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## Follow-up report on the application of the Helms-Burton Law, 2011 - 2012

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## F O R E W O R D

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*This report by the Permanent Secretariat of SELA summarizes the most important aspects concerning the enforcement of U.S. economic sanctions and the Helms-Burton Act against Cuba from the second quarter of 2011 to September 2012.*

*At the Regular Meeting of the Latin American Council held in 1996, the Member States of SELA requested the Permanent Secretariat to submit to the Latin American Council an annual report on this issue, because U.S. sanctions not only have adverse implications for one Member State of the organization, but also, as widely recognized, impose certain standards and rules on the international community on how to conduct relations with Cuba*

*This document is an update of the preceding report, which was submitted to the XXXVII Regular Meeting of the Latin American Council (19 to 21 October 2011). After discussing the enforcement of the sanctions, the document makes a summary of the impact of the Helms-Burton Act and other economic sanctions on Cuba – in the opinion of Cuban authorities – from mid-2011 through 2012. Finally, the report presents some evidences of the extraterritorial implications of the U.S. legislation on Cuba; at the end, there are some arguments on the growing opposition to the U.S sanctions against Cuba at the international level.*



## I. BACKGROUND

The economic sanctions imposed by the United States government against Cuba for five decades now have been criticized by the international community through practically unanimous resolutions of the United Nations General Assembly on 20 consecutive occasions. In the opening speeches delivered during the sixty-sixth period of sessions of the General Assembly, several Heads of State and of Government and Ministers of Foreign Affairs expressed their opposition to the U.S. sanctions against Cuba.

Among other limitations as a result of the economic blockade:

- Cuba cannot export any goods or services to the U.S. or import any products from that country at all;
- Cuba cannot use U.S. dollars in its foreign trade and financial transactions or have accounts in that currency in banks operating in third countries;
- Cuba cannot receive American tourists;
- Cuban ships and airplanes cannot enter U.S. territory;
- Cuban institutions and companies are not allowed to have access to credits from U.S. banks, their affiliates operating in third countries and international institutions, such as the World Bank, the International Monetary Fund or the Inter-American Development Bank;
- According to the annual report published by the Office of Foreign Assets Control (OFAC) of the Department of the Treasury, the total amount of Cuban funds frozen in U.S. banks at the end of 2011 amounted to US\$ 245 million, thus hampering the economic, social and scientific-technical development of Cuba.

The island authorities express that, as can be confirmed on the Web sites of the U.S. Departments of the Treasury and Commerce, the blockade against Cuba continues to be the most unjust, comprehensive, severe and prolonged against any country in the world. The U.S. Government has also taken legal actions against Cuba that, according to the international community, have an extraterritorial effect. They involve restrictions to international trade.

Nevertheless, it should be noted that the U.S. government maintains the suspension of the enforcement of Title III of the Helms-Burton Act, which has been widely criticized by many U.S. allies as it authorizes legal actions against those companies dealing with properties confiscated in Cuba. Regardless of these decisions about Title III, the remaining titles of the Act (I, II and IV) are in force, and several international firms and corporations claim to have been affected by the Act or to have been pressured by the U.S. authorities following the enactment of this legislation. Everything seems to indicate that, even though specific changes have been reported in its relations with Cuba since the beginning of the current administration, the U.S. government continues applying these sanctions.

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**II. ENFORCEMENT OF THE U.S. ECONOMIC SANCTIONS AGAINST CUBA AND OF THE HELMS-BURTON ACT**

The report submitted by the government of Cuba to the United Nations on 20 September 2012<sup>1</sup> once again emphasizes that the economic blockade is fully in force. Among the major measures adopted by the U.S. Government as regards the blockade, according to this report submitted by Cuban authorities, are:

