

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

IN THE MATTER OF THE CLAIM OF

THE DRACKETT COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2439

Decision No. CU- 4792

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act 1949, as amended, was presented by THE DRACKETT COMPANY, in the amount of \$208,335.00 based upon the asserted taking of claimant's 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 claimant, formerly Bristol-Myers Company of Cuba, was organized under the laws of Delaware, that the corporate name was changed to THE DRACKETT COMPANY in 1965, and that at all pertinent times all of claimant's outstanding capital stock was owned by Bristol-Myers Company, a corporation also organized in Delaware. An authorized officer of Bristol-Myers Company has stated that as of November 24, 1969, more than 99% of the parent's outstanding common and preferred stock was owned by nationals of the United States. The Commission holds that claimant corporation is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant has computed its claim as follows:

Cash in National Bank of Cuba		\$120,529
Accounts Receivable from Hermanos Tello Distribuidores		
June 30, 1961 Balance	\$45,423	
Less increase in cash July 1, 1961 to November 24, 1961	<u>20,137</u>	25,286
Merchandise Inventories at Premises of Hermanos Tello Distribuidores		54,446
Depreciated Value of Equipment and Office Furniture at Premises of Hermanos Tello Distribuidores		7,674
Capital Shares of Ferrocarriles Occidentales de Cuba, S.A. In National Bank of Cuba		<u>400</u>
Total		<u>\$208,335</u>

Based on the evidence of record including a copy of the minutes of the Revolutionary Co-Directorate of Hermanos Tello Distribuidores, S.A. which claimant states possessed all the physical assets of Bristol-Myers Company of Cuba in Cuba, a copy of the Resolution dated November 7, 1961 which

authorized the taking of these assets, and a copy of a letter dated January 3, 1962 from the law firm of Bristol-Myers Company in Havana advising it of this taking and of the taking of the balance of the account of Bristol-Myers Company of Cuba in the National Bank of Cuba, the Commission finds that claimant's assets in Cuba were taken by the Government of Cuba on November 7, 1961 and that claimant thereby sustained a loss within the meaning of Title V of the Act.

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.

In support of the asserted value, the record includes a copy of the audited balance sheet of the Cuban branch of Bristol-Myers Company of Cuba as of October 31, 1960, a copy of its trial balance sheet as of June 30, 1961 with copies of certain supporting information.

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 trial balance sheet as of June 30, 1961, which reflects the following, the peso being on a par with the United States dollar:

CU-2439

Assets

Cash	\$100,392
Accounts Receivable	45,423
Merchandise Inventories	54,446
Fixed Assets	7,674
Investment in Ferrocarriles Occidentales de Cuba, S.A.	400
Total Assets	<u>\$208,335</u>

Liabilities and Home Office Accounts

Accounts Payable	\$ 153
Home Office Accounts	<u>208,182</u>
Total Liabilities and Home Office Account	<u>\$208,335</u>

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant as regards the loss of its business in Cuba is that shown in the trial balance sheet as of June 30, 1961, which indicates the value of the assets of its Havana branch as \$208,335.00. The Commission in this regard has consistently not reduced the value of the assets of an American corporation doing business through a branch in Cuba by any liabilities in its determinations under Title V of the Act except those subject to set-off as debts owing to the Government of Cuba. The reason is that the claimant may remain liable for the debts. (See Claim of Simmons Company, Claim No. CU-2303, 1968 FCSC Ann. Rep. 77.)

Accordingly, no deduction is made for the items of liabilities shown on the balance sheet. The Commission therefore finds that the aggregate value of claimant's assets in Cuba was \$208,335.00 on November 7, 1961, the date of loss.

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.


CERTIFICATION OF LOSS

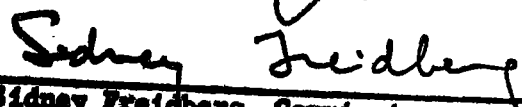
The Commission certifies that THE DRACKETT COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Eight Thousand Three Hundred Thirty-Five Dollars (\$208,335.00) with interest at 6% per annum from November 7, 1961 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).)