

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

IN THE MATTER OF THE CLAIM OF

SWIFT & COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2577

Decision No. CU 3976

Counsel for claimant:

Arthur C. O'Meara, 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 \$6,053,239.00, was presented by SWIFT & COMPANY based upon the asserted loss of certain real and personal property 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 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 Illinois, and that it owned a 100% stock interest in Swift & Company Packers, a corporation organized under the laws of Nevada. An authorized officer of claimant has certified that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States, and that as of June 15, 1967, 99-1/2% of claimant's outstanding capital stock was owned by nationals of the United States. The Commission holds that claimant and Swift & Company Packers, hereafter called the subsidiary, are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

Under date of October 3, 1960, the subsidiary assigned to its parent, the claimant herein, all its rights and interests with respect to assets which it had in Cuba.

It appears from the evidence of record that the subsidiary had operated two branches in Cuba; namely, a plant and refinery for the processing of meats, fats and oils, and a warehouse, all in Havana, and a warehouse at Santiago de Cuba for the distribution of food products. In connection with these activities, the subsidiary owned certain real and personal property, including land, buildings, machinery and equipment, bank accounts, furniture and fixtures, office equipment, automobiles, merchandise, accounts receivable from Cuban nationals and the Government of Cuba, and certain Cuban securities.

On August 24, 1960, the Cuban Minister of Labor issued Resolution No. 16796, pursuant to Law 647 of November 24, 1959, by which the subsidiary's assets in Cuba were intervened. The Commission finds that as a result of the intervention by the Government of Cuba the subsidiary sustained a loss within the meaning of Title V of the Act, and that claimant succeeded thereto by virtue of the assignment of October 3, 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 evidence includes reports from abroad; a copy of a document, dated December 10, 1953, which the subsidiary filed with Cuban authorities, thereby registering some of the real property claimed herein; photographs of the property; and a copy of a deed, dated August 23, 1960 in Havana, Cuba, by which the subsidiary acquired title to an office building and land in Havana at a cost of \$1,675,000.00 (the Cuban peso being on a par with the United States dollar), which amount was deducted from the branches' bank account credit balances.

The record includes copies of documents indicating the payment of real estate taxes to Cuba by the subsidiary; and copies of trial balances for the Cuban branches as of July 23, 1960, certified by the respective branch managers. Additionally the file contains letters from claimant and the subsidiary to the Department of State, and statements from officials of claimant to the Commission concerning this claim.

Claimant has computed its claim on the basis of the branches' trial balances of July 23, 1960, rounding off the figures and adding its own original claim for merchandise shipped to Cuba, as follows:

	<u>Havana Cuba</u>	<u>Santiago Cuba</u>	<u>Total</u>
Land	\$ 149,172.00	\$ 31,000.00	\$ 180,172.00
Buildings	\$2,310,263.00	\$ 158,413.00	
Less Depreciation	<u>205,821.00</u>	<u>91,974.00</u>	
Net Book Value	<u>\$2,104,442.00</u>	<u>\$ 66,439.00</u>	<u>\$2,170,881.00</u>
Machinery	\$ 386,823.00	\$ 14,331.00	
Less Depreciation	<u>234,084.00</u>	<u>4,656.00</u>	
Net Book Value	152,739.00	9,675.00	\$ 162,414.00
Furniture and Minor Equipment	161,043.00	9,323.00	
Less Depreciation	<u>106,882.00</u>	<u>8,302.00</u>	
Net Book Value	54,161.00	1,021.00	55,182.00
Office Machinery	30,430.00	8,498.00	
Less Depreciation	<u>22,326.00</u>	<u>6,703.00</u>	
Net Book Value	8,104.00	1,795.00	9,899.00
Delivery & Automotive Equipment	72,916.00	22,953.00	
Less Depreciation	<u>47,820.00</u>	<u>12,395.00</u>	
Net Book Value	25,096.00	10,558.00	35,654.00
Cash	(162,762.00)	709,167.00	546,405.00
Inventories - Product and Supplies	1,349,782.00	124,321.00	1,474,103.00
Unpaid Sight Drafts for U.S. Shipments to Cuba	<u>432,728.00</u>	<u>-</u>	<u>432,728.00</u>
	<u>\$1,859,848.00</u>	<u>\$ 856,537.00</u>	<u>\$2,716,385.00</u>
Securities - Occidental Railroad	<u>\$ 33,200.00</u>	<u>\$ -</u>	<u>\$ 33,200.00</u>
Debts	<u>\$ 830,819.00</u>	<u>\$ 121,782.00</u>	<u>\$ 952,601.00</u>
Total Amount of Claim	<u>\$4,977,481.00</u>	<u>\$1,075,758.00</u>	<u>\$6,053,239.00</u>

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the properties and equitable to the claimant are those shown in the trial balances for the two branches as of July 23, 1960, except as indicated below.

