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## THE SETTLEMENT OF CLAIMS FOR EXPROPRIATED FOREIGN PRIVATE PROPERTY BETWEEN CUBA AND FOREIGN NATIONS OTHER THAN THE UNITED STATES

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A study of the political, economic and legal relationships between the *United States* and Cuba subsequent to the revolution suggests an intransigence by Cuba in recognizing any property rights by foreigners, a view which may lead to the incorrect conclusion that Cuba has been entirely unwilling to settle any foreign claims. Cuba has concluded formal settlement agreements with France, Spain and Switzerland, all in 1967, and was expected to commence discussions with the Canadian government in mid-1973.

The continuing refusal of the Cuban government to disclose information about its claims negotiations and settlements with both foreign nations and individual claimants precludes all but a very brief discussion of this area. It is an important aspect of the post-revolution foreign policy of Cuba, however, and even a limited study allows several interesting observations which may provide some insight regarding the type of approach Cuba may utilize in any ultimate claims settlement negotiations with the United States. Actually, a release of claims information by Cuba could inure to the nation's benefit since it would confirm a willingness of the Cuban government to deal realistically with capital exporting nations when Cuba decides to achieve a more flexible trade pattern.<sup>1</sup> In addition to re-establishing markets, the settlements have allowed Cuba to diversify its trade in the non-socialist world and to a very small degree lessen the nation's dependence on the Soviet Union.

Claims agreements between Cuba and both France and Switzerland have been made available for study as public documents by the latter nations and, consequently, some interpretation is possible as to the form of agreement acceptable to Cuba in settling claims. Although there has also been an agreement consummated with Spain, it has not been disclosed by the Spanish government.<sup>2</sup> Any agreement reached with Canada, how-

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ever, is likely to be made available upon its execution. The expected negotiations between Cuba and Canada will presumably seek to achieve a settlement of all outstanding claims. The agreement will have no effect on the two nationalized Canadian banks, the Bank of Nova Scotia and the Royal Bank of Canada, which reached individual settlements soon after their properties had been taken.

Subsequent to several initial expropriations of property by the Cuban government in 1959–1960, the proceeds of bank accounts of the Cuban government maintained in United States banks were transferred to banks in Canada.<sup>3</sup> The transfer was not halted until the passage of the Cuban Assets Control legislation which precluded further removal of *any* assets of the Cuban government from the United States.<sup>4</sup> By the earlier removal of the bank deposits to Canada, however, Cuba was provided with a source of foreign exchange allowing settlements with the two Canadian banks which had maintained branches in Cuba.<sup>5</sup> Negotiations with the Cuban government for the claims of other Canadian property owners were not considered possible until recently. On January 14, 1971, the Canadian Department of External Affairs announced that the Canadian and Cuban governments had agreed to commence discussions with a view to reaching a lump sum settlement for claims of Canadian citizens.<sup>6</sup> Simultaneously, the Canadian government announced that Canadian citizens should file details of their claims with the department prior to June 15, 1971.<sup>7</sup> An undisclosed amount of claims was submitted and viewed by the department.<sup>8</sup> In May of 1972, the claims accepted by the department were presented to the Banco Nacional de Cuba in Havana for its consideration,<sup>9</sup> with discussion of the claims, and a possible settlement agreement, anticipated during 1973.<sup>10</sup>

Canadian investment in Cuba at the time of the revolution and recent trade statistics suggest some motivation for a Canadian accord. Canadian investment in Cuba in 1956 was estimated to be \$9.4 million with \$8.8 million of that aggregate owned by the Canadian banks.<sup>11</sup> It would seem apparent that the comparatively low total investment in Cuba, particularly considering some resolution already completed with the banks, would increase the feasibility of a settlement, in contrast to nations with large outstanding claims. The incentive to achieve a settlement would be to encourage Canada to become a more important trading partner than it has been during the last decade. In 1960 and 1961 trade with Canada was at levels of 25.9 and 39.6 million *pesos*, respectively.<sup>12</sup> Trade decreased to 14.6 million *pesos* in 1962, then fluctuated between 20 and 45 million *pesos* from 1963 to 1965, before declining significantly in 1966 and 1967

to only 10.9 and 14 million *pesos*.<sup>13</sup> The willingness to negotiate a claims settlement with Canada may reflect this trade loss and a Cuban government desire to settle the claims issue as an expected impetus to renewed trade.

