

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

IN THE MATTER OF THE CLAIM OF

RALSTON PURINA COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 1467

Decision No. CU 435

Counsel for claimant:

William E. Rulon, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$722,004.38, was presented by the RALSTON PURINA COMPANY, based upon the nationalization of its wholly owned subsidiary, Nutrimentos Purina de Cuba, S.A., by the Government of 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) of the Act defines the term "national of the United States" as "(B) 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 claimant corporation was organized in the State of Missouri. An officer of the corporation has certified that at all times between the date of loss and presentation of this claim, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Therefore, the Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that as of April 13, 1967, the date of presentation of this claim, the portion of claimant's issued and outstanding shares which were not owned by United States nationals was not in excess of seven-tenths of one percent.

The Commission finds on the basis of evidence of record that claimant was the sole shareholder of Ralston Purina de Panama, S.A., a corporation existing under the laws of the Republic of Panama, which in turn was the sole shareholder of Nutrimentos Purina de Cuba, S.A., a corporation organized and incorporated under the laws of Cuba.

On August 25, 1960, the Government of Cuba published in its Official Gazette Resolution No. 207, which listed as intervened, Nutrimentos Purina de Cuba, S.A. Accordingly, the Commission finds that Nutrimentos Purina de Cuba, S.A., was intervened by the Government of Cuba on August 25, 1960.

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.

Claimant has stated its loss to be \$722,004.38.

Among the documentation submitted is the ledger trial balance for Nutrimentos Purina de Cuba, S.A. for August 24, 1960, reflecting the following:

ASSETS

CURRENT ASSETS

| | | |
|----------------------------|-------------|--------------|
| The Royal Bank of Canada | \$ 4,279.33 | |
| Petty Cash | 25.65 | |
| Notes Receivable | 10,000.00 | |
| Accounts Receivable | 256,781.99 | |
| Purchase Ledger | 1,827.14 | |
| Employees' Ledger | 3,569.49 | |
| Claims Receivable | 20.00 | |
| Sundry Accounts Receivable | 15,668.22 | |
| Raw Materials Inventory | 47,669.34 | |
| Manufactured Products Inv. | 2,275.19 | |
| Supplies Inventory | 9,540.50 | |
| Postages Inventory | 24.97 | |
| Total Current Assets | | \$351,681.82 |

FIXED ASSETS

| | | | |
|----------------------------|---------------------|--------------|------------|
| Land | | \$110,000.00 | |
| Buildings | \$140,344.27 | | |
| Machinery & Equipment | 176,690.49 | | |
| Automobile | 2,900.00 | | |
| Furniture and Fixtures | 12,107.48 | | |
| Coca-Cola Machinery | 620.00 | | |
| Office Equipment | 5,983.95 | | |
| | <u>\$338,646.19</u> | | |
| Minus Accrued Depreciation | <u>53,982.29</u> | 284,663.90 | 394,663.90 |

PREPAID OR DEFERRED CHARGES

| | | |
|-----------------------|------------------|-----------|
| Prepaid Taxes | \$ 26.35 | |
| Prepaid Insurance | 3,854.84 | |
| Prepaid Rent | 200.00 | |
| Miscellaneous Prepaid | <u>10,901.88</u> | |
| | | 14,983.07 |

INVESTMENTS AND VALUES

| | | |
|-----------------------|---------------|--------------------|
| Investments in values | \$ 1,960.00 | |
| Deposits in guaranty | <u>247.00</u> | \$ <u>2,207.00</u> |
| TOTAL ASSETS | | 763,535.79 |

LIABILITY AND CAPITAL

CURRENT LIABILITY

| | | |
|------------------------------------|---------------|------------|
| Ralston Purina Co. Panama | 34,153.04 | |
| Notes Payable | (54,72) | |
| Vouchers Payable | 13,895.73 | |
| Suppliers Acct. Payable | 3,146.79 | |
| Sundry Account Payable | 3,860.55 | |
| Dividends Payable | 93,653.62 | |
| Taxes and Social Insurance Payable | 4,990.07 | |
| Refundables Deposits | <u>515.59</u> | 154,160.67 |

