

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20577

IN THE MATTER OF THE CLAIM OF

REVLON, INC.
and
REVLON INTERNATIONAL CORPORATION

Claim No. CU - 2698
Claim No. CU - 8146

Decision No. CU - 5940

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimants:

George Kremer, Esq.

PROPOSED DECISION

These claims against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amounts of \$125,692.56 and \$344,009.81, respectively, were presented by REVLON, INC. and REVLON INTERNATIONAL CORPORATION based upon the asserted loss of certain real and 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 REVLON, INC. (REVLON) was organized under the laws of Delaware, and that at all pertinent times more than 50% of its outstanding capital stock was owned by nationals of the United States. An authorized officer of REVLON has certified that as of the date of filing these claims, May 1, 1967, approximately 96.45% of REVLON's outstanding capital stock was owned by nationals of the United States. The Commission holds that REVLON is a national of the United States within the meaning of Section 502(1)(B) of the Act.

It further appears from the evidence of record that REVLON INTERNATIONAL CORPORATION (INTERNATIONAL), originally known as Revlon Export Corporation until March 3, 1950 when its name was changed to its present one, had been organized under the laws of New York. As of March 4, 1965, INTERNATIONAL merged with C-R Trading Corporation, its wholly-owned Delaware subsidiary, retaining its original name but changing its status to that of a Delaware corporation. The evidence establishes that at all pertinent times all of INTERNATIONAL's outstanding capital stock was owned by REVLON. Accordingly, the Commission holds that INTERNATIONAL is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence establishes that REVLON owned all of the outstanding capital stock of Revlon Overseas Corporation, C.A., organized under the laws of Venezuela (Venezuelan subsidiary); and that the Venezuelan subsidiary,

in turn, owned a branch in Cuba (Cuban branch-Ven.) where its real and personal property appurtenant to its Cuban operations were situated. REVLON's claim is based on the Venezuelan subsidiary's equity in its Cuban branch; a debt due from the Cuban branch (Ven.) to the Venezuelan subsidiary; and a debt due from INTERNATIONAL's Cuban subsidiary to the Venezuelan subsidiary. Therefore, REVLON's property interests were owned indirectly.

The record shows that INTERNATIONAL owned all of the outstanding capital stock of Compania de Productos Revlon de Cuba, S.A., a Cuban corporation (Cuban subsidiary); a stock interest in Ferrocarriles Occidentales de Cuba, S.A., another Cuban corporation; and debts due from the Cuban subsidiary and the Cuban branch (Ven.) directly and indirectly, as follows:

1. A debt owed by the Cuban branch (Ven.) to the Cuban subsidiary.
2. A debt owed by the Cuban branch (Ven.) to INTERNATIONAL.
3. A debt owed by the Cuban subsidiary to Revlon World Wide Corporation, a New York corporation wholly owned by INTERNATIONAL, which corporation merged with its parent, INTERNATIONAL, on December 30, 1959.

Based upon the foregoing, claimants have amended their claims to include the following asserted losses:

REVLON, Claim No. CU-2698

Cuban branch (Ven.) - net worth	\$113,895.34
Debt owed by Cuban branch (Ven.) to its home office, the Venezuelan subsidiary	2,629.57
Debt owed by Cuban subsidiary of INTERNATIONAL to Venezuelan subsidiary of REVLON	<u>9,167.65</u>
Total	<u>\$125,692.56</u>

INTERNATIONAL, Claim No. CU-8146

Cuban subsidiary	\$227,662.00
Stock interest in Ferrocarriles Occidentales de Cuba, S.A.	1.00
Debt owed by Cuban subsidiary to Revlon World Wide Corporation	64,429.66
Debt owed by Cuban branch (Ven.) to INTERNATIONAL	<u>51,917.15</u>
Total	<u>\$344,009.81</u>

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It appears from the evidence of record that the Cuban branch (Ven.) and the Cuban subsidiary (of INTERNATIONAL) occupied premises in the same building at Avenida Independencio No. 2210, Havana, Cuba. The Cuban branch (Ven.) constituted a plant for the manufacture of cosmetics, toiletries and related products, while the Cuban subsidiary (of INTERNATIONAL) acted as the outlet for the sale of said products.

The record includes copies of deeds; copies of audited balance sheets as of December 31, 1960 and accompanying profit and loss statements for the year ending December 31, 1960, with respect to the Cuban branch (Ven.) as well as the Cuban subsidiary (of INTERNATIONAL); pertinent statements of claimants to the Department of State; and statements from officers of and counsel for claimants concerning these claims. It further appears from claimants' statements in their official claim forms that they were allowed tax deductions for their Cuban losses.

