

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

WEST INDIES SUGAR CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0665

Decision No. CU-5969

Counsel for claimant:

Willkie, Farr & Gallagher

AMENDED PROPOSED DECISION

By Proposed Decision issued November 17, 1970, the Commission certified a loss to claimant in the amount of \$79,941,857.20 based upon the loss of its Cuban subsidiaries. The amount of \$5,377,399.94 was deducted in determining the net worth of the Cuban subsidiaries and claimant has objected and submitted additional evidence. Accordingly, the Proposed Decision is hereby amended.

In the balance sheet submitted for the Cuban enterprise Compania Central Altagracia, S.A., the liabilities contained an item of \$5,377,399.94 for Notes Payable. The amount was therefore deducted in finding the net worth. Claimant has filed an affidavit of the president of the claimant corporation with a copy of the Trial Balance for June 30, 1960. On the Trial Balance the debt deducted is listed as a note due WEST INDIES SUGAR CORPORATION. The Commission has considered this additional evidence and now finds that Central Altagracia, S.A. was indebted to the claimant in the amount of \$5,377,399.94 and that claimant sustained an additional loss in that amount within the meaning of Title V of the Act as a result of the nationalization of Compania Central Altagracia, S.A. on August 6, 1960.

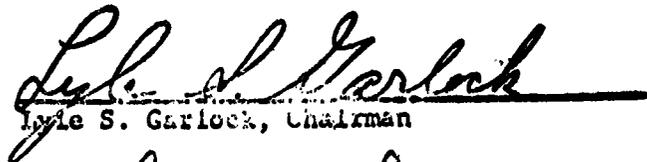
Accordingly, the Certification of Loss as restated below will be entered and in all other respects the Proposed Decision is affirmed.

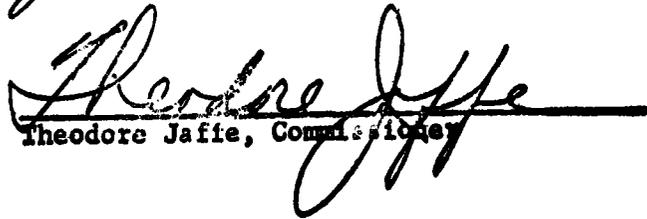
CERTIFICATION OF LOSS

The Commission certifies that WEST INDIES SUGAR CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eighty-Four Million Eight Hundred Eighty Thousand Nine Hundred Fifty-Seven Dollars and Fifty-Five Cents (\$84,880,957.55) with interest thereon at 6% per annum from August 6, 1960 to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Amended  
Proposed Decision of the  
Commission

FEB 17 1971

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended (1970).)

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Claim No. CU - 0665

Decision No. CU - 5969

Counsel for claimant:

Willkie, Farr & Gallagher

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$89,708,774.00, was presented by WEST INDIES SUGAR CORPORATION based upon the asserted loss of its Cuban subsidiaries.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation.

An officer of the claimant corporation which was organized in 1932 under the laws of Delaware has certified that at all times since December 10, 1959, at least 50% of the outstanding capital stock has been owned by United States nationals and that on December 17, 1965 approximately 22.93% of the outstanding capital stock was owned by nonnationals of the United States. The Commission holds that WEST INDIES SUGAR CORPORATION qualifies as a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claim is asserted in the amount of \$89,708,774.00 for the loss of the following Cuban corporations:

Compania Central Altagracia, S.A.  
Miranda Sugar Estates  
Compania Agricola Hato del Medio, S.A.  
Compania Oriental Agricola y de Almacenes, S.A.  
Canera Cruces, S.A.  
Compania Agricola Maibio, S.A.

The record establishes and the Commission finds that claimant was the owner of the above-listed corporations and that they were nationalized by the Government of Cuba on August 6, 1960 under Resolution No. 1, pursuant to Law 851 of July 6, 1960. The corporations were organized under the laws of Cuba and do not qualify as corporate "nationals of the United States" defined under Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that an American stockholder is entitled to file claim based upon an ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.) Therefore, claimant is entitled to file this claim.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which under the particular circumstances is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

In support of the claim, claimant has submitted an appraisal of the lands, cultivations, buildings and equipment owned by its Cuban subsidiaries, balance sheets of the subsidiaries as of June 30, 1960, affidavits of company officials, aerial photos and a survey map of the Cuban properties, and copies of Cuban resolutions affecting the companies.

