

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

IN THE MATTER OF THE CLAIM OF

CANADA DRY CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2351

Decision No. CU 3789

Counsel for claimant:

Edwin S. Wilkins, Esquire

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 \$1,633,114.19, was presented by CANADA DRY CORPORATION, based upon the asserted loss of a stock interest in a Cuban corporation and a debt due from that corporation.

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 more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. An authorized officer of claimant has certified that as of September 15, 1967, 98.98% and 99.90%, respectively, of claimant's outstanding common and preferred capital stock were owned by residents of the United States and citizens of the United States living abroad. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Stock Interest

The evidence establishes and the Commission finds that claimant owned a 100% stock interest in Compania de Refrescos Canada Dry de Cuba, S.A., hereafter called the Cuban subsidiary.

The record shows that on October 24, 1960 the Cuban Government published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized Compania de Refrescos Canada Dry de Cuba, S.A. Since the Cuban Subsidiary was organized under the laws of Cuba, it does not qualify as a corporate "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 previously that a stockholder in such a corporation is

entitled to file a claim based upon the stock in question which represents an ownership interest in the assets of a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

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". The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

Claimant has computed its claim for the loss of its Cuban subsidiary on the basis of the net worth of the subsidiary as shown by the subsidiary's balance sheet as of August 31, 1960.

The evidence includes copies of balance sheets and profit and loss statements for the Cuban subsidiary as of September 30, 1957, September 30, 1958 and September 30, 1959; a copy of a balance sheet for the Cuban subsidiary as of August 31, 1960, prepared from reports received from the Cuban subsidiary; and statements from officials of claimant concerning this claim. The balance sheet as of August 31, 1960 shows the financial condition of the Cuban subsidiary as follows, the Cuban peso being on a par with the United States dollar:

A S S E T S

CURRENT ASSETS:

Cash		\$ 87,610.01
Accounts Receivable		
Trade, less reserve (\$7,034.23)	\$ 37,926.66	
Miscellaneous (including \$8,176.94 due from officers and employees)	<u>16,231.34</u>	54,158.00
Inventories, at cost		
Finished goods	6,646.58	
Merchandise in Transit	57.13	
Goods in Process	3,403.94	
Raw Materials and Supplies	<u>49,212.25</u>	59,319.90

FIXED ASSETS AT COST OF AC-
QUISITION FROM PREDECESSOR
COMPANY, PLUS SUBSEQUENT
ADDITIONS AT COST, LESS RE-
TIREMENTS AND RESERVE FOR
DEPRECIATION:

Land and Improvements	161,671.33	
Buildings	507,732.55	
Machinery and Equipment	359,318.19	
Furniture and Fixtures	43,495.98	
Autos and Trucks	122,888.58	
Construction	<u>30,877.11</u>	
	\$1,225,983.74	
Less reserve for depreciation	<u>425,656.29</u>	800,327.45

Containers - including es- timated quantities in hands of customers - at cost		
Bottles		763,601.18
Cases	311,731.79	
Less reserve for balance sheet purposes, provided from earned surplus	<u>130,959.85</u>	180,771.94

DEPOSITS RECEIVABLE FROM CUS- TOMERS ON RETURNABLE CON- TAINERS - ESTIMATED		37,926.65
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INVESTMENT AT COST, LESS AMOUNT WRITTEN OFF (\$2,399.00)		1.00
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DEFERRED CHARGES AND OTHER ASSETS		<u>80,085.97</u>
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TOTAL ASSETS		<u><u>\$2,063,802.10</u></u>
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LIABILITIES AND CAPITAL

CURRENT LIABILITIES:

Accounts payable		\$ 153,252.61
Taxes payable	\$ 21,722.60	
Profits taxes	<u>56,137.41</u>	77,860.01
Accrued Accounts		
Payroll (including accrued vacation)		22,316.32
Other		5,722.14
LIABILITY TO CUSTOMERS FOR DEPOSITS ON RETURNABLE CONTAINERS - ESTIMATED		171,536.83
DUE TO CANADA DRY CORPORATION (PARENT CORPORATION)*		439,873.22
CAPITAL STOCK AND EARNED SURPLUS		
Capital Stock - Issued		
2000 shares of \$310 each, par value	620,000.00	
Earned Surplus	<u>573,240.97</u>	<u>1,193,240.97</u>
TOTAL LIABILITIES AND CAPITAL		<u>\$2,063,802.10</u>

*Claimant has indicated in this balance sheet that it was the creditor of the Cuban subsidiary on August 31, 1960. It is clear, however, this was intended to show the conditions that ultimately existed. As noted below, the debt was owed to an American subsidiary of claimant, (Canada Dry International, Corp.) which subsidiary dissolved in 1961, claimant thereby succeeding to the status of creditor.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown in the balance sheet as of August 31, 1960. The Commission, therefore, finds that the net worth of the Cuban subsidiary or the excess of its assets over its liabilities on October 24, 1960, the date of loss, was \$1,193,240.97, and concludes that claimant sustained a loss within the meaning of Title V of the Act in that amount on account of its stock interest in the Cuban subsidiary.

Debt

The record shows that the Cuban subsidiary originally owed a debt to Canada Dry International Corporation, organized under the laws of Delaware and a wholly owned subsidiary of claimant. In September 1961, this subsidiary, which qualified at all pertinent times as a national of the United States within the meaning of Section 502(1)(B) of the Act, supra, was dissolved and all its assets including the debt due from the Cuban subsidiary, were transferred to claimant.

The Commission has held that debts of nationalized Cuban corporations are within the purview of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

As indicated above the record shows that as of August 31, 1960, the Cuban subsidiary was indebted to claimant's American subsidiary in the amount of \$439,873.22. The Commission finds that the debt owed to claimant's American subsidiary was \$439,873.22 on October 24, 1960.

Accordingly, the Commission concludes that claimant sustained the following losses within the meaning of Title V of the Act:

Stock interest in Cuban subsidiary	\$1,193,240.97
Debt owed by Cuban subsidiary	<u>439,873.22</u>
Total	<u>\$1,633,114.19</u>

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.

CERTIFICATION OF LOSS

The Commission certifies that CANADA DRY 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 Million Six Hundred Thirty-Three Thousand One Hundred Fourteen Dollars and Nineteen Cents (\$1,633,114.19) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement.

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

30 JUL 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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].)