1. Land

Land is recorded in the trial balances in the aggregate amount of \$180,172.15, which the Commission finds was the value thereof on August 24, 1960, the date of loss.

2. Buildings

Buildings are recorded in the trial balances in the aggregate amount of \$495,881.67, after deductions for depreciation. As stated above, however, the evidence establishes that the subsidiary had acquired title to a certain office building and land in Havana by deed dated August 23, 1960, one day before intervention by the Government of Cuba, at a cost of \$1,675,000.00. Accordingly, the Commission finds that on August 24, 1960, the date of loss, the buildings had an aggregate value of \$2,170,881.67.

3. Machinery, Furniture and Minor Equipment, Office Machinery, and Delivery Equipment

Machinery, furniture and minor equipment, office machinery, and delivery equipment are recorded in the trial balances in the respective aggregate amounts of \$162,413.35, \$55,181.33, \$9,898.55, and \$35,654.24, after deductions for depreciation. The Commission finds that the said items of property had those values on August 24, 1960, the date of loss.

4. Cash

Cash in banks and on hand are recorded in the trial balances in the aggregate amount of \$2,221,404.94. As noted above, the record shows that \$1,675,000.00 had been withdrawn in full payment of the real property acquired by the subsidiary on August 23, 1960. The Commission, therefore, finds that the aggregate value of the cash in banks and on hand on August 24, 1960, the date of loss, was \$546,404.94.

5. Inventories

The record contains a detailed schedule showing the various items which are included under the heading "Inventories", and set forth in the trial balances in the aggregate amount of \$1,474,102.69. An examination of that schedule establishes the following:

(a) The aggregate net amount of inventory at the Santiago branch was \$124,320.55.

(b) The aggregate net amount of \$1,349,782.14, shown as the inventory at the Havana branch, includes: a receivable due from the Santiago branch in the amount of \$425,148.10, less a debt owing to that branch in the amount of \$403,125.67, or a net receivable of \$22,022.33; advanced vacation salaries in the aggregate amount of \$437.21; a claim against claimant in the amount of \$37.94; prepaid rent in the amount of \$169.40; and a receivable in the amount of \$18.00. The total amount of these items, other than the net receivable, is \$662.55, and clearly they do not constitute inventory. Claimant's detailed schedule indicates concurrence in this respect.

It appears, however, that claimant is asserting a loss of inventory in the amount of \$22,022.33, representing a net receivable due from the Santiago branch to the Havana branch. Claimant's letter of August 28, 1969 explains that this receivable arose out of shipments of products from the Havana branch to the Santiago branch, which were duly recorded as receivables and payables in the respective books of the branches and reflected in the trial balances of July 23, 1960. Accordingly, it is clear that the respective books also recorded an appropriate reduction in the inventory of the Havana branch and an increase in the inventory of the Santiago branch. Inasmuch as the inventories of the branches as shown in the trial balances of July 23, 1960 are being allowed herein, the further allowance of \$22,022.33 for this net receivable would be a mere duplication. For the foregoing reasons, the portion of the claim based upon the net receivable in the amount of \$22,022.33 is denied.

The portion of the claim in the amount of \$662.55 for the other receivables is discussed hereafter under the heading "Debts".

On the basis of the foregoing, the Commission finds that the trial balance values of the inventories in the Santiago and Havana branches were \$124,320.55 and \$1,327,097.26, or the aggregate amount of \$1,451,417.81.

It is noted from claimant's letter of August 28, 1969 that there were instances when shipments from the Havana branch were confiscated while

enroute to the Santiago branch. This item is shown in another detailed schedule, discussed under the heading "Debts". Therein appears an item indicating a home office adjustment of "in transit" items of property between the two branches in the amount of \$15,044.87. The Commission finds that this item constituted additional inventory not reflected in the trial balances of July 23, 1960.

Accordingly, the Commission finds that the aggregate value of the inventories on August 24, 1960, the date of loss, was \$1,466,462.68.

6. Unpaid Sight Drafts

The record establishes that claimant shipped certain products, having a value of \$432,728.00, to the Havana branch. It further appears that bank funds in that amount were withdrawn and deposited in a local Cuban bank for transmittal to claimant. Appropriate entries were made in the branch records so that the trial balance of July 23, 1960 reflected the net cash after such withdrawal. The Cuban authorities, however, failed to grant permission for transmittal of the funds and claimant, therefore, never received payment for the products. Claimant's letter of September 7, 1960 to the Department of State indicates that the deposit of the funds in the local bank was made "some weeks ago". In the absence of evidence to the contrary, the Commission finds that said deposit occurred on July 15, 1960.

