

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

IN THE MATTER OF THE CLAIM OF

JOHNSON & JOHNSON INTERNATIONAL

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 1917

Decision No. CU - 4785

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 JOHNSON & JOHNSON INTERNATIONAL in the amount of \$137,980.90 based upon the asserted loss of payment for merchandise shipped to 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.

An officer of the claimant corporation has certified that 100% of the outstanding shares of stock of the claimant herein, organized in New Jersey, was owned at all times by Johnson & Johnson, a New Jersey corporation; and that at all times pertinent to this claim over 99% of the outstanding capital stock of Johnson & Johnson was owned by persons with United States resident addresses. The Commission holds that claimant and Johnson & Johnson are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains copies of invoices, due notices, credit memos, and bank draft acknowledgements reflecting the sale of goods by claimant to Cuban consignees as follows:

<u>Consignee</u>	<u>Date Due</u>	<u>Date Paid</u>	<u>Amount</u>
Centro Asturiano de la Havana	March 18, 1960		\$ 1,290.62
Cuartel Maestro Gen. del Ejercito	Before September 29, 1959		3,767.57
Drogueria Reyes, S.A.	April 18, 1960		\$4,984.01
	Less Credit		<u>1,418.55</u>
			3,565.46
Drogueria Sarra	January 3, 1960		3,061.37
	January 19, 1960		105.48
	May 23, 1960		1,809.92
	January 9, 1961		292.40
Drogueria Taquechel	April 24, 1959		259.65
Distribuidura Govil	October 5, 1960		2,499.17
	October 12, 1960		5,582.16
	November 1, 1960		\$5,258.10
	Less Credit		<u>56.74</u>
			5,201.36
		September 28, 1959	6,545.85
		November 7, 1959	3,336.68
		November 10, 1959	2,639.72
		November 25, 1959	6,033.83
		December 28, 1959	6,057.25
		January 25, 1960	5,779.33

<u>Consignee</u>	<u>Date Due</u>	<u>Date Paid</u>	<u>Amount</u>
Distribuidura Govil (cont.)		February 25, 1960	\$ 6,193.62
		March 25, 1960	6,082.87
		April 25, 1960	5,722.15
		May 25, 1960	6,500.00
		June 24, 1960	6,017.74
		July 25, 1960	6,130.50
		August 25, 1960	6,000.00
		September 26, 1960	6,044.21
		October 25, 1960	6,000.00
		November 25, 1960	5,976.53
		December 26, 1960	5,969.15
		January 25, 1961	6,077.36
		February 26, 1961	6,030.99
		March 25, 1961	<u>1,407.96</u>
		Total	\$137,980.90

Claimant states that it has not received the funds due it or which had been paid for its account to local banks and not transmitted to it.

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, in the instant claim, the Commission finds that the aforesaid sums totalling \$137,980.90 were lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the contrary, such losses occurred on the respective maturity dates with regard to unpaid drafts maturing after September 29, 1959. However, with respect to the dates of loss as to those goods sold prior to September 29, 1959, the Commission finds that the losses occurred on September 29, 1959, the effective date of Law 568. The Commission further finds that in those

instances in which payments were made by Cuban consignees, the losses occurred on the days after payments were made to the Cuban banks, where ascertained, or the days after notification of payments were made to claimant corporation.

Therefore, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that the losses occurred on the dates shown below, the date of Law 568 being used for those items of claim arising prior to that date:

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$ 10,573.07
November 8, 1959	3,336.68
November 11, 1959	2,639.72
November 26, 1959	6,033.83
December 29, 1959	6,057.25
January 3, 1960	3,061.37
January 19, 1960	105.48
January 26, 1960	5,779.33
February 26, 1960	6,193.62
March 18, 1960	1,290.62
March 26, 1960	6,082.87
April 18, 1960	3,565.46
April 26, 1960	5,722.15
May 23, 1960	1,809.92
May 26, 1960	6,500.00
June 25, 1960	6,017.74
July 26, 1960	6,130.50
August 26, 1960	6,000.00
September 27, 1960	6,044.21
October 5, 1960	2,499.17
October 12, 1960	5,582.16
October 26, 1960	6,000.00
November 1, 1960	5,201.36
November 26, 1960	5,976.53

<u>FROM</u> (Cont.)	<u>ON</u>
December 27, 1960	\$ 5,969.15
January 9, 1961	292.40
January 26, 1961	6,077.36
February 27, 1961	6,030.99
March 26, 1961	<u>1,407.96</u>
	\$137,980.90

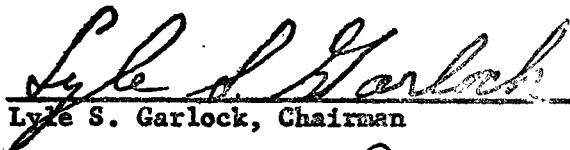
The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered from the aforesaid dates.

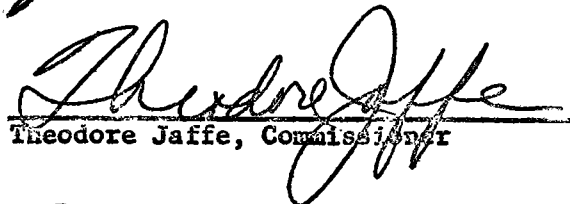
CERTIFICATION OF LOSS

The Commission certifies that JOHNSON & JOHNSON INTERNATIONAL 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 ~~Forty~~ **Forty-Seven** Thousand Nine Hundred Eighty Dollars and Ninety Cents (\$137,980.90) with interest 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

APR 29 1970

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

  
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).)