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## **Normalizing Trade Relations with Cuba: GATT-compliant Options for the Allocation of the U.S. Sugar Tariff-rate Quota**

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Even after 40 years of sanctions, there remain huge differences of opinion on U.S.-Cuba relations. One point all sides agree on, however, is that sooner or later sanctions will be removed. Lifting sanctions raises several issues concerning sugar trade between the two countries. With U.S. sugar prices kept significantly higher than world levels, the U.S. market would be highly attractive for Cuban sugar exporters upon the removal of sanctions. Cuba almost certainly would request access to the U.S. sugar market based on U.S. trade obligations under the World Trade Organization (WTO). The purpose of this paper is to suggest the legal context of U.S. obligations under the WTO with respect to sugar imports from Cuba and to present several options for allocation of the U.S. sugar tariff-rate quota to Cuba under a normalized trade relationship.

Keywords: allocation options; General Agreement on Tariffs and Trade (GATT); historical base period; Most-Favoured-Nation (MFN); substantial interest; tariff-rate quota (TRQ); World Trade Organization (WTO).

## **Introduction**

U.S. sanctions policy with respect to Cuba has received considerable attention recently. The Elián González incident, the granting of permanent normal trade relations to China, visits to Cuba by industry and political leaders, and recent direct food sales of agricultural commodities to Cuba by American companies, have sparked widespread interest in U.S.-Cuba relations. Politicians, too, have focused on Cuba, and since January 2001 more than 20 bills related to removing or relaxing sanctions against Cuba have been introduced in Congress.

Even after 40 years of sanctions, there remain huge differences of opinion on what U.S.-Cuba relations should be. One point all sides agree on is that sooner or later sanctions will be removed. Lifting sanctions would raise several issues concerning sugar trade between the two countries. Sugar is economically and politically important to both countries.

Preceding the suspension of imports in July 1960 the U.S.-Cuba relationship with respect to sugar was highly interdependent. Cuba provided the United States with a reliable source of raw sugar and by the late 1950s Cuban sugar accounted for about 35 percent of U.S. annual domestic consumption.<sup>1</sup> Meanwhile, the United States was Cuba's primary export market, receiving over half of its annual exports, and providing a guaranteed, preferential market. The United States favoured Cuban sugar by allocating 72 percent of the total U.S. import quota to Cuba and granting it a tariff rate 20 percent below that faced by other countries. With the loss of Cuban sugar, U.S. refiners were forced to seek alternative suppliers. Quota allocated to Cuba was given to other sugar-producing nations, such as the Philippines and the Dominican Republic, which were more than willing to supply the lucrative U.S. market. Cuba lost an estimated \$120 million annually in economic rents from its preferential access<sup>2</sup> and immediately turned to the Soviet Union, which agreed to take most of its sugar at extremely favourable terms of trade, mainly bartered for oil.

Since the imposition of sanctions, there have been drastic changes in both countries' sugar industries. In the United States, domestic sugar production has expanded greatly, while the import quota level for raw sugar has been drastically reduced – from 4 million metric tons in 1959 to just over 1 million metric tons presently. In 1990 the absolute import quota was converted to a tariff-rate quota (TRQ), and today the TRQ is allocated among 40 supplying countries. In Cuba, the industry has deteriorated, especially since 1990, with the collapse of the Soviet Union, deterioration of infrastructure, and lack of inputs, particularly fertilizers and pesticides.

A sign of the deterioration of the Cuban sugar industry is the sharp drop in production from pre-sanction levels. In total, production of sugar in Cuba fell by nearly 39 percent between 1959 and 2000, from 6 million metric tons to 3.7 million metric tons (Alvarez and Castellanos, 2001; USDA, 2000).

With U.S. sugar prices kept significantly higher than world levels, the U.S. market would be highly attractive for Cuban sugar exporters if sanctions were lifted. Thus, Cuba almost certainly would request access to the U.S. sugar market based on trade obligations under the World Trade Organization (WTO).<sup>3</sup> However, there seems to be a great deal of uncertainty, even among trade experts, as to U.S. obligations with respect to potential sugar imports from Cuba. Would the United States be required to provide Cuba access to its sugar market, and if so, how much? What criteria would be used to determine Cuba's quota allocation? What tariffs would apply to imports from Cuba, and would the preferential rates Cuba enjoyed prior to the imposition of sanctions still apply?

