

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

IN THE MATTER OF THE CLAIM OF

WITCO CHEMICAL COMPANY, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0115

Decision No. CU

362

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 WITCO CHEMICAL COMPANY, INC. in the amount of \$2,695.54 based upon the asserted loss of payment for merchandise shipped to 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."

An officer of the claimant corporation has certified that the claimant was organized in the State of Delaware and that at all times between September 7, 1960 and presentation of this claim on June 23, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by 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.

Claimant states that 99% of its stockholders were nationals of the United States.

The record contains a copy of claimant's invoice No. 10-2874 of September 7, 1960 reflecting the sale to Cia Goodrich Cubana, S.A., of Havana, Cuba, of goods totalling \$3,400.00, as to which freight, shipping and other attendant fees increased the total to \$4,991.74.

Additionally, the record includes a letter of June 21, 1961 from the Chase Manhattan Bank of New York, to claimant, in which it is stated that the collection of \$4,991.74 was paid by Cia Goodrich Cubana, S.A. on October 24, 1960; and that The Royal Bank of Canada, Havana Branch, was still awaiting a dollar reimbursement release from the Exchange Control, a Cuban Government agency. Claimant states that it has not received the funds.

Under a contractual arrangement with the Continental Carbon Company of Houston, Texas, claimant has world-wide distribution rights for "carbon black", a product manufactured by Continental Carbon Company. It was

"carbon black" that claimant had shipped to Cia Goodrich Cubana, S.A. In compliance with the distribution agreement, Continental Carbon Company reimbursed claimant in the amount of \$2,296.20 on the uncollectible debt, thus reducing the claim herein to \$2,695.54. There has been no response to a Commission letter of May 26, 1967 to claimant, inquiring whether Continental Carbon Company wished to join in the claim.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds, in this and similar cases, 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 into 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 The Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019.)

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on October 25, 1960 as to \$2,695.54, the day after the collection was received by the collecting bank, The Royal Bank of Canada, Havana Branch.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed 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-0644.)

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 the date on which the loss occurred, to the date on which provision is made for the settlement thereof,

CERTIFICATION OF LOSS

The Commission certifies that WITCO CHEMICAL COMPANY, 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 Two Thousand Six Hundred Ninety-Five Dollars and Fifty-Four Cents (\$2,695.54) 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

OCT 4 1967

*Edward D. Re*

Edward D. Re, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*LaVern R. Dilweg*

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).)

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 6 NOV 1967

CU-0115

*Janis M. ...*  
Clerk of the Commission