

N° 4736.

ÉTATS-UNIS D'AMÉRIQUE ET CUBA

Accord additionnel à l'Accord commercial conclu entre les deux pays le 24 août 1934, et Protocole, signés à Washington, le 18 décembre 1939, et échange de notes y relatif de la même date.

Textes officiels anglais et espagnol communiqués par l'envoyé extraordinaire et ministre plénipotentiaire des États-Unis d'Amérique à Berne. L'enregistrement a eu lieu le 19 juillet 1940.

UNITED STATES OF AMERICA AND CUBA

Supplementary Agreement to the Trade Agreement concluded between the Two Countries on August 24th, 1934, and Protocol, signed at Washington, December 18th, 1939, and Exchange of Notes relating thereto of the Same Date.

English and Spanish official texts communicated by the Envoy Extraordinary and Minister Plenipotentiary of the United States of America at Berne. The registration took place July 19th, 1940.

No. 4736. — SUPPLEMENTARY AGREEMENT¹ TO THE TRADE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF CUBA CONCLUDED AT WASHINGTON ON AUGUST 24TH, 1934. SIGNED AT WASHINGTON, DECEMBER 18TH, 1939.

THE PRESIDENT OF THE UNITED STATES OF AMERICA and THE PRESIDENT OF THE REPUBLIC OF CUBA, being desirous of strengthening still further the traditional bonds of friendship and commerce between their respective countries by maintaining the basis of reciprocal preferential treatment in their commercial relations, and of making certain changes in the provisions of the Trade Agreement² between the United States of America and the Republic of Cuba signed at Washington on August 24th, 1934, have resolved to conclude a Supplementary Agreement for that purpose and have, through their respective Plenipotentiaries, agreed on the following Articles :

Article I.

I. Items 58-C, 98-B, 165-C, 225, 256-D and 270-G of Schedule I of the Agreement of August 24th, 1934, are amended to read as follows :

Tariff Item	Description of Articles	Column 1 Minimum preferential reduction to the United States	Column 2 Maximum rates of duty. Specific rates in Cuban pesos
58-C	In articles of all kinds not specifically classified, including refrigerators which use ice, T. 100 kg.	45 %	3.30
98-B	Chemical products not specifically classified, when in small containers, including baking powder or artificial leavening, G. W. T. kg.	40 %	0.042
165-C	Other ordinary wood, including spruce (<i>Picea</i> sp.), regardless of size or form, in logs, or rough sawn or unplanned, but excluding strips, G. W. 100 kg.	20 %	0.20
225	Mechanical combination refrigerators and other machines and apparatus not for industrial use and not specifically classified :		
225-A	Mechanical combinaison refrigerators of all kinds, <i>Ad valorem</i>	30 %	11.9 %
225-B	Other machinery and apparatus not for industrial use and not specifically classified, including loose parts and accessories for the same <i>Ad valorem</i>	30 %	15.96 %
256-D	Of oats, including oats prepared for food (rolled oats), G. W. 100 kg.	20 %	1.30
270-G	Salmon, T. kg.	35 %	0.039

¹ The Proclamation of the President of the United States of America and the Proclamation of the President of the Republic of Cuba were exchanged at Habana on December 22nd, 1939.

The Agreement came into force December 23rd, 1939.

² Vol. CLIII, page 369, of this Series.

2. Item 64-B of Schedule I of the Agreement of August 24th, 1934, shall be designated item 64-C and the following additional items shall be inserted in the said Schedule in the proper numerical order :

Tariff Item	Description of Articles	Column 1 Minimum preferential reduction to the United States	Column 2 Maximum rates of duty. Specific rates in Cuban pesos
64-B	Submarine cables of all kinds, not elsewhere specified, T. 100 kg.	50 %	1.50
78	Resins and gums :		
78-D	Reclaimed rubber in lumps or sheets, T. 100 kg.	30 %	0.70
	<i>Note</i> : There shall be classified as reclaimed rubber that which is obtained by the melting or purifying of scrap vulcanized rubber and which contains a quantity of combined sulphur and other properties characteristic of reclaimed rubber, provided that the corresponding chemical analysis shows that it is reclaimed and not natural rubber directly vulcanized.		
78-E	Vulcanized rubber or gutta-percha, smooth, corrugated or grooved, in rolls or sheets, imported as raw material for the manufacture of articles, T. kg.	35 %	0.0715
102-G	The residue products of the refining of animal fats which contain more than 60 % of free fatty acids, provided they are imported by the industrialists themselves to be employed exclusively in mining and that their employment is guaranteed under oath in the usual manner established or which may be established by the Treasury Department, G. W. 100 kg.	20 %	0.20
147-E	Fabrics of the hair or fleece of the angora goat (mohair) mixed with cotton, rayon or both, in the piece or not made up <i>Ad valorem</i>	40 %	16.25 %
244-D	Peanut butter in containers of not over one pound, T. kg.	20 %	0.144
270-I	Mackerel, T. kg.	30 %	0.028

