

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

IN THE MATTER OF THE CLAIM OF

MERCK SHARP & DOHME (I.A.) CORP.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2983

Decision No. CU-6196

Appeal and objections from a Proposed Decision entered May 19, 1971.
Oral hearing requested.

Argument September 1, 1971 by Clarence A. Abramson, Esq.

FINAL DECISION

On May 19, 1971, the Commission entered its Proposed Decision in this matter, certifying a loss to claimant in the amount of \$415,821.00 for the loss of its assets in Cuba, reduced only by the amount of \$36,522 representing taxes due the Government of Cuba.

Claimant objected that goodwill should have been allowed, but that an alternative method could be considered to determine value; that on a reconstructed and consolidated basis the Cuban branch would have shown net profits, arriving at certain figures by attributing to the Cuban branch the estimated profits made by claimant as distributor and by the parent company on products shipped to the Cuban branch; and further, that the balance sheet adopted in the Proposed Decision did not reflect a \$34,544 increase in value of realty, and that gross costs of fixed property should be used and not costs less depreciation as shown on the balance sheet.

At the oral hearing held on September 1, 1971, the Commission heard argument of counsel. On the basis of the entire record, the Commission finds that the value of the realty should be increased by \$34,544.00. As to the other items on which objections were entered, the Commission finds no basis for altering its Proposed Decision.

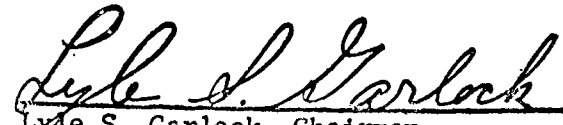
Accordingly, the Certification of Loss in the Proposed Decision is set aside, the following Certification of Loss will be entered, and in all other respects, the Proposed Decision as amended herein, is affirmed.

CERTIFICATION OF LOSS

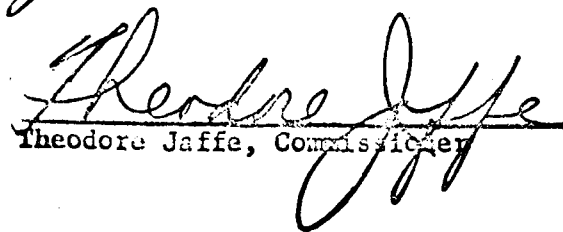
The Commission certifies that MERCK SHARP & DOHME (I.A.) CORP. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Hundred Fifty Thousand Three Hundred Sixty-Five Dollars (\$450,365.00) with interest thereon at 6% per annum from May 23, 1963 to the date of settlement.

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

OCT 6 1971



Lyle S. Garlock, Chairman



Theodore Jaffe, Commissioner

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

IN THE MATTER OF THE CLAIM OF

MERCK SHARP & DOHME (I.A.) CORP.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2983

Decision No. CU- 6196

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 MERCK SHARP & DOHME (I.A.) CORP., in the amount of \$4,465,846.00 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 Sharp & Dohme Inter-American Corp., was organized under the laws of Delaware, that the corporate name was changed to MERCK SHARP & DOHME (I.A.) Corp. in 1956, and that at all pertinent times all of claimant's outstanding capital stock was owned by Merck & Co., Inc., a corporation organized in New Jersey. An authorized officer of Merck & Co., Inc. has stated that as of April 5, 1967, more than 90% 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:

<u>Assets</u>		\$ 452,343
Assets		
Less: Accounts payable	3,282	
Accrued expenses	<u>50,581</u>	<u>(53,864)</u>
		\$ 398,479
Add: Appreciation on land	34,544	
Appreciation on fixed assets - to restate to acquisition cost	<u>35,254</u>	<u>\$ 69,798</u>
Total Cuban Assets		\$ 468,277
Add: Accounts Receivable		<u>\$ 18,869</u>
Total Claim on Assets		\$ 487,146
<u>Price Control Losses</u>		\$ 460,700
<u>Goodwill Loss</u>		<u>\$3,518,000</u>
		\$4,465,846

Merck & Co., Inc., and its subsidiaries, including claimant, are engaged in the manufacture and marketing of a broad line of pharmaceuticals, medicinal chemicals and veterinary products. The importation and sale of these products was carried on in Cuba by a branch of claimant corporation in Havana.