Well before any negotiations were begun with Canada, Cuba entered into the accords with France, Spain and Switzerland. The agreement between Cuba and Spain, executed in 1967, has not been disclosed to the public. The Ministry of Foreign Affairs in Madrid has stated that the agreement itself prohibited the public disclosure of its terms without the permission of both parties; only information of need to claimants may be released.<sup>14</sup> While the Spanish accord provided for some form of compensation, recent discussions in Spain with several Madrid attorneys evidenced their belief that payments had not yet been forthcoming from Cuba, some six years after the accord was signed.

Trade statistics of Cuba and Spain support a view that Cuba might have accepted a resolution with Spain which allowed for a larger pro-rata settlement of claims of Spanish claimants than under the French or Swiss accords. While Spain's trade with Cuba in 1960 was, at 20.8 million *pesos*, less than trade with Canada, France, Japan and the United Kingdom, by 1963 Spain had become the major non-socialist trading partner of Cuba.<sup>15</sup> Trade increased slowly at first, approximately doubling in 1963 from the 1961 statistics. In 1964, however, Spain's trade with Cuba amounted to 107.1 billion *pesos*, a threefold increase over the previous year. Since then the amount of trade with Spain has fluctuated but Spain has continued to hold the lead in trade with Cuba among the non-socialist nations.<sup>16</sup> It is unlikely that Cuba *could* have agreed to a settlement of claims with France and Switzerland, both less significant trading partners, without reaching an accord with Spain. The non-disclosure of the agreement with Spain may evidence that Cuba had to settle for a larger payment than it wished to have disclosed to the public. Whether these observations are correct can only be judged at a future time when the Spanish accord has been disclosed to the public and when additional information is made available which will establish the proportional relationship of the settlement amounts to the total claims valuations filed in each nation.

The Spanish settlement in 1967 was executed in the same month as the agreements with both France and Switzerland. Indeed, all were signed in March within fourteen days of one another. The Cuban government apparently had been unwilling to even discuss the matter of compensation for the nationalizations of the property of any of the countries until late

1966.<sup>17</sup> The thaw which did occur in late 1966, leading to the accords with the three nations, does not suggest in the case of the Swiss agreement that the thaw was particularly extensive. Cuba reached a favorable resolution with Switzerland by establishing a market for 40,000 tons of Cuban sugar annually for eight years, while avoiding a requirement that the Cuban government pay any definite lump sum settlement for the outstanding claim of individuals and insurance companies. France, contrastingly, obtained a lump sum for the payment of *all* claims, not limited to specific companies as in the Swiss accord.<sup>18</sup> The French accord appears to be far more favorable to France than the Swiss accord to Switzerland, although it is impossible to determine the relative percentages which the agreed upon payments represent in proportion to the total claims of the nationals of each country.

The Swiss accord is conclusive only with respect to three Swiss owned Cuban food processing enterprises,<sup>19</sup> all of which were nationalized by Cuban law 890 on October 13, 1960.<sup>20</sup> The agreed upon settlement of 18,039,000 Swiss francs was for indemnification of the nationalization of the enterprises themselves, the payment of fees due to the entities prior to nationalization and for the unauthorized use of brand names by the Cuban government following the nationalizations.<sup>21</sup> The Swiss agreed to an eight year quarterly payment schedule, with 1,752,360 Swiss francs due each of the first three years, followed by five years of annual payments of 2,555,525 Swiss francs.<sup>22</sup> The stated annual payments would be supplemented by additional amounts in the event that further agreements were reached resolving the claims of individuals and insurance companies.

