



THE SECRETARY OF THE TREASURY
WASHINGTON

MEMORANDUM FOR THE PRESIDENT

I believe it is now appropriate for me to acquaint you with the difficulties the Treasury is encountering in administering the embargo on Cuban imports. These difficulties result from the inadequate statutory basis for the embargo. The present authority is the Foreign Assistance Act of 1961, which authorizes us to control trade between the United States and Cuba but does not enable us to control imports of goods manufactured in third countries from Cuban raw materials. The use of the Foreign Assistance Act also gives rise to problems of varying magnitude relating to the administration and enforcement of the embargo. These difficulties could be greatly minimized by strengthening the Regulations through an amendment issued under the Trading with the Enemy Act. This would give us ample authority to control imports from third countries of goods manufactured with Cuban components.

At the moment, the import problem which is at the forefront is that of cigars manufactured in third countries with Cuban tobacco. We know that Cuban cigars are being made in the Canary Islands and in Mexico, and these cigars are being imported into the United States. For example, in the last two weeks some 146,000 cigars made of Cuban tobacco were imported from the Canary Islands. In all of 1961, only 10,500 cigars were imported from that area. Similarly, in the last two weeks some 50,000 cigars apparently made of Cuban tobacco were imported from Mexico, while the 1961 import total from Mexico was only 6,000. In both of these cases, there is an American financial interest in the foreign firms. While these increased imports may not be entirely the result of the embargo, it seems clear that they are in large part attributable to it. In addition, a Jamaican entrepreneur has circularized several American cigar manufacturers offering to establish cigar making facilities in Jamaica for the American firms.

However, the import problem is not limited to cigars. We have been asked by interested tobacco merchants how the embargo affects imports of Cuban leaf tobacco which has undergone various

degrees of processing outside of Cuba. It may well be that some of these tobacco products are not within the scope of the present embargo. We have also had inquiries about the effect of the embargo on imports of Cuban pineapple canned in third countries, and other commodities will undoubtedly come to the forefront as time passes.

As indicated above, the import problem is not limited to a particular country, e.g., Canada. Accordingly, even if the Canadians were disposed to be cooperative, their assistance would not solve the Jamaican, Canary Islands, Mexican, etc., problems, nor would it solve the problem of controlling commodities other than cigars.

Congress is growing restive about the cigar problem. Senators Holland and Smathers have been pressing the White House and the Treasury for action. Representative Cramer made a speech on the House floor on March 12, 1962 criticizing the Administration for permitting these loopholes to exist. Mr. Cramer also introduced a bill (H. R. 10665) to prohibit the interstate shipment of articles consisting wholly or partly of Cuban products. The City Council of Tampa has passed a resolution protesting the situation, and the Cigar Manufacturers Association of America has been circularizing Congressmen with a call for Congressional action.

The difficulty is compounded by the problem of answering inquiries. The attached letter from Mr. Feldman to Senator Holland says that it is the Administration's intent to act promptly if it develops that cigars made with Cuban tobacco are being imported, thus frustrating the objectives of the embargo. However, a statement of firm U. S. policy to watch imports and prevent frustration of the objectives of the present embargo does not meet the problem because the inquiries received from importers have to do with particular shipments and not with general policy. For example, when the Treasury Department receives inquiries as to whether particular imports pending at Customs will be admitted, it is obliged to state that such imports cannot be excluded under existing law and regulations. Thus, while the policy statement may discourage substantial capital investment in third countries to provide new sources of cigars containing Cuban tobacco, it cannot prevent the daily irritation that comes from admitting cigars legally entitled to entry.

If you decide to meet the third country import problem by invoking the Trading with the Enemy Act, you may also wish to consider whether at the same time the Act should be invoked to control the obvious and significant loopholes which inhere in the export embargo by virtue of the foreign subsidiary problem. American firms are now free to fill Cuban requirements with goods manufactured by their foreign subsidiaries, since Commerce can only control exports of U. S. origin goods. There is attached a memorandum listing a number of shipments from Canada to Cuba by companies which appear to be American subsidiaries. Although the items on the list are not "strategic" within the NATO definitions of strategic items, many of them are raw materials and essential spare parts for American-produced machinery which might otherwise break down for lack of parts. While we do not have similar data available for other countries, there is undoubtedly a parallel problem as illustrated by the fact that we have had a number of inquiries from American firms as to the effect of the embargo on trade with Cuba by their foreign subsidiaries.

If action is to be taken to meet these problems, I recommend that such action be not piecemeal but sufficiently broad to enable us to control foreseeable problems. There are three different types of action which could be taken under the Trading with the Enemy Act authority:

(1) We could prohibit imports solely of tobacco products e.g., cigars. This would deal with the most pressing problem at hand, but there would still be the likelihood that additional actions would be needed from time to time to cover such items as canned pineapple or whatever else may arise. This action could, if desired, be extended to purchases of Cuban products by U. S. subsidiaries in other foreign countries.

(2) We could prohibit imports not only of tobacco products but also of all goods containing a significant amount of Cuban raw materials. This would be sufficient to enable us to control fully all aspects of the import problem. This action could also be extended to subsidiaries if so desired.

(3) We could prohibit all financial and commercial transactions with Cuba by Americans or by American subsidiaries in foreign countries. This would enable us to control Cuban earnings of dollars from dividends, pensions, and other remittances from the United States. It would also enable us to control the entire import problem and would enable us to control exports to Cuba by American subsidiaries abroad as well as by U. S. companies.

From the standpoint of the responsibilities of the Treasury Department, I would recommend the third alternative above because it is the most effective control. Both logic and the experience of the past month demonstrate the difficulties that arise as loopholes are spotted in the embargo regulations. However, there is the question of the sensitivity of affected third countries, particularly Canada. As to the weight that should be given this problem as against the image of firm and effective purpose to conduct an effective Cuban embargo by the United States, I would defer to the Department of State. I would, however, call your attention to one misconception that has grown up in past consideration of this problem. It has been apparent to us that objections to invoking the Trading with the Enemy Act have come at least in part from the belief that to do so involves declaring Cuba or those dealing with Cuba to be enemies. I should emphasize that this is in no sense the case. The power of the Secretary of the Treasury to invoke the Trading with the Enemy Act in this situation stems from the existing emergency involving the Communist conspiracy, which has existed since 1950. Actions to meet the threat posed by the Communist conspiracy may be taken against friends and enemies alike, without the necessity of distinguishing between them. As the alternative draft regulations previously submitted to Mr. Feldman show, all that is needed is to publish amended regulations under the authority granted by the Trading with the Enemy Act, in addition to those which have already been issued under the limited authority granted by the Foreign Assistance Act.

Whatever concessions you may determine to make with regard to the sensitivity of Canada and other third countries, I would recommend that as a minimum the Trading with the Enemy Act be invoked to prohibit imports of products from friendly countries which contain Cuban components.

Douglas Dillon

Attachments (2)