

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

IN THE MATTER OF THE CLAIM OF

UNITED FRUIT SUGAR COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2776

Decision No. CU 3824

Counsel for claimant:

George Howard, 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 \$85,100,147.09, was presented by UNITED FRUIT SUGAR COMPANY, based upon asserted losses of investments and 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 UNITED FRUIT SUGAR COMPANY was organized under the laws of Delaware in 1944 and all of its outstanding capital stock has been owned at all times by United Fruit Company which was organized under the laws of New Jersey. An authorized officer of the parent company has certified that more than 50% of the parent's outstanding capital stock was owned by nationals of the United States at all pertinent times and that 98.2% of its outstanding capital stock was owned by United States nationals on February 27, 1968. The Commission holds that the United Fruit Company and claimant are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

The record reflects that UNITED FRUIT SUGAR COMPANY maintained and operated two divisions in Cuba known as the Preston Division and the Banes Division. The Preston Division contained the sugar mill Central Preston, which was built prior to 1907, and included 5,195.0955 caballerias (172,269.366 acres) of land. The sugar mill Central Boston, built in 1900, was in the Banes Division and included 2,965.50 caballerias of land (98,335.98 acres). In the combined divisions, as claimant's property, there were 326.25 miles of railroad tracks, 20 locomotives, over 1,400 cane cars plus other rolling stock, an airport, and more than 3,400 buildings for the sugar mill, laborers' dwellings, hospitals, shops, warehouses, electric plants, stores, offices, schools, churches, clubs and residences for employees.

On August 6, 1960, the Government of Cuba issued Resolution No. 1 which listed as nationalized the UNITED FRUIT SUGAR COMPANY, pursuant to Law 851 of July 6, 1960. The Commission therefore finds claimant's properties in Cuba were nationalized on August 6, 1960, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

Claimant has asserted its losses as follows:

Unimproved land	\$ 7,176,032.50
Improved land & buildings	67,251,210.89
Livestock	680,039.00
Merchandise	181,271.28
Autos & trucks	218,708.53
Furniture, tools & equipment	102,755.73
Material & supplies	1,080,882.77
Cash	485,000.00
Raw sugar in stock	6,666,379.29
Securities	129,900.00
Cuban Government debts	<u>1,127,967.10</u>
Total	\$85,100,147.09

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 the values claimed for the lost assets, claimant has submitted an appraisal made by Parajon e Hijo in 1961, a copy of an appraisal of the agricultural properties made in 1959 for the National Institute of Agrarian Reform by Jose Gago Ferrer and affidavits of individuals employed by claimant.

Land and Improvements

The appraisal of Parajon e Hijo for the land and improvements is summarized below:

<u>Property</u>	<u>Central Preston</u>	<u>Central Boston</u>
Batey Buildings	\$ 2,100,000.00	\$ 1,100,000.00
Sugar Factory Buildings	1,100,000.00	950,000.00
Mill Machinery, shops, etc.:		
Cane Weighing & handling	120,000.00	85,000.00
Milling Equipment	1,800,000.00	1,200,000.00
Furnace & boiler equipment	950,000.00	600,000.00
Factory pipe lines, valves, etc.	300,000.00	200,000.00
Clarification Plant	450,000.00	350,000.00
Evaporating Plant	810,000.00	650,000.00
Crystallizers, centrifugals	530,000.00	500,000.00
Electric Plant	640,000.00	500,000.00
Factory Pumps	200,000.00	150,000.00
Laboratory & cane research	25,000.00	18,000.00
Machine Shop	300,000.00	250,000.00
Foundry	5,000.00	5,000.00
Tool Room & Marine	30,000.00	23,000.00
Supplies	50,000.00	-
Carpenter Shop	35,000.00	35,000.00
Saw Mill	10,000.00	3,000.00
Print Shop	1,000.00	-
Lime Kiln	10,000.00	-
Rock Crusher	18,000.00	2,000.00
Prescuite Plant	9,000.00	-
Guaro Machine Shop	18,000.00	-
Bakery	28,000.00	15,000.00
Engineering Department	20,000.00	10,000.00
Hospital	60,000.00	-
Ice Plant	40,000.00	8,000.00
Laundry	35,000.00	-
Railroad Track & Bridges	3,600,000.00	3,000,000.00
Rolling Stock	2,000,000.00	1,700,000.00
Fuel Oil & Molasses Tanks	450,000.00	300,000.00
Sewerage & Water Supply	300,000.00	300,000.00
Telephone & Power Lines	150,000.00	85,000.00
Wharves	175,000.00	30,000.00
Agricultural Department	1,190,000.00	600,000.00
Field Buildings	2,122,000.00	1,000,000.00
Lands and Cultivations	26,033,537.18	14,896,706.21
Locomotive Shop		80,000.00
Medical Department		12,000.00
Coffee Roaster		5,000.00
Railway Department		50,000.00
Totals	\$45,714,537.18	\$28,712,706.21

The appraisal of Jose Gago Ferrer was limited to the agricultural buildings and cultivated land since the Agrarian Reform Act did not apply to the sugar mills and their production facilities. However, the two appraisals were in agreement on all but one item, the value of cane stools for which

each used a different method. Inasmuch as the method used by Parajon e Hijo has been accepted in other claims, that appraisal is followed to determine the value of the land and improvements on the Central Preston and Central Boston properties and the Commission finds that on August 6, 1960 the land and improvements thereon owned by claimant in Cuba had an aggregate value of \$74,427,243.39.