- **On 7 April 2011**, the Office of Foreign Assets Control (OFAC) levied a fine of US\$ 22,500 on the New York insurance company MetLife for mailing a check directly to a Cuban national.
- **On 26 May 2011**, the Republican Representative for the state of Florida and Chairman of the United States House Committee on Foreign Affairs, Ileana Ros-Lehtinen, introduced bill H.R.2047, the "Caribbean Coral Reef Protection Act of 2011," which proposes amending the Helms-Burton Act to deny entry into, and the benefit of any relationship with, the United States, to foreign persons and entities contributing to the development of oil exploration programmes in maritime zones close to the Cuban coasts. In addition, this bill defends imposing new sanctions and prohibitions to deprive Cuba of access to petroleum resources.
- **On 19 June 2011**, the organizing committee of the International Colloquium on Ernest Hemingway reported that the Department of the Treasury had denied licences to travel to Cuba for 14 United States researchers participating in the event.
- **On 20 June 2011**, the television station CBS4 reported that the Department of the Treasury had refused to issue a licence to the Key West, Florida youth soccer team to travel to Cuba to participate in the National Schools Games.
- **On 19 July 2011**, Representative Ileana Ros-Lehtinen sent a letter to OFAC Director Adam Szubin in which she expressed "concern" at the "efforts by certain travel agencies to circumvent United States laws by promoting tourist travel to Cuba," and requested information about the steps taken to block or rectify the actions of these agencies, specifically including Monroe Travel Service.
- **On 31 July 2011**, for the second consecutive year, the social network Facebook blocked computer specialists in Cuba and other countries under United States sanctions from participating in a world-wide programming contest.
- **On 1 August 2011**, the luxury travel agency Abercrombie and Kent suspended the Cuba travel programmes originally announced on 19 July, following the publication by OFAC of a statement clarifying that tourist travel was not authorized as part of the people-to-people programmes and that the "regulations still contain significant travel restrictions."

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<sup>1</sup> Republic of Cuba. **REPORT OF CUBA** on resolution 66/6 of the United Nations General Assembly, entitled "Necessity of ending the economic, commercial and financial blockade imposed by the United States of America against Cuba," Havana, July 2012

- **On 3 October 2011**, OFAC imposed a fine of US\$ 502,408 on Flowserve Corporation, a supply company for the oil industry based in Irving, Texas, for violating sanctions against Cuba and other countries in 2005 and 2006. Furthermore, this company will have to pay US\$ 2.5 million to the Bureau of Industry and Security in the Department of Commerce for alleged violations of United States export regulations.
- **On 1 December 2011**, American citizens Marc Verzani and Adem Arici were arrested in the United States, accused of conspiring to violate the Trading with the Enemy Act and for concealing trips to Cuba. According to press reports, they had conducted real estate business in Cuba and could face sentences of 25 and 15 years, respectively.
- **On 23 February 2012**, President Obama extended the directives concerning the "Extension of the National Emergency with Respect to Cuba" and the "Emergency Authority Relating to the Regulation of the Anchorage and Movement of vessels," the provisions of which include a ban on travel by recreational ships and yachts to Cuba.
- **On 16 March 2012**, it was discovered that the Esco Corporation, based in the state of Oregon, was being investigated because one of its subsidiaries in Canada had used Cuban nickel in its products.
- **On 1 May 2012**, the Governor of Florida, Rick Scott, signed House Bill 959, which prohibits state and local governments from concluding contracts valued at over US\$ 1 million with companies doing business with Cuba and other countries.
- **On 11 May 2012**, OFAC updated the guidelines for implementing regulations concerning travel to Cuba. The measure puts in clearer terms the licence request process and requirements for people-to-people exchanges and travels.
- **On 14 May 2012**, the United States Supreme Court denied the request presented by the Cuban company CUBAEXPORT to review the 2011 decision of the Court of Appeals for the District of Columbia regarding the OFAC refusal to allow CUBAEXPORT to renew the registration of the Havana Club trademark in the United States.
- **On 12 June 2012**, the Justice Department announced a fine of US\$ 619 million levied against the Dutch bank ING, for not complying with the sanctions regime against Cuba and other countries. ING approved more than 20,000 bank transactions with these countries for a total value exceeding US\$ 2 billion from the early 1990s until 2007.

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**III. IMPACTS OF THE HELMS-BURTON ACT AND THE U.S. ECONOMIC SANCTIONS AGAINST CUBA**

According to the latest report submitted by Cuban authorities to the United Nations<sup>2</sup>, the direct economic damage caused by the U.S. economic, commercial and financial blockade against Cuba until December 2011 amounts to a figure in excess of US\$ 108 billion, if the estimates were calculated at the current price of the American dollar<sup>3</sup>.

The government of President Obama has also kept some measures in effect, such as the persecution of Cuban trade and financial operations abroad. The policy of sanctions against U.S. companies, their subsidiaries and companies in third countries has an immediate effect on cancellation of operations or disruption of trade relations of the companies fined. It also has a deterrent effect on other companies and individuals who might carry out trade and financial operations with Cuba.

Following is a summary of the worst effects of U.S. sanctions on several economic and social sectors in Cuba from mid-2011 to July 2012:

**1. Impact on public health and food**

Although exports of medicines, medical devices and accessories to Cuba are authorized by the Torricelli Act (1992) and the Trade Sanctions Reform and Export Enhancement Act (2000), significant restrictions are still in force. Sales of products in the health sector do not benefit from the licence exemption (or automatic licence) provision established for agricultural products by the Department of Commerce. A specific licence is required, granted on a case-by-case basis with a limited period of validity.

