

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

IN THE MATTER OF THE CLAIM OF

THE PROCTER & GAMBLE  
DISTRIBUTING COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0568

Decision No. CU

3401

Counsel for claimant:

Dinsmore, Shohl, Coates & Deupree

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 THE PROCTER & GAMBLE DISTRIBUTING COMPANY in the amount of \$211,598.12, based upon the asserted loss of payment for raw materials sold and shipped to manufacturers 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.

An officer of the claimant corporation has certified that the claimant was organized in Ohio and that all of its outstanding capital stock has been owned at all times pertinent hereto by The Procter & Gamble Company. An officer of The Procter & Gamble Company has certified that it was organized in Ohio, that at all times pertinent hereto more than half of its outstanding capital stock was owned by persons who were United States nationals, and that as of November 19, 1965, more than 99% of the stockholders were United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains copies of invoices reflecting the sale by claimant to Sabates Industrial, S.A., a Cuban corporation, of raw materials for amounts which, with freight, shipping and other attendant fees included, totalled \$233,531.42. There follows a listing of the invoices of record, showing the date, number, and amount due on each:

<u>Date</u>	<u>Invoice No.</u>	<u>Amount</u>
June 24, 1960	M-99	\$ 7,849.67
June 30, 1960	LB-103	10,435.83
July 1, 1960	D-110-A	4,335.77
July 1, 1960	D-110-A	4,323.56
July 6, 1960	LB-101	10,657.49
July 6, 1960	GNB-102-A	4,476.15
July 6, 1960	LB-107	9,808.12
July 11, 1960	SL-110-B	4,578.55
July 11, 1960	SL-110-B	4,522.09
July 15, 1960	OBD-102-A	4,456.13
July 15, 1960	PI-88-B	2,660.86
July 15, 1960	PI-106	5,621.82
July 20, 1960	SL-110-C	4,501.78
July 22, 1960	PI-112	3,522.94
August 2, 1960	PI-115	3,975.88
August 9, 1960	TC-104	1,420.13
August 18, 1960	PI-114	3,519.34
August 18, 1960	PI-120	1,577.10
August 19, 1960	D-117	4,569.85
August 22, 1960	PI-116	4,437.19
August 24, 1960	PI-105-A	3,775.27
August 29, 1960	D-117	4,572.74
September 1, 1960	LB-118	9,542.67
September 2, 1960	LB-128	9,823.52
September 6, 1960	GBD-113	7,354.79
September 6, 1960	GBD-131	7,273.44
September 7, 1960	PI-105-B	3,848.50
September 14, 1960	D-117	4,476.99
September 14, 1960	D-117	4,557.27
September 15, 1960	LB-128	9,772.35
September 15, 1960	GBD-132	6,543.24
September 16, 1960	PI-121	2,986.31
September 16, 1960	PI-122	3,848.17
September 16, 1960	PI-123	5,362.29
September 16, 1960	PI-125	4,601.79
September 20, 1960	GBD-132	6,520.35
September 20, 1960	GBD-132	6,594.83
September 29, 1960	KC-127-C	4,424.62
September 29, 1960	SL-127-C	4,591.85
September 29, 1960	SL-127-C	4,585.37
September 29, 1960	SL-127-C	4,581.15
October 6, 1960	PI-124	4,467.23
October 7, 1960	PI-130	3,970.88
October 20, 1960	ZO-117	4,205.55
	Total	\$233,531.42

Other documentation of record reveals that Sabates Industrial, S.A., was entitled to a credit against the above-described indebtedness in the total amount of \$29,895.00. In the absence of evidence of any allocation to the contrary, the credit is applied to the earliest of the invoices listed above, eliminating the first four, dated June 24, June 30, and July 1, 1960, and

reducing the amount due on Invoice No. LB-101 of July 6, 1960 to \$7,707.32. The total indebtedness is thus reduced to \$203,636.42, which claimant states it has not received.

The record also contains copies of invoices reflecting the sale by claimant to Productos Detergentes, S.A., a Cuban corporation, of raw materials for amounts which, including freight, shipping and other attendant fees, totalled \$8,502.45, as follows:

<u>Date</u>	<u>Invoice No.</u>	<u>Amount</u>
June 27, 1960	PI-11	\$2,749.88
August 29, 1960	PI-12	936.24
September 16, 1960	PI-14	2,060.72
October 7, 1960	PI-13	<u>2,755.61</u>
	Total	\$8,502.45

The record further reveals that Productos Detergentes, S.A., was entitled to a credit in the amount of \$540.75, which reduces the amount due on Invoice No. PI-11 of June 27, 1960 to \$2,209.13, and the total indebtedness to \$7,961.70, which claimant states it has not received.

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.)

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba. The Commission further finds that the invoiced amounts in payment for raw materials to Sabates Industrial, S.A., and Productos Detergentes, S.A., were due and payable 90 days after the respective dates of the invoices, and the losses occurred on the due dates as thus determined.

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 loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the date on which the losses occurred, to the date on which provisions are made for settlement thereof, as follows:

On	\$ 2,209.13	From	September 25, 1960
On	21,991.59	From	October 4, 1960
On	9,100.64	From	October 9, 1960
On	12,738.81	From	October 13, 1960
On	4,501.78	From	October 18, 1960
On	3,522.94	From	October 20, 1960
On	3,975.88	From	October 31, 1960
On	1,420.13	From	November 7, 1960
On	5,096.44	From	November 16, 1960
On	4,569.85	From	November 17, 1960
On	4,437.19	From	November 20, 1960
On	3,775.27	From	November 22, 1960
On	5,508.98	From	November 27, 1960
On	9,542.67	From	November 30, 1960
On	9,823.52	From	December 1, 1960
On	14,628.23	From	December 5, 1960
On	3,848.50	From	December 6, 1960
On	9,034.26	From	December 13, 1960
On	16,315.59	From	December 14, 1960
On	18,859.28	From	December 15, 1960
On	13,115.18	From	December 19, 1960
On	18,182.99	From	December 28, 1960
On	4,467.23	From	January 4, 1961
On	6,726.49	From	January 5, 1961
On	<u>4,205.55</u>	From	January 18, 1961
	\$211,598.12	Total	

CERTIFICATION OF LOSS

The Commission certifies that THE PROCTER & GAMBLE DISTRIBUTING 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 Two Hundred Eleven Thousand Five Hundred Ninety-eight Dollars and Twelve Cents (\$211,598.12) 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**

*Edward v. B. Sutton*

Edward v. B. 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).)