The purpose of this paper is to contribute to a discussion centered on the aforementioned questions and to suggest the legal context of U.S. obligations under the WTO with respect to sugar imports from Cuba under a normalized trade relationship (see also Alvarez and Castanellos, 1996 and 2001). First, legal considerations involved in re-establishing trade in sugar between the United States and Cuba are covered. Then several GATT-compliant options are proposed for the re-establishment of sugar trade with Cuba, and the pros and cons associated with each option are discussed.<sup>4</sup>

### **Legal Considerations for Removal of Sanctions with Respect to Sugar**

The United States notified the GATT (before the WTO was established) of its imposition of economic sanctions against Cuba and has been allowed to refrain from offering Most-Favoured-Nation (MFN) status to Cuba. However, if trade is opened with Cuba, the United States would be required to bring itself fully into compliance with the provisions of the GATT, necessitating changes in current policies. The roll-back of sanctions would impose on the United States specific trade obligations with respect to Cuba that would need to be met in order to be in compliance with the GATT. How would the GATT rules influence U.S.-Cuba sugar trade in a post-sanctions era? What guidelines does the GATT provide on how the United States should accommodate Cuba in its sugar import regime?

Below we address what lifting sanctions might mean in terms of U.S. compliance with the GATT.

***The United States would be required to grant MFN status to Cuba.***

Non-discriminatory treatment—often referred to as MFN status—is a primary and guiding principle of the GATT. It requires that member countries not discriminate in the way in which they treat WTO trading partners. Thus, if a country decides to offer a concession to one of its trading partners, then that country must offer the concession to all trading partners that are members of the WTO.<sup>5</sup> Further, if a country places a restriction or regulation on imports of a product, then that restriction or regulation must apply to all WTO countries, not just to a designated few.<sup>6</sup> Currently, the United States is exempt from the required offering of MFN status to Cuba owing to claims of national security, as permitted under Article XXI, *Security Exceptions*, of the GATT. The United States used Article XXI in 1962 to justify revoking Cuba’s preferential tariff, withdrawing its import quota access to the U.S. sugar market, and reallocating its import quota to other sugar exporting nations.<sup>7</sup> Continued application of the security exemptions would appear inconsistent in the context of a negotiation toward re-opening trade between the United States and Cuba. Dropping the claim for exemption would then require the United States to grant MFN status to Cuba.

***The United States would be required to apply MFN tariff rates to imports from Cuba.***

With the security exemption no longer in place, the United States could give Cuba treatment “no less favourable” than is given to every other member country of the WTO in accordance with the MFN principle.<sup>8</sup> Continuing to apply prohibitively high sanction-based tariff rates (column 2 rates in the Harmonized Tariff Schedule (HTS) of the United States) to imports from Cuba would discriminate against Cuba and would therefore be inconsistent with Cuba’s MFN status. The United States would be required to offer Cuba the MFN rate of duty (column 1 in the HTS) on sugar upon the removal of economic sanctions.

Imports of Cuban sugar prior to sanctions were dutiable at a preferential rate that was 20 percent below the general rate of duty. These preferences do not exist in today’s HTS.<sup>9</sup> It would be a matter for the United States to determine whether these preferences or other preferences would be in force after the repeal of sanctions.

Currently, other countries receive preferential in-quota access, and in most cases the in-quota tariff rate for raw sugar is zero.<sup>10</sup>

U.S. policy makers must also determine whether the preferences once granted to Cuba still apply, or should be given, so that upon removal of sanctions, Cuba would immediately receive preferential tariff rates under both the in-quota and over-quota categories.<sup>11</sup> Only Mexico and Jordan presently receive preferential over-quota access, in accordance with the NAFTA and the U.S.-Jordan Free Trade Agreement, respectively. Thus, of greater importance, is whether Cuba is eligible for preferential over-quota access for sugar. That is, should the United States offer Cuba a preferential over-quota tariff rate below the general MFN rate as it does for Mexico and Jordan? This is certainly not a foregone conclusion; Cuba would likely need to negotiate for preferential tariff access, and it is highly unlikely that the United States would consider a preferential over-quota tariff rate for Cuba, except perhaps in the context of a free trade agreement.

