

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

IN THE MATTER OF THE CLAIM OF

AMERICAN HOME PRODUCTS CORPORATION

Claim No. CU -0317

Claim No. CU-0318

Decision No. CU-32

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

Louis J. Bayo, Esq.

Appeal and objections from an Amended Proposed Decision entered on August 23, 1967; oral hearing requested.

Oral hearing held on November 16, 1967.

FINAL DECISION

Under date of August 23, 1967, the Commission issued its Amended Proposed Decision certifying losses in favor of claimant as successor in interest to its wholly-owned American subsidiaries, Home Products of Cuba, Inc. (Home) and Laboratorios Wyeth de Cuba, Inc. (Wyeth), which were dissolved in 1960 and 1961, respectively. Certifications of Loss were entered for \$477,368.47 on account of Home's Cuban assets and \$222,504.91 for Wyeth's Cuban assets. In determining these values, it appeared that Home and Wyeth owned Cuban entities and accordingly, all appurtenant liabilities were deducted.

Claimant objected to the Amended Proposed Decision and requested an oral hearing which was held on November 16, 1967. At that hearing, counsel for claimant presented oral argument and an accountant testified concerning the value of the said Cuban assets that had been taken by the Government of Cuba. Subsequently claimant submitted additional supporting evidence, including a valuation report prepared by an accounting firm.

Upon consideration of the entire record, including the evidence presented at the oral hearing and subsequently, the Commission now makes the following findings:

1. The Commission finds that Home and Wyeth did not own Cuban entities but operated in Cuba through branch offices. The Commission has held consistently that the value of a United States corporate claimant's Cuban branch should not be reduced by the branch's liabilities except for taxes owing to the Government of Cuba. (See Claim of Simmons Company, Claim No. CU-2303, 1968 FCSC Ann. Rep. 77.) Since the record indicates that Home's and Wyeth's Cuban branches owed taxes to Cuba in the amounts of \$9,343.67 and \$8,397.03, respectively, the Commission finds that the values of said branches should be increased as follows:

Home

Liabilities per Amended Proposed Decision	\$108,019.87
Less taxes due Cuba	<u>9,343.67</u>
Net increase	<u>\$ 98,676.20</u>

Wyeth

Liabilities per Amended Proposed Decision	\$124,834.41
Less taxes due Cuba	<u>8,397.03</u>
Net increase	<u>\$116,437.38</u>

2. The Commission finds that the valuations most appropriate to the fixed assets of Home's Cuban branch and equitable to the claimant are the insurance valuations thereof. (See Claim of J. A. Dougherty's Sons, Inc., Distillers, Claim No. CU-3100.) Accordingly, the Commission finds that the fixed assets of Home's Cuban branch on the date of loss had a value of \$52,590.53 in excess of that found in the Amended Proposed Decision.

3. The said valuation report prepared by an accounting firm suggests that Wyeth's Cuban branch had a fair market value of between \$950,000.00 and \$1,300,000.00, including goodwill with a value of between \$750,000.00 and \$1,100,000.00. That valuation was based upon: (1) the economic condition of the drug industry in Cuba; (2) the values of certain acquired drug companies, as established by other drug companies, or by the stock market; and (3) the performance and financial condition of Wyeth's Cuban branch.

The Commission finds the first two above bases to be entitled to very little weight in determining the value of Wyeth's Cuban branch. When the only truly relevant basis, performance and financial condition, is considered, the Commission finds no support for the valuations suggested by the accounting firm.

It appears from that report that Wyeth's Cuban branch had net annual (calendar) earnings after Cuban taxes as follows, eliminating 1954, the year in which the branch was established, and 1960, the year in which the branch was taken by Cuba:

1955	\$ (34.93)
1956	6,749.50
1957	74,782.00
1958	78,458.00
1959	<u>19,331.00</u>
Total	<u>\$179,285.57</u>

That report does not include copies of profit and loss statements for Wyeth's Cuban branch. However, the record contains signed copies of profit and loss statements for that branch for the fiscal years ending August 31, 1959 and August 31, 1960. Those statements disclose the following:

Fiscal Year Ending August 31, 1959

Operating losses before intercompany transactions	(\$147,676.93)
Intercompany income - promotional allowance	118,370.84
Other deductions	( <u>7,689.94</u> )
Net operating losses	(\$ 36,996.03)

Fiscal Year Ending August 31, 1960

Operating losses before intercompany transactions	(\$170,553.10)
Intercompany income - promotional allowance	103,689.23
Other deductions	( <u>13,635.16</u> )
Net operating losses	(\$ 80,499.03)

The accounts, "intercompany transactions", "promotional allowance" and "other deductions", are not explained in the record. It would appear that

they relate to transactions not directly involved in Wyeth's Cuban branch's operations. In any event, whether these accounts are considered or not, it is clear that Wyeth's Cuban branch sustained net losses during the fiscal years ending August 31, 1959 and August 31, 1960.

