

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

IN THE MATTER OF THE CLAIM OF

AMERICAN SUGAR COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2445

Decision No. CU 3969

Counsel for claimant:

George E. Diethelm, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$90,330,769.00, was presented by AMERICAN SUGAR COMPANY, based upon asserted losses of investments and property 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.

Evidence of record discloses that AMERICAN SUGAR COMPANY was organized under the laws of the State of Delaware and is the successor in interest to the American Sugar Refining Company. The American Sugar Refining Company was organized in New Jersey in 1891 and merged into American Sugar Company, another New Jersey corporation, in 1963. That resulting corporation merged with Domino Sugar Company of Delaware and a new Delaware corporation, the claimant herein, was formed. An officer of the claimant corporation has certified that at all times more than 50% of the outstanding capital stock of the corporate owner of the claimed property has been owned by United States nationals and that at least 98.685% of the outstanding capital stock was held by persons with residences in the United States and its possessions who are presumed to be nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record reflects that the American Sugar Refining Company (now AMERICAN SUGAR COMPANY) was the owner of three Cuban corporations, Central Cunagua, S.A., Caonao Warehouses and Agricultural Company, S.A., and Camaguey Development Company, S.A. On August 6, 1960, the Government of Cuba issued Resolution No. 1, pursuant to Law 851 of July 6, 1960, which listed as nationalized Central Cunagua, S.A. The Commission therefore finds that Central Cunagua, S.A. and its affiliated companies, Caonao Warehouses and Agricultural Company, S.A. and Camaguey Development Company, S.A. were nationalized on August 6, 1960, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

Claimant has asserted its losses as follows:

| | |
|--|------------------|
| 1. Central Cunagua, S.A. | \$88,420,962.00 |
| 2. Caonao Warehouses and Agricultural Company, S.A. | 1,899,807.00 |
| 3. Camaguey Development Company, S.A. | <u>10,000.00</u> |
| Total Claimed | \$90,330,769.00 |

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.

1. CENTRAL CUNAGUA, S.A.

This Cuban company, sometimes referred to as CCSA, operated two mills and owned two industrial complexes known as Central Cunagua and Central Jaronu. Its land holdings consisted of 16,669.93 caballerias of land (552,808 acres) including 6,784 caballerias of land on two islands, Cayo Romano and Cayo Cruz, which had been intended for use as private port facilities but subsequent Cuban laws made such use impossible. CCSA was engaged in the business of operating its two large sugar mills, selling raw sugar, developing and improving its extensive land holdings, raising livestock, lumbering and managing large forest reserves, and supplying sugar cane to the mills. Cunagua also owned 45 acres of land at Port Tarafa in the Province of Camaguey where it operated a molasses terminal. It maintained a railroad of 211.5 miles of standard guage track having 24 locomotives, 832 cane cars and 127 other cars.

In support of the values claimed for CCSA, claimant has submitted an appraisal and inventory of its buildings, equipment, and land holdings prepared by the American Appraisal Company in 1959 with valuations of other properties by claimant's employees based upon values used by the appraisal company, affidavits of former CCSA officers, financial statements for the years 1958 and 1959 and an estimated balance sheet for August 6, 1960.

The values of Cunagua's land, buildings, equipment, personal property and cultivations as determined by the appraisal company and Cunagua's officers are summarized below:

| | | |
|--|------------------|------------------|
| Land | | \$27,550,000.00 |
| Mill area buildings | | 3,656,047.00 |
| Residential area buildings | | 3,614,919.00 |
| Agricultural buildings & installations | | 2,387,988.00 |
| Machinery & equipment | | 22,170,284.00 |
| Railroad | | 6,090,907.00 |
| Rolling stock | | 5,382,926.00 |
| Agricultural equipment | | 155,981.00 |
| Molasses storage at Port Tarafa | | 218,132.00 |
| Furniture & fixtures | \$173,257.00 | |
| Automotive & work equipment | 313,783.00 | |
| Airplane | 15,000.00 | |
| Pasture area | 86,978.00 | |
| Telephone System | <u>63,780.00</u> | 652,798.00 |
| Sugar cane stools | | 3,149,715.00 |
| Sugar cane stools of colonos on CCSA land | | 6,536,000.00 |
| Livestock | | 93,456.00 |
| Special grasses | | 104,098.00 |
| Drainage canals & river improvements | | 155,679.00 |
| Irrigation equipment | | <u>19,032.00</u> |
| Total | | \$81,937,962.00 |