***The United States would be obligated to open its sugar TRQ system to imports from Cuba.***

MFN status for Cuba would afford that country the same rights with respect to access to the U.S. sugar market as all other countries, and the United States would have the same obligations to Cuba as it does to all other countries with respect to the allocation of portions of the country-specific TRQ for sugar. If Cuba requested access to the U.S. sugar TRQ, the United States would be obligated to accommodate Cuba's request under WTO rules that require all countries with a "substantial interest in supplying a product" be allocated a portion of the TRQ.<sup>12</sup>

The WTO uses the "10 percent share" rule for determining substantial interest, meaning those countries capable of supplying 10 percent of the import market will be considered for allocation.<sup>13</sup> However, if countries holding less than 10 percent import market share are allocated a portion of the TRQ, then all countries capable of supplying sugar must be considered.<sup>14</sup> Currently, the United States allocates a portion of the TRQ to countries that held less than 1 percent of the import share in the historical base period, 1975-81, established for allocating the TRQ. The United States considered all nations in its allocation, so based on that fact, even if Cuba were not capable of supplying 10 percent of the U.S. import share, the United States would consider Cuba as having a substantial interest in supplying the U.S. sugar market.<sup>15</sup> Substantial interest also refers to the importance of the product to the exporting nation's economy.

Sugar is the second largest sector in the Cuban economy behind tourism, and is the largest contributor to export revenues. Therefore, Cuba appears to meet the criteria for establishing substantial interest.

***The United States would need to allocate a TRQ amount that reflects trade shares in the absence of trade restrictions.***

U.S. sugar TRQs, as scheduled in the Uruguay Round Agreement on Agriculture (URAA), are currently allocated based on imports during a previous representative period. Specifically, shares of the TRQ are prorated among 40 sugar-producing nations based on the average level of exports to the United States during the representative period 1975-81. During this period the United States had a global sugar quota and importers filled the quota on a first-come first-served basis (FCFS).<sup>16</sup> If the 1975-81 base period were applied to imports from Cuba, Cuba would receive a TRQ allocation of zero because during that period the United States prohibited imports from Cuba. Clearly the current country-by-country allocation of the U.S. sugar TRQ, of which Cuba gets nothing, is not reflective of the sugar trade that would actually occur in the absence of any trade barrier. Thus application of the 1975-81 base period to determine a TRQ for Cuba is not workable, and other criteria must be found.

The GATT rules give limited guidance on how Cuba might be allocated a sugar quota in the absence of sanctions. The general guideline is that a quota should be allocated in such a way as to approximate Cuba's share of U.S. sugar imports if the imports into the U.S. sugar market were unrestricted.<sup>17</sup> For example, if the U.S. sugar market were completely open to international trade and Cuba were to supply 30 percent of all U.S. imports, then the guideline indicates that Cuba would receive a 30 percent share of any quantitative restriction imposed.

In applying this guideline, countries are required to follow certain allocation criteria. First, the GATT rules require that countries imposing quantitative restrictions first seek agreement on quota allocations from supplying countries that have a substantial interest in supplying the product.<sup>18</sup> This would require existing U.S. sugar quota holders and Cuba to reach an agreement on the amount of quota to surrender and allocate to Cuba. Agreement between current quota holders and Cuba may not be possible because exporters of sugar to the United States currently capture the economic rents created by the imposition of the TRQ, which were valued at approximately \$357 million and \$237 million in 1999 and 2000, respectively.<sup>19</sup>

The top four quota holders, the Dominican Republic, Brazil, the Philippines, and Australia, captured over 50 percent of the available rents in 1999 and 2000. Therefore, because there is a massive economic incentive to hold the rights to export sugar to the United States, countries are not likely to agree on reduced allocation shares.