Based on the evidence of record, including a copy of the Cuban Official Gazette of May 24, 1963, the Commission finds that the assets of the branch of claimant corporation in Havana were taken by the Government of Cuba on May 23, 1963 pursuant to Resolution No. 5 (under Law 851 of July 6, 1960) and that claimant thereby suffered 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, in "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.

A portion of this claim is based on losses due to price controls on retail prices imposed by the Cuban Government in 1959. Claimant states that these controls resulted in reducing retail prices by an average of 20%, that the losses in sales and pre-tax income amounted to \$842,000 from the middle of 1959 through 1962, and that the after-tax income loss amounted to \$460,700. The Commission, however, finds that these losses are speculative in nature and in any event do not come within the purview of Title V of the Act. Accordingly this portion of the claim is denied.

With regard to the portion of this claim based on the loss of goodwill in the amount of \$3,518,000 claimant explains that this figure is based on the ratio of market value of the securities of Merck & Co. listed on the United States stock exchange to the gross book value of the underlying assets in 1960, and using the same ratio to the 1960 Cuban assets to determine its goodwill value. Claimant states that the 1960 values were used because of the erosion of values caused by Cuban Government action since 1960. In this regard it is noted that claimant also states that the average annual sales of the Cuban branch for the years 1958 through 1960 was about \$1,600,000. The balance sheets for the years ending November 30, 1960 and November 30, 1961, however, reflect that the Cuban branch lost \$251,291 and \$87,429 respectively in these years.

There is no basis for finding that the branch had any "good will" value. Accordingly this item of claim is denied.

The record includes a copy of the audited balance sheet of the Cuban branch as of November 30, 1962 which reflects the following:

<u>Assets</u>		
Cash		\$216,742
Accounts Receivable		
Trade	\$ 26,872	
Other	<u>4,774</u>	31,646
Inventories		29,486
Fixed Property, at Cost	\$207,356	
Less: Accumulated Depreciation	<u>35,254</u>	172,102
Prepaid & Deferred Expenses		<u>2,367</u>
Total		<u>\$452,343</u>
 <u>Liabilities</u>		
Accounts Payable		3,282
Accrued Expenses & Miscellaneous Taxes		50,582
MSD (I.A.) Corp. - Current Account		608,274
Net Operating Loss for Year		<u>(209,795)</u>
Total		<u>\$452,343</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 balance sheet as of November 30, 1962, which indicates

the value of the assets of its Havana branch as \$452,343.00. 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 except for \$36,522 which represents taxes due the Government of Cuba and is included under the item "Accrued Expenses and Miscellaneous Taxes". The Commission therefore finds that the aggregate net value of claimant's assets in Cuba was \$415,821.00 on May 23, 1963, the date of loss.


The Commission has decided that in certifications of loss 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.

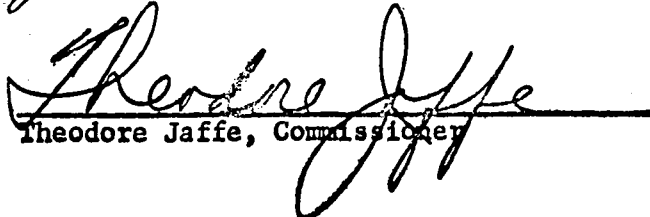
CERTIFICATION OF LOSS

The Commission certifies that MERCK SHARP & DOHME (I.A.) CORP. 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 Four Hundred Fifteen Thousand Eight Hundred Twenty-One Dollars (\$415,821.00) with interest at 6% per annum from May 23, 1963 to the date of settlement.

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

MAY 19 1971


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.(1970).)