakia offered refined sugar on the London market for less than the price of raw. Similar sales were made in Iraq, Ceylon and the Sudan.

By a trilateral form of dumping, Cuban sugar became a species of currency for the satellites. A satellite bartered goods for Cuban sugar and then either bartered the sugar before shipment or sold it to other Bloc or non-Bloc countries. The shipment was then directed to the third party. These transactions became institutionalized, so that the satellites have become middlemen, standing between Cuba and her old markets, and ready to compete in any new markets Cuba might seek to develop.

Cuba thus was forced into a position in which production costs had to be lowered by the use of unskilled volunteer labor in cane

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<sup>56</sup> See *New York Times*, 10 March 1961, page 38, col. 3; 10 January 1961, page 69, col. 1.

harvesting to continue to obtain foreign exchange in the free market. Also, increasingly larger quantities of sugar had to be exported at increasingly lower prices to attract new markets and offset the "market-destroying" effect of Soviet Bloc state trading practices.

The Cuban request for an increased free-market quota to permit this expansion was opposed by the Soviet Union in the International Sugar Council in December 1961. The Council entered 1962 deadlocked on the issue of quota increases.<sup>57</sup>

Although Cuba had since announced sugar committed to several of the satellites will be withheld and sold to customers who furnish dollars or pounds sterling,<sup>58</sup> she has been swept economically within the Soviet Bloc. The "free" sugar market and Cuba with it are firmly within the Soviet economic grip.

## F. MACROSEISMIC EFFECTS OF THE QUOTA MANIPULATION

Manipulation of the Cuba sugar quota may or may not have set in motion a chain of events which will end an effective International Sugar Agreement. Nevertheless, the new sugar boycott of its principal foreign supplier clearly confronted the United States with political and economic problems which overshadowed the evanescent political considerations which appeared significant during the 1960 Congressional debates.

By 23 July 1960, the wholesale sugar price in the United States was \$9.70 per hundred pounds. This was the highest price since 1923. The price increase was produced in part by higher shipping costs upon sugar obtained from sources more remote than Cuba and by the lack of a 20% tariff differential upon sugar obtained from these sources. Sugar refineries in the Eastern United States handled unrefined cane sugar only and could not refine beet sugar obtained within the United States without equipment modifications.

To reduce the rising sugar price, the Secretary of Agriculture increased the estimated need in 1960 from 10,000,000 tons to 10,400,000 tons. 61,840 tons of this increase were to be allocated to quota holders and the remainder was allocated to nonquota holders in foreign countries. Unutilized sugar beet acreage was reallocated

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<sup>57</sup> See *New York Times*, 10 January 1962, page 69, col. 1. The proceedings of the Council are secret. The Cuban quota for 1961 had been set at 1,992,375 tons. The Council was prepared to add to this the 3,000,000 tons taken by the United States before 1959, but Cuba demanded that this increase be of the total 4,860,000 tons committed to the Soviet Bloc, or a total free-market quota of 7,285,000 tons. This would leave the previous 1,992,375 tons to be used in a search for new markets and convertible foreign exchange.

<sup>58</sup> See *New York Times*, 14 February 1962, page 1, col. 4.

to states, such as California, in which producers could make late beet plantings in 1960. In October 1960, domestic restrictions on sugar beet acreage were lifted. Waste everglades land in Florida was rapidly developed by Cuban emigres and others for cane production.

The system of sugar production within the United States was upset by the emergency. Control of production, importation and prices under the Sugar Act of 1948 and related laws had been keyed to the participation of Cuba as a principal foreign supplier. A reduction or elimination of the Cuban sugar quota thus posed the problem of a parallel readjustment in the domestic system for controlling sugar production and imports.<sup>59</sup>

As the logic of the quota system for sugar supply was brought into question, the problem was posed for protection of domestic producers. Their production costs would be higher than those prevailing in the territories of any foreign competitors. Innovations to protect these producers might have repercussions in the farm price support program generally.

The Congress could be expected to consider matters such as these with care and deliberation. While Congress pondered these sensitive issues, the policy of the Administration concerning the Cuban sugar deficit and its by-products would have to be developed both indigenously and piecemeal.

The principal problem in foreign affairs which the President was left to solve concerned the sugar quota of the Dominican Republic. The Council of Foreign Ministers of the Organization of American States voted in August 1960 to condemn Dominican acts of aggression against Venezuela, to break diplomatic relations with the Dominican Republic, and partially to interrupt economic relations with that country. Trade in arms and implements of war was to be suspended entirely. Extension of this embargo to other articles was to be studied by the Council; but no action extending the embargo to items other than arms and implements of war was undertaken at this meeting.

Pursuant to the formula prescribed by Congress in its Amendment of July 1960, to the Sugar Act of 1948, the Dominican Republic was to participate in any reallocation of the Cuban sugar quota. The Secretary of Agriculture estimated that by reduction of the Cuban quota, the Dominican Republic would receive a re-

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<sup>59</sup> At the time of writing (1962), the Administration has prepared a new law for the control of domestic sugar production and sugar imports which, it is understood, drops the quota system, although the details of the law have not been disclosed.

allocation of approximately 322,000 tons over the 34,000 tons which it would have received prior to July 1960.

Because of the advantageous price on the American market, the reallocation was a windfall to members of the Trujillo family, whose members controlled much of the Dominican sugar industry. The United States was in the position, as many felt, of rewarding one dictator while imposing a sanction against another. The Government of Venezuela considered the windfall, while not in violation of the letter of the decision of the Council of Foreign Ministers, not in accordance with the spirit of that decision.

