

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

IN THE MATTER OF THE CLAIM OF

INTERNATIONAL HARVESTER COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2458

Claim No. CU-2459

Decision No. CU -1943

Counsel for claimant:

Joseph D. Skinner, Esq.

AMENDED PROPOSED DECISION

By Proposed Decision dated May 29, 1968, the Commission denied these claims for the reason that claimant had not established the ownership, loss and value of the properties, subject of the claims. Subsequently, claimant submitted additional supporting evidence pertaining to the subject properties. The matters have been considered and the Proposed Decision is hereby amended.

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the total amount of \$13,274,379.09, were presented by INTERNATIONAL HARVESTER COMPANY and are based upon the loss of real and personal property owned by this claimant directly and for the loss of real and personal property owned by a wholly-owned subsidiary of claimant, known as International Harvester Company of Cuba, a Cuban corporation.

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.

Statements by officers of claimant corporation, and other evidence of record, establish that in excess of 95% of the outstanding shares of stock of INTERNATIONAL HARVESTER COMPANY, organized in the State of New Jersey, was owned at times pertinent to these claims by shareholders who were nationals of the United States, and that foreign ownership was less than 5% of the stock. The Commission finds that claimant herein is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Since the Cuban subsidiary, International Harvester Company of Cuba, was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of 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 a claim for the value of such ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.) The evidence of record herein discloses that claimant owned all of the outstanding shares of stock of the Cuban subsidiary.

The evidence of record includes reconstructed balance sheets of the Cuban corporation and for the operations of claimant with respect to those properties directly owned by claimant in Cuba. Additionally, claimant has submitted material to the State Department, affidavits of company employees, correspondence, invoices, ledgers, office records, numerous photographs and other data pertaining to the assets and liabilities of the Cuban subsidiary and those of the claimant. The claimant has also submitted excerpts from the Official Gazette of Cuba, legal data in appeal from expropriation of the properties, subject of these claims, reports to the INRA, a Cuban governmental agency, and other evidence.

The record establishes that certain properties, such as a plantation known as La Conchita in Matanzas, Cuba, and offices with warehouse located

at Vives and Alambique, Havana, were owned directly by the claimant, a New Jersey corporation; and that other properties, including land and buildings on Avenida Rancho Boyeros, Havana, were owned by the subsidiary, International Harvester Company of Cuba.

The Commission finds that on December 22, 1959, pursuant to INRA Resolution 110, the plantation, La Conchita, was intervened by the Government of Cuba and such taking was published in the Official Gazette on January 6, 1960; on April 21, 1960, the warehouse located at #251 Vives Street, corner of Alambique, Havana was intervened by the Government of Cuba by INRA Resolution 164, with publication in the Official Gazette on April 28, 1960; and the property of the International Harvester Company of Cuba, including the improved real property at Calzada de Rancho Boyeros, was nationalized by the Government of Cuba on October 24, 1960, pursuant to Resolution 60-516, in accordance with Resolution 3 of October 24, 1960, pursuant to Law 851 of July 6, 1960.

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.

The claimant has submitted a "Summary of Losses and Losses Claimed", prepared on October 24, 1960, concerning the current and fixed assets of the company in Cuba and the liabilities of claimant arising in Cuba:

	Investment Per Books <u>10-24-60</u>	Losses Claimed <u>10-24-60</u>
<u>Assets:</u>		
Cash	\$ 175,388.48	\$ 175,388.00
Receivables:		
International Harvester Company of Cuba		
Notes receivable	643,938.15	643,938.00
Current account	5,712.83	5,713.00
Accrued interest	6,666.64	6,667.00
Open account	562.00	562.00
Notes receivable		
Camiones y Equipos Mecanicos, motor truck distributor	145,977.40	145,977.00
Bonds		
Republica De Cuba, Emision De Bonas De La Dueba Publica De Cuba 1950-1980	-	5,000.00(1)
Reimbursements of International Harvester Company employes for their losses of household goods and personal articles	-	18,595.00(2)
Inventory:		
Stores	8,502.03	8,500.00
Fiber	5,891.79	6,000.00
Other assets	<u>471.45</u>	<u>2,000.00</u>
Total current assets	<u>\$ 993,110.77</u>	<u>\$1,018,340.00</u>
Fixed assets:		
Land	\$ 187,099.71	\$4,130,000.00
Buildings	512,707.91	700,000.00
Fencing	6,620.25	12,000.00
Roads	40,631.14	60,000.00
Equipment and furniture	470,627.49	660,350.00
Cattle equipment	<u>203.55</u>	<u>750.00</u>
	\$1,217,890.05	\$5,563,100.00
Reserve for depreciation	<u>(770,005.62)</u>	<u>-</u>
	<u>\$ 447,884.43</u>	<u>\$5,563,100.00</u>
Land clearing and plant purchase	\$ 114,948.62	420,400.00
Amortization	<u>(96,933.83)</u>	<u>-</u>
	<u>\$ 18,014.79</u>	<u>\$ 420,400.00</u>
Total fixed assets	<u>\$ 465,899.22</u>	<u>\$5,983,500.00</u>
Total assets	<u>\$1,459,009.99</u>	<u>\$7,001,840.00</u>