Upon consideration of the entire record, the Commission finds no valid basis for allowing any amount on account of goodwill.

Claimant's losses are now summarized as follows:

Home

Allowed in Amended Proposed Decision	\$477,368.47
Addition of net liabilities	98,676.20
Increased value of fixed assets	<u>52,590.53</u>
Total	<u>\$628,635.20</u>

Wyeth

Allowed in Amended Proposed Decision	\$222,504.91
Addition of net liabilities	<u>116,437.38</u>
Total	<u>\$338,942.29</u>

Accordingly, the Certifications of Loss in the Amended Proposed Decision of August 23, 1967 are set aside and the following Certifications of Loss will be entered, and in all other respects the Amended Proposed Decision is affirmed.

CERTIFICATIONS OF LOSS

The Commission certifies that AMERICAN HOME PRODUCTS CORPORATION succeeded to and 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 Six Hundred Twenty-eight Thousand Six Hundred Thirty-five Dollars and Twenty Cents (\$628,635.20), with interest thereon at 6% per annum from October 24, 1960 to the date of settlement; and

The Commission further certifies that AMERICAN HOME PRODUCTS CORPORATION succeeded to and 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 Thirty-eight Thousand Nine Hundred Forty-two Dollars and Twenty-nine Cents (\$338,942.29), with interest thereon at 6% per annum from October 26, 1960 to the date of settlement.

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

**OCT 13 1961**

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

CU-0317  
CU-0318

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AMENDED PROPOSED DECISION

On February 15, 1967, the Commission issued its Proposed Decision in these claims against the Government of Cuba, certifying that claimant had sustained losses in the total amount of \$599,873.38. Claimant corporation objected to the Proposed Decision, and thereafter submitted additional evidence and information in support of these claims. The matter having been reconsidered, it is

ORDERED that the Proposed Decision of the Commission be, and the same is amended to read as follows:

These claims, against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$347,437.94 and \$764,181.24, respectively, were presented by LABORATORIOS WYETH DE CUBA, INC., ( In Dissolution), and by HOME PRODUCTS OF CUBA, INC., (In Dissolution), based upon the nationalization by the Government of Cuba of their respective interests 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 504 of the Act provides, as to ownership of claims, that

A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 502(1) of the Act defines the term "national of the United States" as "(B) 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 both LABORATORIOS WYETH DE CUBA, INC., and HOME PRODUCTS OF CUBA, INC., were organized in the State of Delaware, in 1954 and 1952, respectively, and that each was wholly owned by AMERICAN HOME PRODUCTS CORPORATION. They were engaged in the manufacture and sale in Cuba of certain drug, pharmaceutical and household products. The AMERICAN HOME PRODUCTS CORPORATION was organized in the State of Delaware in 1926 and an officer of the corporation has certified that over 50% of outstanding capital stock is owned by United States nationals. The Commission holds that LABORATORIOS WYETH DE CUBA, INC., HOME PRODUCTS OF CUBA, INC., and AMERICAN HOME PRODUCTS CORPORATION qualify as nationals of the United States within the meaning of Section 502(1)(B) of the Act.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3, (pursuant to Law 851) which listed as nationalized, by expropriation, HOME PRODUCTS OF CUBA, INC., and the Commission finds that the business and properties in Cuba, of HOME PRODUCTS OF CUBA, INC., then wholly owned by AMERICAN HOME PRODUCTS CORPORATION, were nationalized by the Government of Cuba, on October 24, 1960, within the meaning of Title V of the Act.