Livestock

In support of its claim for \$680,039.00 for the loss of livestock, claimant has submitted affidavits of Francis X. Keany and Martin C. Laffie, formerly managers of the Banes Division and the Preston Division, respectively. The affidavits are supplemented by correspondence between the affiants and other company officials and copies of reports of livestock taken by the Cuban Government. Commencing in January, 1960, the Agrarian Reform Institute branded certain of claimant's livestock in Central Preston and Central Boston. The continuous branding and taking of the livestock ended with a proceeding for the expropriation of both Centrals but the expropriation proceedings were dropped after the nationalization of the properties of UNITED FRUIT SUGAR COMPANY. During the expropriation, an appraisal of the livestock was made for the Cuban court by Jose Gago Ferrer; a copy of the appraisal for each Central has been submitted. The appraisals are based on the market value at the time of loss. The appraisal for Central Preston had to be adjusted since the appraiser stated the loss there was for 4,146 head instead of 4,145. The amount of loss is therefore determined to be as follows:

Central Preston	4,145 head	\$323,254.00
Central Boston	<u>3,666 "</u>	<u>356,785.00</u>
	7,811 head	\$680,039.00

The Commission finds that on August 6, 1960 the value of the livestock taken by the Government of Cuba was \$680,039.00.

Merchandise

Claimant operated a merchandise department in Central Boston and Central Preston. In Central Boston, there were 24 merchandise stores, a coffee roaster and a bakery and in the Central Preston area there were 23 stores. The managers of the Centrals submitted affidavits concerning the losses sustained and copies of inventories and reports submitted concerning the takeover of the stores by representatives of the Agrarian Reform Institute. The managers had received prior notice of the expropriation of the stores and inventories had been taken. On the basis of these inventories, the Commission finds that the value of the merchandise in the stores in Central Boston on the date of loss was \$74,639.62, and in the stores of Central Preston was \$106,631.66, making a total loss for merchandise of \$181,271.28.

Autos and Trucks

The amount claimed for the losses for trucks and autos is based upon the book value of these items. An affidavit of the Assistant Comptroller for the United Fruit Company in Boston, where the accounting records for UNITED FRUIT SUGAR COMPANY are located, sets forth the description of the 93 vehicles in the Preston Division and 58 in the Banes Division with the book value of each. The total book value for all the vehicles is \$218,708.53 which the Commission finds as the fair and reasonable value of the trucks and autos taken from claimant by the Government of Cuba on August 6, 1960.

Furniture, Tools & Equipment

This property consisted of house and office fixtures, light tools and equipment located in the Preston and Banes Divisions of claimant in Cuba. The detailed inventory of these items was carried by the local offices of claimant in Cuba which only reported the total accounting figures for each kind of property to the main Boston office. According to the affidavit of the Assistant Comptroller of United Fruit Company, the last figures reported were for the period ending December 31, 1959, and showed a book value as follows:

Preston Division	\$ 62,412.00
Banes Division	<u>40,343.73</u>
	\$102,755.73

Accordingly, the Commission finds that the value of the furniture, tools and equipment lost by claimant on August 6, 1960 was \$102,755.73.

Material and Supplies

Claimant asserts a loss in the amount of \$1,080,882.77 sustained by the Material and Supply Departments of the Preston and Banes Divisions. The Preston Division had two warehouses and the Banes Division had one which were stocked with various kinds of materials, goods, equipment, spare parts, accessories and other articles necessary for the operation and maintenance of the two Divisions. In support of this portion of the claim, there have been submitted affidavits of their former managers, supported by reports of withdrawals by the Cuban INRA, and copies of bills rendered to the INRA for materials taken. The amounts due for materials and supplies taken prior to August 6, 1960 are included in the amount stated for debts owed claimant by the Cuban Government discussed below.

According to the documents submitted with an affidavit of the Assistant Comptroller concerning the records in the home office, the Material and Supply Departments of Preston and Banes had a balance of material on hand on June 30, 1960 of \$1,138,400.00. By applying the amounts for the average receipts and expenditures to the following period, it has been estimated that the balance on hand as of August 6, 1960 was \$1,080,882.77. Therefore the Commission finds the losses sustained by the Material and Supply Departments on August 6, 1960 to be \$1,080,882.77.

