

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

IN THE MATTER OF THE CLAIM OF

BRAGA BROTHERS, INCORPORATED

Under the International Claims Settlement
Act of 1949, as amended

Claim No CU -2526

Decision No. CU-6057

AMENDED FINAL DECISION

Under date of February 3, 1971, the Commission issued its Proposed Decision certifying a loss in favor of CZARNIKOW-RIONDA COMPANY, claimant's name of record, in the amount of \$12,612,873.34, plus interest, which was entered as the Final Decision of the Commission on March 15, 1971.

By letter dated September 24, 1971, the Commission was advised that as of December 19, 1969 claimant's name was changed to BRAGA BROTHERS, INCORPORATED. Accordingly, it is


ORDERED that the certification of loss, as restated below, be entered and that the Proposed Decision be affirmed in all other respects.


CERTIFICATION OF LOSS

The Commission certifies that BRAGA BROTHERS, INCORPORATED 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 Twelve Million Six Hundred Twelve Thousand Eight Hundred Seventy-Three Dollars and Thirty-Four Cents (\$12,612,873.34) with interest thereon 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 Final
Decision of the Commission

OCT 6 1971


Lyle S. Carlock, Chairman


Theodore Jaffe, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
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WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

CZARNIKOW-RIONDA COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 2526

Decision No. CU - 6057

Counsel for claimant:

Sullivan & Cromwell
By W. C. Pierce, 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 \$18,502,362.74, was presented by CZARNIKOW-RIONDA COMPANY based upon the asserted loss of investments in Cuban enterprises.

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 enter-

prises 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.

An officer of the claimant corporation, which was organized in 1909 under the laws of the State of New York, has certified that at all times pertinent hereto more than 50% of the outstanding capital stock was owned by nationals of the United States and that on April 28, 1967 91% of the outstanding capital stock was owned by nationals of the United States. The Commission holds that CZARNIKOW-RIONDA COMPANY qualifies as a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claim is asserted for the loss of investments owned directly by claimant or through Cuban Trading Company, a wholly-owned Cuban corporation, for the following:

Cespedes Sugar Company, S.A.	\$12,161,415.08
Cia. General Cubana de Almacenes Publicos, S.A.	3,026,550.79
Regla Coal and Oil Company	592,194.19
Other Assets Less Liabilities	122,202.68
Good Will	<u>2,600,000.00</u>
Total	\$18,502,362.74

Claimant also had an ownership interest in the Kenaf Corporation, a New York corporation which was dissolved in 1962 after a large part of its assets had been nationalized by the Government of Cuba. (See Claim of Manati Sugar Company, Claim No. CU-2525.)

The record establishes and the Commission finds that claimant was the sole owner of the capital stock of Cuban Trading Company, a Cuban corporation which was nationalized with its affiliated companies by the Government

of Cuba on August 6, 1960 under Resolution No. 1. The corporation was organized under the laws of Cuba and does not qualify as a corporate "national 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 interest owned in the Cuban enterprise.

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 Cuban Trading Company was engaged in the brokering of sugar and molasses for the mills and acted as agent for CZARNIKOW-RIONDA COMPANY in the purchase and shipment of sugar and molasses from Cuba. In addition to its own business, Cuban Trading Company owned 95.77% of the outstanding preferred stock and 92.90% of the outstanding common stock of Cespedes Sugar Company (which owned Caonao Agricultural Company); 99.65% of the capital stock of Compania General Cubana de Almacenes Publicos, S.A.; and 97.50% of the Regla Coal and Oil Company of Cuba. Regla Oil, in turn, owned 4.22% of the Cespedes common stock and 0.35% of the Almacenes Publicos stock.

