

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

IN THE MATTER OF THE CLAIM OF

STANDARD FRUIT AND STEAMSHIP COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0485

Decision No. CU -343⁹⁴³

Appeal and objections from a Proposed Decision entered on January 17, 1968.
Oral hearing requested.

Oral hearing held June 13, 1968.

FINAL DECISION

By Proposed Decision entered on January 17, 1968, the Commission certified that claimant, STANDARD FRUIT AND STEAMSHIP COMPANY, suffered a loss in the amount of \$732,701.47 through nationalization on October 24, 1960 by the Government of Cuba of certain of its assets including 20,867.89 square meters of land on the waterfront of Havana harbor.

Claimant objected to that portion of the Proposed Decision in which the value of the 20,867.89 square meters of land was found to have been \$472,006.76 at the time of loss, that being the value reflected in a balance sheet of December 21, 1955. Claimant has submitted additional evidence and presented oral argument at a hearing before the Commission on June 13, 1968.

Section 503(a) of the International Claims Settlement Act of 1949, as amended, provides in part as follows:

In making the determination 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, (i) fair market value, (ii) book value, (iii) going concern value, or (iv) 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. There can be no doubt that under certain circumstances the book value is clearly the most appropriate to the property and equitable to the claimant, whereas, under other circumstances it would not be appropriate.

In the instant claim, the record now contains evidence which warrants a determination as to value based upon factors other than book value. Based upon all the evidence of record, including an expert appraisal, affidavits, maps, and property plats, the Commission now finds that the value of the waterfront land here involved, at the time of loss, was \$80 per square meter, or \$1,669,431.20 for the 20,867.89 square meters. This is an increase of \$1,197,424.44 over the value found for the land in the Proposed Decision of January 17, 1968, and increases claimant's total loss as a result of the nationalization of its assets by the Government of Cuba to \$1,930,125.91.

Accordingly, the certification of loss will be entered as restated below, and the Proposed Decision as amended herein is affirmed as the Commission's Final Decision in this matter.

CERTIFICATION OF LOSS

The Commission certifies that STANDARD FRUIT AND STEAMSHIP COMPANY 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 Million Nine Hundred Thirty Thousand One Hundred Twenty-five Dollars and Ninety-one Cents (\$1,930,125.91) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement.

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

NOV 6 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
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IN THE MATTER OF THE CLAIM OF

STANDARD FRUIT AND STEAMSHIP COMPANY

Claim No. CU -0485

Decision No. CU

943

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$2,337,326.93, was presented by STANDARD FRUIT AND STEAMSHIP COMPANY, based upon the nationalization of its assets in Havana by the Government of 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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 502(1) of the Act defines the term "national of the United States" as "(B) 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."

An officer of the claimant corporation has certified that the claimant was organized in the State of Delaware, and that at all times between November 21, 1960 and presentation of this claim on October 8, 1965, more than 50% of the outstanding capital stock of the claimant has been 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.

Claimant states that more than 99% of its stock was owned by persons residing in the United States, and assumes that substantially all of them were United States nationals.

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.

An officer of STANDARD FRUIT AND STEAMSHIP COMPANY has certified, and the Commission finds that claimant was the sole shareholder of "Compania de Almacenes Atares, S.A.", which was organized in Cuba on September 29, 1924. It is further certified that claimant corporation owned all of the corporate stock of "Compania de Almacenes Atares, S.A.", and that pursuant to a corporate reorganization in 1955, all of the assets of the wholly-owned subsidiary corporation were transferred to claimant corporation.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3, (pursuant to Law 851) which listed as nationalized

the STANDARD FRUIT AND STEAMSHIP COMPANY, and the Commission finds that the assets of claimant corporation were nationalized by the Government of Cuba on October 24, 1960, within the meaning of Title V of the Act.

Claimant corporation bases its claim upon a November 6, 1952, appraisal by Frederick Snare Corporation of Havana, Cuba, which is itemized as follows:

1. Land	\$2,086,789.00
2. Bulkhead	69,734.97
3. Warehouse Building	143,234.12
4. Pavement Area	24,038.84
5. Tracks	5,550.00
6. Miscellaneous Property	<u>7,980.00</u>
	\$2,337,326.93

Among the documentation submitted are records relating to the 1955 dissolution of Compania de Almacenes Atares, S.A. and the acquisition of all of the assets of said company by claimant corporation, including a general balance sheet as of December 21, 1955. This balance sheet indicates:

ASSETS

Cash in Bank		\$ 36,820.14
Lands	\$472,006.76	
Buildings	116,288.19	
Wharves	45,000.00	
Fences	17,235.65	
Warehouse Equipment	78,967.47	
Furniture and Fixtures	<u>3,203.40</u>	
	\$732,701.47	
Less Depreciation of the Assets:	219,536.20	
		\$513,165.27
Prepaid Insurance Premiums		<u>2,762.13</u>
	TOTAL ASSETS	\$552,747.54

The record also includes a schedule of property losses claimed by claimant corporation as a deduction in the company's 1960 Consolidated United States

Corporation Income Tax Return. Claimant corporation claimed a deduction totalling \$483,953.78 on account of the loss of the same properties which are the subject of this claim.

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 Commission has carefully considered all of the evidence, taking into account the basis of valuation most appropriate to the property and equitable to the claimant, including the evidence submitted as to book value and depreciated replacement costs, as indicated in the Frederick Snare Corporation appraisal, and finds that the values for subject properties as reflected in the December 21, 1955 balance sheet are the most appropriate basis of evaluation. Accordingly, the Commission finds that the properties of STANDARD FRUIT AND STEAMSHIP COMPANY in Havana, at the time of nationalization, had the following values:

Lands	\$472,006.76
Buildings	116,288.19
Wharves	45,000.00
Fences	17,235.65
Warehouse Equipment	78,967.47
Furniture and Fixtures	<u>3,203.40</u>

TOTAL VALUE \$732,701.47

The Commission concludes that STANDARD FRUIT AND STEAMSHIP COMPANY sustained a total loss in the amount of \$732,701.47 within the meaning of Title V of the Act as a result of the nationalization of its assets in Cuba by the Government of Cuba on October 24, 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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 24, 1960, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that STANDARD FRUIT AND STEAMSHIP COMPANY 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 Seven Hundred Thirty-Two Thousand Seven Hundred One Dollars and Forty-Seven Cents (\$732,701.47) with interest thereon at 6% per annum from October 24, 1960, to the date of settlement.

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

JAN 17 1963



Edward D. Re, 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, 32 Fed. Reg. 412-13 (1967).)

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