

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

IN THE MATTER OF THE CLAIM OF

BECTON, DICKINSON and COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0113

Decision No. CU -11

Controller of Corporation:

J. P. Atkinson

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 BECTON, DICKINSON and COMPANY for \$18,799.75 based upon the loss of payment for merchandise shipped to Cuban enterprises by its wholly-owned Panamanian subsidiary, Becton, Dickinson and Company, S.A. The claim was denied by Proposed Decision issued October 16, 1966 which decision was set aside by Order issued January 25, 1967 and the claim has been reconsidered in its entirety.

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 which was organized under the laws of the State of New Jersey, has certified that at all times pertinent hereto more than 50 percent of the outstanding capital stock was owned by nationals of the United States and that on February 6, 1967 at least 94 percent of the outstanding capital stock was owned by United States nationals. The Commission holds that BECTON, DICKINSON and COMPANY qualifies as a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence establishes that claimant owned all of the outstanding capital stock of Becton, Dickinson and Company, S.A. organized under the laws of Panama. The claim herein is based upon debts due and owing to claimant's Panamanian subsidiary for goods shipped to Cuban customers and a note owed by a Cuban firm. Claimant's Panamanian subsidiary does not qualify to assert its claim under Section 502(1)(B) of the Act but the Commission finds that claimant may assert such a claim for loss of the accounts receivable from Cuban enterprises. (See Claim of Avon Products, Inc., Claim No. CU-0772, Amended Proposed Decision, 1967 FCSC Ann. Rep. 35.)

Claimant has submitted records of its Panamanian subsidiary showing shipments made to Cuban customers, with information concerning the payment by some of the customers of drafts, and correspondence acknowledging certain of the debts owed to Becton, Dickinson and Company, S.A.

The customers and total amounts due and payable are as follows:

<u>Customer</u>	<u>Total</u>
Mario Alvarado	\$ 1,163.26
Oscar J. Angulo	3.00
Antigua Co. S.A.	21.60
Cia. Importadora Bio-Quimica, S.A.	329.98
Drogueria Berenguer	1,778.68
Drogueria Danhauser	2,841.28
Drogueria Reyes, S.A.	3,196.20
Especialidades Veterinarias, S.A.	.45
F. Gonzalez Padron	4,343.90
Provedora Comercial America, S.A.	550.41
Perez y Diez, S.A.	2,541.34
Drogueria Sarra	<u>2,029.65</u>
Total	\$18,799.75

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 customers in Cuba 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.)

The Commission finds that claimant's right to receive payment for the aforesaid shipments was lost as a result of the intervention by the Government of Cuba. Claimant has submitted no evidence to establish the exact

date that each account was payable but asserts that it has not received payment for the outstanding accounts enumerated above.

The Commission further finds that all the accounts were due and payable on or before June 6, 1961, the date of the last notification of payment of any draft to a Cuban bank for merchandise shipped by the Panamanian subsidiary to Cuban customers.

Accordingly, the Commission concludes that claimant suffered a loss on June 6, 1961 in the amount of \$18,799.75 within the meaning of Title V of the Act as a result of the intervention by the Government of Cuba.


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.

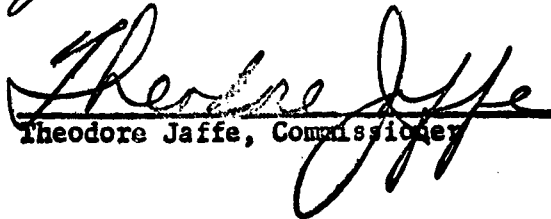
CERTIFICATION OF LOSS

The Commission certifies that BECTON, DICKINSON and 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 Eighteen Thousand Seven Hundred Ninety-Nine Dollars and Ninety-Five Cents (\$18,799.95) with interest thereon at 6% per annum from June 6, 1961 to the date of settlement.

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

APR 7 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 Amended 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).)

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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 BECTON, DICKINSON and COMPANY for \$18,799.75 based upon shipments of goods by its Panamanian subsidiary to Cuban customers.

Under Section 503 of the International Claims Settlement Act of 1949, as amended (64 Stat. 12; 69 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 79 Stat. 988) the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. That section 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

(a) . . . 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 504 of the Act provides, as to Ownership of Claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

In order for the Commission to favorably consider claims under Section 503(a) of Title V of the Act, it must be established that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking.

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

An officer of the claimant corporation has certified that BECTON, DICKINSON and COMPANY is a New Jersey corporation and that at all times between April 2, 1956 and presentation of this claim on April 8, 1966, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. It appears that claimant is a national of the United States within the meaning of Section 502(1)(A) of the Act.

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

The record contains copies of invoices reflecting sales to twelve

customers in Cuba of goods having a total value of \$18,799.75. Claimant contends that, with one exception, all of the drafts covering the shipments were paid for in Cuban pesos, but dollars were not remitted by the Cuban National Bank.

The above mentioned invoices also show that the shipments were made by Becton, Dickinson and Company, S.A., of the Republic of Panama, said to be wholly owned by claimant. Becton, Dickinson and Company, S.A., is not a Cuban corporation whose corporate entity has been destroyed by Cuba. In such case its possible American stockholders might have a claim against the Government of Cuba. On the contrary, however, so far as the record shows, the Panamanian corporation remains intact, an entity capable of transacting business, incurring debts and holding property.

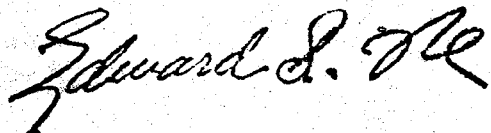
The Commission finds it unnecessary to determine the status of the Cuban accounts, holding that any claim which may have arisen under international law in connection therewith, belongs to Becton, Dickinson and Company, S.A., of the Republic of Panama, and not to the claimant herein.

Accordingly, the Commission concludes that this claim is not valid under Title V of the Act in that it was not owned by a national of the United States on the date of filing with the Commission and, therefore, it is hereby denied.

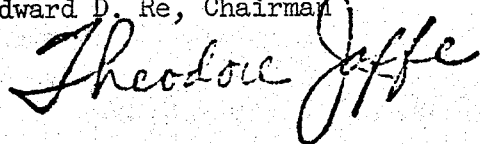
The Commission deems it unnecessary to make specific findings with respect to other elements of this claim.

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

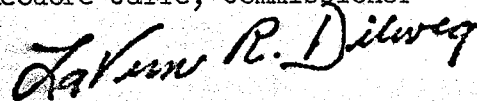
13 OCT 1966



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 20 days after service or receipt of notice of this Proposed Decision upon the expiration of 30 days after such service or receipt of notice, the decision will be entered as the Final Decision of the Commission, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) (1964))