

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

IN THE MATTER OF THE CLAIM OF

THE NEW TUINUCU SUGAR COMPANY, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for Claimant:

Claim No. CU-1850

Decision No. CU 6817

Firm of Herman Goldman  
By David A. Brauner, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$21,895,208.00, was presented by THE NEW TUINUCU SUGAR COMPANY, INC., and is based upon the asserted ownership and loss of its properties in Cuba.

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 or entity.

The record establishes that claimant was organized in 1951 under the laws of the State of New York and that at all times pertinent hereto at least 50% of claimant's outstanding capital stock has been owned by United States nationals. The Commission holds that THE NEW TOINUCU SUGAR COMPANY, INC. qualifies as a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claim is asserted for property owned by claimant and its two Cuban subsidiaries as follows:

Land	\$ 1,254,931.80
Improvements	17,808,465.66
Growing Cane	183,751.98
Livestock	4,800.00
Port of Tunas de Zaza	604,165.00
Other Consolidated Net Assets	1,774,694.42
Investments	<u>264,400.00</u>
Total	\$21,895,208.86

On the basis of the evidence of record, the Commission finds that claimant was the owner of certain property in Cuba and the sole stockholder of the Cuban enterprises, Compania Destiladora Paraiso, S.A. and J. Artecona & Compania, S. en C., and that claimant's property and the two Cuban firms were nationalized by the Government of Cuba on August 6, 1960 under Resolution No. 1. The subsidiary 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 for the interests owned in the Cuban enterprises.

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.

According to the evidence of record, claimant owned and operated two sugar mills, Central Tuinucu and Central La Vega, which produced an average of 37,000,000 arrobas of cane, equivalent to 480,000 bags of raw sugar of 250 pounds each. An average of 3,000,000 gallons of blackstrap molasses, the by-product, was produced at the same time. The claimant also owned 323.45 caballerias or 10,726 acres of land of which 260.69 caballerias were for cane production, the remainder being used for sugar mill sites, alcohol distillery location, cattle raising, and miscellaneous purposes. Compania Destiladora Paraiso, S.A. operated the distillery which produced approximately 469,000 gallons of alcohol (5,630,000 gallons per year), and 3,000 50-pound bags of yeast per month. J. Artecona & Compania, S. en C. did not own land but leased claimant's land for growing sugar cane. Claimant operated its own port facilities at Tunas de Zaza where it owned some land, a dock, railroad lines and buildings. Claimant, in addition to the complete machinery and equipment necessary for the operation of the sugar mills, owned railroad lines and equipment for the transporting of the sugar cane to the mills.

In support of the amount claimed, claimant has submitted copies of financial statements including balance sheets for the years 1955 - June, 1960, and

a copy of the claim submitted to the Department of State in 1961. The financial statements are consolidated for claimant and its two subsidiaries, and a separate balance sheet for claimant as of June 30, 1960 was submitted. The values claimed herein are the same as those filed with the Department of State in 1961.

The amount claimed for the nationalized land is \$1,254,931.80 which is the revalued amount set forth in the balance sheets for 1959 and 1960. The Commission finds this value to be fair and reasonable and concludes that claimant lost land in that amount as a result of actions of the Government of Cuba on August 6, 1960.

The improvements, as valued by claimant on the basis of a reasonable replacement cost, are:

<u>Plant and Machinery</u>	<u>Replacement Cost</u>
Tuinucu mill	\$ 8,794,920
La Vega mill	1,852,500
Alcohol distillery	2,921,446
Buildings	1,795,836
Railroad equipment:	
Railroad lines	366,903
Siding and switches	315,732
Rolling stock	858,254
Miscellaneous	5,234
Irrigation system	9,670
Working capital assets	732,598
Construction in progress	155,373
	<u>\$ 17,808,466</u>

Claimant was requested to submit the basis of the replacement costs and if any depreciation has been deducted in arriving at the valuation. An affidavit was submitted signed by Placido A. Ervesun, Vice-President of claimant, in which he stated that he was present at and participated in conferences and consultations among the officers of the claimant corporation regarding the preparation of the claim. He further stated that the estimated replacement values of the assets contained in the claim were determined in consultation with persons familiar with the value of such property in Cuba and were made with consideration being given to depreciation of such assets.