1. Cespedes Sugar Company

Claimant asserts its ownership interest in Cespedes Sugar Company to have a value of \$12,161,415.08, the total value assertedly being \$13,976,833.46. In support of the asserted value, claimant has submitted an appraisal of the land, buildings, equipment and machinery; a copy of the claim filed with the Department of State in 1961; financial statements; and affidavits of company officers. Properties of Cespedes included an electrically driven sugar mill, Central Cespedes, over 34,000 acres of land, 53 miles of railroad with rolling stock, warehouses, telephone lines, workers' quarters, and electric plant. Its wholly owned subsidiary, Caonao Agricultural Company, grew sugar cane for processing at the Cespedes sugar mill.

On the basis of the evidence of record, the Commission finds that the value of the fixed assets of Cespedes and its subsidiary on August 6, 1960 were as follows:

Batey and Factory buildings	\$ 660,000.00
Cane weighing and unloading equipment	70,000.00
Cane grinding equipment	750,000.00
Furnace and Boiler equipment	500,000.00
Factory Pipe lines and valves	175,000.00
Clarification Plant	300,000.00
Evaporization Plant	350,000.00
Crystallizers and Centrifugals	350,000.00
Electric Plant and Power Lines	450,000.00
Factory Pumps	100,000.00
Electric Motors	50,000.00
Laboratory	5,000.00
Machine and Carpenter Shops	80,000.00
Railroad tracks, rolling stock	2,675,000.00
Agricultural Department	470,000.00
Telephone System	5,000.00
Tanks; molasses, water, oil	260,000.00
Furniture and Fixtures	50,000.00
Lands and Cultivations	<u>6,501,229.00</u>
Total	\$13,801,229.00

On the basis of the records submitted, the Commission finds that the value of the assets of Cespedes which were not included in the list above amounted to \$2,678,139.42, including a value of \$33,000.00 for its investment in Ferrocarriles Occidentales de Cuba, S.A. and a value of \$100,000.00 for livestock which is determined to be fair and reasonable. The

liabilities are found to be a total of \$3,728,122.28 including \$894,000.80 for First Mortgage Bonds and \$18,749.17 for interest due on these bonds to August 6, 1960. The liabilities thus exceeded the other assets by \$1,049,982.86.

The Commission further finds that the assets of Caonao Agricultural Company, other than its fixed assets included in the listing above, had a value of \$134,760.01 on August 6, 1960 and the total liabilities amounted to \$841,412.43, making an excess of liabilities over these assets of \$706,652.42. Accordingly, the Commission finds that the net worth of Cespedes Sugar Company and its subsidiary on August 6, 1960 amounted to \$12,044,593.72 (\$13,801,229.00 less the amounts of \$1,049,982.86 and \$706,652.42). Because the appraisal lumped the fixed assets of both companies, a separate net worth for Caonao is not determined.

Of the net worth of \$12,044,593.72, the Commission finds that the preferred shareholders are entitled to \$217,504.00 for the par value of the shares plus unpaid dividends totalling \$354,757.95 for dividends unpaid up to August 6, 1960, the date of loss, approximately \$2.6310 per share. Thus the loss sustained by the common stockholders for their equity in the net worth amounted to \$11,472,331.77 and the loss per share for each of the 782,496 shares of common stock outstanding on August 6, 1960 was \$14.6612.

The Commission concludes that Cuban Trading Company as the holder of 208,292 preferred shares (95.77%) and 726,927 common shares (92.90%) of Cespedes Sugar Company suffered a loss in the amount of \$548,055.27 for the preferred shares and \$10,657,796.21 for its common shares or a total of \$11,205,851.48.

2. Cia General Cubana de Almacenes Publicos, S.A.

This company operated a sugar warehousing business in Matanzas, Cuba. It owned nine warehouses with 62,561.35 square meters of land and its equipment included barges, special railroad cars, rebagging equipment and winches. Claimant asserts a value of \$3,037,023.28 for this firm in 1960, including the amount of \$1,250,000.00 for good will. In support of the claimed value, claimant has submitted an appraisal of the buildings, land and equipment

located in Matanzas, a copy of Almacenes Publicos balance sheet dated December 31, 1959 and a statement of its profits and dividends for several years.