The granting of licences is contingent on the United States Government's ability to monitor and verify, through on-site inspections or by other means, that the product will be used for the authorized purpose. As a matter of policy, the sale of state-of-the-art technology in this sector is not authorized.

To date, direct imports from the United States are minimal and, for the most part, limited to supplies. The following are some of the many examples of the adverse effects of the blockade on the health sector:

The William Soler Hospital Paediatric Cardiology Centre does not have access to levosimendan, a drug used for treating low cardiac output that is only produced by ABBOTT Laboratories in the United States. It also lacks nutritional formulas for newborn and breastfed babies, as well as oligoelements and some vitamins for parenteral use also produced in that country.

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<sup>2</sup> Ibidem.

<sup>3</sup> According to the government of Cuba, if we take into consideration the depreciation of the dollar against the value of gold in the international financial market, the effect on the Cuban economy would be over US\$ 1,066 trillion.

It is also impossible for the hospital to acquire, in the American market, tissue laminates for skin expansion used on children who suffer severe burns, and therefore it has to look for them in other distant markets at higher costs.

In addition, there is also a shortage of temporary substitute skin, such as the artificial skin INTEGRA and the a cellular human dermis ALLODERM, both made in the United States and used for patients suffering from severe second- and third-degree burns, as reported by the Cuban Society of Plastic Surgery and Burn Reconstruction.

The cardiovascular surgery department at the William Soler Paediatric Hospital each year cares for 100 to 110 children less than one year of age, more than 90% of whom require parenteral nutrition to be able to undergo surgery and improve their prognosis. Cuba does not have access to parenteral nutritional supplements produced in the United States, which are of higher quality than those obtained by that hospital.

The company Medicuba SA, a drug, reagent and medical supply importer, was unable to obtain equipment for obstetrics and gynaecology because the supplier, A/E Panameña, cancelled the transaction, indicating that the factory that produced the equipment had been acquired by a United States company, which did not allow such exports to Cuba.

A Canadian intermediary company cancelled its sales contract with Medicuba to provide United States-made HIV-1P24 ELISA kits for diagnosing AIDS in children of HIV/AIDS-positive mothers, upon learning that Cuba was the final destination of the product.

The Neurological and Neurosurgery Institute was unable to purchase a laboratory kit CanA NSE EIA (ref 420-10) produced by the United States company Fujirebio Diagnostics, Inc. and used to detect the neuron-specific enolase protein in serums and cerebrospinal fluid as a diagnostic and prognostic tool in cases of ischemic cerebrovascular disease, which account for high rates of morbimortality in Cuba.

The Institute of Cardiology and Cardiovascular Surgery plans to perform some 400 surgeries in 2012, 70% of which will be coronary bypasses and the remaining 30% will be for replacement mitral and aortic valves. The fact that replacement valves, cardiac stabilizers and positioners and other equipment and materials related to these surgeries cannot be purchased in the United States has had many effects, including doubling the cost of these items in the country.

Since the United States company St. Jude no longer does business in Cuba as a result of the blockade, the Institute's pacemaker and electrophysiology department does not have a non-fluoroscopic three-dimensional anatomical mapping system and as such cannot perform ablations of complex dysrhythmias. Patients with such ailments must be sent to Europe for treatment, with the attendant risks and costs.

Cuba is one of the countries with an ageing population in Latin American and Caribbean, with 18.1% of its population aged over 60. Among this population, some 130,000 people suffer from Alzheimer's disease or a related form of dementia. Treating these patients is made difficult by Cuba's inability to obtain the principal cholinesterase inhibitors, in particular the drug Aricept (Donepezilo), produced by the United States company Pfizer. The same is true for the new atypical antipsychotic medications, intended to control the psychic and behavioural symptoms that are the primary causes of institutionalization.

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In addition, Cuba is still not permitted to purchase new United-States-made cystostatics for certain illnesses, and is still being denied access to medical literature, Internet sites created to facilitate the free exchange of information, and software that are essential for scientific modelling and simulation and allow users to view advanced image-processing systems for diagnosing diseases.

From March 2011 to March 2012, losses in the food sector, in the opinion of the Cuban government, amounted to some US\$ 131,572,967, owing to many factors, including the need to purchase food from distant markets, with the concomitant increase in insurance and freight charges, and the additional cost of keeping resources in inventory.

Although agricultural products and food can be imported from the United States, there are still no trading relations in this area between both countries. The limited possibility of purchasing food continues to be governed by very strict regulations, and is subject to a complex licensing mechanism that applies to travel by United States business representatives, the signing of contracts, and transport and expenses resulting from these transactions. In addition, OFAC reserves the right to cancel these licences without warning or explanation.