LABORATORIOS WYETH DE CUBA, INC., under date of December 1, 1960, informed the United States State Department that its property and business in Cuba were nationalized by forced expropriation on October 26, 1960. In support thereof, there was submitted copy of an "Acta" of October 26, 1960, whereby administration of both HOME PRODUCTS OF CUBA, INC., and LABORATORIOS WYETH DE CUBA, INC., was transferred to an administrator appointed by Resolution 60-467, issued by I.N.R.A. (National Institute of Agrarian Reform), on October 25, 1960, and which was issued pursuant to Resolution 3 of October 24, 1960 (supra). Resolution 3 of October 24, 1960, does not, however, list LABORATORIOS WYETH DE CUBA, INC. LABORATORIOS WYETH DE CUBA, INC., in its letter of December 1, 1960, also indicated that subsequently its business and properties in Cuba were intervened. On September 13, 1961, the Cuban Government published in its Official Gazette, Acuerdo No. VII, pursuant to Law 890, (Cuban Official Gazette, October 13, 1960), listing enterprises nationalized by expropriation, and including LABORATORIOS WYETH DE CUBA, INC. However, the business and properties of LABORATORIOS WYETH DE CUBA, INC., were not restored to it by the Government of Cuba, on or after October 26, 1960, and the Commission finds, in the absence of evidence to the contrary, that its business and properties in Cuba were effectively nationalized by the Government of Cuba on October 26, 1960, within the meaning of Title V of the Act. (See the Claim of Jack Moss, FCSC Claim No. CU-0225.)

Based on the foregoing the Commission finds that HOME PRODUCTS, INC., OF CUBA, and LABORATORIOS WYETH DE CUBA, INC., suffered losses within the meaning of Title V of the Act on October 24, 1960, and October 26, 1960, respectively when the business and properties of said entities were nationalized and taken by the Government of Cuba.

The record further shows that HOME PRODUCTS OF CUBA, INC., a Delaware corporation, was placed in liquidation and dissolution on November 28, 1960, and that LABORATORIOS WYETH DE CUBA, INC., also a Delaware corporation, was placed in liquidation and dissolution on November 20, 1961. The Commission has been informed as of August 16, 1966, by the Office of the Secretary and General Attorney of AMERICAN HOME PRODUCTS CORPORATION, that liquidation of both LABORATORIOS WYETH DE CUBA, INC., and HOME PRODUCTS OF CUBA, INC., has been completed and that AMERICAN HOME PRODUCTS CORPORATION is the successor of record of both companies.

The Commission holds that AMERICAN HOME PRODUCTS CORPORATION is the legal successor in interest of the aforementioned entities and invested with the claims which arose in their favor. (See the Claim of The Berwind-White Coal Mining Company, FCSC Claim No. CU-0538.) Accordingly, AMERICAN HOME PRODUCTS CORPORATION is substituted as claimant in these matters.

A corporate officer of AMERICAN HOME PRODUCTS CORPORATION has affirmed that the holders of more than 99% of the outstanding shares of capital stock of said corporation reside in the United States, its territories and possessions; that less than 1% of the shareholders of AMERICAN HOME PRODUCTS CORPORATION have United States withholding tax deducted from their dividend checks because they are non-resident aliens; and that to the best of his knowledge and belief the percentage of the outstanding shares of capital stock of AMERICAN HOME PRODUCTS CORPORATION beneficially owned by aliens is relatively insignificant.

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.

Value - HOME PRODUCTS OF CUBA, INC.

The asserted loss of HOME PRODUCTS OF CUBA, INC., is itemized as follows:

Land	\$100,000.00
Buildings & Improvements	200,000.00
Machinery & Equipment	17,703.28
Furniture & Fixtures	15,891.29
Inventories:	
Finished Stock	52,529.29
Raw Materials	36,413.71
Packaging Materials	49,379.55
Goods in Process	4,350.87
Miscellaneous Inventories	1,304.39
Accounts Receivable	156,868.89
Cash in Banks	112,333.83
Miscellaneous Other Assets	12,736.49
Due from Affiliates	<u>4,669.65</u>
	\$764,181.24

Among the documentation submitted are an affidavit of November 30, 1960 of the former Chief Accountant of HOME PRODUCTS OF CUBA, INC., and of LABORATORIOS WYETH DE CUBA, INC., with an annexed short form of balance sheet prepared on October 28, 1960, to show the approximate balance as of October 25, 1960, reflecting a capital account of \$600,000.00 and his further detailed explanation thereof; balance sheets for July 31, 1960, August 31, 1960, September 30, 1960, and October 26, 1960, as well as the "Estimated Actual Value" for October 26, 1960; schedules, and profit and loss statements.

A balance sheet enumerates the assets, tangible or intangible, and all the liabilities of an enterprise. The liabilities consist of outside creditors' claims, which are contractual in nature, and those of the owner, which are residual in nature. The excess of assets over contractual liabilities represents the owner's equity, or net worth. It may be observed that the same result is reached by adding the capital investment, appropriate surplus reserves (not including reserves for depreciation, taxes and the like), and any undivided profit, as appropriate, and subtracting any outstanding deficit.

