MEMORANDUM

Cuban-American Relations: Constituent Assembly's
Transitory Provision To Liquidate the Moratoria

Paragraph (3) of Article IV of the Supplementary
Trade Agreement of December 18, 1939, amending Article
XVII of the Trade Agreement of August 24, 1934, reads
as follows:

"Notwithstanding the foregoing provi-
sions, 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 ac-
cordance with the provisions set forth in
the note to the said item 501, the Govern-
ment 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."

The principal direct purpose of any trade agree-
ment is to promote mutually beneficial economic and
commercial relations between the signatory countries.

The draft transitory provision to liquidate the
moratoria, as approved as a whole by the Constituent
Assembly and as so far amended, tends to defeat this
purpose and, therefore, to impair one of the primary
objects of the Trade Agreement with Cuba.
In substantiation of this statement, the Department has already authorized you to say that (1) the draft unduly favors the debtor and consequently would damage Cuban credit; (2) interest rates should be increased, particularly in the cases of large obligations; (3) amortization periods should be reduced; (4) obligations contracted after the date of the 1934 moratorium should be excluded; and (5) direct settlements between debtors and creditors and waivers of the moratorium should be respected.

The Department has authorized you to say that twelve New York banks, in their character of trustees, have telegraphed the Department in the sense that the confiscatory character of the proposal is obvious. While the Department did not say that it agreed with the banks, it obviously thought enough of the observation to transmit it to you.

In addition to the foregoing defects of the project, all of which obviously tend to prejudice instead of improve economic and commercial relations between the United States and Cuba, having in consideration the huge sum of American investments in Cuba, running into the hundreds of millions of dollars, the following additional objections to the project may be noted:

(1) Amortization payments are arbitrarily postponed until 1942.

(2) In the case of sugar mills no payment, whether for interest or amortization, is required if the average price of sugar during the crop is less than 1.40. This constitutes an undue burden on the creditor. It can be demonstrated that payments could be made, on interest at least, on the basis of a price as low as 1.25.

(3) The Embassy has been informed by reliable persons in a position to know the facts, including the head of one large American bank which is directly in-
volved, that the measure contains provisions intended to take care of numerous private cases involving members of the Constituent Assembly and their friends or associates. The effect of some of these provisions would be arbitrarily to deprive American interests of certain equities or guarantees they now possess.

4. The right of personal action is suppressed.

There are at least two ways in which the present situation might be overcome:

1. The Assembly might pass a further amendment to the present transitory provision which would authorize the Congress to enact a different measure if it considered such action desirable in the public interest.

2. If the Constituent Assembly insisted on approving the measure in more or less its present form, it would still be possible for interested parties to file suit charging unconstitutionality of the Assembly's action.

In this connection, it can be alleged that the present Constituent Assembly, in contradistinction to what might be termed a post-revolutionary Constituent Assembly, which possesses complete sovereignty in the absence of a constitutionally organized government, has arbitrarily assumed legislative power when, as a matter of fact, its mandate from the people empowered it to do one of two things: (1) Approve the draft constitution submitted to it by the Congress; or (2) draft a new constitution. It is believed probable that if the Government, itself—the executive power in this case—took the point of view that the Assembly's exercise of power was unconstitutional, the Supreme Court would agree and the suit would be successful.

At any rate, it is not our responsibility to consider what means Cuba has available to overcome a situation which in its present status constitutes an affront to the United States and an impairment of one of the objects of the Reciprocal Trade Agreement. From our point of view, it makes no difference whether the affront
affront is committed by the executive power, by the legislative power, by the Constituent Assembly, or by any other person or body. If the result of the action is to impair any object of the Trade Agreement, we have the right to denounce the Trade Agreement, after having given the Cuban Government time to remedy the condition.

If the Constituent Assembly actually passes the transitory provision in more or less its present form, and the United States takes no action in the matter, it is very difficult to conceive how we can expect any effective cooperation from the Cuban Government in the future along the many lines which may become important to us in the present state of world affairs. There is a theory which is widely held in the Cuban Government that the United States is so anxious not to have trouble with Cuba, for obvious reasons of inter-American solidarity, that it will accept almost any affront rather than openly protest. I submit that this is not a healthy basis for future cooperation. In fact, I do not see how, with that conviction uppermost in the minds of leaders in the Cuban Government, we can expect anything approaching efficient and loyal cooperation during the coming months and years, when we shall doubtless require it.

The President of Cuba has characterized the transitory provision in its present form as immoral. He agrees with us 100% in the attitude we have already expressed, and goes farther than we have chosen to do in criticizing the project. It is very probable that if we expressed our intention to invoke paragraph (3) of Article IV of the Supplementary Trade Agreement, it would not, in fact, be necessary to do so; or that if we were required to do so, the situation we complained of would be remedied before the time for termination were reached.

If, on the other hand, the present representatives of the Cuban people should insist that it is their right to prejudice our interests in Cuba arbitrarily, it is best that this be brought out in the open at as early a date as possible, so that a better basis for cooperation may be established.

W.L.B.