The impact on the company ALIMPORT is particularly significant, and can be summarized as follows:

- The lack of access to financing from United States credit entities and other similar institutions has a decisive impact on the so-called "country risk" for third-party creditors. As a result, the financial costs of its transactions have risen by approximately 5% and can even exceed those of interbank transactions normally quoted on the market. It is estimated that this factor generated a loss of almost US\$ 46 million during the reporting period.
- The absence of relations between Cuban and United States banks and the constant monitoring of financial agencies by the Government of the United States forced this company to channel its payments through third parties, which sometimes involved more than two financial institutions. These endless manoeuvres required outlays of US\$ 11 million in liquid funds.
- The fact that Cuban banks cannot make payments in United States dollars to third countries forces them to purchase repayment currencies, which causes considerable losses owing to currency exchange risks and the high volatility of financial markets. This limitation, along with the need to seek alternatives in order to satisfy suppliers, caused the company to lose some US\$ 33 million.
- Due to the ban on exporting Cuban products to the United States market and the restrictions on United States vessels loading cargo in Cuba for transportation to other destinations, ships carrying agricultural products purchased in the United States are forced to sail in ballast, thus raising freight charges. In 2011, the country incurred costs of US\$ 3 million in extra freight charges.

Additionally, the fact that inputs for the Cuban food industry, such as packaging products and preservatives, malt, hop and pulp for the manufacture of children's foods, have to be imported from other distant markets, has led to lost income of more than US\$ 1 million.

## **2. Impact on education, culture and sports**

Cuba still has no access to the United States market for the purchase of school supplies and basic materials and for the exchange of scientific, cultural and sports information.

In order to import a wide range of educational products acquired in Asia, the company CONSUMIMPORT had to hire 239 20-foot containers and 285 40-foot containers, for an additional cost of US\$ 812,767, owing to the difference in freight charges compared with the United States market. It also incurred US\$ 47,996 in additional costs arising from its inability to use the United States dollar, for a total loss of US\$ 863,023.

- **In September 2011**, OFAC seized the amount of US\$ 1,409.85, which a Spanish citizen was transferring to pay the quarterly school fees for his two children studying at the French School of Havana.
- **On 21 March 2012**, the United States Department of the Treasury prevented Professor Alan Hoffman, of the University of Washington, from giving a course on biomaterials in Cuba. Dr. Hoffman had planned to participate in the Third International Course on Biomaterials, sponsored by the UNESCO Chair in Biomaterials at the University of Havana, the Centre of Biomaterials (Biomat-Cuba) and the Spanish National Research Council.

Research, academic and cultural institutions in the United States are prohibited from purchasing Cuban books for their collections. In 2011, at the 25th Guadalajara International Book Fair, in Mexico, the organizers had to warn United States librarians and distributors against purchasing Cuban books at the event, due to the blockade against Cuba; their Cuban counterparts were also not allowed to purchase contemporary United States literature.

The Coliseo de la Ciudad Deportiva, an emblematic sports facility in Cuba, has been unable to purchase the air conditioning system necessary for its proper operation, because the main manufacturers and suppliers of the required equipment are from the United States, generating US\$ 550,000 in lost income.

## **3. Impact on other sectors of the economy in Cuba**

During the reporting period, the impact of the U.S. economic blockade on foreign trade amounted to US\$ 3,553,602,645, according to Cuban authorities. The losses with the greatest impact in the sector still resulted primarily from the inability to access the United States market in order to sell exports, including tobacco products, and to acquire technology, equipment and general inputs for these products.

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Among the sectors most affected by the restrictions that the blockade places on foreign investment are those prioritized in Cuba's economic development and/or export of goods and services, such as petroleum, tourism and biotechnology. Shares in businesses such as SHERRITT INTERNATIONAL CORP., which has investments in Cuba's petroleum and mining sectors, have lost value owing to the lack of access to the United States market and capital. Executives from this company and its three related companies that trade with Cuba (Moa Nickel S.A., Cobalt Refinery Company Inc. and International Cobalt Company, Inc.) were included on the list of business executives barred from entering the United States.

As set forth in the official report of Cuba to the United Nations, harassment of foreign financial and banking institutions aimed at restricting funds transfers to and from Cuban banks increased, allegedly because these banks could not do business with Cuba, which was on the "list of State sponsors of terrorism," even though most of the transfers were made in euros and other currencies.