It may be noted that the balance sheets of HOME PRODUCTS OF CUBA, INC., consistently reflect an operating loss. The book values, briefly stated by both of the above-mentioned methods is as follows:

July 31, 1960:

Assets	\$593,887.96	Capital Account	\$546,273.17
Liabilities	<u>110,104.44</u>	Loss	<u>62,489.65</u>
Net Worth	\$483,783.52	Net Worth	\$483,783.52

August 31, 1960:

Assets	\$613,990.09	Capital Account	\$549,856.23
Liabilities	<u>127,685.88</u>	Loss	<u>63,552.02</u>
Net Worth	\$486,304.21	Net Worth	\$486,304.21

September 30, 1960:

Assets	\$578,858.79	Capital Account	\$545,227.30
Liabilities	<u>105,446.04</u>	Loss	<u>71,814.55</u>
Net Worth	\$473,412.75	Net Worth	\$473,412.75

October 26, 1960:

Assets	\$585,388.34	Capital Account	\$533,943.58
Liabilities	<u>108,019.87</u>	Loss	<u>56,575.11</u>
Net Worth	\$477,368.47	Net Worth	\$477,368.47

On the other hand, the "October 26, 1960 Estimated Actual Value" is shown as follows:

Assets	\$764,181.24	Capital Account	\$533,943.58
Liabilities	<u>108,019.87</u>	Earned Surplus	<u>122,217.79</u>
Estimated Net Worth	\$656,161.37	Estimated Net Worth	\$656,161.37

A careful examination into the difference of \$178,792.90 between the October 26, 1960 book asset figure and the October 26, 1960 Estimated Actual Value asset figure discloses that there is included in the claimed figure of \$764,181.24, the following estimated increases over the book value:

Land	\$ 39,232.10
Buildings & Improvements	98,816.09
Machinery & Equipment	5,957.42
Furniture & Fixtures	4,651.59
Finished Stock	20,066.19
Including the Reserve for Inventory Losses	<u>10,069.51</u>
	\$178,792.90

This figure is also equivalent to the total of the operating loss of \$56,575.11 and the estimated earned surplus of \$122,217.79.

The basis for the estimated increases is not, however, substantiated by claimant.

The Commission has considered all evidence submitted by HOME PRODUCTS OF CUBA, INC., (In Dissolution) in support of its evaluation of loss, and concludes that the book value as of October 26, 1960 is the most appropriate basis of valuation. The Commission finds that the liabilities must be deducted from \$585,388.34, representing the book value of the assets, and concludes that at the time of nationalization, the value of the business and properties of HOME PRODUCTS OF CUBA, INC., was \$477,368.47.

Accordingly, it is concluded that claimant succeeded to a loss in the amount of \$477,368.47 within the meaning of Title V of the Act as a result of nationalization and taking of the business and properties of its wholly owned subsidiary, HOME PRODUCTS OF CUBA, INC., by the Government of Cuba as of October 24, 1960.

Value - LABORATORIOS WYETH DE CUBA, INC.

The asserted loss of LABORATORIOS WYETH DE CUBA, INC., is itemized as follows:

Leasehold Improvements	\$ 662.00
Machinery & Equipment	814.63
Automobiles	10,355.00
Inventories:	
Finished Stock	119,826.22
Packaging Materials	7,308.21
Work in Process	519.89
Accounts Receivable	80,649.49
Cash in Banks	120,808.83
Miscellaneous other Assets	6,493.67
	<u>\$347,437.94</u>

The documentation submitted on value include the aforementioned affidavit of November 30, 1960, and the further detailed explanation thereof; a short form of balance sheet reflecting an approximate capital account of \$300,000.00 as of October 25, 1960, balance sheets for July 31, 1960, August 31, 1960, and October 26, 1960, as well as the "Estimated Actual Value" for October 26, 1960; schedules, and related statements; and photographs.

As it appears from the following, LABORATORIOS WYETH DE CUBA, INC., apparently was operating at a loss. The book values for July and August 1960, briefly stated, are as follows:

July 31, 1960:

Assets	\$471,678.58	Capital Account	\$359,652.69
Liabilities	<u>289,599.81</u>	Loss	<u>177,573.92</u>
Net Worth	\$182,078.77	Net Worth	\$182,078.77

August 31, 1960:

Assets	\$426,397.36	Capital Account	\$347,065.71
Liabilities	<u>268,379.33</u>	Loss	<u>189,047.68</u>
Net Worth	\$158,018.03	Net Worth	\$158,018.03

October 26, 1960:

Assets	\$347,339.32	Capital Account	\$339,806.50
Liabilities	<u>224,834.41</u>	Loss	<u>217,301.59</u>
Net Worth	\$122,504.91	Net Worth	\$122,504.91

The "October 26, 1960 Estimated Actual Value" reflects an increase of \$98.60 in the total asset figure, which is accomplished by not deducting the Reserve for Inventory Losses.