The losses as asserted by claimant are for the following:

Land, cultivations, buildings, animals and equipment as appraised	\$75,747,365.00
Sugar and molasses	9,544,229.00
Bank accounts	2,372,001.00
Accounts receivable	242,116.00
Prepaid items and miscellaneous investments	<u>1,803,063.00</u>
Total	\$89,708,774.00

The record shows that the Cuban subsidiaries owned and operated four sugar mills, a complete railroad system with 290 miles of track, a network of roads, telephone system, and electric plants for the mills and surrounding bateys wherein were located company-owned residences for workers, stores, schools, hospitals, churches, shops, and theaters, and a warehouse in Santiago. Evidence establishing the value of these assets is contained in an appraisal made by Luis Parajon based upon information originally

gathered in 1953 for an insurance valuation which information was brought up to date to reflect the changes in equipment and properties between 1953 and 1960,

On the basis of the appraisal and balance sheets, the Commission finds the value of the assets of claimant's Cuban subsidiaries on August 6, 1960 to have been as follows:

<u>Current Assets</u>	
Cash	\$ 2,104,408.96
Accounts Receivable & deposits	238,474.72
Cane Liquidation Receivable	524,711.58
Sugar on hand & in Liquidation	10,318,190.69
Molasses on hand & in Liquidation	677,744.14
Manufacturing Materials & Supplies	108,028.40
Rents Receivable	40,667.19
<u>Working Assets</u>	
Prepaid Insurance, Taxes, etc.	12,688.64
Maintenance Materials & Supplies	1,372,351.59
<u>Miscellaneous Investments</u>	
	210,752.23
<u>Fixed Assets</u>	
Land and Cultivations	34,465,365.00
Railroad System	14,360,000.00
Communications System	180,000.00
Central Miranda Sugar Mill and batey	7,930,000.00
Central Palma Sugar Mill and batey	6,850,000.00
Central Alto Cedro Sugar Mill and batey	4,720,000.00
Central Santa Ana Sugar Mill and batey	3,342,000.00
Cia. Agricola Maibio, S.A.	400,000.00
Cia. Agricola Hato del Medio, S.A.	200,000.00
Santiago de Cuba properties	120,000.00
Furniture & Fixtures	110,000.00
Tools & Implements	80,000.00
Carts & Wagons	140,000.00
Agricultural Equipment	500,000.00
Total Assets	\$89,005,383.14

Inasmuch as the corporations which were nationalized were Cuban entities, deductions must be made for their liabilities to determine the loss suffered by claimant. On August 6, 1960, the Commission finds that the liabilities of these firms were:

<u>Current Liabilities</u>	
Accounts Payable	\$ 853,652.50
Dividends Payable	438,299.59
Accrued Wages, Taxes, etc.	1,076,770.45
Accounts Payable to Cane Growers	1,671,845.67
Accrued 1960 Superproduction Payable	83,857.38
<u>Long Term Debts</u>	
Notes	<u>5,377,399.94</u>
Total Liabilities	\$9,501,825.53

The Commission concludes that claimant suffered a loss in the amount of \$79,503,557.61 as a result of the nationalization of its Cuban subsidiaries by the Government of Cuba on August 6, 1960, within the meaning of Title V of the Act.

The Commission further finds that the Cuban enterprises were indebted to claimant in the amount of \$438,299.59 for dividends unpaid as set forth in the individual balance sheets for June 30, 1960. The Commission concludes that claimant suffered an additional loss in the amount of \$438,299.59 on August 6, 1960, making a total loss of \$79,941,857.20 resulting from the nationalization of the enterprises.

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that WEST INDIES SUGAR CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seventy-nine Million Nine Hundred Forty-one Thousand Eight Hundred Fifty-seven Dollars and Twenty Cents (\$79,941,857.20) with interest at 6% per annum from August 6, 1960 to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

NOV 17 1970

  
Leo S. G. Glock, Chairman

  
Theodore Jaffe, Commissioner

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