On the basis of the appraisal, the Commission finds that the value of Almacenes Publicos buildings, equipment and land in Matanzas were \$1,618,000.00 on August 6, 1960. The Commission further finds that Almacenes Publicos had current assets which exceeded its liabilities by the amount of \$283,005.12 at the time of loss, and therefore the net worth of this company on August 6, 1960 was \$1,901,005.12. Thus the loss sustained for each of the 2,900 shares of capital outstanding at the time of loss amounted to \$655.5190 per share.

The Commission concludes that Cuban Trading Company as the holder of 2,890 shares of Almacenes Publicos capital stock suffered a loss in the amount of \$1,894,449.91.

The amount of \$1,250,000.00 was asserted as the value of the good will of Almacenes Publicos based upon its average earnings and the dividends paid. However, the Commission finds no basis for allowing good will with an average profit of only \$146,900.00 for thirteen years, which is less than 10% of the value of the fixed assets.

3. Regla Coal and Oil Company

Claim is asserted herein for \$592,194.19 for the nationalization of Regla Coal and Oil Company in which the Commission finds that Cuban Trading Corporation had a stock interest. The assets of Regla consisted of cash, coal on hand, warehouses and their contents, 33,000 shares of Cespedes Sugar Company common stock and 10 shares of Almacenes Publicos common stock. Of the 1,000 shares of common stock issued by Regla, 975 were owned by Cuban Trading Company on August 6, 1960.

On the evidence of record, the Commission finds that the assets of Regla, excluding its shares of Cespedes and Almacenes Publicos, exceeded its liabilities by the amount of \$69,036.06. As determined above, a share of Cespedes Sugar Company common stock was worth \$14.6612 and a share of

Almacenes Publicos was worth \$655.5190 per share at the time of loss. Accordingly, the loss suffered by Regla for its ownership in Cespedes and Almacenes Publicos was \$483,819.60 and \$6,555.19, respectively and the total value of Regla at the time of loss therefore amounted to \$559,410.85.

The Commission concludes that Cuban Trading Company as holder of 975 shares of the 1,000 outstanding shares of Regla stock suffered a loss in the amount of \$545,425.58.

4. Other Assets Less Liabilities

Claimant asserts a loss of an additional amount of \$122,202.68 for the loss of Cuban Trading Company based upon the balance sheet for November 30, 1959, the amount being the difference between the listed assets and the liabilities. However, in listing the liabilities, claimant has omitted a liability in the amount of \$871,546.88 due and owing to claimant by Cuban Trading Company. Therefore no excess of assets over the actual liabilities is established and claim for such is hereby denied.

On the basis of all the foregoing, the Commission finds that the assets and liabilities of Cuban Trading Company on August 6, 1960 to be as set forth below. Advances made to nationals of the United States such as Bernardo Braga, George Braga, Garcia, Diaz y Compania, Francisco Sugar Company, Manati Sugar Company, and New Tuinucu Sugar Company are omitted as assets since debts due from American nationals may not be allowed unless they constitute charges on property nationalized, expropriated, intervened, or otherwise taken by the Government of Cuba. (See Claim of Anaconda American Brass Company, Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.) Since the record does not establish that these advances in the amount of \$1,390,214.97 were charges on property within the meaning of Section 505(a) of the Act, they are not considered in determining the net worth on August 6, 1960.

Cuban Trading Company

Assets

Current Assets		\$ 2,521,429.08
Fixed Assets		75,672.43
Investments		
Cespedes Sugar Company	\$11,205,851.48	
Almacenes Publicos	1,894,449.91	
Regla	545,425.58	
Other	15,647.00	<u>13,661,373.97</u>
Total Assets		\$16,258,475.48

Liabilities

Current Liabilities	\$ 767,226.22	
Bank Loans	3,113,534.58	
Czarnikow-Rionda	871,546.88	
Total Liabilities		<u>\$ 4,752,307.68</u>

Excess of Assets over Liabilities or Net Worth \$11,506,167.80

The Commission finds that claimant suffered a loss in the amount of \$11,506,167.80 for its ownership interest in Cuban Trading Company.