The Commission has considered all evidence submitted by LABORATORIOS WYETH DE CUBA, INC., (In Dissolution) in support of its evaluation of loss, and concludes that the book value as of October 26, 1960, is the most appropriate basis of valuation. The balance sheet of October 26, 1960, reflects liabilities in the total amount of \$224,834.41. However, the record also discloses that \$100,000.00 of this amount represents a loan of 100,000 Cuban pesos borrowed by LABORATORIOS WYETH DE CUBA, INC. from Corporation Interamericano Smith, Kline and French on July 15, 1960, which loan was outstanding at the time of nationalization and continued outstanding thereafter until July 14, 1961.

To establish the existence of the loan, claimant, the AMERICAN HOME PRODUCTS CORPORATION (As successor to LABORATORIOS WYETH DE CUBA, INC.), has submitted a copy of a "Public Instrument No. 301." (Exhibit A of record) dated July 15, 1960, between LABORATORIOS WYETH DE CUBA, INC., and Corporation Interamericano Smith, Kline and French evidencing the parties' agreement to the settlement of the aforesaid loan in United States currency at the agreed rate of thirty-three and three-tenths cents (\$0.333) for each Cuban

peso of the loan. The evidence of payment and final settlement of the agreed amount is supported by letter agreement of July 14, 1961 (Exhibit B of record).

On the basis of this additional evidence, the Commission finds that the loan of \$100,000.00 represented a liability which survived the nationalization and was subsequently satisfied by LABORATORIOS WYETH DE CUBA, INC., and should not be considered in arriving at the net worth of LABORATORIOS WYETH DE CUBA, INC. The Commission further finds that at the time of nationalization the liabilities of the business and properties of LABORATORIOS WYETH DE CUBA, INC., amounted to \$124,834.41, and that such liabilities must be deducted from \$347,339.92, representing the book value of the assets. The Commission therefore concludes that at the time of nationalization, the value of the business and properties of LABORATORIOS WYETH DE CUBA, INC. was \$222,504.91.

Accordingly, it is concluded that claimant succeeded to a loss in the amount of \$222,504.91 within the meaning of Title V of the Act as a result of nationalization and taking of the business and properties of its wholly owned subsidiary LABORATORIOS WYETH DE CUBA, INC., by the Government of Cuba as of October 26, 1960.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (See the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249).

Accordingly, the Commission concludes that the amount of the losses succeeded to by claimant shall be increased by interest thereon at the rate of 6% per annum on \$477,368.47 from October 24, 1960 and on \$222,504.91 from October 26, 1960, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSSES

The Commission certifies that AMERICAN HOME PRODUCTS CORPORATION succeeded to and 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 Hundred Seventy-seven Thousand Three Hundred Sixty-eight Dollars and Forty-seven Cents (\$477,368.47), with interest thereon at 6% per annum from October 24, 1960 to the date of settlement; and

The Commission further certifies that AMERICAN HOME PRODUCTS CORPORATION succeeded to and 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 Twenty-two Thousand Five Hundred Four Dollars and Ninety-one Cents (\$222,504.91), with interest thereon at 6% per annum from October 26, 1960 to the date of settlement.

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

**23 AUG 1967**

*Edward D. Re*

Edward D. Re, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*LaVern R. Dilweg*

LaVern R. Dilweg, Commissioner

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).)

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Decision No. CU-32

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, were presented by LABORATORIOS WYETH DE CUBA, INC., (In Dissolution) in the amount of \$347,437.94, and by HOME PRODUCTS OF CUBA, INC., (In Dissolution) in the amount of \$764,181.24 based upon the nationalization by the Government of Cuba of their respective interests in Cuba.