3. Schedule I of the Agreement of August 24th, 1934, is hereby amended by inserting after item 253-B the following :

Note : The tariff treatment of rice of United States origin imported into Cuba may be modified by the Government of the Republic of Cuba with the consent of the Government of the United States of America notwithstanding the provisions of Article II of this Agreement and of items 253-A and 253-B of this Schedule.

Article II.

1. Item 501 of Schedule II of the Agreement of August 24th, 1934, is amended by adding the following additional paragraphs to the note to the said item :

If, at any time after the issuance of a public notice pursuant to the provisions of the preceding paragraph, the President of the United States of America gives public notice that the suspension of title II of the Sugar Act of 1937, which he proclaimed on September 11th, 1939, has been or will be terminated, the rates of duty on articles enumerated and described in item 501 of this Schedule, entered, or withdrawn from warehouse, for consumption on or after the day following the filing of such public notice with the Division of Federal Register of the United States National Archives, shall be determined without regard to the provisions of the preceding paragraph which shall thereafter cease to have any force or effect.

Notwithstanding the provisions of the preceding paragraph, if the powers vested in the Secretary of Agriculture of the United States of America under title II of the Sugar Act of 1937 expire and the President of the United States of America gives public notice that no limitation equivalent to that provided for in title II of the Sugar Act of 1937 on the importation into, or the marketing in, the United States of America of sugar originating in the Republic of Cuba has been imposed or provided for by law, the rates of duty on articles enumerated and described in item 501 of this Schedule entered, or withdrawn from warehouse, for consumption on or after the day following the filing of such public notice with the aforesaid Division of Federal Register, shall be determined without regard to the provisions of Column 2 of this Schedule but such rates of duty shall not exceed those in effect on August 24th, 1934. If, however, at any time after the issuance of any such public notice, an equivalent limitation is imposed on the importation into, or the marketing in, the United States of America of sugar originating in the Republic of Cuba, the President of the United States of America shall give public notice of such fact and the maximum rates of duty on such articles, entered, or withdrawn from warehouse, for consumption on or after the day following the filing of such public notice with the aforesaid Division of Federal Register, shall again be those set forth in Column 2 of this Schedule, subject to the provisions of this paragraph.

The term "sugar" as used in the two preceding paragraphs shall mean "sugar" as defined in Section 101 (c) of the Sugar Act of 1937.

2. Items 601, 603, 605, the note following item 605, and items 771 and 802 of Schedule II of the Agreement of August 24th, 1934, are amended to read as follows:

Tariff Act of 1930 Paragraph	Description of Articles	Column 1 Minimum preferential reduction to Cuba	Column 2 Maximum rates of duty Specific rates in United States dollars
601	Wrapper tobacco, and filler tobacco when mixed or packed with more than 35 % of wrapper tobacco, if unstemmed	20 %	1.20 per lb.
601	Filler tobacco, not specially provided for, other than cigarette leaf tobacco: If stemmed If unstemmed	20 % 20 %	0.25 per lb. 0.175 per lb.
603	Scrap tobacco <i>Note:</i> Filler tobacco, not specially provided for, unstemmed or stemmed (other than cigarette leaf tobacco), and scrap tobacco, the growth, produce or manufacture of the Republic of Cuba, entered, or withdrawn from warehouse, for consumption in excess of a total quantity (unstemmed equivalent) of 22,000,000 pounds in any calendar year after 1939, shall be subject to duty as though such articles were not enumerated and described in this Schedule, but the rates of duty thereon shall not exceed those in effect on August 24th, 1934. For the purposes of this note, the quantity (unstemmed equivalent) of unstemmed filler tobacco shall be its actual net weight as determined for the assessment of duties or taxes in the United States, and the quantity (unstemmed equivalent) of stemmed filler and scrap tobacco shall be 133 % of the actual net weight as determined for the assessment of duties or taxes in the United States.	20 %	0.175 per lb.
605	Cigars and cheroots of all kinds	20 %	2.25 per lb. and 12 ½ % <i>ad valorem</i>

Tariff Act of 1930 Paragraph	Description of Articles	Column 1 Minimum preferential reduction to Cuba	Column 2 Maximum rates of duty Specific rates in United States dollars
771	White or Irish potatoes (other than certified seed potatoes) when imported and entered for consumption during the period from December 1st in any year to the last day of the following February, inclusive . .	50 %	0.30 per 100 lbs.
802	Rum, in containers holding each one gallon or less. .	20 %	2.00 per proof gallon

Article III.