The method of payment under the Swiss accord illustrates the practicalities involved in achieving any settlement with Cuba except where the Cuban need to reach a settlement is so severe as to eliminate any bargaining power. That need has not been apparent, with the unlikely exception of the undisclosed accord with Spain. The Swiss accord illustrates the absence of any bargaining weakness on the part of Cuba. The Swiss government specifically commented that Cuba's lack of foreign currency precluded the possibility of compensation by direct cash payments.<sup>23</sup> The Cuban government, however, was not willing to apply *all* of the currency received from the sale of sugar to Switzerland to the settlement amount, it rather insisted that the Swiss accept substantially more than an amount of sugar which would represent the annual indemnification payment at world sugar prices. After what the Swiss government described as "bitter discussions" the issue was resolved with the Swiss interests agreeing to buy an annual total of 40,000 tons of sugar at the world price; approximately

one third of the hard currency Cuba was to receive for the sale would serve as an indemnity.<sup>24</sup> The Swiss purchasers did reserve the right to utilize the sugar in either Switzerland or other international markets, and both parties agreed to discuss the possible substitution of coffee or molasses for sugar.<sup>25</sup> The accord further agreed that the total indemnity might be amortized more rapidly during the last four years of the eight year agreement duration by applying twenty percent of the value of purchases of Cuban coffee, not substituted for sugar, to the indemnification balance.

Recognizing foreseeable problems of delivery of the sugar by Cuba, presumably due to unstable climatic conditions or perhaps even to higher priority commitments to the Soviet bloc, the accord provided that the contractual obligations would extend beyond the eight year period until full compensation had been made. The Swiss interests would not be committed to purchasing more than 40,000 tons annually,<sup>26</sup> although the purchases might extend beyond the eight years in the event of presumably unavoidable Cuban delays.<sup>27</sup>

The uniqueness of the Swiss accord is partially attributable to the food processing nature of the expropriated Swiss owned companies and the ability of the parent Swiss companies to utilize or resell Cuban sugar and, possibly coffee and molasses. The agreement is indeed realistic; it amounts essentially to a government negotiated settlement for three private firms based primarily on the capacity of those firms, rather than the Swiss government, to absorb Cuban sugar and other agricultural commodities of a sufficient quantity so that Cuba would be allowed to obtain needed foreign exchange, while returning only a portion of that exchange as indemnification. The willingness of the Cuban government to pay one third of the sugar receipts as indemnification is substantially more than its proposal for indemnification contained in the June 6, 1960 nationalization law which expropriated United States investor owned private property, that law limited the indemnification to an unrealistic fund created from 25 percent of the *excess* of sugar purchases above a base of three million tons at a subsidized price.<sup>28</sup> Were the Swiss companies unable to utilize or resell the sugar, it is quite possible that no agreement would have been reached with the Swiss since the Swiss possess few commodities currently needed by the Cuban economy.<sup>29</sup>

The Swiss accord additionally provides some form for resolving claims of individuals. Claims valuation of the three nationalized food processing industries had been previously accomplished in Switzerland, apparently to the Cuban government's satisfaction. The Cubans demanded further

evidence of the claims of expropriated individuals and the insurance companies, however, even though the Swiss Department of Politics had attempted to evaluate the claims of all persons referred to them by various means, although without a formal announcement of a claims program.<sup>30</sup> The lack of a more formal claims program to preadjudicate claims may have resulted in the participation by the Cuban government in approving individual claims. Under the accord, the value of the indemnities of individuals would be determined by *mutual* agreement after documents requested by the Cuban authorities had been furnished. Thus, the resolution of the claims of the three food processing firms by apparent acceptance of a predetermined claims method was to be followed by more of an informal mixed claims commission format for the remaining claims of individuals and the insurance companies. It is likely that one of the major reasons for this difference is the inability of the latter group to absorb some of Cuba's agricultural production. The willingness and ability evidenced by the three food processing concerns to accept sugar undoubtedly resulted in their receiving a great percentage of their claims than would have been the case had they, like the individual claimants, been interested solely in receiving cash indemnification.