If agreement is not possible, the GATT guidelines require that quotas be allocated based on import quantity or value shares supplied by countries during a “previous representative period.” The guidelines also require that any “special factors” affecting trade be taken into consideration when allocating quotas based on the previous representative period.<sup>20</sup>

### **Allocation Options**

**W**ithin the constraints of U.S. commitments under the GATT, there are several options available to the United States for giving Cuba access to its sugar market. Below, six options are discussed, three of which maintain the current level of the TRQ and three of which increase the level of the TRQ.

#### *Globalizing the TRQ*

One option would be to terminate all country-specific quotas and open the U.S. sugar market to imports on a FCFS basis, as it was in 1975-81. Using a FCFS basis is referred to as “globalizing the TRQ”, which implies opening the quota to exports of sugar from all countries. Under FCFS, the in-quota tariff rate would be applied to imports arriving at U.S. ports at the beginning of the quota period and would continue in force until the TRQ were filled. Imports arriving after the quota is filled would face the higher over-quota tariff rate. Under the FCFS method of allocation, no over-quota imports would be allowed until the TRQ were completely filled. Currently, countries not holding a share of the quota may export unlimited quantities at the over-quota rate, regardless of whether the TRQ fills. Under the FCFS system the United States would not be required to grant Cuba a specific share of the TRQ, but instead Cuba would have to compete with other sugar exporting countries for a share of the U.S. imports.

The FCFS option is closest to unrestricted trade, as countries must compete for access. However, because economic rents provide incentives for inefficient producers to export sugar to the United States, competition is distorted. The FCFS option encourages exporters to be first in line on opening day of the TRQ period, a practice referred to as “a run for the border”. There is even the likelihood of exporters storing their sugar in warehouses close to the U.S. border in order to be first in line, so it is possible for the TRQ to fill in the first few days of the TRQ season, creating



significant market and price volatility. The FCFS option also wastes resources used in capturing the rents (e.g., incurring storage costs) and thus the rents may be dissipated. Another cost of the FCFS option is that exporters may not know whether they will face the in-quota or over-quota tariff, even after arrival, because shipments at different ports all count toward the quota. This could cause efficient exporters to divert their sugar to guaranteed markets other than the United States.

With respect to GATT compatibility, FCFS may be the most politically expedient option, requiring no negotiations with quota-holding countries. While the FCFS option might benefit Cuba, it by no means guarantees Cuban access. Although the FCFS option would be GATT-compliant, it would probably be resisted by current quota holders who derive rents under the U.S. sugar TRQ. It should be noted that the United States does not have a legal obligation to ensure that current exporters continue to derive rents.

### ***Auctioning the TRQ***

Opening the U.S. sugar TRQ to a competitive bidding process would allow exporters to purchase the right to export to the U.S. market. Auctioning is a practice used by many countries and is currently considered a GATT-compliant allocation method if the auction is conducted in a fair and transparent manner. Similar to globalizing the TRQ, countries (i.e., individual exporters) would compete for access, as opposed to being assigned access by the United States. Auctioning the rights to export has the potential to overcome the inefficiencies associated with allocation of the import quota, substituting quota rents for tariff revenues. As with the FCFS method, the size of the TRQ would not change. If the purchased export shares were fully tradable, then a “free market” for exports of sugar to the United States could exist up to the TRQ level. Presumably, in the absence of monopolization by a single or small group of exporters, competition would prevail, resulting in the most efficient producers gaining access to the TRQ shares. In reality, however, because the price differential between the U.S. domestic price and the world price is so great, incentives exist for exporters to overbid in the present with the expectation of holding all the rights to export, and therefore all of the economic rents, in the future. It might even be possible for one group to purchase the entire right to export and then withhold the use of its rights (i.e., withhold exports) to maximize welfare (i.e., to achieve optimal profit levels). Auctioning procedures can be designed to guard against monopolization (Bergsten et al., 1987).

Even if the United States took measures to guard against monopolization of the right to export (e.g., use-or-lose requirements and maximum bids), existing imperfect competition (e.g., subsidized exports) could lead to less efficient allocation than would exist under the perfectly competitive assumption (Krishna, 1990, 1991).

