

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

IN THE MATTER OF THE CLAIM OF

MEAD JOHNSON & COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 1398

Decision No. CU - 4133

AMENDED PROPOSED DECISION

Under date of October 28, 1969, the Commission issued its Proposed Decision on this claim, certifying a loss in the amount of \$31,444.34 plus interest in favor of claimant, based upon debts due from Cuban consignees, and denying a portion of the claim for certain branch assets for lack of proof. Subsequently, claimant submitted evidence to establish the loss of said branch assets.

Upon consideration of the new evidence in light of the entire record, it is ORDERED that the Proposed Decision be amended as follows:

The Commission finds claimant owned certain items of personal property in Cuba in connection with its Cuban branch office operations; namely, cash, certain deposits, debts due from its Cuban employees, furniture and fixtures, and samples. The Commission further finds, on the basis of an affidavit of December 22, 1969 from the former manager of claimant's Cuban branch, that all of the foregoing branch assets were taken by the Government of Cuba on November 5, 1960.

Based upon the entire record, including the new evidence, the Commission finds that the values of the properties thus taken on November 5, 1960 were as follows:

Cash		\$ 9,676.00
Deposits		650.00
Debts from Cuban employees		1,260.00
Furniture and fixtures	\$8,318.28	
Less depreciation	<u>1,537.20</u>	6,781.00
Samples		<u>305.00</u>
Total		<u>\$18,672.00</u>

Accordingly, claimant's losses within the meaning of Title V of the Act aggregated \$50,116.34. The certification of loss as restated below will be entered, and in all other respects the Proposed Decision of October 28, 1969 is affirmed.

CU-1398

CERTIFICATION OF LOSS

The Commission certifies that MEAD JOHNSON & 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 Fifty Thousand One Hundred Sixteen Dollars and Thirty-Four Cents (\$50,116.34) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

29 JAN 1970

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE TO TREASURY DEPARTMENT: This claimant is the subject of another certification of loss in Claim No. CU-1004

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 Amended 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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Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1398

Decision No. CU - 4133

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$50,125.84, was presented originally by Mead Johnson International, Ltd., in whose place MEAD JOHNSON & COMPANY was substituted. The claim is based upon the asserted loss of payment for merchandise shipped to Cuban consignees and the loss of certain personal property at a branch office 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 incorporated originally under the laws of Indiana and that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. It further appears from the record that on December 22, 1967, the Indiana corporation merged with Bristol Myers Company and that the Indiana corporation went out of existence on that date, all of its assets being transferred to MEAD JOHNSON & COMPANY, a corporation organized under the laws of Delaware as of September 29, 1967, subsequent to the filing of this claim. An authorized officer of claimant has certified that as of December 9, 1966, 99.67% of claimant's outstanding capital stock was owned by nationals of the United States. The Commission holds that claimant and its predecessor, MEAD JOHNSON & COMPANY, the former Indiana corporation, both qualify as nationals of the United States within the meaning of Section 502(1)(B) of the Act. (See Claim of Mead Johnson & Company, Claim No. CU-1004.)

The evidence establishes that this claim arose in favor of Mead Johnson International, Ltd., a wholly-owned Canadian subsidiary of claimant. Since this subsidiary was organized under the laws of Canada, it does not qualify as a national of the United States within the

meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his direct or indirect ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Merchandise Shipped to Cuba

The record includes extracts from the subsidiary's accounts receivable ledger, copies of invoices, evidencing the shipments to Cuba, and statements from officials of claimant and of the subsidiary concerning this claim. Claimant states that some of the Cuban consignees made payments on account of the purchases from claimant by deposits in local Cuban banks, but that dollar reimbursement to claimant was denied by Cuban authorities. However, claimant has no evidence to establish the dates when such deposits were made. Claimant states that it has not received any payments on account of the debts due from the Cuban consignees.

The following information concerning the shipments made to the Cuban consignees, supported by the evidence of record, shows the dates of the last debit entries in the open accounts maintained by the subsidiary, and the amounts thereof:

<u>Consignee</u>	<u>Date of Last Debit Entry</u>	<u>Amount</u>
Drogueria Alcazar, S.A.	August 31, 1960	\$ 9,054.20
Drogueria Dr. B. Bolumen	June 23, 1960	6,271.05
Drogueria Sarra	September 30, 1960	7,055.04
Drogueria Taquechel	December 31, 1959	<u>9,064.05</u>
	Total	\$31,444.34

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad,

but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba. In the absence of evidence to the contrary, the Commission finds that the losses occurred 30 days from the last debit entries in the open accounts.

Branch Assets

It appears from the record that the subsidiary maintained a branch office in Cuba where it owned certain items of personal property. Claimant asserts that the claim arose in 1960 and that the losses of its Canadian subsidiary aggregated \$18,681.50. The record, however, contains no evidence to establish that the branch office assets, consisting of cash, deposits, advances to employees, furniture and fixtures, samples, literature, prepaid insurance and other deferred assets were taken by the Government of Cuba.

As far back as December 22, 1967, the Commission suggested, inter alia, that evidence be submitted to support the assertion that these assets were taken by Cuba. No evidence in this respect was received either in response to that request or in reply to two later suggestions of the Commission, dated July 31, 1969 and September 11, 1969.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

The Commission finds that claimant has failed to sustain its burden of proof with respect to its claim for the loss of personal property at the Cuban branch of its Canadian subsidiary. Accordingly this portion of the claim is denied.

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 this case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
January 30, 1960	\$ 9,064.05
July 23, 1960	6,271.05
September 30, 1960	9,054.20
October 30, 1960	<u>7,055.04</u>
	<u>\$31,444.34</u>

CERTIFICATION OF LOSS

The Commission certifies that MEAD JOHNSON & 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 Thirty-One Thousand Four Hundred Forty-Four Dollars and Thirty-Four Cents (\$31,444.34) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

28 OCT 1969

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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CU-1398