The final settlements for the individual and insurance claims was to be added to the aggregated indemnification in article 1 of the accord and would therefore "benefit also from the means of transfer set forth in the present agreement as well as by the commercial contracts which will aid in its execution."<sup>31</sup> What is not clear is whether the determination of individual and insurance company claims would place an additional burden on the Swiss interests to increase purchased quantities of sugar. The answer seems to be no. Article 3 of the agreement states that the obligation of the Swiss interests is the purchase of 40,000 tons of sugar; there is no suggestion of any additional amount contingent upon the resolution of claims of individuals under article 4. While it is unreasonable to expect the nationalized food processing companies to purchase additional sugar, the Swiss government could well assume that burden if the quantity is reasonable and predictably disposable. Additional purchases could either add to the annual 40,000 ton commitment or extend the agreement beyond eight years. The allocation of the indemnities paid to the Swiss government is reserved by the latter nation,<sup>32</sup> although it would appear that the mutual determination of claims under article 4 might set the value of each individual claim.

Soon after the signing of the agreement, the Swiss government published notices in both the *Federal Paper* and the *Official Swiss Paper of*

*Commerce*, informing Swiss national claimants who were not then known to the Swiss government to file their claims.<sup>33</sup> The nationals were given approximately two months to file their claims with the Federal Political Department of the Swiss government. Detailed information was requested, the data then to be utilized in the mutual resolution of the claims with Cuba.

The Swiss accord could only have been reached with the realism evidenced by the Swiss government, including a direct trade agreement as part of the settlement. The unique nature of the companies involved allowed such a resolution, although the absence of a preadjudication of claims may in the long run prove to have been disadvantageous for those individuals and insurance companies which under the accord are subjected to a mutual determination of the validity of their claims. While any ultimate resolution with the United States may be similar, *i.e.*, Cuba may either agree to pay a certain percentage of preadjudicated claims, or, although extremely unlikely, participate in a predetermination of those claims and bargain the claim value down to a similar percentage. The distribution of the funds to claimants would not be identical under each method, however. Had the Swiss government provided for a thoroughly documented preadjudication of the claims, it might well have been able to have included the individual and insurance company claims in the original accord, without the necessity of the continuation of what the Swiss government itself labeled as "difficult" and occasionally "bitter" discussions. Preadjudication is not a requirement to a lump sum settlement which does not contain a direct trade agreement; indeed, the French accord provided for a lump sum settlement with no direct trade agreement involved and with the continuation of French claims practice which does not utilize preadjudication procedures.<sup>34</sup> It does seem, however, that preadjudication provides a better bargaining base than the rather sketchy procedures followed by the Swiss government.

The French-Cuban accord, executed in Havana on March 16, 1967, 14 days after that with Switzerland and two days after the undisclosed agreement with Spain, is in marked contrast to the Swiss agreement in that the French accord does not include a direct trade agreement.<sup>35</sup> The motivation for the agreement was undoubtedly partially attributed to a desire for increased trade with France. The execution of the settlement agreements with France, Spain and Switzerland all within the same two weeks suggests a similar Cuban motivation for resolving the claims of each of these nations. Judged by examining the agreement with Switzerland, the motivation for each agreement was likely the desire to



maintain or develop trade relationships. The pattern of trade with France prior to the agreement and during 1967, supports the view that trade did increase after the agreement, even though there was no trade requirements in the agreement. The trade was probably the outgrowth of ancillary oral understandings.

