

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

IN THE MATTER OF THE CLAIM OF

PEPSI-COLA METROPOLITAN
BOTTLING COMPANY, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3597

Decision No. CU 5842

Counsel for claimant:

F. Mendez-Capote, Esquire

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 \$1,566,981.00, was presented by PEPSI-COLA METROPOLITAN BOTTLING COMPANY, INC. based upon the asserted loss of certain 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 New Jersey (Exhibit I), and that at all pertinent times more than 50% of its outstanding capital stock was owned by nationals of the United States. It further appears from the evidence of record that at all pertinent times all of claimant's outstanding capital stock was owned by PepsiCo, Inc., a Delaware corporation (Exhibit III), and that as of December 27, 1967, at least 98% of the parent's outstanding capital stock was owned by persons residing in the United States. (See Claim of PepsiCo, Inc., Claim No. CU-3596.) The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant owned a branch in Cuba which was engaged in bottling, distributing and selling the beverage "Pepsi-Cola" in certain territory near the city of Havana.

By means of contracts dated November 7, 1959, with Compania Pepsi-Cola de Cuba, S.A., a wholly-owned Cuban subsidiary of PepsiCo, Inc., claimant's parent, claimant's Cuban branch acquired certain machinery, bottles, trucks and other equipment appurtenant to its business operations in Cuba (Exhibit V). On December 14, 1959, claimant sold the two plants it had thus acquired to Embotelladora Antillana, S.A., a Cuban corporation, for the price of \$839,792.52. (See Exhibit VII and VIII herein and Exhibits 8 and 9 accompanying Claim No. CU-3596.)

In its Official Gazette of July 7, 1961, the Government of Cuba listed as nationalized Cia. Embotelladora Metropolitana, S.A., (claimant's name in Spanish). (Exhibit 15 accompanying Claim No. CU-3596.) The Commission finds that on July 7, 1961 the Government of Cuba nationalized the properties of this claimant in Cuba. On August 8, 1961 Embotelladora Antillana, S.A. was listed in the Cuban Official Gazette as nationalized (Exhibit VI).

Claimant asserts the following losses:

Cash		\$ 160,788.00
Accounts receivable		189,715.00
Inventories		155,142.00
Vending machinery and equipment		110,885.00
Machinery and equipment	\$448,795.00	
Less depreciation	<u>336,128.00</u>	112,667.00
Bottles and cases		92,610.00
Other assets		<u>33,875.00</u>
	Total	\$ 855,682.00
Less Accounts payable		<u>132,287.00</u>
		\$ 723,395.00
Debts due from Embotelladora Antillana, S.A., a Cuban corporation		<u>843,586.00</u>
	Total	<u>\$1,566,981.00</u>

In support of its claim, claimant has submitted a copy of an audited balance sheet for its Cuban branch as of December 31, 1959. It appears that no other financial records concerning the Cuban operations are available. That balance sheet shows the following, the Cuban peso being on a par with the United States dollar:

Assets

Current Assets

Cash		\$160,787.74
Notes receivable		50,000.00
Accounts receivable		55,696.85
Inventories:		
Bottled goods	\$14,961.16	
Raw materials and in process	5,215.10	
Supplies	47,561.28	
Vending equipment	<u>72,019.99</u>	<u>139,757.53</u>
	Total Current Assets	\$ 406,242.12

Miscellaneous Assets

Long term notes receivable less current notes of \$50,000.00 shown above		\$793,585.60
Long term accounts receivable		134,017.83
Bottling and other machinery, less reserve of \$12,114.06		38,864.66
Other assets, less reserve of \$1,899.00		<u>4,980.82</u>
	Total Miscellaneous Assets	\$ 971,448.91

Property, Plant and Equipment

Machinery and equipment, less depreciation of \$336,128.40		\$112,666.73
Bottles and cases on hand		29,122.32
Bottles and cases in custody of customers		<u>63,487.36</u>
	Total Property, Plant and Equipment	\$ 205,276.41