Further the Commission finds that the Cuban entities, Cuban Trading Company and Cespedes Sugar Company were indebted to the claimant in the amounts of \$871,546.88 and \$223,400.00, respectively, for a total of \$1,094,946.88. These debts as debts of nationalized enterprises are certifiable under Title V of the Act (see Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966]) and the Commission finds that claimant suffered a loss in the amount of \$1,094,946.88 in this connection.

On the basis of the evidence of record, the Commission also finds that claimant owned 21,799 shares of the 41,495 shares of the outstanding capital stock of Kenaf Corporation. The Kenaf Corporation, a New York corporation, was dissolved in 1962 after a major portion of its assets were nationalized by the Government of Cuba on May 25, 1960. Accordingly, the Commission finds that claimant is entitled to file this claim for its ownership interest in the assets of Kenaf Corporation. (See Claim of Manati Sugar Company, FCSC Claim No. CU-2525.) The Commission previously found that the total loss suffered by Kenaf was \$22,382.95 (See Manati, supra) and the Commission now finds that claimant's interest in such loss on May 25, 1960 amounted to \$11,758.66.

5. Good Will

Claim is asserted in the amount of \$2,600,000.00 for the loss of good will attributed to Cuban Trading Company. Claimant states that Cuban Trading Company was organized in 1907 and that it handled supplies of sugar bags, coal, fuel and other operating needs of mills, served in an advisory capacity for mills, and acted as broker in the marketing of sugar and molasses and as agent for claimant in the purchase and shipment of sugar and molasses from Cuba. Claimant further asserts that Cuban Trading Company handled the shipping and marketing of over 20% of Cuba's production annually. The amount claimed appears based upon the fact that claimant was saved the amount of \$260,000.00 annually for the ten years prior to its nationalization. From the evidence submitted, it appears that claimant was not required to pay any brokerage commission to Cuban Trading Company for its services. Claimant has also submitted a balance sheet dated November 30, 1959, which indicates a loss for the Trading Company for the period covered by the balance sheet.

On the basis of the evidence submitted, the Commission is not convinced that the history of Cuban Trading Company would lead a willing purchaser to pay an additional amount for good will over and above the net worth of the company. As agent for claimant, benefits appear to have inured to the claimant and not to the Trading Company. Accordingly, this portion of the claim is denied.

The Commission concludes that claimant suffered losses within the meaning of Title V of the Act on the dates and in the amounts as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>
Investment in Kenaf	May 25, 1960	\$ 11,758.66
Cuban Trading Company	August 6, 1960	11,506,167.80
Debts	August 6, 1960	<u>1,094,946.88</u>
	Total Loss	\$12,612,873.34

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:


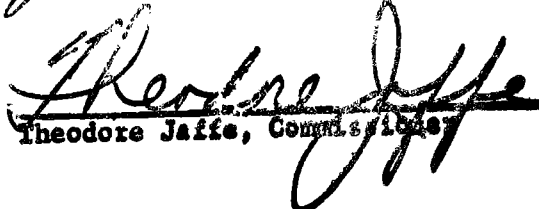
<u>FROM</u>	<u>ON</u>
May 25, 1960	\$ 11,758.66
August 6, 1960	<u>12,601,114.68</u>
Total	\$12,612,873.34

CERTIFICATION OF LOSS

The Commission certifies that CZARNIKOW-RIONDA 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 Twelve Million Six Hundred Twelve Thousand Eight Hundred Seventy-Three Dollars and Thirty-Four Cents (\$12,612,873.34) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

FEB 3 1971


 Lyle S. Garlock, 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).)