

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

IN THE MATTER OF THE CLAIM OF

KRAFTCO CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3071

Decision No. CU-3874

Counsel for claimant:

James W. Mason, Esq.

FINAL DECISION

Under date of September 11, 1969, the Commission issued its Proposed Decision certifying a loss in favor of NATIONAL DAIRY PRODUCTS CORPORATION, claimant's name of record, in the amount of \$240,178.14 plus interest.

By letter, dated September 16, 1969, counsel for claimant advised the Commission that as of April 18, 1969 claimant had changed its name to KRAFTCO CORPORATION. Moreover, it appears from counsel's communication that there are no objections to the Commission's Proposed Decision. 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 KRAFTCO 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 Two Hundred Forty Thousand One Hundred Seventy-eight Dollars and Fourteen Cents (\$240,178.14) 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 Final
Decision of the Commission

OCT 8 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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Counsel for claimant:

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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 \$240,178.00, was presented by NATIONAL DAIRY PRODUCTS CORPORATION based upon asserted losses of its 100% stock interest in a Cuban subsidiary, certain personal property in Cuba, and a debt due from a Cuban concern.

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 shows that claimant was organized under the laws of Delaware and that at all pertinent times more than 50% of its outstanding capital stock was owned by nationals of the United States. An officer of claimant has stated that as of December 31, 1966, over 98% of claimant's outstanding capital stock was owned by persons with addresses in continental United States, American Samoa, the Canal Zone, Puerto Rico, and the Virgin Islands, from which he concluded that at least 90% of claimant's outstanding capital stock was owned by nationals of the United States at that time. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Stock Interest

The Commission finds on the basis of the evidence of record that claimant owned a 100% stock interest in Alimentos Kraft de Cuba, S.A. (Kraft Food Company of Cuba, Inc.), hereafter called the Cuban subsidiary, which operated a food plant at Guanajay, Cuba. Stock certificates evidencing claimant's ownership of the Cuban subsidiary are included in the record.

The evidence also includes a detailed report, dictated March 20, 1961, setting forth certain facts concerning the taking of the Cuban subsidiary's plant by Cuban authorities toward the end of February 1961, and an affidavit from a former employee of the Cuban subsidiary from September 26, 1956 to

February 24, 1961, when he fled Cuba to secure his personal safety. In that affidavit, this former employee of the Cuban subsidiary confirmed the facts stated in the said report dictated on March 20, 1961.

On the basis of the entire record, the Commission finds that the Cuban subsidiary was effectively nationalized or otherwise taken by the Government of Cuba on February 27, 1961, as asserted by claimant.

Since the Cuban subsidiary was organized under the laws of Cuba, it does not qualify as a national of the United States within the meaning of Section 502(1)(B) of the Act, quoted above. It has been previously held that an American stockholder, owning an interest in such a corporation, may file a claim based upon his stock, which represents an ownership interest in the nationalized enterprise within the meaning of Section 502(3) of the Act. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

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". The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

The evidence includes a copy of the Certificate of Incorporation for the Cuban subsidiary, showing its incorporation on September 23, 1957;

balance sheets and profit and loss statements for the Cuban subsidiary as of December 31, 1957, December 31, 1958, December 31, 1959, and December 31, 1960, and a balance sheet as of January 28, 1961, all of which financial statements were prepared on the basis of information reported by the Cuban subsidiary to claimant, and certified as such by an authorized officer of claimant; as well as statements from officials of claimant concerning this claim.

On the basis of all the evidence of record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown in the latest balance sheet for the Cuban subsidiary as of January 28, 1961. That balance sheet shows net assets in the amount of \$244,701.00 and total liabilities in the amount of \$34,680.00.

Accordingly, the Commission finds that the net worth of the Cuban subsidiary or the excess of its assets over its liabilities was \$210,021.00, and concludes that claimant sustained a loss on February 27, 1961 in that amount within the meaning of Title V of the Act.

Tangible Personal Property

It appears from affidavits executed on November 6, 1967 by the Transport Supervisor and the Controller, respectively, of claimant's Kraft Food Division at Lakeland, Florida, that glass jars and caps had been shipped by the Florida Division to the Cuban subsidiary between 1957 and 1960. According to arrangements between the Florida Division and the Cuban subsidiary, the jars were to be filled with fruit items processed by the Cuban subsidiary and returned to the Florida Division. For shipping purposes only, the Florida Division had prepared pro forma invoices indicating the value of each shipment. The cost of each shipment and all additional charges were defrayed by the Florida Division, and while located temporarily on the premises of the Cuban subsidiary, the jars and caps remained the property of claimant's Florida Division. When the filled jars were returned to the Florida Division, the Cuban subsidiary was credited with the value of the contents.

Included in the record are copies of the pro forma invoices and memoranda from the Cuban subsidiary acknowledging receipt of the jars and caps. An authorized officer of claimant has certified that according to claimant's books and records, its jars and caps, having an aggregate value of \$19,992.00, were on the premises of the Cuban subsidiary on February 27, 1961, when the Cuban Government nationalized or otherwise took the Cuban subsidiary. The Commission, therefore, finds that claimant sustained a loss on February 27, 1961 in the amount of \$19,992.00 on account of the said jars and caps.

Debt

Claimant has submitted a copy of its statement, dated October 28, 1960, prepared from its books and records, indicating that it had shipped its Kraft products to a Cuban consignee, Cuban American Foods Company, of Havana, Cuba. The record shows that this was an open account, the last debit entry being dated July 24, 1959. It further appears that the Cuban consignee had purchased products in the aggregate amount of \$22,498.46, and had made payments to claimant in the aggregate amount of \$12,333.32, leaving a net debt due claimant in the amount of \$10,165.14. Claimant states that it has never received any payments on account of this debt.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter, the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by

the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba. Inasmuch as the loss would, generally, have been found to have occurred 30 days after the date of the last debit entry in the said open account, which would be August 23, 1959, a date prior to the effective date of Law 568, the Commission finds that the loss in this case occurred on September 29, 1959, the effective date of Law 568.

Recapitulation

Claimant's losses may be summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Stock Interest	February 27, 1961	\$210,021.00
Tangible Personal Property	February 27, 1961	19,992.00
Debt	September 29, 1959	<u>10,165.14</u>
	Total	<u>\$240,178.14</u>

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 as follows:

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$ 10,165.14
February 27, 1961	<u>230,013.00</u>
Total	<u>\$ 240,178.14</u>

CERTIFICATION OF LOSS

The Commission certifies that NATIONAL DAIRY PRODUCTS 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 Two Hundred Forty Thousand One Hundred Seventy-eight Dollars and Fourteen Cents (\$240,178.14) 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 Proposed
Decision of the Commission

SEP 11 1960

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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