

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

IN THE MATTER OF THE CLAIM OF

GENERAL MILLS, INC.

Claim No. CU -2680

Decision No. CU **3400**

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Clifford L. Whitehill, Esq.

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 GENERAL MILLS, INC., in the amount of \$236,851.19 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.

The record shows that claimant was organized under the laws of Delaware. An officer of claimant has stated that less than 1% of claimant's outstanding capital stock is owned by nonnationals of the United States, and that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The claim is based upon the sale of products to three consignees in Cuba, all certified to be nonnationals of the United States. The record includes copies of invoices and accompanying sight drafts, a copy of a sales contract with two of the above customers providing for payments by 36 installments and an annexed statement indicating the balance due pursuant to the contract, and statements from officers and representatives of claimant to the Commission and to the Department of State concerning the losses claimed herein.

The following is a listing of the invoices, consignees, due dates for payment according to the terms of sale, and the amounts owing to claimant on account of these transactions:

CU-2680

1. Granja Nichols de Cuba, S.A. (consignee)

<u>Invoice No.</u>	<u>Due Date</u>	<u>Amount</u>
CG-992	July 10, 1959	\$ 7,077.72
CG-1077	August 15, 1959	6,576.23
	Total	\$13,653.95

2. Cia. Avicola Sanchez, S.A. (consignee)

<u>Invoice No.</u>	<u>Due Date</u>	<u>Amount</u>
CG-956	August 21, 1959	\$ 6,834.63
CG-1032	September 25, 1959	7,987.95
CG-1131	November 6, 1959	6,722.19
CG-1132	November 6, 1959	6,817.48
CG-1130	November 5, 1959	8,233.51
CG-1147	November 13, 1959	6,946.24
CG-1170	November 25, 1959	12,538.65
CG-1178	November 27, 1959	6,632.12
CG-1205	December 10, 1959	9,529.98
CG-1204	December 9, 1959	9,486.66
CG-1278	January 12, 1960	7,980.28
CG-1279	January 12, 1960	8,124.46
CG-1337	February 2, 1960	7,265.72
CG-1355	February 2, 1960	7,969.38
CG-1356	February 6, 1960	13,352.19
CG-1362	February 16, 1960	7,947.19
CG-1398	March 1, 1960	10,438.00
CG-1406	March 3, 1960	7,983.51
CG-1434	March 19, 1960	10,624.52
	Total	\$163,414.66

3. Oscar Diaz (consignee)

<u>Invoice No.</u>	<u>Due Date</u>	<u>Amount</u>
CG-76	June 25, 1958	\$ 739.46
CG-254	September 25, 1958	1,800.00
	Total	\$2,539.46

The record shows that Oscar Diaz was also indebted to claimant on account of a sale in the total amount of \$15,957.92, payable in 36 installments, and that the net unpaid balance due claimant was \$5,037.92. Accordingly, the Commission finds that Oscar Diaz owed claimant debts aggregating \$7,577.38.

4. Almacenes La Cruz Verde, S.A. (consignee)

<u>Invoice No.</u>	<u>Due Date</u>	<u>Amount</u>
7797	August 12, 1959	\$5,900.41

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.)

The Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba. Claimant has stated that item (1) above in the amount of \$13,653.95 was paid by the consignee by deposit in Banco Financiero, Isle of Pines, Cuba, and that item (2) above in the amount of \$163,414.66 was paid by the consignee and deposited in Banco Continental Cubana, Havana, Cuba, but that these funds could not be transferred to the United States. However, claimant has submitted no evidence to establish the dates when these payments were made to the said banks, which fact, if established, would affect only the dates of loss with respect to items (1) and (2) above.

In the absence of evidence to the contrary, the Commission finds that claimant's losses on account of invoices listed under items (1), (2), (3) and (4) above occurred on September 29, 1959, the effective date of Law 568, with respect to those invoices that were due prior to September 29, 1959, including its losses of \$5,037.92 due from Oscar Diaz pursuant to his contract with claimant; and that claimant's losses with respect to all other listed invoices occurred on the due dates indicated above.

A portion of this claim is based upon an asserted debt in the amount of \$46,302.79 due from Cia. Avicola Sanchez, S.A., one of the above-mentioned consignees, resulting from the balance of an open account. On several occasions during the course of developing this claim, the Commission requested the submission of supporting evidence. However, no evidence whatsoever was submitted. Under date of August 8, 1967 and October 6, 1967, counsel for claimant stated with respect to this portion of the claim as follows: "No further documentation available at this date." By letter dated July 25, 1968, counsel stated that claimant had submitted all available documentation.

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 the burden of proof with respect to its claim for a debt in the amount of \$46,302.79. 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 respective dates 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.

Accordingly, the Commission concludes that the amount of claimant's losses arising from shipments of goods to the Cuban consignees, a total of \$190,546.40, shall be increased by interest as follows:

<u>From</u>	<u>On</u>
September 29, 1959	\$ 41,954.32
November 5, 1959	8,233.51
November 6, 1959	13,539.67
November 13, 1959	6,946.24
November 25, 1959	12,538.65
November 27, 1959	6,632.12
December 9, 1959	9,486.66
December 10, 1959	9,529.98
January 12, 1960	16,104.74
February 2, 1960	15,235.10
February 6, 1960	13,352.19
February 16, 1960	7,947.19
March 1, 1960	10,438.00
March 3, 1960	7,983.51
March 19, 1960	<u>10,624.52</u>
	\$190,546.40

CERTIFICATION OF LOSS

The Commission certifies that GENERAL MILLS, INC., 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 Ninety Thousand Five Hundred Forty-six Dollars and Forty Cents (\$190,546.40) 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

DEC 18 1968

Leonard v. B. Sutton

Leonard v. P. 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).)