Trade with France decreased significantly from 21.5 million *pesos* in 1960 to 8.4 million in 1961 and 2.9 million in 1962.<sup>36</sup> France was indeed one of the problem countries for Cuba's trade sector after the revolution. Trade with Canada, Japan, Mexico and the United Kingdom did not decrease as substantially as that with France, or even increased during the same period.<sup>37</sup> Spanish-Cuban trade also decreased abruptly, although it then began to increase to much higher levels than previously, an increase which Cuba certainly wanted to maintain.<sup>38</sup> After reaching the 1962 low, Cuban trade with France increased in 1963 to 8.4 million *pesos*, in 1964 to 21.6 million *pesos*, in 1965 to 29.6 million *pesos* and then decreased slightly in 1966 to 22.3 million *pesos*.<sup>39</sup> Thus, France had become an important trading partner at the time of the agreement, a relationship which Cuba presumably wished not only to maintain but to further develop. Subsequent to the signing of the French agreement, the trade in 1967 with France more than doubled over the previous year, reaching 56.1 million *pesos*.<sup>40</sup> The willingness of Cuba to consummate an accord must have been at least a partial impetus to this increased trade, regardless of whether any immediate oral understandings were concluded by the negotiating parties.

The French accord is additionally distinguishable by its applicability to all French claimants, in contrast to the limitation of the Swiss accord to the three nationalized food processing industries. While the French accord did not include any additional mutual determination of claims as in the Swiss case, the former accord does indicate that the agreement was determined "after a bilateral examination of the claims raised by French persons, natural and juridical."<sup>41</sup> Such a provision should not be unexpected; no nation agreeing to the payment of a settlement amount for the taking of foreign property is likely to accept the unilateral declaration of the claimant nation as to the amount of claims owed. In any future agreement between Cuba and the United States, Cuba is unlikely to unquestionably accept as conclusively determinative of the value of the property expropriated, the approximately \$1.8 billion of United States claims adjudicated by the Foreign Claims Settlement Commission. Little problem is likely to be created, however. Even though Cuba might successfully challenge many of the claims on such grounds as an inability of the

Commission to have access to adequate records to support the valuation of certain properties in Cuba, the \$1.8 billion is far in excess of any conceivable amount which Cuba might be able to pay. Consequently, reducing the aggregate by even an arbitrary 20 percent for possible over-valuation of property, leaves a total which is still beyond Cuba's ability to pay. Since any payment from Cuba to the United States is likely to be more in the range of 10-20 percent of the adjudicated claims amount, any Cuban desire to critically review *each* claim would serve little purpose. The claim records of the Foreign Claims Settlement Commission, as public documents, have been accessible to Cuban representatives to examine, and the conclusion would have to be that although there are obvious questionable valuations, the procedures utilized were generally fair and did not tend to over-inflate claims. Indeed, many viewers of the adjudication process suggest that the Commission has been too conservative in its approach, particularly when valuing business property and evidencing a reluctance to adopt going concern value approaches which would give higher final valuations than the Commission's more traditional utilization of book value methods.

The French accord provided for the payment of 10,861,53 francs in 12 nearly equal installments over approximately five years.<sup>42</sup> The method of payment is far simpler than that of the Swiss accord; the *Banco Nacional de Cuba* is obligated to make the periodic payments by transfers to the credit of a special account opened in the Bank of France. Additional provisions of the brief accord, not unexpected in this form of agreement, provide for a full release of Cuba upon complete payment of the agreed upon sum, a guarantee by the French government against claims of French nationals, a grant to France of exclusive jurisdiction for the distribution of the funds, free exchange of necessary information and the settlement of disagreements by mutual negotiations.

