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

IN THE MATTER OF THE CLAIM OF

GENERAL FOODS CORPORATION

Under the International Claims Settlement Act of 1949, as amended

Claim No. CU - 0188

Decision No. CU 4221

Counsel for claimant: Herman Hoffman, 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 $271,640.82 was presented by GENERAL FOODS CORPORATION based upon the asserted loss of certain 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 Delaware, and that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. An authorized officer of claimant has certified, under date of March 25, 1968 that 98.16% of claimant's outstanding capital stock was owned by nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

It appears from the evidence of record that on October 1, 1956 claimant granted to its wholly-owned subsidiary, GENERAL FOODS CORPORATION, organized in Nevada, a license to manufacture and sell in Cuba certain desserts under claimant's trade mark JELL-O and other trade-marked products of claimant. On the same date, the Nevada subsidiary entered into an agreement with a Cuban corporation, Bestov Products, S.A., subsequently known as Productos Besto, S.A., by which the Cuban corporation was authorized to act as the sole distributor of said products in Cuba. This agreement provided that the Cuban corporation, hereafter referred to as Besto, should purchase the food products from the Nevada subsidiary and sell them to its customers in Cuba. A further agreement was concluded on October 1, 1956 between the Nevada subsidiary and another Cuban corporation, Compania Elaboradora General De Productos, S.A., hereafter referred to as Elaboradora. The agreement provided that Elaboradora was to manufacture and package in Cuba the said food products with machinery and materials supplied by the Nevada subsidiary. Pursuant to this arrangement, the Nevada subsidiary shipped certain machinery and related material to Elaboradora, the terms of the contract stating that said machinery and material was to remain the property of the Nevada subsidiary.

Besto and Elaboradora were related to each by common ownership, and Elaboradora conducted its manufacturing and packaging of the food products on the premises of Besto. As part of the arrangements, Besto guaranteed that Elaboradora would perform in accordance with its agreement.

Operations in Cuba commenced and continued pursuant to the foregoing arrangements. Records were maintained to duly record the results of these operations. As of August 31, 1960, the Nevada subsidiary assigned to claimant all of its rights and interests with respect to its property in Cuba and its agreements with Besto and Elaboradora.

The evidence establishes that on October 20, 1960, the Cuban Minister of Labor intervened Besto. The Commission finds that all of claimant's assets in Cuba, including its property situated on the premises of Besto, were also intervened by Cuba on October 20, 1960, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

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.

Claimant has computed its claim as follows, referring to its Cuban operations as a Cuban branch:

Cash	$ 155,928.10
Accounts Receivable	44,088.43
Inventory	46,406.49
Prepaid Expense	278.02
Fixed Assets (Net of Accumulated Depreciation)	40,845.90
TOTAL ASSETS	$ 287,546.94
Liabilities Assumed	19,545.19
	$ 268,001.75
Net Profit from Cuban Branch and miscellaneous transactions 8/31/60 to date of loss	3,639.07
NET CUBAN BRANCH ASSETS EXPROPRIATED	$ 271,640.82

The evidence includes a list of the fixed assets at the Cuban branch as of August 31, 1960; copies of invoices showing the shipment of said assets to Cuba; copies of a bank statement for the Cuban branch; copies of balance sheets, and profit and loss statements, for the Cuban branch as of March 31, 1958, March 31, 1959, March 31, 1960 and August 31, 1960; and statements from officials of claimant concerning this claim.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that reflected in the balance sheet as of August 31, 1960.

That balance sheet shows claimant's branch assets as follows:

Cash		$ 155,928.10
Accounts Receivable		44,088.43
Inventories:		
Raw material	$ 12,003.13	
Packing material	26,494.08	
Finished and semi-finished goods	7,909.28	46,406.49
Prepaid Expenses		278.02
Investments and Advances - Subs. & Divs.*		(3,188.06)
Fixed Assets	53,544.79	
Less Depreciation	12,698.89	40,845.90
Total Assets		$ 284,358.88

*Counsel for claimant explained in his letter of October 21, 1969 that this item represented the balance due claimant for shipment of gelatin.

As noted above, claimant has reduced its claim by certain liabilities of the branch it had assumed upon assignment of the branch assets by its Nevada subsidiary on August 31, 1960.

The Commission has held consistently that it will not reduce the value of the assets of a branch operating in Cuba by its liabilities except for those debts, such as taxes owing to Cuba, which must be considered under the theory of set-off (see Claim of Simmons Company, Claim No. CU-2303), the reason being that claimant is or may be liable for such debts. Accordingly, no deductions are being made for the ordinary debts of the Cuban branch.

However, counsel's communication of October 21, 1969 indicated that claimant was indebted to the Government of Cuba for taxes in the amount of $12,483.24, which must be deducted in determining the amount of losses under Title V of the Act. (See Claim of Simmons Company, supra.)

The record further shows that the Cuban branch earned a net income of $3,639.07 for the month of September 1960.

The Commission therefore finds that the aggregate net value of claimant's loss on October 20, 1960 was $275,514.71.

It will be noted that the total amount of the 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.

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 GENERAL FOODS CORPORATION 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 Two Hundred Seventy-five Thousand Five Hundred Fourteen Dollars and Seventy-one Cents ($275,514.71) with interest at 6% per annum from October 20, 1960 to the date of settlement.

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

NOV 26 1969

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).)