

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

IN THE MATTER OF THE CLAIM OF

AMERIPOL, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0603

Decision No. CU 6207

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 Goodrich-Gulf Chemicals, Inc. for \$102,899.46 based upon the asserted ownership and loss of payment for merchandise shipped to Cuba. Subsequently the name of Goodrich-Gulf Chemicals, Inc. was changed to AMERIPOL, INC.

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 B.F. Goodrich Company, a corporation organized under the laws of New York, has certified that as of January 18, 1967, 98.3% of the outstanding stock was owned by United States nationals. Since the record establishes that AMERIPOL, organized under the laws of Delaware, is a wholly-owned subsidiary of the B.F. Goodrich Company, the Commission holds that claimant corporation is a national of the United States within the meaning of Section 502 (1)(B) of the Act.

Claim is asserted herein for the loss of \$102,899.46 by claimant assertedly resulting from the intervention of claimant's customer, a Cuban corporation, Compania Goodrich Cubana S.A. (Goodrich S.A.), by the Government of Cuba.

The record contains copies of invoices of Goodrich-Gulf Chemicals, Inc. reflecting sales to Goodrich, S.A. in the amounts shown below, including dates payments were due:

<u>Date Due</u>	<u>Amount</u>
November 11, 1959	\$ 17,735.05
November 22, 1959	44,950.70
December 29, 1959	28,205.94
January 3, 1960	16,761.48
September 17, 1960	14,136.71
September 28, 1960	21,208.03
	<u>\$142,997.91</u>

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Claimant states that it has not received the funds but that items of \$11.94 for commission credit and \$61.95 for a discount which had not been deducted, should be deducted from this total resulting in \$142,924.02. It adds that Goodrich-Gulf Chemicals, Inc. asserted this amount as an income tax deduction in 1960 and that it was allowed.

Claimant also states that it received \$64,321.18 from a guarantor of 45% of these accounts. This sum will be applied to satisfy or reduce the earlier accounts.

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 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 the aforesaid sums as reduced totalling \$78,602.84 were lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the contrary, such losses occurred on the respective maturity dates with regard to unpaid drafts maturing after September 29, 1959, one date used for 1959 losses.

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 as follows:


<u>From</u>	<u>On</u>
December 29, 1959	\$26,496.62
January 3, 1960	16,761.48
September 17, 1960	14,136.71
September 28, 1960	<u>21,208.03</u>
	\$78,602.84

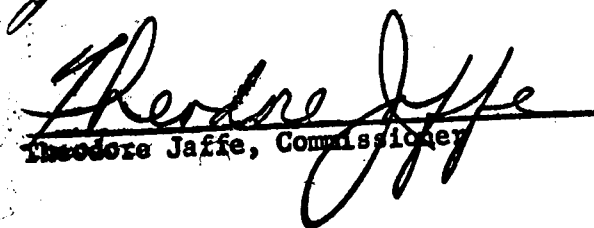
CERTIFICATION OF LOSS

The Commission certifies that AMERIPOL, 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 Seventy-eight Thousand Six Hundred Two Dollars and Eighty-Four Cents (\$78,602.84) 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

MAY 26 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 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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