The auction method of allocation would require significant administrative effort. While the auction method is currently acceptable under the GATT, as with the FCFS method auctioning would not guarantee Cuba access to the U.S. sugar market. More efficient producers and/or those producers with sufficient capital to purchase rights to export would be more likely than Cuba to gain access to the U.S. market.

### *Redistributing the TRQ*

The United States could allocate a country-specific quota to Cuba by reducing the quota allocated to current quota holders, such that the overall level of the TRQ remains unchanged but the relative shares of current quota holders are reduced to accommodate Cuba's entry.<sup>21</sup> In other words, the size of the pie would not change, but the size of the individual slices would.

To accomplish the redistribution of shares, the United States would add Cuba to the list of recipients and prorate the shares as it did during the URAA. In doing so, the United States would be required to justify the choice of the selected historical base period under which it calculated Cuba's share. Choice could be problematic, and could complicate any formula-driven allocations. There exists no historical base period for U.S. imports of sugar that would represent actual imports from Cuba and other countries if trade were normalized with Cuba. Cuba has not exported to the United States since 1960, so choosing a representative base period based on historical exports to the United States is not possible. The current base period used for quota allocation (1975-81) is not acceptable because Cuba was restricted from exporting to the United States during that period. A pre-1960 base period is even less workable because Cuba dominated the U.S. import market at that time. An allocation based on pre-revolution import levels would give Cuba practically all of the TRQ, at the expense of current quota holders.

Because of sanctions, the United States could argue that special factors have affected trade in the product.<sup>22</sup> The United States might justify computing what Cuba's exports would likely be, given the removal of the sanctions. That is, the United States could use production and consumption figures in Cuba to determine Cuba's potential level of exports. Then, a reasonable amount of the import quota could be allocated to Cuba, taking into account Cuba's export commitments to other markets.

### *Increasing the TRQ*

Another GATT-compliant option would be to simply increase the total amount of the TRQ and allocate some portion of the extra quantity to Cuba. The amount allocated to Cuba would be required to mirror the share of total imports Cuba would likely capture given the absence of the quantitative restriction. Thus, the United States would need to justify the allocation, but could rely on the special factor clause found in Article XIII of the GATT. In this scenario, the overall size of the TRQ would increase and the prorated levels would also be altered. That is, adding Cuba to the allocation list would require the readjustment of allocation shares for each country, as in the previous option. The overall percentage of the TRQ granted to other countries would be lower, but the absolute levels would not change for current quota holders.

### *Tariffing the TRQ*

Another GATT-compliant option would be for the United States to remove the TRQ, which would require countries to relinquish all quota rights, and to administer a single tariff in its place (this is referred to as “full tariffication”).<sup>23</sup> If the tariff rate were set to equal the tariff equivalent created by the import quota,<sup>24</sup> exports of sugar to the United States would theoretically provide the same level of price support as under the present TRQ. In fact, because the TRQ does not always fill, imports might even increase slightly to the actual level of the current TRQ. Any further liberalization could therefore occur under a tariff reduction. Replacing the TRQ with a tariff would not conflict with U.S. commitments for tariff reductions made during the Uruguay Round because the tariff equivalent created by the import quota would be lower than the bound over-quota tariff rate in the United States’ Schedule of Concessions.<sup>25</sup>

Tariffication would obviate the need to allocate shares of U.S. sugar imports to any particular country, and efficiency would increase because rents that were once captured by foreign exporters would be converted to tariff revenues. If the quota were removed and replaced with a tariff, competition would provide the most efficient, lowest-cost producers comparative advantage. In the short run, Cuba would most likely not be competitive in the world market, as its cost of production is well above the world average.<sup>26</sup> As with the FCFS option, political backlash from domestic producers as well as from current quota holders would likely occur.