The values asserted for the improvements at the sugar centrals, including machinery and equipment, have been compared with other claims based upon sugar mills having the same production capabilities and which claims were supported by appraisals made by an appraisal company not connected with the company for whom the appraisal was made. On the basis of all the evidence of record, the Commission finds the values claimed for the mills, buildings, railroad equipment, working capital assets and construction in progress are fair. An itemized listing of the cost of the equipment and improvements of the alcohol distillery reflects a total paid out of \$1,460,722.39. The Commission finds that \$1,460,722.39 is a fair and reasonable value for the distillery and concludes that claimant suffered a loss in the amount of \$16,347,742.39 by the taking of the mills, machinery and equipment on August 6, 1960.

Claimant has asserted the loss of \$792,716.98 for growing cane cultivated by the subsidiary, J. Artecona y Compania, S. en C., for livestock and the land and improvements located at the port of Tunas de Zaza.

Based upon the record herein and other evidence available to the Commission concerning the value of similar property, the Commission finds these values to be fair and reasonable and concludes that claimant suffered a loss in the amount of \$792,716.98 for the taking of these assets on August 6, 1960.

Claimant has also asserted a loss in the amount of \$1,774,694.42 for its consolidated net assets, the excess of cash, accounts receivable, inventories, and other miscellaneous assets over the liabilities. The amounts set forth for the assets and liabilities were consolidated from the financial records of claimant. Inasmuch as the Commission does not deduct liabilities of United States nationals, except for taxes due the Cuban Government (see Claim of Simmons Company, Claim No. CU-2303), those liabilities of claimant's are to be omitted. Accordingly, the Commission finds that the loss suffered by claimant for net consolidated assets on August 6, 1960 amounted to \$4,760,696.27.

Claimant asserted a loss of \$264,400.00 based upon investments as listed below:

Cuban Bagasse Products, S.A. stock	\$215,000.00
Western Railroad of Cuba stock (Ferrocarriles Occidentales de Cuba)	48,400.00
Sociedad El Progreso de Sancti Spiritus - 4% bonds	1,000.00

On the evidence of record, the Commission finds that claimant owned 46,000 shares of Cuban Bagasse Products, S.A. stock and 484 shares of Western Railroad of Cuba. In the Claim of George F. Baker, III, Claim No. CU-1017, the Commission determined that the value of common stock of Cuban Bagasse Products, S.A. on August 7, 1960 was \$2.8607 per share. The Commission therefore finds that claimant, as the owner of 46,000 shares, suffered a loss in the amount of \$131,592.20 for its ownership interest in Cuban Bagasse when its assets were taken on August 6, 1960.

In the Claim of Ruth Anna Haskew, Claim No. CU-0849, the Commission held that the value of the common stock of Western Railroad of Cuba (Ferrocarriles Occidentales de Cuba, S.A.), which enterprises were required to purchase under Cuban laws, was the original purchase price. Claimant paid \$100.00 per share or a total of \$48,400.00 and the Commission finds that claimant suffered a loss in that amount for its ownership interest in the railroad company on August 6, 1960.

Concerning the asserted interest in bonds of the Sociedad El Progreso de Sancti Spiritus, the Commission has no information as to the date of maturity, date of issuance or market value of these bonds on which to base any certification of loss. Accordingly, that portion of the claim asserted for such bonds must be and is hereby denied.

RECAPITULATION

The Commission finds claimant suffered the following losses on August 6, 1960 within the meaning of Title V of the Act:

Land	\$ 1,254,931.80
Buildings, Equipment & Machinery	16,347,742.39
Growing Cane	183,751.98
Livestock	4,800.00
Port of Tunas de Zaza	604,165.00
Consolidated net assets	4,760,696.27
Investments:	
Cuban Bagasse Products, S.A.	131,592.20
Western Railroad	<u>48,400.00</u>
	\$23,336,079.64

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.


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 claim it is so ordered.

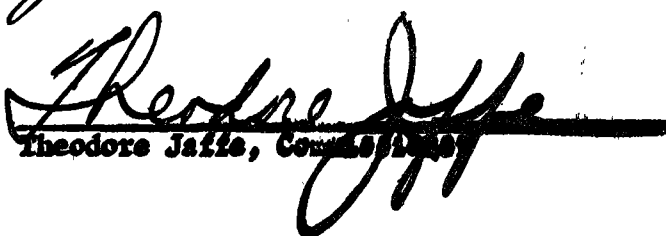
CERTIFICATION OF LOSS

The Commission certifies that THE NEW TUINUCU SUGAR COMPANY, INC. 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 Twenty-three Million Three Hundred Thirty-six Thousand Seventy-nine Dollars and Sixty-four Cents (\$23,336,079.64) 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 Proposed  
Decision of the Commission

SEP 22 1971

  
Lyle S. Carlock, Chairman

  
Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

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 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).)

CU- 1850