

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

IN THE MATTER OF THE CLAIM OF

SMITH KLINE & FRENCH
INTER-AMERICAN CORPORATION

Claim No. CU - 0946

Decision No. CU - 3709

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, in the amount of \$248,019.98, was presented by SMITH KLINE & FRENCH INTER-AMERICAN CORPORATION 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 Delaware, and that at all pertinent times all of the outstanding capital stock of claimant was owned by Smith Kline & French Laboratories, a corporation organized under the laws of Pennsylvania. An authorized officer of the parent corporation has certified that at all pertinent times more than 50% of its outstanding capital stock was owned by nationals of the United States, and that as of November 28, 1966, 99.85% of the parent's outstanding capital stock was owned by persons residing in the United States. The Commission holds that claimant and the parent corporation are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence establishes that claimant entered into an agreement with Hermanos Tellos Distribuidores, S.A., a Cuban corporation, hereafter called the distributor, pursuant to which the distributor agreed in consideration of certain commissions and fees to use its facilities in distributing and selling claimant's pharmaceutical products in Cuba. In conjunction with these activities, claimant owned certain personal property which was in the possession of the distributor, as well as a bank account, certain securities, and a debt due from the distributor resulting from the sales of claimant's products. These facts are supported by a copy of the agreement and amendments thereto between claimant and the distributor; a copy of a bank statement evidencing the balance of bank deposits in claimant's favor; copies of certificates evidencing claimant's ownership of four shares of stock in Ferrocarriles Occidentales de Cuba, S.A., a Cuban corporation; extracts from claimant's books and records certified by a

firm of certified public accountants as of November 8, 1961; copies of pertinent extracts from claimant's Cuban income tax return for the year 1959; copies of audited balance sheets and profit and loss statements as of December 31, 1955, December 31, 1956, December 31, 1957, December 31, 1958 and December 31, 1959, covering the Cuban operations of claimant; a copy of an insurance policy covering fire and other casualty losses of claimant's properties in Cuba and in other foreign countries; copies of a certificate registering claimant's activities with Cuban authorities and a certificate authorizing claimant to do business in Cuba; and statements from officials of claimant concerning this claim.

On the basis of the entire record, the Commission finds that claimant owned certain personal property in Cuba; namely, a bank account with the First National City Bank of New York, Havana Branch, which was transferred to the National Bank of Cuba; another bank account with Banco de los Colones, Havana; certain machinery and equipment, certain furniture and fixtures, and certain inventories in the possession of the distributor; a debt due from a Cuban insurance company; a debt due from the distributor; certain prepaid expenses; and four shares of stock in Ferrocarriles Occidentales de Cuba, S.A.

The record contains a copy of a Resolution issued on November 7, 1961 by the Cuban Minister of Industries, pursuant to which the distributor, its business and all its assets and facilities, including assets belonging to claimant, were intervened. The Commission, therefore, finds that as a result of such action claimant sustained a loss on November 7, 1961 within the meaning of Title V of the Act.

Claimant has computed its claim as follows, the Cuban peso being on a par with the United States dollar:

Bank deposits at First National City Bank of New York, Havana Branch		\$129,062.23
A bank deposit with Banco de los Colones, Havana		13,714.73
Machinery & equipment	\$4,707.03	
Less depreciation	<u>4,631.67</u>	75.36
Furniture & fixtures	1,806.68	
Less depreciation	<u>1,221.40</u>	585.28
Inventories		27,649.83
Debt from Cuban insurance company		1,635.03
Debt from Distributor		84,940.25
Prepaid expenses		125.00
4 shares of stock in Ferrocarriles Occidentales de Cuba, S.A.		<u>400.00</u>
Total Assets		\$258,187.71
Less Liabilities:		
Purchases from SK&F Labs. Ltd., England	736.05	
Royalties payable to Olin - Mathieson, New York	<u>9,431.68</u>	<u>10,167.73</u>
Net Assets in Cuba		<u>\$248,019.98</u>

An examination of claimant's records substantiates each of the above items; accordingly, the Commission finds that the aggregate value of claimant's assets in Cuba on November 7, 1961, the date of loss, was \$258,187.71.

Claimant has reduced its claim by certain liabilities in the amount of \$10,167.73, being \$736.05 assertedly due to an English company and \$9,431.68 assertedly due to a New York corporation. It is noted that claimant did not own a legal entity in Cuba, but carried on its business through an agent. In making determinations under Title V of the Act, the Commission consistently has not reduced the value of a corporate claimant's assets in Cuba by any liabilities of its Cuban operations, except for taxes owing to the Government of Cuba (see Claim of Simmons Company (Claim No. CU-2303), the reason being that claimant is or may still be liable for those debts. The record shows that claimant was indebted to Cuba for taxes in the amount of \$1,380.16 which must be deducted from the above asset value. It is, therefore, concluded that claimant sustained a net loss in the amount of \$256,807.55 with respect to its assets in Cuba.

It will be noted that the total amount of the losses 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 amount which may be asserted by claimant as the extent thereof.

The Commission has decided that in certification of loss 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 SMITH KLINE & FRENCH INTER-AMERICAN 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 Fifty-Six Thousand Eight Hundred Seven Dollars and Fifty-Five Cents (\$256,807.55) with interest at 6% per annum from November 7, 1961 to the date of settlement.

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

JUN 19 1969

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities for the loss here certified.

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).)