Under Section 503 of the International Claims Settlement Act of 1949, as amended (64 Stat. 12; 69 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 79 Stat. 988) the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. That section 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

(a) . . . 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 504 of the Act provides, as to Ownership of Claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 502(1) of the Act defines the term "national of the United States" as . . . (B) 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 both LABORATORIOS WYETH DE CUBA, INC., and HOME PRODUCTS OF CUBA, INC., were organized in the State of Delaware, in 1954 and 1952, respectively, and that each was wholly owned by AMERICAN HOME PRODUCTS CORPORATION. They were engaged in the manufacture and sale in Cuba of certain drug, pharmaceutical and household products. The AMERICAN HOME PRODUCTS CORPORATION was organized in the State of Delaware in 1926 and an officer of the corporation has certified that over 50% of outstanding capital stock is owned by United States nationals. The Commission holds that LABORATORIOS WYETH DE CUBA, INC., HOME PRODUCTS OF CUBA, INC., and AMERICAN HOME PRODUCTS CORPORATION qualified as nationals of the United States within the meaning of Section 502(1) (B) of the Act.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3, (pursuant to Law 851) which listed as nationalized, by expropriation, HOME PRODUCTS OF CUBA, INC., and the Commission finds that the business and properties in Cuba, of HOME PRODUCTS OF CUBA, INC., then wholly owned by AMERICAN HOME PRODUCTS CORPORATION, were nationalized by the Government of Cuba, on October 24, 1960, within the meaning of Title V of the Act.

LABORATORIOS WYETH DE CUBA, INC., under date of December 1, 1960, informed the United States State Department that its property and business in Cuba were nationalized by forced expropriation on October 26, 1960. In support thereof, there was submitted copy of an "Acta" of October 26, 1960, whereby administration of both HOME PRODUCTS OF CUBA, INC., and LABORATORIOS WYETH DE CUBA, INC., was transferred to an administrator appointed by Resolution 60-467, issued by I.N.R.A. (National Institute of Agrarian Reform), on October 25, 1960, and which was issued pursuant to Resolution 3 of October 24, 1960 (supra). Resolution 3 of October 24, 1960, does not, however, list LABORATORIOS WYETH DE CUBA, INC. LABORATORIOS WYETH DE CUBA, INC., in its letter of December 1, 1960, also indicated that subsequently its business and properties in Cuba were intervened. On September 13, 1961, the Cuban Government published in its Official Gazette, Acuerdo No. VII, pursuant to Law 890, (Cuban Official Gazette, October 13, 1960), listing enterprises nationalized by expropriation, and including LABORATORIOS WYETH DE CUBA, INC. However, the business and properties of LABORATORIOS WYETH DE CUBA, INC., were not restored to it by the Government of Cuba, on or after October 26, 1960, and the Commission finds in the absence of evidence to the contrary, that its business and properties in Cuba were effectively nationalized by the Government of Cuba on October 26, 1960, within the meaning of Title V of the Act. (See In the Matter of the Claim of Jack Moss, FCSC Claim No. CU-0225.)

Based on the foregoing the Commission finds that HOME PRODUCTS, INC., OF CUBA, and LABORATORIOS WYETH DE CUBA, INC., suffered losses within the meaning of Title V of the Act on October 24, 1960 and October 26, 1960, respectively when the business and properties of said entities were nationalized and taken by the Government of Cuba.

The record further shows that HOME PRODUCTS OF CUBA, INC., a Delaware corporation, was placed in liquidation and dissolution on November 28, 1960, and that LABORATORIOS WYETH DE CUBA, INC., also a Delaware corporation, was placed in liquidation and dissolution on November 20, 1961. The Commission has been informed as of August 16, 1966, by the Office of the Secretary and General Attorney of AMERICAN HOME PRODUCTS CORPORATION, that liquidation of both LABORATORIOS WYETH DE CUBA, INC., and HOME PRODUCTS OF CUBA, INC., has been completed and that AMERICAN HOME PRODUCTS CORPORATION is the successor of record of both companies.

The Commission holds that AMERICAN HOME PRODUCTS CORPORATION is the legal successor in interest of the aforementioned entities and invested with the claims which arose in their favor. (See In the Matter of the Claim of The Berwind-White Coal Mining Company, FCSC Claim No. CU-0538.) Accordingly, AMERICAN HOME PRODUCTS CORPORATION is substituted as claimant in these matters.

A corporate officer of AMERICAN HOME PRODUCTS CORPORATION has affirmed that the holders of more than 99% of the outstanding shares of capital stock of said corporation reside in the United States, its territories and possessions; that less than 1% of the shareholders of AMERICAN HOME PRODUCTS CORPORATION have United States withholding tax deducted from their dividend checks because they are non-resident aliens; and that to the best of his knowledge and belief the percentage of the outstanding shares of capital stock of AMERICAN HOME PRODUCTS CORPORATION beneficially owned by aliens is relatively insignificant.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of prop-

erties, 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.