Article VIII of the Agreement of August 24th, 1934, is amended to read as follows :

Articles the growth, produce or manufacture of the United States of America or the Republic of Cuba shall, after importation into the other country, be exempt from all internal taxes, fees, charges or exactions other or higher than those payable on like articles of national or any other foreign origin, subject, in the case of the United States of America, to the constitutional limitations on the authority of the Federal Government.

Articles the growth, produce or manufacture of the United States of America enumerated and described in Schedule I annexed to this Agreement, with respect to which a rate of duty is specified in Column 2 of the said Schedule, shall be exempt from all other duties, taxes, fees, charges or exactions, in excess of those imposed on September 3rd, 1934, or required to be imposed thereafter by laws of the Republic of Cuba in force on September 3rd, 1934. The provisions of this paragraph shall not apply, however, to the tax of 1½% on gross sales and incomes referred to in Decree-Law No. 393 of November 8th, 1935, or to any increase which may be made in the general rate of such tax.

Articles the growth, produce or manufacture of the Republic of Cuba enumerated and described in Schedule II annexed to this Agreement shall, on their importation into the United States of America, be exempt from all duties other than ordinary Customs duties and all taxes, fees, charges or exactions, imposed on or in connection with importation, in excess of those imposed on September 3rd, 1934, or required to be imposed thereafter by laws of the United States of America in force on September 3rd, 1934.

No internal Federal taxes shall be imposed on articles the growth, produce or manufacture of the Republic of Cuba enumerated and described in item 501 of Schedule II annexed to this Agreement in excess of those imposed on September 3rd, 1937, or required to be imposed thereafter by laws of the United States of America in effect on September 3rd, 1937.

The provisions of Article I and Article III of this Agreement and of the third paragraph of this Article shall not prevent the Government of the United States of America from imposing at any time on the importation of any article a charge equivalent to an internal tax imposed in respect of a like domestic article or in respect of a commodity from which the imported article has been manufactured or produced in whole or in part.

Article IV.

1. The second paragraph of Article XVII of the Agreement of August 24th, 1934, is amended by changing the period at the end thereof to a comma and adding the following :

subject to the provisions of Article XI and the third and fourth paragraphs of this Article.

2. The third paragraph of Article XVII of the Agreement of August 24th, 1934, is amended to read as follows :

Notwithstanding the foregoing provisions, if the rates of duty specified in Column 2 of Schedule II annexed to this Agreement in respect of item 501 of the said Schedule should be increased in accordance with the provisions set forth in the note to the said item 501, the Government of the Republic of Cuba may propose negotiations for the modification of this Agreement. If agreement with respect to such proposal is not reached within thirty days following receipt thereof by the Government of the United States of America, the Government of the Republic of Cuba shall be free, within fifteen days after the expiration of the aforesaid period of thirty days, to terminate this Agreement in its entirety on thirty days' written notice.

3. Article XVII of the Agreement of August 24th, 1934, is amended by adding the following new paragraph after the third paragraph of the said Article :

It is further agreed that, in the event that the Government of either country adopts any measure which, even though it does not conflict with the terms of this Agreement, is considered by the Government of the other country to have the effect of nullifying or impairing any object of the Agreement, the Government which has adopted any such measure shall consider such written representations and proposals as the other Government may make with a view to effecting a mutually satisfactory adjustment of the matter ; if no agreement is reached with respect to such representations or proposals within thirty days after they are received, the Government which made them shall be free, within fifteen days after the expiration of the aforesaid period of thirty days, to terminate this Agreement in its entirety on thirty days' written notice.

Article V.

The present Agreement and the accompanying Protocol shall constitute an integral part of the Agreement of August 24th, 1934.

Article VI.

The present Agreement shall be proclaimed by the President of the United States of America and by the President of the Republic of Cuba in conformity with the laws of their respective countries. It shall enter into force on the day following the exchange of the proclamation of the President of the United States of America and the proclamation of the President of the Republic of Cuba, which shall take place in Habana as soon as possible.

In witness whereof the respective Plenipotentiaries have signed this Agreement and have affixed their seals hereto.

Done in duplicate, in the English and Spanish languages, both authentic, at the city of Washington, this eighteenth day of December, 1939.

For the President of the United States of America :

(Seal) Cordell HULL,

Secretary of State of the United States of America.

