

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

IN THE MATTER OF THE CLAIM OF

DEL MONTE CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0460

Decision No. CU

3414

Counsel for claimant:

Pillsbury, Madison & Sutro
by William B. Christy IV, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by DEL MONTE CORPORATION in the amount of \$163,733.00 plus interest. The claim is based upon the nationalization or other taking by the Government of Cuba of the corporation Productos Del Monte de Cuba, S.A., in Havana, 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.

Officers of the claimant corporation have certified that the claimant, formerly known as California Packing Corporation, was organized in the State of New York; that more than 99.5% of its outstanding capital stock is owned by United States nationals; and that at all times between October 19, 1916 and presentation of this claim on September 24, 1965, more than 50% of its outstanding capital stock was owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The Commission finds on the basis of evidence of record that claimant was the sole shareholder of Productos Del Monte de Cuba, S.A., a corporation organized and incorporated on February 26, 1960 under the laws of Cuba, engaged in purchasing canned tomato sauce from Cuban sources for subsequent resale under the Del Monte label, and furnishing technical assistance to Cuban growers and processors. The Commission further finds that Productos Del Monte de Cuba, S.A., was nationalized by the Government of Cuba on August 28, 1961. The Commission concludes that claimant sustained a loss with respect to its ownership interest in Productos Del Monte de Cuba, S.A., on August 28, 1961, as a result of the nationalization of that enterprise.

Claimant has stated that its losses as a result of such nationalization were as follows:

Cash	\$156,640
Revolving fund	500
Inventories	3,175
Prepaid charges	<u>3,418</u>
Total	\$163,733

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.

In support of its claim, claimant has submitted a balance sheet for Productos Del Monte de Cuba, S.A., as of June 30, 1961, and certain bank statements. In the absence of other evidence, the Commission concludes that book value, determined from the balance sheet of June 30, 1961, with certain adjustments hereinafter described, is the most appropriate basis of valuation of the Cuban enterprise at the time of its nationalization.

The balance sheet of June 30, 1961 indicates the following:

Assets

Cash in bank	\$170,012.74
Revolving fund	500.00
Inventories of materials and supplies	3,174.95
Deferred charges	<u>3,409.28</u>
	<u>\$177,096.97</u>

Liabilities

Accrued interest	\$ 23.55
Notes payable	4,295.03
Income tax payable	13,255.04
Other taxes payable	108.71
Capital stock	1,000.00
Retained earnings	<u>158,414.64</u>
	<u>\$177,096.97</u>

With respect to the item "Cash in bank", claimant has submitted a bank statement dated December 31, 1960 from Banco Continental Cubano showing a balance in favor of Productos Del Monte de Cuba, S.A., of 181,899.38 pesos, and a statement of April 27, 1962 from Banco Nacional de Cuba (then the successor to Banco Continental Cubano) showing a balance of 156,533.66 pesos. The latter statement includes charges of 2 pesos made after the nationalization of Productos Del Monte de Cuba, S.A. Accordingly, the sum of \$156,535.66, the equivalent of 156,535.66 pesos, will be substituted for the sum of \$170,012.74 appearing as "Cash in bank" in the balance sheet. The difference is accounted for in part by indication that the two tax items in the balance sheet, totalling \$13,363.75, were paid. Thus, in further adjustment of the balance sheet, these items are eliminated. As a final adjustment, the asset item of \$3,409.28 for "Deferred charges" is eliminated, since the balance sheet reveals that this represents the unamortized balance of organizational expenses. This would appear to be merely a bookkeeping expense item, and should not be considered as an asset for purposes of certification of loss. Accordingly, deducting total liabilities of \$4,318.58 from total assets of \$160,210.61, the Commission finds the value of Productos Del Monte de Cuba, S.A., at the time of its nationalization to have been \$155,892.03; and concludes that claimant, as sole owner of the nationalized enterprise, suffered a loss in that amount on August 28, 1961 within the meaning of Title V of the International Claims Settlement Act of 1949, as amended.

The balance sheet of June 30, 1961 also discloses that the notes payable in the amount of \$4,295.03 were owed to the claimant corporation. Thus, claimant occupied the status of a creditor of the nationalized enterprise, as well as the owner of all of its outstanding capital stock. As a debt owed by an enterprise nationalized by the Government of Cuba, this also constituted "property" as defined in Section 502(3) of the Act; and that property was lost by claimant when the debtor corporation was nationalized. Accordingly, the Commission concludes that in its creditor status, claimant suffered a further loss of \$4,295.03 on August 28, 1961 within the meaning of Title V of the Act.

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 DEL MONTE 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 One Hundred Sixty Thousand One Hundred Eighty-seven Dollars and Six Cents (\$160,187.06) with interest thereon at 6% per annum from August 28, 1961 to the date of settlement.

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

JAN 8 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).)