Value - HOME PRODUCTS OF CUBA, INC.

The asserted loss of HOME PRODUCTS OF CUBA, INC., is itemized as follows:

Land	\$100,000.00
Buildings & Improvements	200,000.00
Machinery & Equipment	17,703.28
Furniture & Fixtures	15,891.29
Inventories:	
Finished Stock	52,529.29
Raw Materials	36,413.71
Packaging Materials	49,379.55
Goods in Process	4,350.87
Miscellaneous Inventories	1,304.39
Accounts Receivable	156,868.89
Cash in Banks	112,333.83
Miscellaneous Other Assets	12,736.49
Due from Affiliates	4,669.65
	<u>\$764,181.24</u>

Among the documentation submitted are an affidavit of November 30, 1960 of the former Chief Accountant of HOME PRODUCTS OF CUBA, INC., and of LABORATORIOS WYETH DE CUBA, INC., with an annexed short form of balance sheet prepared on October 28, 1960, to show the approximate balance as of October 25, 1960 reflecting a capital account of \$600,000.00 and his further detailed explanation thereof; balance sheets for July 31, 1960, August 31, 1960, September 30, 1960 and October 26, 1960, as well as the "Estimated Actual Value" for October 26, 1960; schedules, and profit and loss statements.

A balance sheet enumerates the assets, tangible or intangible, and all the liabilities of an enterprise. The liabilities consist of outside creditors' claims, which are contractual in nature, and those of the owner, which are residual in nature. The excess of assets over contractual liabilities represents the owner's equity, or net worth.

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It may be observed that the same result is reached by adding the capital investment, appropriate surplus reserves (not including reserves for depreciation, taxes and the like), and any undivided profit, as appropriate, and subtracting any outstanding deficit.

It may be noted that the balance sheets of HOME PRODUCTS OF CUBA, INC., consistently reflect an operating loss. The book values, briefly stated by both of the above mentioned methods is as follows:

July 31, 1960:

Assets	\$593,887.96	Capital Account	\$546,273.17
Liabilities	<u>110,104.44</u>	Loss	<u>62,489.65</u>
Net Worth	\$483,783.52	Net Worth	\$483,783.52

August 31, 1960:

Assets	\$613,990.09	Capital Account	\$549,856.23
Liabilities	<u>127,685.88</u>	Loss	<u>63,552.02</u>
Net Worth	\$486,304.21	Net Worth	\$486,304.21

September 30, 1960:

Assets	\$578,858.79	Capital Account	\$545,227.30
Liabilities	<u>105,446.04</u>	Loss	<u>71,814.55</u>
Net Worth	\$473,412.75	Net Worth	\$473,412.75

October 26, 1960:

Assets	\$585,388.34	Capital Account	\$533,943.58
Liabilities	<u>108,019.87</u>	Loss	<u>56,575.11</u>
Net Worth	\$477,368.47	Net Worth	\$477,368.47

On the other hand, the "October 26, 1960 Estimated Actual Value" is shown as follows:

Assets	\$764,181.24	Capital Account	\$533,943.58
Liabilities	<u>108,019.87</u>	Earned Surplus	<u>122,217.79</u>
Estimated Net Worth	\$656,161.37	Estimated Net Worth	\$656,161.37

A careful examination into the difference of \$178,792.90 between the October 26, 1960 book asset figure and the October 26, 1960 Estimated Actual Value asset figure discloses that there is included in the claimed figure of \$764,181.24, the following estimated increases over the book value:

Land	\$ 39,232.10
Buildings & Improvements	98,816.09
Machinery & Equipment	5,957.42
Furniture & Fixtures	4,651.59
Finished Stock	20,066.19
Including the Reserve for Inventory Losses	<u>10,069.51</u>
	\$178,792.90

This figure is also equivalent to the total of the operating loss of \$56,575.11 and the estimated earned surplus of \$122,217.79.

The basis for the estimated increases is not, however, substantiated by claimant.

The Commission has considered all evidence submitted by HOME PRODUCTS OF CUBA, INC., (In Dissolution) in support of its evaluation of loss, and concludes that the book value as of October 26, 1960 is the most appropriate basis of valuation. The Commission finds that the liabilities must be deducted from \$585,388.34, representing the book value of the assets, and concludes that at the time of nationalization, the value of the business and properties of HOME PRODUCTS OF CUBA, INC., was \$477,368.47.

Accordingly it is concluded that claimant succeeded to a loss in the amount of \$477,368.47 within the meaning of Title V of the Act as a result of the nationalization and taking of the business and properties of its wholly owned subsidiary, HOME PRODUCTS OF CUBA, INC., by the Government of Cuba as of October 24, 1960.