Cash

Claim is made for the sum of \$485,000.00 in bank accounts and cash on hand. According to the evidence submitted, as of June 30, 1960 claimant's two divisions had bank accounts totalling \$877,133.96 and cash on hand in the amount of \$126,886.60 for a total of \$1,004,020.56. The Assistant

Comptroller of United Fruit Company has sworn that no detailed cash report was received from the Cuban offices after the report for the period ending June 30, 1960. During July, 1960, cash receipts totalled \$639,216.49 and payments made were estimated at \$1,158,237.05, leaving a cash balance of \$485,000.00. The Commission thus finds that the amount of cash lost by claimant on August 6, 1960 was \$485,000.00.

Raw Sugar in Stock

A portion of the claim is for raw sugar stock, the claimed amount being 641,632 bags of sugar containing 162,673,970 pounds valued at \$6,666,379.29. Prior to the nationalization of claimant's Cuban assets, the Preston and Banes Divisions submitted to the Boston offices of claimant inventories of raw sugar for the period ending June 30, 1960. No information was received concerning the movement of sugar after that date and the affidavit of the Assistant Comptroller states that the accounting records, papers and documents of claimant in its Boston office indicate that at the time of loss claimant's Cuban divisions had 641,632 bags of sugar on hand. The Commission therefore finds that claimant sustained a loss of \$6,666,379.29 for its raw sugar taken on August 6, 1960.

Securities

Claim is made for 1,299 shares of Ferrocarriles Occidentales de Cuba, S.A. stock. Under Cuban law sugar mill owners had to subscribe to these shares in accordance with its sugar quota or, in the alternative, pay a particular tax assessed against the users of that railroad. The claimant purchased the shares for \$129,900.00 in 1954 and 1955. The original certificates were held in the Havana Office of the First National Bank of Boston but no quotations were available after the purchase date indicating the market value of the shares. In support of the claim for the stock shares, claimant has submitted photostatic copies of the certificates and reports from its Cuban Divisions concerning the purchase of the shares and their deposit in the Havana bank. The Commission has previously held that the value of these shares is the original cost (see Claim of Ruth Anna Haskew, Claim No. CU-0849), and

the Commission now finds that claimant has sustained a loss in the amount of \$129,900.00 for its stock interests in Ferrocarriles Occidentales de Cuba, S.A.

Debts of Cuban Government

Claim is made for the amount of \$1,127,967.10 for debts owed by the Cuban Government. A portion of that amount is for materials, supplies and services rendered to the National Institute of Agrarian Reform (INRA) by the Banes and Preston Divisions during the period from December 23, 1959 to July 29, 1960. Supporting the claim are copies of bills rendered the INRA and reports from the Division managers. The balance of the debt claimed is for payment due from the Cuban Sugar Stabilization Institute. All sales of molasses were conducted through this Institute from which no payment had been received for the molasses crops in 1958, 1959 and 1960, although an advance of \$1,322,133.03 had been received for the 1958 crop and \$139,049.16 for the 1959 crop. The amount claimed for unpaid molasses crops is \$1,012,921.90, and in support thereof claimant has submitted an affidavit of the Assistant Comptroller in which the amount of molasses produced by each division in the years 1958, 1959 and 1960 are set forth and the affiant swears that the accounting records, papers and documents at the Company's office in Boston confirm the amounts claimed. Although Section 503(a) of the statute, supra, ostensibly would seem to bar the allowance of claims which arose prior to January 1, 1959, the amendment to Title V in 1965 which created the Cuban Claims Program must be interpreted in the instant case to permit such. This is so because REPORT No. 706, which accompanied H.R. 9336 in the House of Representatives, in describing Section 1 of the Bill, expressed the pertinent Congressional intent as follows:

"In short, pre- and post-Castro creditor interests of American nationals based on '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' are eligible for consideration by the Foreign Claims Settlement Commission under this title so long as the 'taking' (i.e. refusal to pay) of such property interests arose for the first time after January 1, 1959." (Underscoring added.)

The Commission therefore finds that the Cuban Government was indebted to claimant in the amount of \$1,127,967.10 and that claimant sustained a loss in that amount on August 6, 1960.

Summary

Accordingly, the Commission finds that value of the assets lost by claimant is as follows:

Land, Buildings, Machinery and Equipment	\$74,427,243.39
Livestock	680,039.00
Merchandise	181,271.28
Autos and Trucks	218,708.53
Furniture, Tools and Movable Equipment	102,755.73
Material and Supplies	1,080,882.77
Cash	485,000.00
Raw Sugar	6,666,379.29
Securities	129,900.00
Debts of Cuban Government	<u>1,127,967.10</u>
Total Assets	\$85,100,147.09

and concludes that claimant suffered a loss in the total amount of \$85,100,147.09 within the meaning of Title V of the Act, as a result of the nationalization of claimant's assets by the Government of Cuba on August 6, 1960.

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 UNITED FRUIT SUGAR COMPANY suffered a loss, as a result of the 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 Eighty-five Million One Hundred Thousand One Hundred Forty-seven Dollars and Nine Cents (\$85,100,147.09) with interest at 6% per annum from August 6, 1960 to the date of settlement.

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

AUG 27 1969

Leonard F. Sutton
Leonard F. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Isidore Freidberg
Isidore 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).)