### ***Including Cuba in an existing free trade agreement or separate bilateral free trade agreement***

A final option would be to include Cuba in an existing free trade agreement (FTA), such as the NAFTA, or negotiating a separate U.S.-Cuba bilateral agreement. In negotiating trade agreements, the GATT rules require such agreements to cover the elimination of trade barriers for “substantially all trade” so as not to exclude import-sensitive sectors. Thus, if Cuba is granted a share of the U.S. sugar TRQ through an existing trade agreement or a special bilateral agreement, the agreement must include substantially all trade, not just trade in sugar. One way in which Cuba could receive access to the U.S. sugar market is through the allocation of its own TRQ, as is the case with Mexico under the NAFTA. However, to comply with the GATT, the TRQ must be included in a current FTA, such as the NAFTA, or in a full-fledged bilateral FTA, such as the FTAs the United States has with Israel, Jordan, and Singapore. Allocating a separate TRQ to Cuba would increase the overall level of imports for sugar, which would most likely be unpopular with U.S. producers.

### **Conclusion**

**G**ATT-compliant options differ greatly in political viability. Welfare effects highlight economic and political implications of each option. Three of the options maintain the overall level of imports, while three options increase the amount of imports. Maintaining the current size of the TRQ only affects the distribution of tariff revenues and quota rents; producer and consumer welfare remains constant. When the size of the TRQ is increased, U.S. producers and taxpayers bear the burden of the policy change while consumers benefit slightly. U.S. producers will certainly scrutinize any option that increases access to the U.S. sugar market because currently they face an oversupply situation. With the saturated market, producers are averse to increasing imports. It is certain that producers would be much more responsive to redistribution or globalization of the TRQ, as the level of imports would not increase in that case.

Effects on Cuba’s access to the U.S. market could hinge on whether sanctions are removed before or after certain critical upcoming policy events. A great deal depends on Mexico and whether sanctions against Cuba are removed pre- or post-common-market for sugar with Mexico, set for 2008 under NAFTA. Once the common market is formed, the current TRQ regime will be under tremendous pressure and may very well collapse, since Mexico has the ability to ship large quantities of sugar to the United States.

Thus, the creation of the common market may result in a complete reworking of the U.S. domestic and trade sugar policy. Similarly, the TRQ may become irrelevant with the passage of the Free Trade Area of the Americas, which includes liberalization features for sugar. At that point, all sugar exported to the United States would be based on competition, so the most efficient (or subsidized) exporters would serve the U.S. market.

In the upcoming WTO negotiations for agriculture, the United States faces possible increases in the sugar TRQ levels and reductions in over-quota tariffs. If removal of sanctions were to occur before the completion of the next round of negotiations, Cuba would be an active member in negotiating changes in the allocation of a larger U.S. sugar TRQ.

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## Endnotes

- \* Devry S. Boughner and Jonathan R. Coleman are economists in the Office of Industries, United States International Trade Commission (USITC). The opinions expressed in this paper are solely the opinions of the authors and in no way reflect the opinions of the USITC or any of the agency's Commissioners.
1. Committee on Agriculture (1970) is the source of the data reported in this paragraph.
  2. Economic rent was the premium offered to Cuba by selling sugar at high U.S. market prices as opposed to lower world market prices. Rents are equal to the difference between the U.S. domestic price and the sum of the world price plus the in-quota tariff, per unit of export.
  3. Both the United States and Cuba are signatories to the General Agreement on Tariffs and Trade (GATT), the WTO's principal set of rules for trade in goods, and both are members of the WTO.

