

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

IN THE MATTER OF THE CLAIM OF

ELI LILLY INTERAMERICA, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-2826

Decision No. CU

5839

Counsel for claimant:

Baker & McKenzie

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 ELI LILLY INTERAMERICA, INC. in the amount of \$375,445.00 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 of 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 the claimant was organized in the State of Indiana on December 12, 1957, as Eli Lilly & Company of Columbia, Inc., a wholly owned subsidiary of Eli Lilly & Company. At the close of business on June 30, 1966, Eli Lilly & Company of Columbia, Inc., merged with Eli Lilly-Pan-American Corporation, a United States national organized in Indiana on September 21, 1943, and a wholly owned subsidiary of Eli Lilly & Company. Also a party to this merger was a third wholly owned subsidiary of Eli Lilly & Company named Eli Lilly & Company of Argentina, Inc. Subsequent to the combination of the three subsidiary corporations, on July 6, 1966, Eli Lilly & Company of Columbia changed its name to ELI LILLY INTERAMERICA, INC. All the capital stock of ELI LILLY INTERAMERICA, INC. has been owned by Eli Lilly & Company.

An officer of Eli Lilly & Company has certified that Eli Lilly & Company was organized in the State of Indiana on January 28, 1901 and that at all times between January 28, 1901 and the presentation of this claim on May 1, 1967, more than 50% of the outstanding capital stock has been owned by United States nationals. Said officer has certified that only 0.4% of the stockholders of Eli Lilly & Company are residents of foreign countries and assumed to be foreign nationals.

The Commission holds that ELI LILLY INTERAMERICA, INC. is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record includes copies of correspondence from banks, agents of the claimant, consignee business enterprises in Cuba, copies of invoices, and other data concerning shipments of merchandise to Cuban business firms, listed hereafter as the consignees. This evidence discloses that the purchase price of the goods and accompanying charges for such shipments were, in many instances, paid by the consignees to local Cuban banks; and that the dollar reimbursement releases or authorization were never granted by Cuban governmental officials. Other drafts for shipments made by claimants were not paid to the collecting bank by the consignee. Claimant states that it has not received any of the funds for such shipments.

There follows hereafter data concerning the shipments made to Cuban consignees, including information on paid and unpaid drafts, with the dates on which payments were acknowledged or dates when the unpaid drafts were due and payable. (The listed amounts are net after adjustment or credit):

<u>CONSIGNEE</u>	<u>DUE DATE</u>	<u>AMOUNT</u>
Alvarez Fuentes y Compania	August 4, 1960	\$19,111.72
Drogueria Amiquet	September 24, 1960	4,682.61
Drogueria Amiquet	October 6, 1960	135.71
Drogueria Danhauser	August 7, 1958	1,890.69
Drogueria Danhauser	November 27, 1958	3,223.40
Drogueria la Cosmopolita	June 25, 1959	1,035.31
Drogueria la Cosmopolita	August 31, 1960	319.88
Drogueria la Cosmopolita	November 11, 1960	94.32
Drogueria de Johnson	January 25, 1960	166.88
Drogueria de Johnson	June 2, 1960	544.26
Drogueria de Johnson	August 25, 1960	24,978.68
Drogueria de Johnson	September 1, 1960	1,177.88
Drogueria de Johnson	October 20, 1960	913.89
Drogueria Maestre y Espinosa	May 27, 1960	199.84
Drogueria Maestre y Espinosa	September 18, 1960	5,636.90
Drogueria Maestre y Espinosa	September 19, 1960*	2,100.65