Deferred Assets

Prepaid items		\$ 3,619.90
Advertising materials		24,879.78
Other		<u>395.00</u>
	Total Deferred Assets	<u>\$ 28,894.68</u>
	Total Assets	<u><u>\$1,611,862.12</u></u>

Liabilities and Capital

Current Liabilities

Accounts payable	\$41,458.63	
Accrued taxes	4,895.33	
Other accrued liabilities	38,326.77	
Customers' deposits on bottles and cases	<u>47,606.14</u>	
Total Current Liabilities		\$ 132,286.87
Due Canadian subsidiary of claimant's parent		41,088.49
Due claimant (Capital account)		<u>1,438,486.76</u>
Total Liabilities and Capital		<u>\$1,611,862.12</u>

One of claimant's controllers who is familiar with claimant's Cuban branch operations stated in an affidavit of April 30, 1970 that while certain of the current assets would change in form from day to day, the financial condition of the branch as a whole would remain about the same as shown in the balance sheet as of December 31, 1959. He further stated on the basis of his knowledge of claimant's records that certain changes did take place as a result of transactions occurring between December 31, 1959 and the date of loss; namely, that the inventories, excluding the vending equipment, were increased by further shipments in 1960 to the Cuban branch in the amount of \$87,405.00; that the vending equipment in the claimed amount of \$110,885.00 merely represents the combined value of the vending machines and the bottling and other machinery as shown in the balance sheet; that the claim for "Other assets" in the amount of \$33,875.00 merely represents the combined value of other miscellaneous assets and deferred assets as shown in the balance sheet; and that the customers' deposits is merely an offset against accounts receivable due from the customers.

Upon consideration of the entire record, the Commission finds that claimant sustained a loss within the meaning of Title V of the Act on July 7, 1961, when all of the assets of its Cuban branch, including the debt due from Embotelladora

Antillana, S.A., were taken by the Government of Cuba. The Commission further finds that on July 7, 1961, the date of loss, the values of claimant's branch assets in Cuba were as follows:

Cash		\$ 160,787.74
Notes receivable from Embotelladora Antillana, S.A.		843,585.60
Accounts receivable	\$189,714.68	
Less Customers' deposits	<u>47,606.14</u>	142,108.54
Inventories		155,142.54
Vending machinery and equipment		110,884.65
Machinery and equipment, less depreciation		112,666.73
Bottles and cases on hand and in custody of customers		92,609.68
Deferred and other assets		<u>33,875.50</u>
	Total	<u>\$1,651,660.98</u>

It is noted that claimant has reduced its claim by the amount of its accounts payable. The Commission has held consistently that with respect to a Cuban branch, as opposed to a Cuban corporation, a corporate claimant's loss should not be reduced by any of the branch's liabilities, except for taxes owing the Government of Cuba or other appropriate debts on the theory of set-off (see Claim of Simmons Company, Claim No. CU-2303), the reason being that the

parent is or may still be liable for the debts of its Cuban branch. The Commission therefore concludes that the accrued taxes due Cuba in the amount of \$4,895.33 should be deducted in determining the extent of claimant's losses. For the same reason, the aggregate amount which the Cuban branch owed its customers for deposits was offset against the debts due the Cuban branch from those customers. The Commission therefore finds that the aggregate amount of claimant's losses within the meaning of Title V of the Act was \$1,646,765.65.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof (see Claim of Eileen M. Smith, Claim No. CU-3038).

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 respective dates 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 PEPSI-COLA METROPOLITAN BOTTLING COMPANY, 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 Million Six Hundred Forty-six Thousand Seven Hundred Sixty-five Dollars and Sixty-five Cents (\$1,646,765.65) with interest thereon at 6% per annum from July 7, 1961 to the date of settlement.

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

SFP 16 1970


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 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).)