

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

IN THE MATTER OF THE CLAIM OF

THE PROCTER & GAMBLE COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0569

Decision No. CU **3393**

Counsel for claimant:

Dinsmore, Shohl, Coates & Deupree

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by THE PROCTER & GAMBLE COMPANY in the amount of \$4,996,256.42, based upon debts of nationalized Cuban enterprises.

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.

An officer of the claimant corporation has certified that the claimant was organized in Ohio, that at all times pertinent hereto more than half of its outstanding capital stock was owned by persons who were nationals of the United States, and that as of November 19, 1965, more than 99% of the stockholders were 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.

On the basis of evidence of record, the Commission finds that Sabates Industrial, S.A. (hereinafter referred to as "Industrial") and Productos Detergentes, S.A. (hereinafter referred to as "Productos"), both corporations organized under the laws of Cuba, were nationalized by the Government of Cuba on October 13, 1960 pursuant to Law No. 890 of that date. It is further found that on the date of nationalization, Industrial was indebted to the claimant in the amount of \$257,305.82, and Productos was indebted to the claimant in the amount of \$96,880.35. Evidence in support of this finding includes auditor's reports on the two Cuban corporations dated February 19, 1960, their balance sheets as of December 31, 1959, and a note dated October 1, 1959 payable to claimant by Productos. The Commission concludes that these debts totalling \$354,186.17, owed by enterprises

which were nationalized by the Government of Cuba, constitute "property" as defined in Section 502(3) of the Act; and that claimant was the direct owner of said property and lost it as a result of the nationalization of the debtor enterprises within the meaning of Section 503(a) of the Act.

The Commission further finds that claimant was the owner of all of the outstanding capital stock of Procter & Gamble Comercial de Cuba, S.A. (hereinafter referred to as "Comercial"), a corporation organized under the laws of Cuba; that by contract dated October 1, 1959 Comercial sold to Industrial all of its assets except certain "trademarks, commercial slogans and industrial designs and commercial styles", and Industrial assumed all of Comercial's liabilities, the consideration therefor being \$4,642,070.25, which amount Industrial still owed Comercial on October 13, 1960, when Industrial was nationalized. Thus Comercial, claimant's wholly-owned subsidiary in Cuba, remained a corporate entity with no liabilities and with assets consisting only of its "trademarks, commercial slogans and industrial designs and commercial styles" and an account receivable from Industrial in the amount of \$4,642,070.25. In this respect, the record includes a copy of the contract of October 1, 1959; copies of two notes dated December 18, 1959 in the amounts of \$2,410,647.76 and \$1,731,422.49 payable from Industrial to Comercial; copies of two notes dated October 5 and 23, 1959 in the amounts of \$230,000.00 and \$270,000.00, respectively, payable from Industrial to Sun Life Assurance Company of Canada; a copy of a letter dated November 28, 1960 regarding the assignment on October 3, 1960 by Sun Life Assurance Company of Canada to Comercial of the two notes payable to it; and compatible entries in the auditor's report and balance sheet of Industrial. The Commission concludes that this indebtedness of \$4,642,070.25 also constituted property as defined in the Act, and that claimant was the indirect owner thereof and lost it within the meaning of the Act when Industrial was nationalized by the Government of Cuba.

Accordingly, the Commission holds that claimant suffered a loss in the total amount of \$4,996,256.42 on October 13, 1960, within the meaning of Title V of the International Claims Settlement Act of 1949, as amended.

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 THE PROCTER & GAMBLE 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 Four Million Nine Hundred Ninety-six Thousand Two Hundred Fifty-six Dollars and Forty-two Cents (\$4,996,256.42) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

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

DEC 18 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

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).)