As noted above, both claimants assert claims, in whole or in part, on the basis of indirect ownership of property in Cuba. The various items of property herein are discussed in detail below.

The Commission finds on the basis of a copy of a Resolution of April 18, 1961 issued pursuant to the Cuban Agrarian Reform Law that the Cuban branch (Ven.) and the Cuban subsidiary (of INTERNATIONAL) were intervened by the Government of Cuba on April 18, 1961, as a result of which claims against the Government of Cuba arose. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Commission has held that claims based on the indirect ownership of property, including debts, inter alia, that was nationalized or intervened by Cuba are within the purview of Title V of the Act. (See Claim of Avon Products, Inc., Claim No. CU-0072, Amended Proposed Decision, 1967 FCSC Ann. Rep. 35, and Claim of United Merchants & Manufacturers, Inc., Claim No. CU-0759, Amended Proposed Decision, id. at 52.) Accordingly, the Commission finds that REVLON and INTERNATIONAL are the proper party claimants in these proceedings.

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.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the properties and equitable to the claimants are those appearing in the said balance sheets as of December 31, 1960 for the Cuban branch (Ven.) and the Cuban subsidiary (of INTERNATIONAL), except as noted hereafter. In this connection, the Commission has held that the value of a Cuban branch belonging to a foreign subsidiary of an American claimant should be determined by considering the branch's liabilities as well as its assets. (See Claim of Martha P. Balme, Claim No. CU-8162, involving the Cuban branch of a Liberian subsidiary.)

The audited balance sheet for the Cuban branch (Ven.) as of December 31, 1960 shows its financial condition as follows, the Cuban peso being on a par with the United States dollar:

<u>ASSETS</u>		
Cash in bank and on hand		\$ 658.22
Accounts receivable-miscellaneous		326.09
Inventories, at cost		43,317.03
Prepaid expenses		264.76
Debt due from the Cuban subsidiary		2,982.73
Bonds of Cuban Electric Company		500.00
Plant and equipment, at cost:		
Building	\$133,804.46	
Machinery and equipment	31,236.74	
Furniture and fixtures	21,235.96	
	<u>\$186,277.16</u>	
Less depreciation	<u>8,118.36</u>	178,158.80

Land		\$ 42,124.49
Organization expenses, less amortization of \$152.40 as of December 31, 1960		<u>609.94</u>
Total Assets		<u>\$268,942.06</u>

LIABILITIES

Accounts payable	\$ 1,146.31	
Accrued liabilities	<u>6,889.10</u>	\$ 8,035.41
Due to affiliates:		
Cuban subsidiary	\$100,000.00	
Venezuelan subsidiary	2,629.57	
INTERNATIONAL	<u>51,917.15</u>	154,546.72
Home Office capital account		<u>106,359.93</u>
Total		<u>\$268,942.06</u>

The audited balance sheet for the Cuban subsidiary (of INTERNATIONAL) as of December 31, 1960 shows its financial condition as follows:

ASSETS

Cash in banks and on hand		\$112,916.38
Accounts receivable, less bad debts reserve of \$3,715.71		55,070.48
Other receivables		2,588.88
Inventories, at cost		43,009.44
Prepaid expenses		2,566.74
Due from affiliates:		
Cuban branch (Ven.)	\$100,000.00	
INTERNATIONAL	<u>92.10</u>	100,092.10
Claim receivable		782.56
Stock in Ferrocarriles Occidentales de Cuba, S.A., less reserve of \$799.00		1.00
Property and equipment, at cost:		
Automobile	\$ 3,373.00	
Furniture and fixtures	<u>18,829.36</u>	
	\$ 22,202.36	
Less depreciation	<u>8,125.39</u>	<u>14,076.97</u>
Total Assets		<u>\$331,104.55</u>

LIABILITIES

Accounts payable		\$ 4,960.01
Accrued liabilities		22,775.05
Cuban profits taxes payable		1,078.48
Due to affiliates:		
Revlon World Wide Corporation (INTERNATIONAL)	\$ 84,537.64	
Venezuelan subsidiary	9,167.65	
Cuban branch	<u>2,982.73</u>	96,688.02

Capital:		
Issued stock	\$150,000.00	
Retained earnings	<u>55,602.99</u>	<u>\$205,602.99</u>
	Total	<u>\$331,104.55</u>

Claim No. CU-2698

Cuban Branch (Ven.)