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. In the absence of evidence to the contrary, the Commission finds that the loss in the amount of \$432,728.00 occurred on July 16, 1960, one day after deposit in the local Cuban bank.

7. Securities

The record shows that the subsidiary owned shares of stock in Ferrocarriles Occidentales de Cuba, S.A., maintained in Cuba and therefore no longer available to claimant.

Since that corporation 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 interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

It appears that these shares of stock were recorded in the trial balance of the Havana branch as of July 23, 1960 at cost, \$33,200.00. In the absence of evidence to the contrary, the Commission finds that the value of these shares of stock on August 24, 1960, the date of loss, was \$33,200.00. (See Claim of Ruth Anna Haskew, Claim No. CU-0849.)

8. Debts

The record contains a detailed schedule showing the various items which are included under the heading "Debts", and set forth in the trial balances in the aggregate amount of \$952,600.34. An examination of that schedule in the light of claimant's explanations in its letter of August 28, 1969 establishes the following:

(a) Except as noted under (b) hereof, all of the items in this schedule represented net amounts due from the Government of Cuba and from sundry Cuban nationals and Cuban enterprises, as well as certain prepaid expenses. The Commission finds that these items constituted property within the meaning of Section 502(3) of the Act.

(b) Taxes due the Government of Cuba in the amount of \$1,086.92, set forth in that schedule as a deduction, are discussed below under the heading "Deductions"; and "in transit" items in the amount of \$15,044.87, likewise included therein, are being allowed as inventory under paragraph 5 above.

On the basis of the foregoing, the Commission finds that the values of the debts and prepaid expenses aggregated \$938,642.39.

As indicated under paragraph 5 above, the schedule of inventories included certain receivables in the amount of \$662.55 which were eliminated therefrom. The Commission finds on the basis of the evidence of record that out of that amount the sum of \$624.61 represented debts constituting property within the meaning of Section 502(3) of the Act. The remainder thereof, \$37.94, is asserted as a claim against claimant. Since all of the assets at both branches were owned by the subsidiary, to which claimant succeeded by assignment, this receivable is in effect due from claimant to itself. In any event, this amount would have to be deducted under the theory of set-off. (See Claim of Simmons Company, Claim No. CU-2303.) Accordingly, the portion of the claim for \$37.94 is denied.

The Commission finds that the aggregate value of the debts and prepaid expenses on August 24, 1960, the date of loss, was \$939,267.00.

Deductions

The record shows that the subsidiary was indebted to the Government of Cuba for certain taxes which must be deducted in determining the amount of loss under Title V of the Act. (See Claim of Simmons Company, supra.) According to the trial balances and claimant's explanations in its letter of August 28, 1969, the subsidiary was indebted to the Government of Cuba as follows:

<u>Item</u>	<u>Amount</u>
Reserve for deposits on protested taxes	\$ 1,086.92
Maternity taxes	377.14
Employees' Cuban income tax deductions	1,520.66
Sales taxes	1,517.06
Reserve for Cuban income taxes	68,355.61
4% Employees' payroll taxes	1,744.97
Retirement fund taxes	<u>4,268.81</u>
Total	<u>\$78,871.17</u>

The Commission concludes that the foregoing deductions should be applied to the losses on August 24, 1960 of the assets of the two branches and not to the loss on July 16, 1960 on account of the products shipped to the Havana branch.

Recapitulation

Claimant's losses within the meaning of Title V of the Act may be summarized as follows:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>
Land	August 24, 1960	\$ 180,172.15
Buildings	August 24, 1960	2,170,881.67
Machinery	August 24, 1960	162,413.35
Furniture and minor equipment	August 24, 1960	55,181.33
Office machinery	August 24, 1960	9,898.55
Delivery equipment	August 24, 1960	35,654.24
Cash	August 24, 1960	546,404.94
Inventories	August 24, 1960	1,466,462.68
Securities	August 24, 1960	33,200.00
Debts and prepaid expenses	August 24, 1960	<u>939,267.00</u>
Total		\$5,599,535.91
Less: Deductions		<u>78,871.17</u>
		\$5,520,664.74
Unpaid Sight Drafts	July 16, 1960	<u>432,728.00</u>
Total Losses Sustained		<u>\$5,953,392.74</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>
July 16, 1960	\$ 432,728.00
August 24, 1960	<u>5,520,664.74</u>
Total	<u>\$5,953,392.74</u>

CERTIFICATION OF LOSS

The Commission certifies that SWIFT & COMPANY succeeded to and 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 Five Million Nine Hundred Fifty-three Thousand Three Hundred Ninety-two Dollars and Seventy-four Cents (\$5,953,392.74) with interest at 6% per annum on \$432,728.00 from July 16, 1960 and on \$5,520,664.74 from August 24, 1960 to the date of settlement.

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

OCT 1 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).)