<u>CONSIGNEE</u>	<u>DUE DATE</u>	<u>AMOUNT</u>
Drogueria Maestre y Espinosa	September 20, 1960	\$ 6,992.47
Drogueria Maestre y Espinosa	October 1, 1960	1,431.66
Drogueria Maestre y Espinosa	October 2, 1960	828.55
Drogueria Maestre y Espinosa	October 7, 1960	7,866.99
Drogueria Occidental	September 10, 1959	3,735.90
Drogueria Occidental	December 23, 1959	3,429.97
Drogueria Occidental	July 28, 1960	7,854.82
Drogueria Occidental	August 11, 1960	7,321.66
Drogueria Occidental	August 18, 1960	623.80
Drogueria Occidental	September 26, 1960	316.57
Centro de la Colonia Espanola	September 29, 1960	441.63
Compania Productora de Alimentos "El Agro", S.A.	June 25, 1959	450.00
Ministerio de Defenca Nacional Ejercito de Cuba	December 22, 1958	1,544.94
Sanatorio de la Colonia Espanola	September 15, 1959	58.05
Drogueria Reyes	June 9, 1960	1,034.34
Drogueria Reyes	June 16, 1960	2,244.26
Drogueria Reyes	June 25, 1960	4,944.58
Drogueria Sara	January 22, 1960	345.49
Drogueria Sara	April 7, 1960	20,216.79
Drogueria Sara	April 31, 1960	195.68
Drogueria Sara	July 6, 1960	5,773.05
Drogueria Sara	July 14, 1960	5,883.21
Drogueria Sara	July 16, 1960	6,881.52
Drogueria Sara	July 30, 1960	2,205.38
Drogueria Sara	August 4, 1960	9,334.62
Drogueria Sara	August 18, 1960	5,319.11
Drogueria Sara	September 1, 1960	4,743.13
Drogueria Sara	September 3, 1960	11,864.59
Drogueria Sara	September 15, 1960	5,397.58
Drogueria Sara	September 26, 1960	7,868.05
Drogueria Sara	October 2, 1960	2,112.46
Drogueria Sara	October 6, 1960	939.37
Drogueria Sara	October 9, 1960	5,407.48
Drogueria Sara	October 23, 1960	7,057.47
Drogueria Taquechel	January 1, 1959	21,843.71
Drogueria Taquechel	January 15, 1959	772.23
Drogueria Taquechel	January 22, 1959	4,443.10
Drogueria Taquechel	January 27, 1959	225.07
Drogueria Taquechel	February 10, 1959	11,744.24
Drogueria Taquechel	February 29, 1959	2,316.94
Drogueria Taquechel	March 1, 1959	2,329.91
Drogueria Taquechel	March 3, 1959	224.76
Drogueria Taquechel	March 18, 1959	34,039.06
Drogueria Taquechel	March 24, 1959	15,925.12
Drogueria Taquechel	May 2, 1959	8,304.21
Drogueria Taquechel	June 2, 1959	6,937.96
Drogueria Taquechel	June 9, 1959	2,037.76
Drogueria Taquechel	June 12, 1959	78.35
Drogueria Taquechel	June 19, 1959	21,084.66

<u>CONSIGNEE</u>	<u>DUE DATE</u>	<u>AMOUNT</u>
Drogueria Taquechel	August 7, 1959	\$ 153.83
Drogueria Taquechel	August 22, 1959	78.35
Drogueria Taquechel	September 3, 1959	12,930.86
Drogueria Taquechel	September 10, 1959	1,910.39
Drogueria Taquechel	September 12, 1959	585.25
Drogueria Taquechel	September 15, 1959	3,551.64
	TOTAL	<u>\$370,395.19</u>

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 into 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.)

Accordingly, 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, in absence of evidence to the contrary, the loss occurred:

<u>ON</u>	<u>AS TO</u>
September 29, 1959	\$163,455.69
December 23, 1959	3,429.97
January 22, 1960	345.49
April 7, 1960	20,216.79
April 31, 1960	195.68
May 27, 1960	199.84
June 2, 1960	711.14
June 9, 1960	1,034.34

June 16, 1960	\$ 2,244.26
June 25, 1960	4,944.58
July 6, 1960	5,773.05
July 14, 1960	5,883.21
July 16, 1960	6,881.52
July 28, 1960	7,854.82
July 30, 1960	2,205.38
August 4, 1960	28,446.34
August 11, 1960	7,321.66
August 18, 1960	5,942.91
August 25, 1960	24,978.68
August 31, 1960	319.88
September 1, 1960	5,921.01
September 3, 1960	11,864.59
September 15, 1960	5,397.58
September 18, 1960	5,636.90
September 19, 1960	2,100.65
September 20, 1960	6,992.47
September 24, 1960	4,682.61
September 26, 1960	8,184.62
September 29, 1960	441.63
October 1, 1960	1,431.66
October 2, 1960	2,941.01
October 6, 1960	1,075.08
October 7, 1960	7,866.99
October 9, 1960	5,407.48
October 20, 1960	913.89
October 23, 1960	7,057.47
November 11, 1960	94.32
TOTAL	<u>\$370,395.19</u>

In connection with the aforesaid dates of loss, the Commission finds that such unpaid accounts 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 from date of shipment with regard to unpaid accounts, maturing after September 29, 1959. However, with respect to the dates of loss as to those goods shipped for which payment was due 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 the Cuban consignees, the losses occurred on the days after payments were made by the Cuban consignee to the Cuban bank.

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.)


Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the losses occurred, to the date on which provision is made for the settlement thereof.


CERTIFICATION OF LOSS

The Commission certifies that ELI LILLY INTERAMERICA, 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 Three Hundred Seventy-Thousand Three Hundred Ninety-Five Dollars and Nineteen Cents (\$370,395.19) 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

SEP 16 1970

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, 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).)