The primary effects on the national banking system during the reported period were:

- Impacts arising from currency exchange transactions owing to the inability to use the United States dollar in Cuban external trade, forcing Cuba to resort to the double forex mechanism (using currencies other than dollar) and making financial transactions more expensive because creditors require payment in dollars
- Closing of accounts in many foreign banks.
- Correspondent banks' refusal to confirm or advise letters of credit.
- Some foreign banks' refusal to make payments to Cuban banking institutions.
- The need to maintain minimum balances in Cuban accounts abroad, given the blockade-related risks.
- For some foreign banks, there is the requirement of incorporation in order to deal with Cuban banks; the obligation to provide information on their shareholders and correspondent banks, among others, with the justification that Cuba is one of the countries sanctioned by OFAC.

Some of these impacts can be seen in the following examples:

In 2011, OFAC fined two entities for a total amount of US\$ 198,000 for carrying out unauthorized financial transactions related only to Cuba. Three other entities were also fined a total of US\$ 89,176,408 for jointly violating regulations concerning Cuba and other countries. In this case, the United States bank JP Morgan Chase paid out the majority of the fine to settle a debt of US\$ 88.3 million.

In 2012, a European banking entity refused to open a current account denominated in euros for a Cuban bank, stating that the account did not comply with the bank's strategy for that type of product, even though it had accepted the Cuban request months before.

At the beginning of this year and without prior incidents of this type, another European bank, a correspondent of a Cuban institution, withheld the funds of a payment group acting as an intermediary for some Cuban companies, on the ground that, owing to OFAC restrictions, it required more information on those transactions.

An Asian banking entity refused to process a Cuban company's export transaction because the documents related to that export were withheld in the United States, causing the bank to reject the transaction and to return the merchandise to the country.

Due to the dominant position of United States companies in the information technology, Cuba's losses in this sector are estimated at US\$ 66.766 million, arising mainly from the inability to access directly that market in order to import equipment and technology and export services, as well as from the additional costs for other items.

The joint venture Empresa de Telecomunicaciones de Cuba S.A. (ETECSA) is among the entities that are still suffering the greatest impact, with losses in importing information and communications technology and related supplies. That factor alone caused ETECSA more than US\$ 14 million in lost income during the reported period.

Other impacts that were not quantified include those stemming from the ban on purchasing licences for software products; denial of access to Internet sites and services, including access to sites for information and technical tools, such as PCTools and NetBeans and open-source computer programs; as well as participation in commercial and other kinds of events.

The Cuban civil aviation sector is still affected by the United States sanctions, recording losses estimated at US\$ 269,125,427 from May 2011 to April 2012.

Cuba is unable to purchase fuel, inputs and supplies in the United States market, which forces it to turn to third markets through intermediaries, with the concomitant increase in freight charges. It is estimated that the losses incurred in the case of fuel, which has to be purchased in the Mediterranean, amount to US\$ 5 million.

At the same time, even though the Cuban State offers all facilities to United States airlines companies in their operations in various parts of the country, the United States still refuses to allow Cuban airline companies to operate in its territory.

Cuba is still not allowed to import hydrometeorological equipment used to study the full water cycle, monitor the hydrological cycle, and carry out effective hydrological prevention. The German company Ott Hydromet GmbH refused to sell the aforementioned equipment upon receiving a letter from the United States Department of Commerce indicating that it would not authorize the licence because the equipment had United States patents. That refusal affected the macromeasuring programme, because a new supplier had to be found. It delayed the arrival of goods by more than six months, a period during which the necessary measurements for hydrological prevention could not be taken and water could not be used more efficiently.

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The company Worthington de México (WDM) was prevented from selling US Motor Works electric motors for water pumps that had to be installed in pumping stations in various locations, because its head office in the United States knew of the product's final destination.

#### **4. Section 211 of the 1999 United States Omnibus Consolidated and Emergency Supplemental Appropriations Act and further patent- and trademark-related violations**

The reporting period saw no end to the situation created by the intention of the company BACARDI to appropriate the HAVANA CLUB rum trademark in the United States, where it had obtained favourable rulings in 2011, based on the notorious Section 211 of the 1998 United States Omnibus Appropriations Act on the registration, renewal or protection in the United States of trademarks and brands associated with assets that have been nationalized in Cuba.

This provision prevents the Cuban owners of these trademarks or their successors, as well as businesses related to Cuban entities, from benefiting, in United States territory, from the recognition and enjoyment of their rights with respect to trademarks or brands that are registered and protected in Cuba.

February 2012 marked the tenth anniversary of the ruling by the Appellate Body of the World Trade Organization (WTO) that section 211 violated the national treatment and most-favoured-nation obligations assumed by the United States under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Paris Convention for the Protection of Industrial Property, and requested that the United States Government end that measure, which is incompatible with the obligations imposed by the TRIPS Agreement, to which the United States is a party.