A few observations from the Cuban pattern of claims settlement to date may be drawn from the above information which may have some applicability on any future settlement of the United States claims. Cuba was unwilling for nearly seven years to *discuss* any settlement even with those European nations which continued some level of trade after the expropriations of property of their own nationals. Trade statistics, particularly the increase of trade with Spain and France immediately after the settlement, suggest that Cuba ultimately decided that increased trade with Europe, although not with the United States, was desirable. The reasons must include a wish to divert some trade from the Soviet Union in order both to lessen Cuba's dependence on the Soviets and to obtain needed con-

vertible foreign exchange. The actual increased trade with France and Spain, as well as the direct trade provisions in the Swiss accord, additionally illustrate that Cuba has not agreed to any settlement of claims merely to resolve legitimate claims for property deprivations, but that the settlements are considered as a *quid pro quo* for the acquisition of needed commodities or foreign exchange. That the same attitude will be evidenced in any future bargaining with the United States should be obvious. It is doubtful that the United States would agree to any accord, however, which returned to Cuba a substantial sugar quota, or that any sugar sales would be at a subsidized price.<sup>43</sup> Since any settlement with the United States could only be accomplished through trade-generated foreign exchange, the manner of payment would most certainly be tied to stipulated trade levels with the United States, although not *necessarily* including specific purchase requirements of particular commodities.

The Cuban delay in negotiating with Canada is not entirely surprising. After an initial brief but substantial reduction of trade in 1962, Canada maintained a significant trade volume with Cuba until 1966, when trade again declined to about one-half of the earlier levels.<sup>44</sup> Cuba's need for commodities, its sympathy for an increasing Canadian nationalism and separatism from the United States, and the relative closeness of the Canadian markets, establishes Canada as a market which Cuba would like to increasingly penetrate. The result could be a further delay in returning to some trade detente with the United States. As Cuba's trade increases with other nations of the West which offer substitute commodities for those previously available only in the United States, the United States will have a continually diminished bargaining position regarding a resolution of the outstanding claims. Indeed, Cuba could acquire a unique position in the world by establishing substantial trade relationships with nearly all trading nations *other* than the United States, but maintaining a policy of no contact with the United States for no reason other than to avoid resolving the claims settlement issue. There currently appears to be little which Cuba needs from the United States which cannot be bought in other *available* world markets. Settlement agreements with Canadian and European nations are eased by the relatively small investment in Cuba by nationals of those areas at the time of the revolution. That portends a pessimistic approach to using these settlements as a likely precursor to a United States-Cuban accord. While it is not known what percentage of total claims Cuba's agreements with other nations have allowed, for a settlement of even ten percent of the claims adjudicated under the Cuban Claims Act by the Foreign Claims Settlement Commission, Cuba would

have to agree to pay nearly \$200 million. The payment of *any* percentage future settlement would have to take place over a long term and be funded by renewed trade. Little indication of a need to re-establish trade with the United States is presently apparent. What may bring Cuba back into a trading relationship with the United States, however, is both the market proximity and the size of the United States market for Cuban exports. Whatever future resolution is reached between Cuba and the United States, the information currently available regarding Cuban settlements of international claims issues with other nations may be of substantial use both in identifying the type of agreement that Cuba is willing to consider and to illustrate those conditions which the Cubans deem mandatory for any settlement.

The pattern of Cuba's settlements with other nations does not suggest a Cuban recognition of a right to compensation under either Cuban or international law, but rather an intention to settle claims as a condition precedent to the development or continuation of trade patterns with specific nations. A Cuban settlement with the United States must evolve from a need which is currently not in evidence. If renewed relation means increased freedom of access for United States nationals to visit Cuba, and for journalists and scholars not carefully selected by the Cuban government to visit and report about changes in Cuba, then Cuba may continue its semi-isolation status from the United States for the indefinite future. The re-establishment of relations, with renewed trade and some settlement of the claims issue, currently appears to pose too many problems for a substantial detente. It will come, but at a slow pace more analogous to the increasing nexus between the United States and the Peoples' Republic of China than to recent trade developments with the Soviet Union and Eastern Europe. When relations are re-established, further study of the Cuban approach to the settlement of claims by foreign property owners will be facilitated. Until then, continued inquiry will be limited to a catch-as-catch-can appraisal of those agreements with individuals and nations which disclose some of the details of the agreements, implementing procedures and claims experience.