Included in the appraised amount is the sum of \$6,536,000.00 for cane stools of colonos other than Caonao which had been planted on land owned by Cunagua. In Cuba, the colonos (planters) were protected by law (Articles 4 and 6, Law of 1922, Lanzas, A Statement of the Laws of Cuba, p. 186) and stalks and canes remained free from the ownership of the land owner for the duration of a lease or contract unless the colono did not fill his quota of sugar. Accordingly, the Commission finds that these cane stools planted by colonos, although on land owned by Cunagua, were not the property of Cunagua and claim therefor would be denied if this method of valuation were used; and, of course, the above figures do not have liabilities deducted therefrom.

The Commission, therefore, finds that the following listing of assets and liabilities compiled from the record is the most appropriate method to arrive at a net value for the loss, viz:

ASSETS AND LIABILITIES FOR CUNAGUA ON AUGUST 6, 1960
(After adjustments reflecting the appraised values and with the Cuban peso equal to a United States dollar)

ASSETS

Current Assets

| | |
|---------------------------|---------------------|
| Cash on hand and in banks | \$ 375,000.00 |
| Accounts Receivable | 1,160,000.00 |
| Raw Sugar | 7,488,000.00 |
| Supplies and Materials | <u>1,975,000.00</u> |
| Total Current Assets | \$10,998,000.00 |

Agricultural Cultivations

| | |
|-----------------|-------------------|
| Cane Stools | 3,149,715.00 |
| Special Grasses | <u>104,098.00</u> |
| Total | \$ 3,253,813.00 |

Investments

| | |
|---|-------------------|
| Mortgage | 5,000.00 |
| Stock Ferrocarriles Occidentales (cost) | <u>183,171.24</u> |
| Total | \$ 188,171.24 |

Fixed Assets and Work Equipment

| | |
|---------------------------------------|-------------------|
| Land | 27,550,000.00 |
| Buildings & Equipment | 9,745,932.00 |
| Port Tarafa Storage Buildings | 218,132.00 |
| Machinery & Equipment | 22,170,284.00 |
| Agricultural Equipment | 155,981.00 |
| Railroad & Equipment | 11,473,833.00 |
| Telephone System | 63,780.00 |
| Livestock | 93,456.00 |
| Canals & Irrigation Equipment | 174,711.00 |
| Furniture & Fixtures | 173,257.00 |
| Automotive, Airplane & Work Equipment | <u>328,783.00</u> |
| Total | \$72,148,149.00 |

Deferred Charges

450,000.00

Total Assets \$87,038,133.24

LIABILITIES

Current Liabilities

| | |
|------------------------------------|------------------|
| Notes & Accounts Payable | \$ 5,590,000.00 |
| Freight | 138,000.00 |
| Taxes | 88,000.00 |
| Funds on account of colonos | 719,000.00 |
| Special fund for sugar | 57,000.00 |
| Reserve for shipping expenses | 660,000.00 |
| Superproduction pay | 295,000.00 |
| Insurance | 75,000.00 |
| Dividend to American Sugar Company | 161,000.00 |
| Accrued expenses | <u>68,000.00</u> |

Total Current Liabilities \$ 7,851,000.00

The Commission finds that the net worth of Central Cunagua, S.A. on August 6, 1960 was \$79,187,133.24, the excess of its assets over its liabilities. To determine the claimant's total loss for the nationalization of Cunagua, the amount of dividends due claimant (\$161,000.00) set forth in the liabilities of the Cuban entity is added to the net worth, making a total of \$79,348,133.24.

Accordingly, the Commission finds that claimant sustained a loss in the amount of \$79,348,133.24 as a result of the nationalization of Central Cunagua, S.A. on August 6, 1960.

2. CAONAO WAREHOUSES AND AGRICULTURAL COMPANY, S.A.

Caonao Warehouses and Agricultural Company, S.A. was a Cuban corporation engaged principally in the business of growing sugar cane on lands owned by Cunagua and other lands leased by Caonao. It was a major colono of both the Jaronu and Cunagua sugar mills. The company also operated warehouses for the storage of raw sugar produced by Cunagua. Claimant has submitted an inventory of its buildings and equipment with an appraisal of these items, plus financial statements for the years 1958 and 1959 and an estimated balance sheet for August 6, 1960.