For the President of the Republic of Cuba :

(Seal) Pedro MARTÍNEZ FRAGA,

*Ambassadeur Extraordinary and Plenipotentiary
of the Republic of Cuba.*

PROTOCOL

The undersigned, the duly empowered Plenipotentiaries of their respective Governments, have agreed on the following Articles with regard to the interpretation of the Trade Agreement between the United States of America and the Republic of Cuba, signed August 24th, 1934, as amended by the Supplementary Agreement which they have signed this day :

Article I.

The term "duty" as used in Article I of the Agreement of August 24th, 1934, in relation to the undertakings of the United States of America and in Article III of that Agreement shall be understood to continue to refer to ordinary Customs duties.

Article II.

The provisions of Article I of the Agreement of August 24th, 1934, shall not be construed to be in conflict with Section 3424 of the Internal Revenue Code of the United States of America.

Article III.

The term "duties" as used in the first sentence of Article XIII of the Agreement of August 24th, 1934, shall be understood to refer to rates of duty.

Article IV.

It is agreed that the words, "become inoperative", which appear in the English text of the Note to Item 50r of Schedule II of the Agreement of August 24th, 1934, express the meaning intended by the Governments of the two countries, and that the corresponding Spanish text should read "quedaran sin efecto" in place of "fuesen derogadas".

In witness whereof, the respective Plenipotentiaries have signed this Protocol and have affixed their seals hereto.

Done in duplicate, in the English and Spanish languages, both authentic, at the city of Washington, this eighteenth day of December, 1939.

For the President of the United States of America :

(Seal) Cordell HULL,

Secretary of State of the United States of America.

For the President of the Republic of Cuba :

(Seal) Pedro MARTÍNEZ FRAGA,

*Ambassador Extraordinary and Plenipotentiary
of the Republic of Cuba.*

PROTOCOLO

Los infrascritos, Plenipotenciarios debidamente acreditados de sus respectivos Gobiernos, han acordado los siguientes Artículos en relación con la interpretación del Convenio Comercial entre los Estados Unidos de América y la República de Cuba, firmado el 24 de agosto de 1934, tal y como ha sido modificado por el Convenio Suplementario que han firmado hoy :

Artículo I.

La palabra « derecho », tal y como se emplea en el Artículo I del Convenio de 24 de agosto de 1934, en relación con los compromisos asumidos por los Estados Unidos de América y en el Artículo III de ese Convenio, se entenderá que continúa refiriéndose a los derechos ordinarios de aduana.

Artículo II.

Las disposiciones del Artículo I del Convenio de 24 de agosto de 1934, no serán interpretadas como opuestas a la Sección 3424 del Código de Impuestos Internos de los Estados Unidos de América.

Artículo III.

La palabra « derechos » tal y como se emplea en la primera frase del Artículo XIII del Convenio de 24 de agosto de 1934, se entenderá que se refiere a los tipos de derecho o adeudos.

Artículo IV.

Se conviene en que las palabras « become inoperative », que aparecen en el texto inglés de la Nota a la Partida 501 de la Lista II del Convenio de 24 de agosto de 1934, expresan el significado deseado por los Gobiernos de los dos países y que el texto español correspondiente deberá de decir « quedaran sin efecto » en lugar de « fuesen derogadas ».

En fe de lo cual, los respectivos Plenipotenciarios han firmado este Protocolo y le han fijado sus sellos.

Hecho en duplicado, en los idiomas inglés y español, ambos auténticos, en la ciudad de Washington, a los dieciocho días del mes de diciembre de 1939.

For the President of the United States of America :

(Por el Presidente de los Estados Unidos de América :)

(Seal) Cordell HULL,

Secretary of State of the United States of America.

(Secretario de Estado de los Estados Unidos de América.)

For the President of the Republic of Cuba :

(Por el Presidente de la República de Cuba :)

(Seal) Pedro MARTÍNEZ FRAGA,

Ambassador Extraordinary and Plenipotentiary of the Republic of Cuba.

(Embajador Extraordinario and Plenipotenciario de la República de Cuba.)

EXCHANGE OF NOTES

BETWEEN THE SECRETARY OF STATE OF THE UNITED STATES OF AMERICA
AND THE CUBAN AMBASSADOR.

I.

TEXTE ESPAGNOL. — SPANISH TEXT.

EMBAJADA DE CUBA.

EXCELENCIA :

WASHINGTON, D. C., 18 de diciembre de 1939.

Tengo el honor de referirme a la nota que ha sido insertada al final de la Partida 253 de la Lista I del Convenio Comercial concluído entre la República de Cuba y los Estados Unidos de América el 24 de agosto de 1934, por una estipulación del Convenio Comercial Suplementario entre la República de Cuba y los Estados Unidos de América, firmado en Washington en el día de hoy.