(1) Represents investment in Cuban bonds, such investment not recorded on books.

(2) Represents reimbursements to International Harvester Company employes subsequent to 10/24/60 for losses sustained prior to 10/24/60.

	Investment Per Books <u>10-24-60</u>	Losses Claimed <u>10-24-60</u>
<u>Liabilities:</u>		
Accounts payable - trade	\$ 2,673.66	
Deposits received on workmen's houses	<u>10,960.75</u>	
Total liabilities	\$ <u>13,634.41</u>	
<u>Investment in Cuba:</u>		
Cuban Plantation	\$ 563,515.47	
Vives Warehouse	91,382.56	
Cuban motor truck distributor	145,977.40	
Advances	<u>644,500.15</u>	
Total investment	<u>\$1,445,375.58</u>	
Total liabilities and investment	<u>\$1,459,009.99</u>	<u>\$7,001,840.00</u>

The aforesaid reconstructed balance sheet, prepared as of October 24, 1960, concerning the current and fixed assets of the company, refers to the "Investment Per Books" and the "Losses Claimed". The record discloses that the investments, according to the books of claimant, concerning the rural property, such as La Conchita, with the La Conchita, Paraiso and Fadruga tracts of approximately 4,305 acres, were made during the years 1917 through 1925 by purchase; and the Vives and Alambique property in Havana was acquired in 1928 by purchase and the building erected in 1929. Such investments, in the amounts shown above, were made many years before loss of the properties and would not necessarily be indicative of the value of such properties at the time of loss in 1959-1960.

The record also discloses that in November 1958 the management of claimant decided to sell the property at Vives and Alambique, Havana; that the property was vacant after December 1958 because of the erection of new facilities on the highway from Havana to the airport and such property, known as Rancho Boyeros, was acquired by the subsidiary through purchase in 1957, with the building being completed in 1958. Evidence of record, including company correspondence, discloses that the Cuban employees were authorized

to sell the Vives Street property for 180,000 pesos; and that an offer was made by a prospective buyer in the amount of 166,000 pesos, although no sale was effected.

The record also includes a Statement of the Cuban employees concerning the value of the La Conchita plantation at the time of seizure by the Government of Cuba. This material establishes that the La Conchita, Paraiso and Fadruga tracts, comprised 4,305 acres, including extensive improvements, fences, rail lines, bridges, rolling stock, machinery, vehicles and extensive personal property; that the henequen plants were valued at \$781,663.00, as a minimum, at the time of loss; and that the total value of the plantation as reported to the INRA at time of seizure was \$3,567,590.00, although certain estimates were high and the actual value of the plantation, according to the report, was in the amount of \$3,404,717.00, as follows:

Value of land	\$1,403,971.00
Buildings and improvements	452,650.00
Roads	60,000.00
Fences	12,000.00
Rail lines and bridges	435,628.00
Rolling stock	43,200.00
Machinery and equipment	150,815.00
Furniture and Fixtures	
Office and Staff Houses	16,250.00
Miscellaneous equipment, machinery	42,390.00
Henequen plants	781,663.00
Corrals, milking equipment	<u>6,150.00</u>
Total	\$3,404,717.00

The Commission finds that the most equitable basis for determining the value of property owned directly by claimant in Cuba is the aforesaid reconstructed balance sheet as same pertains to current assets, and other evidence of record such as the values reported by company officials, with accompanying records, prepared at the time of loss. Thus, the Commission finds that the current assets of the claimant were in the amount of \$993,110.77; that the Vives Street property had a value of \$173,000.00 at the time of loss; that the plantation, La Conchita, had a value of \$3,404,717.00 at the time of loss; that the total value of the current and fixed assets were in the amount of \$4,570,827.77. Claimant's liabilities in Cuba, including accounts payable

and house deposits received, were in the amount of \$13,634.41. The Commission has consistently not deducted liabilities of a corporate claimant as it may remain liable for such obligations. In the absence of any compelling reason as to why they should be deducted, the Commission finds the asset figure of \$4,570,827.77 represents the loss involved.