On 14 May 2012, the United States Supreme Court, citing section 211, denied the company Cubaexport the possibility of defending its right to renew the registration of its prestigious Havana Club trademark before the United States Patent and Trademark Office, based on refusal by OFAC to grant the Cuban entity the licence that had allowed the registered trademark to be renewed in the United States from 1976 to 2006.

Since 1995, Cubaexport, in conjunction with the French company Pernod Ricard, distributor of Havana Club rum, has defended its right to register the well-recognized trademark, which was endorsed by the WTO when it ruled against the United States and called for the elimination of that illegal section.

#### **IV. THE EXTRATERRITORIAL DIMENSION OF THE U.S. ECONOMIC SANCTIONS AGAINST CUBA**

During the last year, the government of the United States has maintained its regulations, directly affecting citizens, institutions and companies of third countries that establish or expect to establish economic, trade, financial and scientific-technical relations with Cuba.

The extraterritorial regulations of the U.S. sanctions include the following:

- United States companies' subsidiaries in third countries are banned from carrying out any kind of transaction with companies in Cuba.

- The export to the United States, by third-country companies, of products originating in Cuba or containing any components of Cuban origin, is banned.
- Third-country companies are banned from selling goods or services to Cuba if more than 10% of their technology consists of United States components, even if their owners are third-country nationals.
- Vessels transporting goods from or to Cuba, regardless of the flag State, are banned from entering United States ports.
- Third-party banks are banned from opening United States dollar-denominated accounts for Cuban natural or legal persons or from conducting financial transactions in United States dollars with Cuban entities or individuals.
- Third-country businesspeople who have investments in or conduct business with Cuba are penalized with the denial of United States visas, a denial which may extend to family members. They are even subject to legal action in United States courts if their transactions with Cuba involve property related to claims by United States citizens or Cuban born individuals who subsequently acquired United States citizenship.

There are countless recent examples of Cuban commercial transactions with third-country companies that are not under United States jurisdiction being halted or hindered by U.S. sanctions, according to the official report of the Republic of Cuba to the United Nations. The following examples illustrate this situation:

- **On 17 April 2011**, the digital edition of Spanish newspaper El País reported that the United States, through its Securities and Exchange Commission (SEC), had requested the Spanish bank BBVA to explain the statement made in its annual report that one of its employees, out of over 100,000, was in Cuba. The SEC demanded from the Spanish bank information on the extent and nature of his past, current and anticipated activities in Cuba and on any contact with the Cuban authorities.
- **On 8 March 2011**, OFAC, targeting the Compañía Puro Habano y Ron Ltda, of Bogotá, Colombia, froze the sum of US\$ 135,000 for the purchase of products in Cuba. It refused a request to release the funds on the grounds that "frozen assets are only released in limited circumstances that do not involve commercial activity with Cuba."
- **On 28 July 2011**, the German newspaper Die Welt reported that German companies were being banned from using the PayPal system for Internet payments if they traded in Cuban goods. According to the company spokesperson, this policy is connected with the product's country of origin.
- **On 29 July 2011**, United States Representative Ros-Lehtinen wrote to both Timothy Geithner, United States Secretary of the Treasury, and Jan Hommen, Chairman of the Executive Board of the Dutch banking group ING, expressing her concern at the violation by ING of United States laws on Cuba and other countries. In her letter, she requested a determination of whether ING had committed such breaches, and called on the Department of the Treasury to hold ING and other similar bodies "accountable for their actions."

