

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

IN THE MATTER OF THE CLAIM OF

SEASHORE FOOD PRODUCTS, INC.

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No. CU - 3163

Decision No. CU - 6814

Counsel for claimant:

Herbert Wall, 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 amended amount of \$179,211.95, was presented by SEASHORE FOOD PRODUCTS, INC. based upon the asserted loss of a stock interest in a Cuban corporation.

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 owned 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, formerly known as Seashore Food and Pickle Products, Inc., was organized under the laws of Florida, 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 certified that as of April 28, 1967, all of claimant's outstanding capital stock was owned by 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 evidence establishes and the Commission finds that at all pertinent times claimant owned all of the outstanding capital of Cia. Pepinera del Caribe, S.A. (Pepinera), a Cuban corporation.

Since Pepinera 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 a stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Commission finds on the basis of affidavits from individuals having personal knowledge of the facts that Pepinera was intervened by the Government of Cuba in November 1960. In the absence of evidence to the contrary, the Commission finds that the intervention occurred on November 15, 1960.

The record includes statements made to the Department of State; copies of inventories prepared at the time Pepinera's properties were taken; affidavits from officers of claimant and its former Cuban attorney; and a copy of a balance sheet as of the date of loss reconstructed by claimant's accountants from the said inventories and other records maintained by claimant.

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 interest 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.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate in this case and equitable to the claimant is that shown by the said reconstructed balance sheet. This discloses that Pepinera had a net worth of \$179,211.95. The Commission therefore finds that claimant's stock interest in Pepinera had a value of \$179,211.95 on November 15, 1960, the date of loss.


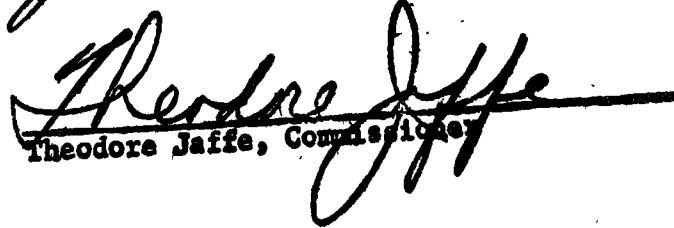
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that SEASHORE FOOD PRODUCTS, 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 One Hundred Seventy-nine Thousand Two Hundred Eleven Dollars and Ninety-five Cents (\$179,211.95) with interest at 6% per annum from November 15, 1960 to the date of settlement.

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

SEP 15 1971


Lyle S. Garlock, 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 (1970).)