4. The issue of confiscated property is not addressed in this paper; however, the authors recognize that any sale of Cuban sugar without a negotiated settlement by former owners of sugar assets in Cuba could trigger claims (see Travesio-Diaz, 1996).
5. The MFN principle is given in Article I, *General Most-Favoured Nation Treatment*, of the GATT. Paragraph 1 of this Article states: "... any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties."
6. Regulations must also apply to the domestic industries, a principle that is known as "national treatment", the second pillar of the WTO after MFN treatment. Two exceptions to equal application of restrictions or regulations are antidumping and countervailing duties.
7. See U.S. notification COM.IND/6/Add. 4, p. 53 for justification of the embargo against Cuba. See also C/M/198 p. 33, L/5980, May 1986 regarding the denial of U.S. sugar import quota to any country failing to certify that it does not transship Cuban sugar to the United States.
8. Article II, *Schedule of Concessions*, paragraph 1(a) of the GATT, requires that the United States apply MFN status to all market access and tariff treatment. It reads, "Each contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement."
9. The Cuban preferences were repealed when the Tariff Schedule of the United States, the predecessor of the HTS, was repealed.
10. Preferential in-quota tariff rates are offered to Canada and Mexico in accordance with the NAFTA; countries eligible for Generalized System of Preference access (excluding India and Brazil); selected Caribbean countries under the Caribbean Basin Economic Recovery Act; Israel; and Andean Trade Preference Act countries.
11. The United States also gave preferences to Cuban producers for a number of other agricultural goods prior to 1962. If the United States were to reinstate the preferences for Cuban goods, then presumably Cuba would also be obliged to reinstate pre-existing preferences for U.S. goods.
12. Paragraph 1 of Article XIII states that no prohibition or restriction (in this case the TRQ) "... shall be applied ... unless the importation of the like product of all third countries ... is similarly prohibited or restricted." Currently the United States similarly prohibits the importation of the "like product" sugar. That is, the TRQ does not only apply to a select few members of the WTO, but rather, it applies to all members.
13. Member countries have never agreed upon a strict definition for "substantial interest", but the "10 percent share" rule was stated in a meeting of the Committee on Tariff Concessions in July 1985 and has since been the applied rule. (See TAR/W/57, December 18, 1985).

14. The infamous dispute on bananas between Ecuador (and other countries) and the EU hinged on the selection of the historical base period. In that case, the EU allocated shares to countries with less than 10 percent import market share.
15. Based upon the level of the U.S. raw sugar TRQ scheduled with the WTO, 10 percent of imports would equal approximately 111,720 metric tons. In 2000, sugar production in Cuba equaled approximately 4 million metric tons, of which approximately 80 percent (3.2 million metric tons) was exported.
16. A global quota is one where a total import quota is set, and individual supplying countries compete to fill the quota. This system differs from the country-specific quota allocation introduced in the URAA, which allocates specific quota quantities to specific countries.
17. This requirement comes from Article XIII, paragraph 2. It states that when applying import restrictions (the TRQ) to any product, the contracting parties should aim at a distribution of trade in such product (in this case, sugar) "... approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions ...." The base period of 1975-81 selected by the United States was a period under which the quantitative restriction was still in place, but not allocated on a country-by-country basis.
18. Article XIII, paragraph 2 (d) requires that countries observe the GATT standards for allocation of shares of the TRQ among supplying countries. The country applying the restriction may seek agreement with respect to allocation of shares with all other contracting parties that have a substantial interest in supplying the sugar.
19. Calculation of rents is based upon domestic and world prices for 1999 and 2000 published by the USDA in its *Sugar and Sweetener Outlook Report*, and upon in-quota tariff rates published in the Harmonized Tariff Schedule of the United States, 1999 and 2000.
20. The provision that special factors be taken into consideration is given in Article XIII, paragraph 2(d) of the GATT.
21. In some years not all countries fill their quotas. Redistribution in this case does not mean taking the unused portions of the TRQ from current quota holders and redistributing them to Cuba. First, this would only result in allocating a relatively tiny amount to Cuba (less than 50,000 metric tons) and second, under the current system, unused portions must be prorated among current quota holders. Cuba could not simply be "given" these unused amounts.
22. Article XIII, paragraph 2(d) of GATT provides for "special factors".
23. "Tariffication" in the Uruguay Round generally meant turning the former absolute import quotas into TRQs or tariffs. Tariffication in this context means converting the TRQ into a single tariff. In 2000, the tariff equivalent of the import quota equaled 15.02 cents per pound (i.e., 213 percent *ad valorem* equivalent).



24. The tariff equivalent is the gap between the domestic and world price created by the imposition of the import quota (i.e., the level of protection offered by the import quota at the level of in-quota imports).
25. An Article XXVIII, *Modification of Schedules*, negotiation may be required between the United States and principal suppliers because of the modification of the TRQ regime to a single applied tariff.
26. Alvarez and Castellanos (2001) estimate that between 1990 and 1995, the world average cost of production per metric ton equaled \$361, while the cost of production in Cuba equaled \$434 per metric ton.

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