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- **On 16 August 2011**, OFAC imposed a fine of US\$ 374,400 on the French shipping and transport company CMA CGM, for providing services to Cuba and other countries between December 2004 and April 2008.
- **On 12 September 2011**, the SEC began an investigation of Spanish bank BBVA for alleged involvement in 1996 in an investment of approximately 20 million euros to set up a venture with the Office of the Historian of the City of Havana.
- **On 27 September 2011**, 34 members of the United States House of Representatives sent a letter to Antonio Brufau Niubó, Chairman of the Spanish company Repsol, urging the company, in a threatening manner, to abandon its planned oil exploration work in Cuba. They warned that, under current laws, the company and its subsidiaries are subject to criminal and civil legal action in United States courts, and violations of the United States laws on trade with Cuba could have serious consequences for the individuals or bodies involved.
- **On 29 November 2011**, OFAC levied a fine of US\$ 175,500 on the New York branch of the German bank Commerzbank for serving as a consultant and guarantor for a Cuban national in a payment to a Canadian company.
- **In December 2011**, the United States Government asked the Spanish company Telefónica to explain its relations with Cuba, and reiterated its warnings of previous years. The company was obliged to state that it had not signed any agreements, pending
  - authorization from the United States.
- **In December 2011**, the management of the Hilton Hotel in Trinidad and Tobago, run under contract by the United States company Hilton Worldwide, was instructed not to host the Cuban delegation attending the Cuba-Caribbean Community (CARICOM) summit, chaired by Cuban President Raúl Castro Ruz. The Hilton issued a statement on 6 December indicating that it had been unable to obtain a licence from OFAC for the Hilton Trinidad and Tobago to host the summit, leading to a change in venue for the event.
- **On 27 February 2012**, the United States Government froze 137,000 Danish kroner belonging to a Danish citizen for purchasing Cuban tobacco in Germany.
- **On 25 May 2012**, the Bureau of Industry and Security of the United States Department of Commerce imposed a fine of US\$ 1.753 million on the Panamanian branch of the Swedish company Ericsson, the leading global manufacturer of mobile network equipment, for violating the laws of the blockade between 2004 and 2007.
- The Cuban company LABIOFAM faced difficulties importing a mixed stock of lactobacillus from France for the Cuban National Enterprise for the Protection of Flora and Fauna. Subsequently, the French producer SORBIAL, which marketed this product, contacted its Cuban counterpart to cancel the contract on the ground that it had been acquired by a United States company.
- The Cuban company QUIMIMPORT, an importer of chemical products for agricultural production, was obliged to cancel the import of 458 litres of Sofit 300 EC, an herbicide used to control weeds in rice cultivation, because the Swiss company with which it

had entered into an agreement indicated that it could not supply the product owing to the blockade regulations. The company had up to US\$ 222,370 in lost income because it could not use the United States dollar.

### **Impacts on cooperation from multilateral organizations**

The impacts of U.S. sanctions against Cuba have also been felt in the context of international multilateral organizations, according to Cuban authorities.

In January 2012, the Office of the Resident Representative of the United Nations Development Programme (UNDP) in Cuba announced that this international programme was having serious difficulties paying for the general operations of cooperation projects with Cuba due to the blockade laws.

As is well known, the most public manifestation of these difficulties occurred in December 2011, when the Office of Foreign Assets Control froze more than US\$ 4 million in funds intended for three projects that Cuba is developing with the cooperation of the Global Fund to Fight AIDS, Tuberculosis and Malaria.

These collaboration projects with multilateral organizations allow Cuba to purchase antiretrovirals for the treatment of HIV/AIDS patients, including Ritonavir - 100 mg, produced only by the United States company ABBOTT Laboratories. In this case, the drug could be purchased for Cuban patients only after OFAC had issued a licence, with the uncertainty that time would pass and inventories could be depleted. Without this drug, 650 Cuban patients would not have alternative form of treatment.

In 2009, within the framework of technical cooperation between Cuba and the International Atomic Energy Agency (IAEA), a request was made for the purchase of equipment for inductively coupled plasma mass spectrometry (ICP-MS), a technique recognized worldwide for analyzing trace metals in food products and environmental samples.

Since then, the Government of the United States has refused to grant a licence for its acquisition, thereby restricting access to markets for detecting the presence of chemical residues in food, which represent a risk to human health. The impact of awarding contracts for the analysis of fishery products to foreign entities alone amounts to US\$ 70,000 annually.

The National Institute of Fundamental Investigations in Tropical Agriculture reported impacts on the availability of financial resources for two international cooperation projects due to a 30% increase in the prices of certain equipment, parts, climate control equipment, materials and expendable inputs, which had to be acquired in third countries. Incurred losses amounted to US\$ 14,617.

Although travel between Cuba and the United States has increased, the Government of the United States continues to use the blockade regulations to limit academic, scientific, cultural and sports exchanges between the two countries and to hinder professional visits in both directions, for political reasons, including participation in events organized in Cuba and the United States. On multiple occasions, the Department of the Treasury has rejected requests for licences from American professionals wishing to participate in events in Cuba.

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For example, in May 2012, the U.S. Department of State denied visas to 10 Cuban academics and intellectuals to participate in the XXX Congress of the Latin American Studies Association.

### V. OPPOSITION TO THE U.S. SANCTIONS AGAINST CUBA AT THE INTERNATIONAL LEVEL

**The seventeenth Regular Session of the Assembly of Heads of State and Government of the African Union**, held in Malabo, Equatorial Guinea, on 30 June and 1 July 2011, adopted the "Resolution on the lifting of the economic and trade blockade imposed on the Republic of Cuba by the United States of America." The text, adopted for the second consecutive year, reiterated the "call made to the Government of the United States of America to lift the longstanding and unjustifiable economic and trade blockade imposed on the Republic of Cuba, and thus enable it to enjoy all the legitimate prospects for its sustained development."