## NOTES

<sup>1</sup>This argument has apparently not been effective with the Cuban government. The author has been unable to obtain a Cuban visa to visit the country to study Cuba's claims agreements and trade attitudes. Reasonably good authority, supported by the written materials describing recent visits to Cuba, suggests that those who are allowed to visit Cuba are either long term "Cuba watchers" of clearly proven sym-

pathies to the revolution, or liberal journalists who know little, if anything, about Cuba, and who are likely to be satisfied with tours of those areas the Cuban government wishes to have publicized.

<sup>2</sup>See note at text 14 *infra*.

<sup>3</sup>The move was apparently overlooked as a forerunner of events to come. The dollars moved to Canada had more "purchasing power" there, they were less *de minimus* in contrast to Canadian investments in Cuba than investments by United States nationals.

<sup>4</sup>Cuban Assets Control Regulations, July 8, 1963. 31 C.F.R. Pt. 515 (1972).

<sup>5</sup>These branches were expropriated, but not under the same law which nationalized United States Banks. See text accompanying notes 179-80 ch. 111, *supra*.

<sup>6</sup>Communiqué, Department of External Affairs, Ottawa, Canada, No. 3, Jan. 14, 1971. [hereinafter cited as Communiqué].

<sup>7</sup>*Id.* at 30.

<sup>8</sup>The Canadian government has not released the aggregate value of the claims. Claimants were advised to obtain details of the procedures and forms from the Claims Section of the department. The January 14, 1971 communiqué for filing of claims contained only a brief reference to standing, stating that:

In accordance with well-established international rules and practice in this field, the Canadian Government will be able to take into consideration only claims in respect of property which belongs to persons who were Canadian citizens at the time the property was nationalized or otherwise taken. Communiqué at 30.

<sup>9</sup>Letter dated Nov. 23, 1972 to the author from the Legal Advisory Division, Department of External Affairs, Ottawa, Canada.

<sup>10</sup>Discussions had not yet commenced as of late February, 1973. Letter dated February 21, 1973 to the author from the Legal Advisory Division, Department of External Affairs, Ottawa, Canada.

<sup>11</sup>U.S. Department of Commerce, Investment in Cuba, II (1965).

<sup>12</sup>Cuba, 1968 Supplement to the Statistical Abstract of Latin America 170, table 107 (U.C.L.A. 1970) [hereinafter cited as UCLA report].

<sup>13</sup>*Id.* at 170-71.

<sup>14</sup>Letter dated January 23, 1973 to the author from Minister Counselor José María Allendesalazar, Embassy of Spain, Washington, D.C. relaying instructions from the Ministry of Foreign Affairs, Madrid, Spain.

<sup>15</sup>UCLA report 170, table 107.

<sup>16</sup>*Id.* at 170-71.

<sup>17</sup>The Swiss Federal Council, in its report to the Swiss Federal Assembly requesting the approval of the settlement, indicated that Cuba had been unwilling to discuss the issue with Switzerland until late 1966. See Message du Conseil fédéral à l'Assemblée fédérale relatif à l'accord entre la Confédération suisse et la République de Cuba concernant l'indemnisation des intérêts suisses, 2 [hereinafter cited as Swiss Message]. Original text supplied the author by the Swiss government. The negotiations were nowhere nearly as lengthy as the waiting period for their commencement; commenced on February 20, 1967, they were concluded the next month, on March 2nd. The Swiss government was additionally acting on behalf of nationals of Liechtenstein.

<sup>18</sup>Weston suggests that the French-Cuban agreement may not have been conditioned upon France's acceding to a trade agreement. B. Weston International Claims; Post-war French Practice 33 (1971) [hereinafter cited as Weston]. While no agreement was directly tied to the accord, the trade pattern of Cuba and France implies that the accord was prompted by the prospect of a continued favorable trade relationship.