The aforesaid summary of losses includes a claim for \$5,000.00 based upon the loss of five bonds of the issue known as 4% Bonds of the Public Debt of Cuba, 1950-1980, in the face amount of 5,000 pesos, equivalent to \$5,000.00. These bonds, submitted to the Commission as evidence of claimant's ownership of such securities, have attached interest coupons in the equivalent amount of \$20.00 each, payable semiannually on June 30 and December 31, with respect to each \$1,000 bond until maturity on June 30, 1980.

The Commission finds that claimant was the owner of such bonds and that claimant suffered a loss in that connection on October 24, 1960. No payments by the Government of Cuba, on the coupons attached to the bonds were due and outstanding on October 24, 1960, the date of loss. Accordingly, the Commission finds that on the date of loss, October 24, 1960, Cuba was indebted to claimant with respect to these 4% bonds in the total amount of \$5,000.00, and that claimant suffered such loss within the meaning of Title V of the Act.

(See Claim of Hartford Fire Insurance Company, Claim No. CU-0021.)

Claimant has submitted two assignments dated August 25, 1969, and September 8, 1969, executed by W. R. Setzler and Benjamin E. Parmele, former employees of the claimant in Cuba, whereby these employees assigned to claimant their claims against the Government of Cuba arising out of the asserted taking of their personal property, including household and personal effects.

The evidence of record establishes that the Messrs. Setzler and Parmele, nationals of the United States at all times pertinent to these claims, were employed as officers of the International Harvester Company of Cuba, claimant's subsidiary. Further, these employees left Cuba shortly after October 24, 1960, when the property of the subsidiary was nationalized by Cuba, and these

employees' personal property, having a value of \$18,595.00, was taken by the Government of Cuba after they left Cuba and before the assignments executed in 1969. In the absence of evidence to the contrary, the Commission finds that the property of these employees was taken by Cuba on December 15, 1960, and that claimant herein succeeded to their respective claims for such loss in the total amount of \$18,595.00. (See Claim of General Motors Corporation and General Motors Acceptance Corporation, Claim No. CU-3088.)

The claimant has also submitted a "Summary of Losses and Losses Claimed" concerning their subsidiary, International Harvester Company of Cuba, as of October 24, 1960:

	Investment Per Books <u>10-24-60</u> (Pesos)	Losses Claimed <u>10-24-60</u> (Pesos)
<u>Assets:</u>		
Cash:		
In banks	583,014.65	583,014.65
Petty cash	800.00	800.00
Government bonds	49,000.00	49,000.00
Revenue stamps	807.37	807.37
Receivables		
Wholesale, retail, and miscellaneous	1,993,021.22	2,127,659.14
Less: Reserve for losses	(250,000.00)	-
Special funds	128,812.44	128,812.44
Other assets	53,558.38	53,558.38
Commission receivable	151,150.00	151,150.00
Inventory	<u>1,347,543.02</u>	<u>1,637,264.75</u>
Total current assets	<u>4,057,707.08</u>	<u>4,732,066.73</u>
Fixed assets:		
Land	300,098.83	400,000.00
Building	437,720.39	537,000.00
Furniture and fixtures	154,917.76	154,917.76
Service station equipment	23,515.31	23,515.31
Field equipment	31,639.44	31,639.44
Assembly equipment	591.28	591.28
	<u>948,483.01</u>	<u>1,147,663.79</u>
Less: Reserve for depreciation	<u>(142,471.05)</u>	<u>-</u>
Total fixed assets	<u>806,011.96</u>	<u>1,147,663.79</u>
Total assets	<u>4,863,719.04</u>	<u>5,879,730.52</u>