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Value - LABORATORIOS WYETH DE CUBA, INC.

The asserted loss of LABORATORIOS WYETH DE CUBA, INC., is itemized as follows:

Leasehold Improvements	\$ 662.00
Machinery & Equipment	814.63
Automobiles	10,355.00
Inventories:	
Finished Stock	119,826.22
Packaging Materials	7,308.21
Work in Process	519.89
Accounts Receivable	80,649.49
Cash in Banks	120,808.83
Miscellaneous other Assets	6,493.67
	<u>\$347,437.94</u>

The documentation submitted on value include the aforementioned affidavit of November 30, 1960, and the further detailed explanation thereof; a short form of balance sheet reflecting an approximate capital account of \$300,000.00 as of October 25, 1960, balance sheets for July 31, 1960, August 31, 1960, and October 26, 1960, as well as the "Estimated Actual Value" for October 26, 1960; schedules, and related statements; and photographs.

As it appears from the following, LABORATORIOS WYETH DE CUBA, INC., apparently was operating at a loss. The book values for July and August, 1960, briefly stated, are as follows:

July 31, 1960:

Assets	\$471,678.58	Capital Account	\$359,652.69
Liabilities	<u>289,599.81</u>	Loss	<u>177,573.92</u>
Net Worth	\$182,078.77	Net Worth	\$182,078.77

August 31, 1960:

Assets	\$426,397.36	Capital Account	\$347,065.71
Liabilities	<u>268,379.33</u>	Loss	<u>189,047.68</u>
Net Worth	\$158,018.03	Net Worth	\$158,018.03

October 26, 1960:

Assets	\$347,339.32	Capital Account	\$339,806.50
Liabilities	<u>224,834.41</u>	Loss	<u>217,301.59</u>
Net Worth	\$122,504.91	Net Worth	\$122,504.91

The "October 26, 1960 Estimated Actual Value" reflects an increase of \$98.60 in the total asset figure, which is accomplished by not deducting the Reserve for Inventory Losses.

The Commission has considered all evidence submitted by LABORATORIOS WYETH DE CUBA, INC., (In Dissolution) in support of its evaluation of loss, and concludes that the book value as of October 26, 1960 is the most appropriate basis of valuation. The Commission finds that the liabilities must be deducted from \$347,339.32, representing the book value of the assets, and concludes that at the time of nationalization, the value of the business and properties of LABORATORIOS WYETH DE CUBA, INC., was \$122,504.91.

Accordingly, it is concluded that claimant succeeded to a loss in the amount of \$122,504.91 within the meaning of Title V of the Act as a result of nationalization and taking of the business and properties of its wholly owned subsidiary LABORATORIOS WYETH DE CUBA, INC., by the Government of Cuba as of October 26, 1960.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (See the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249).

Accordingly, the Commission concludes that the amount of the losses succeeded to by claimant shall be increased by interest thereon at the rate of 6% per annum on \$477,368.47 from October 24, 1960 and on \$122,504.91 from October 26, 1960, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSSES

The Commission certifies that AMERICAN HOME PRODUCTS CORPORATION succeeded to and suffered a loss, as a result of actions of the

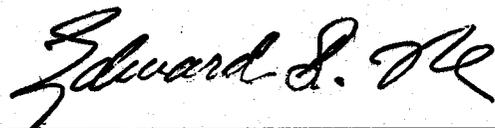
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Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Hundred Seventy-seven Thousand Three Hundred Sixty-eight Dollars and Forty-seven Cents (\$477,368.47), with interest thereon at 6% per annum from October 24, 1960 to the date of settlement; and

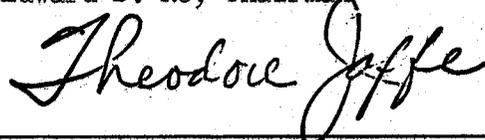
the Commission further certifies that AMERICAN HOME PRODUCTS CORPORATION succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Twenty-two Thousand Five Hundred Four Dollars and Ninety-one Cents (\$122,504.91), with interest thereon at 6% per annum from October 26, 1960 to the date of settlement.

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

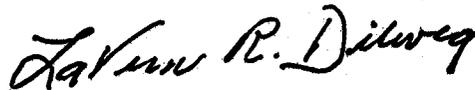
15 FEB 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

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 upon the expiration of 30 days after such service or receipt of notice, the decision will be entered as the Final Decision of the Commission, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

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