DEFERRED CREDITS

| | | |
|--------------------------------|--|-----------|
| Miscellaneous Accrued Expenses | | 10,699.11 |
|--------------------------------|--|-----------|

FIXED LIABILITIES

| | | |
|----------------------------------------|--|-----------|
| Mortgage Payable (Maria del C. Galtes) | | 20,177.40 |
|----------------------------------------|--|-----------|

CAPITAL

| | | |
|-------------------------------|----------------|-------------------|
| Stock Capital | \$1,000,000.00 | |
| Stocks not issued | 500,000.00 | \$500,000.00 |
| Plus: Surplus | | 89,199.45 |
| Minus: Net Loss as of 8/24/60 | | <u>10,700.84</u> |
| | | <u>578,498.61</u> |

| | | |
|-----------------------------|--|--------------|
| TOTAL LIABILITY AND CAPITAL | | \$763,535.79 |
|-----------------------------|--|--------------|

The balance sheet enumerates the assets, tangible and intangible, and the liabilities of the enterprise. The liabilities consist of creditors' claims, which are contractual in nature, and those of the owner, which are residual in nature. The excess of assets over contractual liabilities represents the owners' equity, or net worth. The same result may be reached by adding the capital investment, appropriate surplus reserves (not including reserves for depreciation, taxes and the like), and any undivided profit, as appropriate, and subtracting any outstanding deficit.

In the instant case it is noted that the item of \$10,699.11, listed among the liabilities as "Miscellaneous Accrued Expenses," is in fact a fund established from the surplus account as a credit for future

expenses. Accordingly, the calculation of net worth is as follows:

| | |
|--------------------------------|--------------|
| Stock Capital (issued) | \$500,000.00 |
| Surplus | 89,199.45 |
| Miscellaneous Accrued Expenses | 10,699.11 |
| | <hr/> |
| | \$599,898.56 |
| Less Net Loss | 10,700.84 |
| Net Worth | <hr/> |
| | \$589,197.72 |

The Commission has considered carefully all of the evidence of record, and finds that the book value of \$589,197.72 for Nutrimentos Purina de Cuba, S.A., is the most appropriate to the property and equitable to the claimant, and concludes that claimant, in its status of indirect owner, suffered a loss in that amount within the meaning of Title V of the Act as a result of the intervention of Nutrimentos Purina de Cuba, S.A., by the Government of Cuba on August 25, 1960.

In addition, as shown by the balance sheet, claimant was a creditor of Nutrimentos Purina de Cuba, S.A., for the amount of \$34,153.04, and as indirect owner of all of the outstanding stock, for the additional amount of \$93,653.62 shown as "Dividends Payable". Accordingly, the Commission concludes that claimant, in its status of creditor, suffered a further loss of \$127,806.66 within the meaning of Title V of the Act as a result of the intervention on August 25, 1960.

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0064).

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 August 25, 1960, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

An additional amount of \$5,000.00 is claimed as "attorneys' fees", apparently incurred in connection with this claim. No specific provision is made in the statute for the inclusion in the certification of loss of such expenses. The Commission has held that such expenses

were not intended by Congress to constitute a loss resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against property of nationals of the United States by the Government of Cuba within the meaning of Section 503(a) of the Act. (See the Claim of Mary Pauline Seal, Claim No. CU-059.) Accordingly, this portion of the claim is denied.

CERTIFICATION OF LOSS

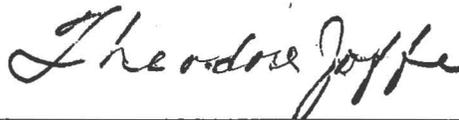
The Commission certifies that RALSTON PURINA COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seven Hundred Seventeen Thousand Four Dollars and Thirty-Eight Cents (\$717,004.38), with interest thereon at 6% per annum from August 25, 1960 to the date of settlement.

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

OCT 18 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

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).)

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.

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 21 NOV 1967

Francis Masterson
Clerk of the Commission