Como he informado a Vuestra Excelencia, es la intención de mi Gobierno prestar ulterior consideración a la posibilidad de mejorar el trato arancelario otorgado al arroz americano importado en Cuba, mejora que se mantendría en vigor mientras la participación en las necesidades del consumo de azúcar de los Estados Unidos que pueda ser abastecida por azúcar originario de la República de Cuba, no sea modificada en perjuicio de Cuba en relación con la establecida en las estipulaciones relativas a cuota de la Ley Azucarera de los Estados Unidos de 1937.

Entiendo que en el caso de que mi Gobierno formule un arreglo a este objeto y tal arreglo resulte aceptable al Gobierno de Vuestra Excelencia, podrá ser aplicado al arroz americano importado en Cuba no obstante lo estipulado en el Artículo II y en las Partidas 253-A y 253-B de la Lista I del Convenio de 24 de agosto de 1934, a condición, sin embargo, de que en el caso de que mi Gobierno ponga término a este trato más favorable, las estipulaciones relativas al arroz, de la Partidas 253-A y 253-B de la Lista I antes mencionada del Convenio firmado el 24 de agosto de 1934, entrarán de nuevo en pleno vigor.

Aprovecho esta oportunidad para reiterar a Vuestra Excelencia las seguridades de mi más alta consideración.

MARTÍNEZ FRAGA.

A Su Excelencia

Mr. Cordell Hull,
Secretario de Estado,
Washington.

¹ TRADUCTION. — TRANSLATION.

EMBASSY OF CUBA.

EXCELLENCY,

WASHINGTON, D. C., December 18th, 1939.

I have the honor to refer to the note which has been inserted after Item 253 of Schedule I of the Trade Agreement entered into between the United States and Cuba on August 24th, 1934, by a provision of the Supplementary Trade Agreement between the United States and Cuba signed at Washington on this day.

It is, as I have informed you, the intention of my Government to give further consideration to the possibility of arranging an improvement in the tariff treatment of American rice imported into Cuba, such improvement to remain in effect so long as the share of United States consumption requirements of sugar which may be supplied by sugar originating in the Republic of Cuba is not altered to Cuba's disadvantage as compared with that established in the quota provisions of the United States Sugar Act of 1937.

¹ Traduction du Gouvernement des Etats-Unis d'Amérique.

¹ Translation of the Government of the United States of America.

It is my understanding that in the event that my Government devises an arrangement for this purpose and such arrangement is found acceptable to your Government it may be applied to American rice imported into Cuba notwithstanding the provisions of Article II and Items 253-A and 253-B of Schedule I of the Agreement of August 24th, 1934, provided, however, that in the event such improved treatment is terminated by my Government, the provisions relating to rice in the aforesaid Items 253-A and 253-B of Schedule I of the Trade Agreement signed on August 24th, 1934, shall again come into full effect.

I avail myself of this opportunity to renew to Your Excellency the assurances of my very high consideration.

MARTÍNEZ FRAGA.

His Excellency Mr. Cordell Hull,
Secretary of State, Washington, D. C.

II.

DEPARTMENT OF STATE.

EXCELLENCY,

WASHINGTON, *December 18th*, 1939.

I have the honor to acknowledge your note of this date, in which you state that it is the intention of your Government to give further consideration to the possibility of improving the Customs treatment of American rice imported into Cuba, such improvement to remain in effect so long as the share of United States consumption requirements of sugar which may be supplied by sugar originating in the Republic of Cuba is not altered to Cuba's disadvantage as compared with that established in the quota provisions of the United States Sugar Act of 1937.

I further have the honor to confirm your understanding that the note which has been inserted, by a provision of the Supplementary Trade Agreement between the United States and Cuba signed at Washington on this day, after Item 253 of Schedule I of the Trade Agreement entered into between the United States and Cuba on August 24th, 1934, will make possible the application of such an arrangement in the event it is desired by your Government and is found acceptable by my Government, notwithstanding the provisions of Article II and items 253-A and 253-B of Schedule I of the Agreement of August 24th, 1934.

Accept, Excellency, the renewed assurances of my highest consideration.

Cordell HULL.

His Excellency Pedro Martínez Fraga,
Ambassador of the Republic of Cuba.

Certified to be true and complete textual copies of the original supplementary agreement, protocol and of notes exchanged in connection therewith in all the languages in which they were signed.

For the Secretary of State
of the United States of America :

Edward Yardley,
Director of Personnel.