	Investment Per Books <u>10-24-60</u> (Pesos)	Losses Claimed <u>10-24-60</u> (Pesos)
<u>Liabilities:</u>		
Accounts payable - trade	76,672.91	
Due International Harvester Company:		
Notes payable	643,938.15	
Current account	5,712.83	
Accrued interest	6,666.64	
Open account	562.00	
Due International Harvester Company of Germany and Great Britain	180,932.02	
Commissions payable	136,035.00	
Pension and other liabilities	<u>128,812.44</u>	
	1,179,331.99	
Reserve for contingencies	50,000.00	
Deferred income	<u>16,000.00</u>	
Total liabilities	<u>1,245,331.99</u>	
<u>Capital and Retained Earnings:</u>		
Capital	2,000,000.00	
Retained earnings	<u>1,618,387.05</u>	
Total capital and retained earnings	<u>3,618,387.05</u>	
Total liabilities and equity	<u>4,863,719.04</u>	<u>5,879,730.52</u>

The Commission finds that the most appropriate basis for an evaluation of the claimant's subsidiary, International Harvester Company of Cuba, is the reconstructed balance sheet of October 24, 1960, with evaluations of such fixed assets prepared on or about the time of loss. However, the Commission has consistently held that losses through investments in Cuban companies, such as the subsidiary in the instant claims, are to be determined on the basis of their net worth, not merely the asset value.

The Commission finds, however, that the "Reserve for Contingencies" is not properly a liability in this instance and will not be deducted from the

assets of \$4,863,719.04, resulting in total adjusted liabilities in the amount of \$1,195,331.99. The Commission finds that the net worth of the Cuban subsidiary is \$3,668,387.05.

The reconstructed balance sheet of the subsidiary includes, as liabilities, the sum of \$656,879.62, an indebtedness of the subsidiary due and payable to claimant, the parent corporation, including notes payable, current and open accounts, with accrued interest. The Commission has found that the International Harvester Company of Cuba was indebted to the claimant in this amount; that such sum remained unpaid when the Cuban firm was nationalized by the Government of Cuba; and that the claimant, INTERNATIONAL HARVESTER COMPANY, sustained a loss in this amount on October 24, 1960, within the meaning of Title V of the Act. This is listed among the assets of INTERNATIONAL HARVESTER COMPANY. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

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, as follows:

<u>FROM</u>	<u>ON</u>
December 22, 1959	\$4,397,827.77
April 21, 1960	173,000.00
October 24, 1960	3,673,387.05
December 15, 1960	<u>18,595.00</u>
	\$8,262,809.82

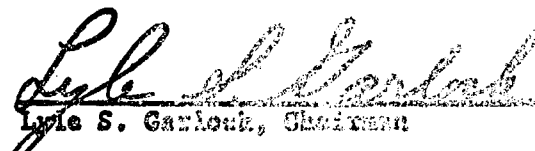
The following Certification of Loss will be entered and in all other respects the Proposed Decision is affirmed.

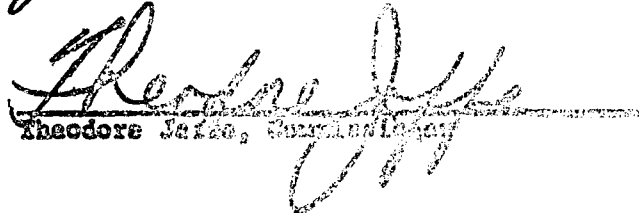
CERTIFICATION OF LOSS

The Commission certifies that INTERNATIONAL HARVESTER COMPANY 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 Eight Million Two Hundred Sixty-Two Thousand Eight Hundred Nine Dollars and Eighty-Two Cents (\$8,262,809.82) with interest at 6% per annum from the respective dates of loss to the date of settlement.

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

OCT 7 1970


Lyle S. Carlouk, 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 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).)

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Act of 1949, as amended

Claim No. CU-2458

Claim No. CU-2459

Decision No. CU -

1943

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the total amount of \$13,274,379.09, were presented by INTERNATIONAL HARVESTER COMPANY, and are based upon the asserted loss of stock interests, debts and improved real property and personal property located 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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant asserts the ownership of certain stock interests, debts and improved real property and personal property located in Cuba; however, claimant has submitted no documentary evidence in support of these claims. By Commission letter of July 18, 1967, claimant was advised as to the type of evidence proper for submission to establish these claims under the Act.

On November 13, 1967, claimant was invited to submit any evidence it might have within 60 days from that date, and claimant was informed that, absent such evidence, it might become necessary to determine the claims on the basis of the present record. This period was extended an additional 60 days, at claimant's request, on January 17, 1968. Claimant has not responded to that correspondence of the Commission and no evidence has been submitted in support of these claims.

The Commission finds that claimant has not met the burden of proof, in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, these claims are hereby denied. The Commission deems it unnecessary to determine other elements of these claims.

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

MAY 29 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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