The balance sheet for August 6, 1960 after adjustments to reflect the appraised values is as follows:

| <u>ASSETS</u> | |
|---|----------------|
| <u>Current Assets</u> | |
| Cash | \$ 200.00 |
| Material | 1,000.00 |
| Accounts Receivable | 351,500.00 |
| Railroad Stock (Ferrocarriles Occidentales) | 33,300.00 |
| Total Current Assets | \$ 386,000.00 |
| <u>Fixed Assets & Equipment</u> | |
| Buildings | 438,749.00 |
| Equipment | 883,015.00 |
| Livestock | 10,098.00 |
| Total Fixed Assets | \$1,331,862.00 |
| Deferred Charges | 19,450.00 |
| Total Assets | \$1,737,312.00 |

LIABILITIES

Current Liabilities

| | |
|---|------------------|
| Accounts Payable | \$ 15,000.00 |
| Dividends Payable to American Sugar Company | 188,000.00 |
| Unpaid wages, taxes withheld | 17,800.00 |
| Miscellaneous accruals | <u>51,405.00</u> |

Total Liabilities \$272,205.00

The Commission finds that the net worth of Caonao Warehouses and Agricultural Company, S.A. on August 6, 1960 was \$1,465,107.00, the excess of its assets over its liabilities. An additional loss of \$188,000.00 for unpaid dividends listed in the liabilities of Caonao was sustained by claimant by the nationalization of that Cuban entity.

Accordingly, the Commission finds that claimant sustained a loss in the amount of \$1,653,107.00 as a result of the nationalization of Caonao Warehouses and Agricultural Company, S.A. by the Government of Cuba on August 6, 1960.

3. CAMAGUEY DEVELOPMENT COMPANY, S.A.

The amount of \$10,000.00 has been claimed for losses sustained by claimant for the nationalization of the Camaguey Development Company, S.A., a Cuban corporation organized in 1957 to acquire, develop, and exploit lands, mines and mineral locations. The company had acquired two oil exploration permits permitting it to explore for oil on lands owned by Central Cunagua, S.A. Such authority had to be obtained from the Government since mineral rights did not belong to the owner of the surface of the land. Claimant has stated in Exhibit LL that this corporation "was not an operational enterprise prior to August 6, 1960 . . ." No evidence of any exploration of the claims has been submitted, however, in the oil industry an oil lease or drilling permit has a value per se because of the wide market for such interests. In the absence of evidence to the contrary the Commission finds that claimant has established a value of its cost i.e. \$10,000 as a result of the nationalization of Camaguey Development Company, S.A.

GOING CONCERN VALUE

Claimant has asserted the loss of \$3,000,000.00 for the going concern value for the two enterprises, Central Cunagua, S.A. and Caonao Warehouses and Agricultural Company, S.A. The amount was determined by multiplying the average annual cost of sales of the two companies for the years 1957, 1958 and 1959 by 15% (estimated to be the rate of increase of normal costs in the first year of operation).

In a previous claim (Claim of Julius J. Shepard, Claim No. CU-0407) the Commission held that going concern value may be determined on the basis of net earnings demonstrated over a period of years. In the instant claim, however, the net earnings do not justify a finding of going concern value and the method employed by claimant is an insufficient basis for determining any additional value as a going concern.

Accordingly, the portion of the claim for going concern value is denied.

The Commission therefore finds that the losses sustained by AMERICAN SUGAR COMPANY as a result of the nationalization of Central Cunagua, S.A. and Caonao Warehouses and Agricultural Company, S.A. on August 6, 1960 by the Government of Cuba are:

| | |
|---|------------------|
| Central Cunagua, S.A. | \$79,348,133.24 |
| Caonao Warehouses and Agricultural Company, S.A. | 1,653,107.00 |
| Camaguey Development Company, S.A. | <u>10,000.00</u> |
| | \$81,011,240.24 |

The Commission has decided that in certification of losses 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 AMERICAN SUGAR COMPANY sustained 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-one Million Eleven Thousand Two Hundred Forty Dollars and Twenty-four Cents (\$81,011,240.24) 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

OCT 1 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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 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, 32 Fed. Reg. 412-13 (1967).)