When Congress reconvened in August, following the National Conventions, the President, in addition to requesting an extension of the Sugar Act beyond the deadline of 31 March 1961 with continuing authority to reduce the Cuban quota, also requested authority to reallocate to other foreign suppliers the 322,000 ton quota which, by the Amendment of 1960, would pass to the Dominican Republic.

This threat of economic action against the Dominican Republic, even though its regular quota was not disturbed, proved an obstacle which prevented Congressional action concerning the sugar quota during the remainder of the session. The Congress adjourned without extending the Act beyond the deadline of 31 March 1961 established before its recess.

While it then became necessary for the Secretary of Agriculture to authorize importation of 322,000 tons of Dominican sugar, an entry fee of 2 cents per pound was imposed upon sugar imported under this reallocated quota, the fee being payable in advance. This fee was based upon the provision in the Amendment of 1960, subjecting a reallocated quota "to such terms and conditions as \* \* \* the President \* \* \* deems appropriate under the prevailing circumstances."

The Secretary determined that Dominican sugar in the national interest should be purchased at less than the United States market price.<sup>60</sup> The part of the Cuban quota allocated to the Dominican Republic consequently brought 3.7 cents per pound as against 5.7 cents per pound which the sugar would have brought without the entry fee. While this price was still .45 cents above the world-market price, the entry fee denied approximately \$12,900,000 to the Dominican Republic.

A somewhat different problem was presented by reallocation of the Cuban quota among other quota and nonquota holders. Quota countries were quick to solicit increases and were resentful of apparent inequities in reallocations by the Administration. Nonquota

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<sup>60</sup> 25 *Federal Register* 9197 (1960).

countries, such as India, seeking substantial allocations, could point with justification to the fact that the supported American price was a form of aid to the foreign supplier.

Reallocation of the Cuban sugar quota thus became entangled in the delicate nuances of foreign aid. An award of part of the Cuban quota created a vested interest in the recipient. If Castro fell, the Cuban quota might be restored. The tendency of the recipient thus might be to support Castro to insure the breach between the United States and Cuba continued. If the reallocation proved temporary, the United States would have encouraged the foreign supplier to increase acreage to meet the new demand. This would leave it with an unmanageable surplus when the quota was restored. The Soviet Union, the major sugar producer, could then wreck the internal economy of the overexpanded sugar producer by disturbances of the free sugar market.

### **G. THE DEFENSIVE PHASE OF ECONOMIC ACTION AGAINST CUBA: AN INTERIM JUDGMENT AND DEMONSTRATED NEED**

Sufficient time has not elapsed to permit an adequate appraisal of the economic measures developed by the United States against Cuba in the "sugar encounter." During 1961 Congress extended the Sugar Act until 30 June 1962 and authorized the President to exclude from reallocations any country with which the United States did not maintain diplomatic relations. Under this authority the Cuban sugar quota was entirely eliminated.<sup>61</sup>

The Punta del Este Conference in 1962 voted to interrupt the traffic and trade in arms between Cuba and other countries in the Hemisphere. The Council of the Organization of American States was directed to consider the extension of this embargo and boycott to other items, with special attention to those of a strategic nature, although recommendations concerning such matters must now come from the Council.

A boycott upon shipments of goods into the United States of Cuban origin and goods imposed from or through Cuba was imposed by the President in February 1962.<sup>62</sup> Action may be taken to have

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<sup>61</sup> 75 Stat. 40 (1961).

<sup>62</sup> 25 *Federal Register* 1085 (1962). Reliance was placed upon Section 620(a) of the Foreign Assistance Act of 1961, 75 Stat. 445, which authorizes the President to maintain a total embargo on all trade between Cuba and the United States. The term "boycott" is used in the text as a more accurate description of the effect of the President's proclamation, an embargo already existing on the outflow of trade from the United States to Cuba.

the Coordinating Committee of the Consultative Group apply its International List and trade restrictive techniques to Cuba.<sup>63</sup> The effects of these and other measures which may be adopted must be assessed in the future.

At the present time the most sanguine tentative appraisal of these measures suggests only that time was bought within which Latin American action might be mobilized to contain the Castro-Communist revolution by accelerating the drift of Cuba into the Soviet grip. Whether this will work ultimately to the political advantage or disadvantage of the United States will depend upon the effectiveness with which the purchased time is utilized.

Economic pressure upon Cuba frustrated for the time being an extension of the Castro Revolution to other parts of Latin America. Loss of dollars derived from premium sales of sugar in the United States created unemployment in Cuba. The embargo of 1960 and its subsequent extension in 1962 have created serious shortages in food and hardware. Although assistance from the Soviet Bloc might ultimately compensate for these deprivations, the Castro regime was, in the interim, forced to concentrate its attention upon internal problems and could devote only a small part of its time and even less of its resources to exportation of its political, social and economic doctrines.

Manipulation of the quota created a Cuban emergency. Delay in the manipulation, coupled with the excitement and surge of patriotism which the quota withdrawal created in Cuba, enabled Castro to purge his moderate followers without embarrassing explanations to the Cuban public of the facts behind the ousters. Redirection of Cuban trade was forced at a time when only the Soviet Bloc had both the capacity for absorbing it quickly and the political motive for soliciting actively Cuban requests for markets and economic assistance.

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<sup>63</sup> A suggestion of the outline of probable future action may be found in the testimony of Secretary of State Rusk appearing in *Investigation and Study of the Administration, Operation and Enforcement of the Export Control Act of 1949 and Related Acts, Part II* (Hearings Before the Select Committee on Export Control, House of Representatives, 87th Cong., 2nd Sess. Doc. 77836, 1962) 606-610; 615-620; 625; 626.