<sup>19</sup>Accord entre le Gouvernement de la Confédération suisse et le Gouvernement Révolutionnaire de la République de Cuba concernant l'indemnisation des biens, droits and intérêts suisse touchés par les lois promulguées par le Gouvernement Révolutionnaire de la République de Cuba à partir du 1er janvier 1959 [hereinafter cited as Swiss Accord]. Original text supplied the author by the Swiss government.

<sup>20</sup>Swiss Accord, art. 1. The three companies were the Compañía Nacional de Alimentos, S.A., Latas Modernas, S.A., and Conservas Selectas, S.A., all absorbed by the most encompassing of the Cuban expropriatory decrees, which nationalized nearly all remaining foreign owned property on the island.

<sup>21</sup>*Id.* arts. 1, 2. Payment in Swiss francs rather than pesos was obviously a non-negotiable demand of the Swiss, the Cuban pesos having rapidly achieved a state of inconvertibility in world markets after the revolution. The need to use the franc as a measure of payment was further suggested by the Swiss agreement to installment compensation; the peso was subject to artificial support and was an unreliable currency for future payments.

<sup>22</sup>*Id.* art. 2. The compensation payments have been made with "exemplary punctuality." Letter dated June 7, 1973 to the author from the Department Politique Fédéral, Bern, Switzerland.

<sup>23</sup>Swiss Message at 2.

<sup>24</sup>*Id.* at 3.

<sup>25</sup>Swiss Accord art. 3.

<sup>26</sup>If the additional purchase of coffee allowed the full indemnification amount to be paid in less than eight years, the Swiss interests nevertheless remained committed to the annual purchase of 40,000 tons of sugar.

<sup>27</sup>*Id.* The Accord does not define what delays might be acceptable. Were Cuba to overcommit itself to sugar export contracts, Swiss priority would seem low since Cuba would want to first supply nations offering needed foreign exchange or commodities, without the deduction for indemnities required with sales to the Swiss interests.

<sup>28</sup>Ley 851, 6 Jul. 19, *Gaceta Oficial*, 7 Jul. 1960. See text accompanying notes 108-115, ch. IV, *supra*.

<sup>29</sup>It is difficult to predict whether Switzerland's international status as a financial center and reputation as a peaceful and admired neutral, encouraged the settlement; the terms of the agreement would suggest that this probably had very little effect.

<sup>30</sup>Swiss Message at 3.

<sup>31</sup>Swiss Accord art. 4.

<sup>32</sup>*Id.* art. 6.

<sup>33</sup>Avis—Announce des biens, des créances et des intérêts suisses à Cuba. April 13, 1967. Original text supplied the author by the Swiss government.

<sup>34</sup>See Weston at 61 n. 235.

<sup>35</sup>Decree No. 67-853 of September 20, 1967 [1967] J.O. 9761, Oct. 4, 1967. [1967] [hereinafter cited as the French Accord]. The Accord is translated in Weston at 193.

<sup>36</sup>UCLA report at 170, table 107.

<sup>37</sup>*Id.*

<sup>38</sup>See the text accompanying notes 12-16, *supra*.

<sup>39</sup>UCLA report at 170-171, table 107.

<sup>40</sup>*Id.* at 170, table 107.

<sup>41</sup>French Accord at preamble.

<sup>42</sup>French Accord, art. 2. The 10,861,532 French francs using exchange rates prevailing in March 1967, was equivalent to approximately \$2,170,000. The Swiss Accord total of 18,039,000 Swiss francs, also applying March, 1967 exchange valuations, equalled about \$4,140,000.

<sup>43</sup>If a subsidized price is utilized to provide for an indemnification fund, the result is a United States taxpayer indemnification of the United States claimants.

<sup>44</sup>UCLA report at 170, table 107.