With respect to the assets of the Cuban branch (Ven.), bonds of the Cuban Electric Company in the amount of \$500.00, Section 505(a) of the Act applies inasmuch as the Cuban Electric Company is an American entity which has filed a claim under the Act. (See Claim of Cuban Electric Company, Claim No. CU-2578.) Section 505(a) of the Act provides as follows:

. . . . A claim under Section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The Commission has been advised by counsel for claimants that the said bonds were not secured by any property taken by the Government of Cuba.

Accordingly, the assets of the Cuban branch (Ven.) should be reduced pro tanto. The Commission therefore finds that the bonds in the amount of \$500.00 did not constitute an asset of the Cuban branch (Ven.) taken by Cuba within the meaning of Title V of the Act. (See Claim of Anaconda American Brass Co., Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.) Accordingly, the Commission finds that the aggregate value of the Cuban branch's (Ven.) assets on April 18, 1961, the date of loss, was \$268,442.06.

Counsel for claimants has informed the Commission, on the basis of records maintained by REVLON, that during the period from December 31, 1960, the date of the balance sheet, to April 18, 1961, the date of loss, the Cuban branch's (Ven.) accounts payable and accrued liabilities in the aggregate amount of \$8,035.41 were paid. The Commission therefore finds that on the date of loss the liabilities of the Cuban branch (Ven.) aggregated \$154,546.72, exclusive of its home office capital account.

Accordingly, the Commission finds that the value of the Cuban branch (Ven.) or the excess of its assets over its liabilities on April 18, 1961, the date of loss, was \$113,895.34. It is concluded that REVLON sustained a loss in that amount.

Debts:

As indicated by the respective balance sheets as of December 31, 1960 for the Cuban branch (Ven.) and the Cuban subsidiary (of INTERNATIONAL), the Cuban branch (Ven.) and the Cuban subsidiary (of INTERNATIONAL) owed debts to the Venezuelan subsidiary in the amounts of \$2,629.57 and \$9,167.65, respectively. In determining the Claim of Avon Products, Inc., supra, the Commission held that a claim for debts of an intervened enterprise in Cuba owned indirectly by an American claimant is covered by Title V of the Act. The Commission therefore finds that REVLON sustained a loss on April 18, 1961 in the aggregate amount of \$11,797.22, in respect of these debts.

REVLON's losses on April 18, 1961 are summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
Cuban branch	\$113,895.34
Debts	<u>11,797.22</u>
Total	<u>\$125,692.56</u>

Claim No. CU-8146

Cuban Subsidiary:

As indicated by the above balance sheet as of December 31, 1960, the Cuban subsidiary's total assets aggregated \$331,104.55. Counsel for claimants has informed the Commission that, on the basis of records maintained by INTERNATIONAL, the aggregate amount of the Cuban subsidiary's assets on April 18, 1961, the date of loss, was \$327,662.00, the precise components thereof not being available.

It is noted, however, that this revised aggregate amount does not include the \$1.00 for the stock interest in Ferrocarriles Occidentales de Cuba, S.A., a Cuban corporation, since that asset is being claimed in addition to the

revised amount. The record shows that the original cost of said stock was \$800.00, and that its book value was reduced by a reserve for losses in the amount of \$799.00.

The Commission has held that a stock interest in Ferrocarriles Occidentales de Cuba, S.A. should be evaluated on the basis of the cost thereof. (See Claim of Ruth Anna Haskew, Claim No. CU-0849, 1968 FCSC Ann. Rep. 31.) Accordingly, the Commission finds that the value of the Cuban subsidiary's stock interest in Ferrocarriles Occidentales de Cuba, S.A. on April 18, 1961, the date of loss, was \$800.00.

Counsel for claimants stated in his letter of September 21, 1970 that the Cuban subsidiary's asset, a debt due from the Cuban branch (Ven.) in the amount of \$100,000.00, should be deleted since it did not constitute property that was taken by the Government of Cuba. Apparently, counsel reasoned that since the debt was really owed by the Venezuelan subsidiary situated in Venezuela, it could not be taken as property within the jurisdiction of the Government of Cuba.

As a general rule, the Commission has so held with respect to all assets of enterprises nationalized by Cuba that were located outside of Cuba. Following the rule of international law, the Commission has generally refrained from giving extraterritorial effect to nationalization decrees of foreign governments in the administration of claims programs. (See FCSC Dec. & Ann. 376 (1968).)

