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

IN THE MATTER OF THE CLAIM OF

STANDARD BRANDS INCORPORATED and
PAN AMERICAN STANDARD BRANDS, INC.

Claim No. CU-3566

Decision No. CU-3747

Under the International Claims Settlement Act of 1949, as amended

Counsel for claimants: James E. Sapp, Jr., Esq.

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 $1,973,652.00, was presented by STANDARD BRANDS INCORPORATED and PAN AMERICAN STANDARD BRANDS, INC., identified by claimants as Standard Brands and Pasbinc, respectively, based upon the nationalization of a wholly-owned Cuban subsidiary of Standard Brands, and the nationalization of Pasbinc's assets 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 evidence establishes that Standard Brands and Pasbinc were both organized under the laws of Delaware. An authorized officer of both claimants has certified that all of the outstanding capital stock of Pasbinc was owned by Standard Brands at all pertinent times; that more than 50% of the outstanding capital stock of Standard Brands was owned by United States nationals at all pertinent times; and that as of May 1, 1967, more than 97% of the outstanding capital stock of Standard Brands was owned by residents of the United States. The Commission holds that both claimants are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

On the basis of the evidence of record, the Commission finds that Standard Brands was the sole stockholder of Compania de Levadura Fleischmann, S.A., a Cuban corporation, hereafter referred to as the Cuban subsidiary. Inasmuch as the Cuban subsidiary was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" defined under Section 502(1)(B), as indicated above. In such a situation, the Commission has held that an American stockholder of the Cuban corporation is entitled to file a claim based on his stock interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The record shows that Pasbinc manufactured and sold in Cuba a variety of food products, and that it imported and sold in Cuba tea and other packaged food products. It further appears from the record that Pasbinc leased the buildings and the plant machinery and equipment from the Cuban subsidiary. The evidence includes copies of the leases in question and original deeds evidencing the ownership of the real property by the Cuban subsidiary; copies of balance sheets as of November 30, 1959 and September 30, 1960, showing the results of Pasbinc's Cuban operations; copies of profit and loss statements for Pasbinc's Cuban operations for the fiscal years ending November 30, 1957, November 30, 1958, and November 30, 1959, for the nine months ending August 31, 1960, and for the month ending September 30, 1960; copies of the Cuban subsidiary's balance sheet as of September 30, 1960; copies of the Cuban subsidiary's profit and loss statements for the fiscal years ending November 30, 1957 and November 30, 1958, for the nine months ending August 31, 1960, and for the month ending September 30, 1960; detailed appraisals for the Cuban subsidiary's buildings and machinery and equipment, and accompanying schedules; as well as statements from officials of both claimants concerning this claim.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized PAN AMERICAN STANDARD BRANDS, INC. The Commission finds that Pasbinc's assets in Cuba and the Cuban subsidiary, whose activities and properties were closely associated with those of Pasbinc, were nationalized or otherwise taken on October 24, 1960, and that both claimants thereby sustained losses 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, going concern value or cost of replacement.

The question, in all cases, is 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, and cost of replacement.

Cuban Subsidiary

The record shows that the losses asserted by the claimants with reference to the Cuban subsidiary are as follows:

Property	
Land	$ 40,816.59
Buildings	392,398.00
Plant Equipment	910,019.00
Auto, Furniture and Fixtures, etc.	10,823.00
Cash	1,702.05
Securities (Cuban R.R. bonds)	1.00
Total	$1,355,759.64
Less Liability: Accrued Taxes	448.00
Total	$ 448.00
Total Claimed	$1,355,311.64

It appears from the record that an expert had appraised the Cuban subsidiary's buildings and machinery and equipment (plant equipment) in 1950. In his affidavit of April 27, 1967, this expert included details as to his methods of appraisal and set forth precisely how values on the date of loss in 1960 can be derived. These methods were applied by an official of Standard Brands who had served as an accountant for the Cuban subsidiary for several years, and was fully familiar with the property involved. By affidavit, dated May 1, 1967, this accountant described the various buildings of the Cuban subsidiary in detail and indicated how he had applied the methods suggested by the expert appraiser to arrive at valuations as of the date of loss for the buildings and the plant equipment, taking into account appropriate deductions for depreciation. Attached to his detailed affidavit are photographs of some of the buildings, a map showing the layout of the plant in Cuba, and attached schedules indicating the results of applying the methods of the expert appraiser, as well as schedules for the values of other properties obtained from the latest available balance sheets.

Upon consideration of the entire record, the Commission finds that the valuations most appropriate to the properties and equitable to the claimants are those derived by the application of the expert appraiser's methods to the Cuban subsidiary's buildings and plant equipment, and those shown by the latest available balance sheets (book values) for the other assets, with certain adjustments reflected in claimants' books and records for transactions which could not be recorded in the records maintained in Cuba. All of these matters are set forth in detail in the accountant's affidavit of May 1, 1967 and attached schedules.

The record shows that the Cuban subsidiary owed Cuba $448.00 for taxes and had no other liabilities. The Commission finds that Standard Brands sustained a loss in the amount of $1,355,311.64 on account of its stock interest in the Cuban subsidiary.

Pasbinc's Branch

The record shows that the losses asserted by the claimants with reference to Pasbinc's Branch are as follows:

Property	
Auto, Furniture and Fixtures, etc.	$ 71,095.00
Cash	235,015.47
Securities (Cuban R.R. bonds)	3,500.00
Inventories	299,995.70
Net Accounts Receivable	164,147.77
Other Assets	17,824.81
Total	$791,578.75
Less Liabilities:	
Payables	75,866.00
Accrued Taxes	52,416.00
Other Payables	44,955.00
Total Liabilities	$173,237.00
Total Claimed	$618,341.75

It is noted that Pasbinc did not own a legal entity in Cuba, but carried on its operations in a branch office. In making determinations under Title V of the Act, the Commission consistently has not reduced the value of a corporate claimant's branch office assets by any of the branch's liabilities, except for charges or liens against its Cuban assets, and for taxes and other debts owing to Cuba (see Claim of Simmons Company, Claim No. CU-2303), the reason being that Pasbinc is or may still be liable for its branch's debts.

The record shows that the branch owed Cuba taxes in the amount of $52,416.00. Accordingly, the Commission finds that Pasbinc sustained a loss in the amount of $739,162.75.

It will be noted that the total amount of loss found herein is in excess of the aggregate amount asserted by claimants. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimants as the extent thereof.

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 STANDARD BRANDS INCORPORATED 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 Three Hundred Fifty-five Thousand Three Hundred Eleven Dollars and Sixty-four Cents ($1,355,311.64) with interest at 6% per annum from October 24, 1960 to the date of settlement; and

The Commission certifies that PAN AMERICAN STANDARD BRANDS, 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 Seven Hundred Thirty-nine Thousand One Hundred Sixty-two Dollars and Seventy-five Cents ($739,162.75) with interest at 6% per annum form October 24, 1960 to the date of settlement.

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

JUL 9 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimants establish retention of the securities for the loss here certified.

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).)