

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

IN THE MATTER OF THE CLAIM OF

NORWICH INTER-AMERICA, INC.
NORWICH PHARMACAL CO.

Claim No. CU -0834

Decision No. CU **1888**

Under the International Claims Settlement
Act of 1949, as amended

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 NORWICH INTER-AMERICA, INC. in the amount of \$41,939.67, based upon the asserted loss of payment for merchandise shipped to Cuba. NORWICH PHARMACAL CO. having petitioned to join in this claim, and the matter having been duly considered, the petition is hereby granted.

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.

A portion of this claim arises from merchandise shipped to Cuba by Eaton Inter-America, Inc., which was incorporated in 1951 in New York State. All of the outstanding stock of this corporation was owned by NORWICH PHARMACAL COMPANY. Eaton Inter-America, Inc. was merged with NORWICH PHARMACAL COMPANY on October 30, 1964. Accordingly, the Commission finds that NORWICH PHARMACAL COMPANY has succeeded to the claim which arose in favor of Eaton Inter-America, Inc.

One shipment of merchandise to Cuba was made by NORWICH INTER-AMERICA, INC., a corporation incorporated on November 15, 1951 which was and is wholly owned by NORWICH PHARMACAL COMPANY.

The NORWICH PHARMACAL COMPANY was incorporated in the State of New York in 1890, and an officer of that corporation has certified that more than 99% of its outstanding capital stock is owned by United States nationals. The Commission holds that claimants are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

Claimants have submitted documentation in support of their contentions that sale and delivery of merchandise was made to the following consignees:

| | | |
|--|-----------------|-------------|
| Eaton Inter-America, Inc. | | |
| to Piensos Tropical, S.A. | \$42,153.26 | |
| less credits | <u>5,525.85</u> | \$36,627.41 |
| to Instituto Nacional de Reforma Agraria | | 3,685.91 |
| NORWICH INTER-AMERICA, INC. | | |
| to Productos Bestos, S.A. | | 1,626.41 |

Claimants state they have not received these funds.

The record also contains copies of letters concerning payments by Piensos Tropical, S.A., to Cuban Banks.

Data as to the aforesaid shipments follows in chronological order:

| <u>Invoice Date</u> | <u>Terms</u> | <u>Amount</u> | <u>Payment, Bank Letter or Due Date</u> |
|--|-----------------|---------------|---|
| <u>Instituto Nacional de Reforma Agraria</u> | | | |
| December 7, 1959 | | \$ 3,685.91 | January 6, 1960 |
| <u>Productos Bestos, S.A.</u> | | | |
| October 30, 1960 | (90 days) | 1,627.12 | January 2, 1961 |
| <u>Piensos Tropical, S.A.</u> | | | |
| January 19, 1958: | \$1,448.64 | | |
| less credits | <u>205.73</u> | 1,242.91 | January 11, 1960 |
| December 8, 1958 | | 5,612.16 | October 5, 1959 |
| January 30, 1959 | | 8,588.66 | November 20, 1959 |
| March 16, 1959 | | 10,463.54 | December 10, 1959 |
| April 23, 1959 | | 1,125.00 | December 30, 1960 |
| May 1, 1959: | \$5,400.00 | | |
| less credits | <u>671.65</u> | 4,728.35 | June 1, 1959 |
| November 9, 1959: | \$2,152.50 | | |
| less credits | <u>4,648.47</u> | (2,495.97) | |
| Piensos Total | | \$29,262.65 | |

Claim has also been made for \$7,362.76 apparently invoiced to Piensos under date of February 4, 1959. However, the record reflects that this item was incorrectly credited to the account of Piensos Tropical, S.A., actually representing a collection received by Eaton Inter-America, Inc. from Argentina. Accordingly, this item of claim, not being within the scope of the Act, is denied.

The item of \$3,685.91 was due originally to Eaton Inter-America, Inc., from the Instituto Nacional de Reforma Agraria, an agency of the Cuban Government. Inasmuch as this debt of the Government of Cuba has not been paid, the Commission finds that NORWICH PHARMACAL CO. succeeded to and suffered a loss in that amount on January 6, 1960 within the scope of Title V of the Act. (See Claim of Clemens R. Maise, Claim No. CU-3191.)

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 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 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.)

Accordingly, the Commission finds that the remainder of the property subject of this claim 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 the following dates:

for NORWICH PHARMACAL CO.:

| <u>ON</u> | <u>FROM</u> |
|-----------------|--------------------|
| \$ 4,728.35 | September 29, 1959 |
| 5,612.16 | October 6, 1959 |
| 8,588.66 | November 21, 1959 |
| 10,463.54 | December 11, 1959 |
| 3,685.91 | January 6, 1960 |
| 1,242.91 | January 12, 1960 |
| <u>1,125.00</u> | December 31, 1960 |
| \$ 32,948.56 | |

for NORWICH INTER-AMERICA:

| | |
|-------------|-----------------|
| \$ 1,627.12 | January 2, 1961 |
|-------------|-----------------|

The above dates are either the dates when payment was due, the date after the bank letter of information, or payment to a bank, or the effective date of Cuban Law 568.

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 dates 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 claimants shall be increased by interest thereon at the rate of 6% per annum from the dates on which the losses occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that NORWICH INTER-AMERICA, INC. suffered a loss as a result of actions of the Government of Cuba under the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Thousand Six Hundred Twenty-Seven Dollars and Twelve Cents (\$1,627.12) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

the Commission certifies that NORWICH PHARMACAL CO. succeeded to and 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 Thirty-Two Thousand Nine Hundred Forty-Eight Dollars and Fifty-Six Cents (\$32,948.56) 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 22 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

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, 32 Fed. Reg. 412-13 (1967).)