However, the instant case is to be distinguished. As noted above, the Commission has held that Cuban branches belonging to foreign subsidiaries of American claimants should be treated as Cuban entities for the purpose of valuation under Title V of the Act. (See Claim of Martha P. Balme, Claim No. CU-8162.) It follows, therefore, that a debt of such a Cuban branch would be considered a liability of the branch, not the parent. By the same token, an asset of such a Cuban branch would be considered an asset of the branch, not the parent; and it would, therefore, be concluded that such an asset was within the jurisdiction of the Government of Cuba within the

meaning of Title V of the Act. Moreover, since the \$100,000.00 debt of the Cuban branch in this case has been deducted from its assets in determining the value of the Cuban branch, it would be inequitable to eliminate it as an asset of the Cuban subsidiary. Accordingly, the Commission finds that the \$100,000.00 receivable constituted an asset of the Cuban subsidiary on the date of loss.

On the other hand, the debt due the Cuban subsidiary from INTERNATIONAL directly, in the amount of \$92.10, as shown by the said balance sheet, did not constitute an asset of the Cuban subsidiary that was taken by the Government of Cuba, and the Commission so finds.

Based upon the foregoing, the Commission finds that the aggregate value of the Cuban subsidiary's assets on April 18, 1961, the date of loss, was \$328,369.90.

On the basis of records maintained by INTERNATIONAL reflecting transactions between the date of the balance sheet and the date of loss, counsel for claimants has advised the Commission of the following facts:

A. Current liabilities of the Cuban subsidiary in the aggregate amount of \$27,735.06, covering accounts payable of \$4,960.01 and accrued liabilities of \$22,775.05, as shown in the balance sheet as of December 31, 1960, were paid in full.

B. The debt of \$84,537.64 owed by the Cuban subsidiary to Revlon World Wide Corporation, as shown in the balance sheet, was reduced by payment of \$20,107.98 to a balance of \$64,429.66.

Accordingly, the Commission finds that the aggregate amount of the Cuban subsidiary's liabilities on the date of loss was \$77,658.52, representing taxes payable of \$1,078.48 and debts to affiliates of \$76,580.04. The Commission therefore finds that the net worth of the Cuban subsidiary or the excess of its assets over its liabilities was \$250,711.38. It is concluded that INTERNATIONAL sustained a loss in that amount.

Debts:

As noted above, the Cuban subsidiary (of INTERNATIONAL) owed \$64,429.66 to Revlon World Wide Corporation; and the Cuban branch (Ven.) owed \$51,917.15, as shown by the balance sheet for the said Cuban branch.

The Commission therefore finds that INTERNATIONAL sustained a loss on April 18, 1961 in the aggregate amount of \$116,346.81.

INTERNATIONAL's losses on April 18, 1961 are summarized as follows:

<u>Item of Property</u>	<u>Amount</u>
Cuban subsidiary	\$250,711.38
Debts	<u>116,346.81</u>
Total	<u>\$367,058.19</u>

It will be noted that the total amount of the losses found herein is in excess of the amount asserted by INTERNATIONAL. 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 certifications of loss 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 it is so ordered.

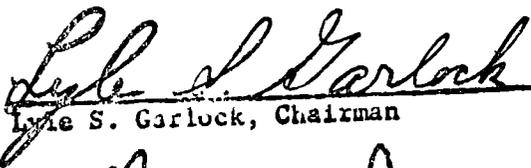
CERTIFICATIONS OF LOSS

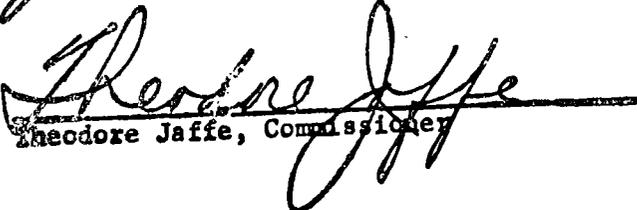
The Commission certifies that REVLON, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Twenty-five Thousand Six Hundred Ninety-two Dollars and Fifty-six Cents (\$125,692.56) with interest at 6% per annum from April 18, 1961 to the date of settlement; and

The Commission certifies that REVLON INTERNATIONAL 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 Three Hundred Sixty-seven Thousand Fifty-eight Dollars and Nineteen Cents (\$367,058.19) with interest at 6% per annum from April 18, 1961 to the date of settlement.

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

NOV 4 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, 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 claimants establish retention of the securities or 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 those 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. (FGSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

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