On 30 August 2011, **the non-governmental organization Amnesty International** appealed to President Barack Obama not to extend the blockade against Cuba. As reported by the CNN correspondent, that text said: "We earnestly ask that you abandon this policy, which for five decades has proven to be prejudicial for human rights."

During the general debate of the United Nations General Assembly at its sixty-sixth session in September 2011, dignitaries and high-level representatives from 39 Member States explicitly criticized the blockade and called for it to end.

**The United Nations General Assembly**, in a vote on 25 October 2011, unequivocally declared its opposition to the United States blockade with the adoption – by a vote of 186 in favour, 2 against and 3 abstentions – of a resolution entitled "Necessity of ending the economic, commercial and financial blockade imposed by the United States of America against Cuba."

**The XXI Ibero-American Summit of Heads of State and Government, held in Asunción, Paraguay**, on 28 and 29 October 2011, issued a special communiqué on the necessity of ending the economic and financial blockade imposed by the Government of the United States of America against Cuba, including the Helms-Burton Act. The communiqué reiterated "the strongest rejection of the application of such laws and measures contrary to international law, such as the Helms-Burton Act, and called upon the Government of the United States of America to end its application."

**The first World Bloggers' Conference**, which brought together more than 400 digital activists, journalists, academics and students from 23 countries in the Brazilian city of Foz de Iguazú, in October 2011, rejected "any restriction to Internet access, such as that imposed currently by the United States in its blockade against Cuba."

**The Latin America and Caribbean Heads of State and Government, gathered in Caracas, Venezuela, at the Summit of the Community of Latin American and Caribbean States (CELAC)**, issued on 3 December 2011 a "Special communiqué on the necessity of ending the economic, commercial and financial blockade imposed by the United States against Cuba." The communiqué reiterated "their strongest rejection of laws and measures contrary to international law, such as the Helms-Burton Act, including its extraterritorial impact," and "called on the Government of the United States of America to end its application. They also urged the Government of the United States to comply with the consecutive resolutions adopted by the United Nations General Assembly and to respond

to repeated calls from the countries of Latin America and the Caribbean to end the economic, commercial and financial blockade imposed against Cuba.”

**The Port of Spain Declaration on the occasion of the IV Summit of Heads of State and Government of the Caribbean Community (CARICOM) and Cuba**, which took place in Trinidad and Tobago on 8 December 2011, strongly condemned the unilateral and extraterritorial application of coercive laws and measures contrary to international law, the Charter of the United Nations and the principles of free navigation and trade in the world, and urged the Government of the United States of America to heed the overwhelming call of the Member States of the United Nations and to lift with immediate effect the unjust economic, commercial and financial blockade imposed against the Republic of Cuba.

**The fourteenth meeting of the Organization of Eastern Caribbean States (OECS) Authority**, held in Rodney Bay, Saint Lucia, on 23 and 24 January 2012, issued a communiqué in which the leaders expressed firm support for the sentiments stated in the Port of Spain Declaration on the occasion of the fourth summit of Heads of State and Government of the Caribbean Community and Cuba, which categorically rejected the unjust and cruel economic, commercial and financial blockade against the Republic of Cuba, and the extraterritorial measures aimed at extending the reach of the blockade to include third countries.

**The VIII Special Meeting of the Political Council of the Bolivarian Alliance for the Peoples of Our America (ALBA-TCP), held in Havana, Cuba**, on 15 February 2012, adopted a special declaration on Cuba’s participation in the VI Summit of the Americas, rejecting the economic, commercial and financial blockade imposed on that country by the Government of the United States.

On 13 April 2012, the member countries of the Bolivarian Alliance for the Peoples of Our America issued a special communiqué expressing their position at the **Summit of the Americas**. In the document, they stated their decision not to participate in future Summits of the Americas without Cuba’s presence and “demanded the United States Government to immediately cease the inhumane economic, commercial and financial blockade against Cuba and to start a dialogue process based on respect for the sovereign will and self-determination of the Cuban people.” Almost all the countries participating in the aforementioned Summit expressed their opposition to the blockade.

The ministers of member countries of the **Movement of Non-Aligned Countries, at the meeting of the Coordinating Bureau held in Sharm El Sheikh, Egypt**, from 7 to 10 May 2012, reiterated their call for the Government of the United States of America to end the economic, commercial and financial blockade against Cuba which, besides being unilateral and contrary to the Charter of the United Nations, international law and the principle of good neighbourly relations, is causing significant losses and economic damage to the Cuban people.