

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

IN THE MATTER OF THE CLAIM OF

THE GOODYEAR TIRE & RUBBER COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0887

Decision No. CU

887

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$6,282,053.85 was presented by THE GOODYEAR TIRE & RUBBER COMPANY based upon debts and loss resulting from the intervention of Goodyear de Cuba, S.A.

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 Ohio and that at all times between August 1, 1960 and presentation of this claim on December 1, 1966, 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 63,575 of its 64,116 stockholders were residents of the United States and assumes that substantially all of them were United States nationals; and that 541 stockholders were residents of foreign countries and assumed to be citizens of those countries.

An officer of THE GOODYEAR TIRE & RUBBER COMPANY has certified, and the Commission finds that claimant was the holder of 980 shares of the 1,000 outstanding shares of Goodyear de Cuba, S.A. and was the beneficial owner of the remaining 20 shares of stock under a Declaration of Trust signed by Edwin J. Thomas on March 26, 1959, and that Goodyear de Cuba, S.A. was organized under the laws of the Republic of Cuba on January 1, 1928.

On November 25, 1959, the Government of Cuba published in its Official Gazette Law No. 647 which authorized the Minister of Labor, in such cases as he deemed it necessary, to order the intervention of enterprises or working centers. Law 843, published in the Official Gazette of July 6, 1960, gave the Labor Ministry unilateral authority to extend the period of its intervention of any establishment beyond

the six months period provided in Law 647. Resolution 19045 of August 30, 1960, of the Ministry of Labor, provided for the intervention of Goodyear de Cuba, S.A. and appointed an intervenor who delivered the Resolution to the firm on September 1, 1960. Thereafter, the Company was nationalized by Resolution No. 3 of the President of the Republic of Cuba published in the Cuban Official Gazette on October 24, 1960.

Based on the foregoing, the Commission finds that claimant sustained a loss within the meaning of Title V of the Act on September 1, 1960, when Goodyear de Cuba, S.A. was intervened by the Government of Cuba.

In making determinations with respect to the validity and amount of claims and value of properties, rights and interests taken, the Act provides in Section 503(a) that the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

Claimant has stated its loss in the amount of \$6,282,053.85, \$4,973,915.26 representing the amount due and owing on account from Goodyear de Cuba, S.A., \$144,413.85 the amount due on a sight draft payable by the Cuban enterprise, and \$1,163,724.74 being the value claimed for the stock of Goodyear de Cuba, S.A. as of September 1, 1960.

In support of the valuations claimed, claimant has submitted balance sheets of the Cuban firm for December 31, 1959 and August 30, 1960, a statement of assets of Goodyear de Cuba, S.A. as of September 1, 1960 amounting to \$6,473,770.00, a schedule of liabilities as of September 1, 1960, the record of account between claimant and the Cuban company, a listing of the physical assets of the Cuban company with the purchase prices and book values, and a photocopy of an insurance binder on buildings, machinery, fixtures and equipment.

The balance sheet for Goodyear de Cuba as of August 31, 1960
reflects the following:

<u>ASSETS</u>			
<u>Current Assets</u>	<u>Cash</u>		
	Cash in Bank	\$ 834,521.00	
	Cash on Hand	2,300.00	\$ 836,821.00
	<u>Receivables</u>		
	Accounts Receivable	1,464,233.00	
	Bills Receivable	225,562.00	
	Suspense Account	148,548.00	
	Less Res. for Cash Disc	4,571.00	
	Less Res. for Contr Rebate	36,901.00	
	Less Res. for Commissions	31,262.00	
	Less Res. for Bad Debts	364,377.00	
	Net Total Receivables		1,401,232.00
	Advances to Employees	5,369.00	
	Guarantee Deposits	3,154.00	8,523.00
	<u>Inventories</u>		
	Duty, Frt. and Clearance Chg.	24,885.00	
	Merchandise on Hand	546,368.00	
	Merchandise in Transit	1,285.00	
	Prepaid Duty etc Raw Mat.	9,272.00	
	Raw Materials	198,973.00	
	Raw Materials in Transit	63,773.00	
	Total Inventories		844,556.00
	Total Current Assets		\$3,091,132.00
	<u>Securities</u>		\$ 4.00
<u>Fixed Assets</u>	Land and Appurtenances	\$ 120,179.00	
	Buildings	604,904.00	
	Machinery and Equipment	2,347,037.00	
	Furniture and Fixtures	59,455.00	
	Motor Cars and Trucks	52,042.00	
	Less Res. for Depreciation	1,169,432.00	
	Total Fixed Assets		\$2,014,185.00
	<u>Prepaid and Deferred Chgs.</u>		
	Insurance	\$ 370.00	
	Taxes	385.00	
	Misc.	1,979.00	
	Total Prepaid and Def. Chgs.		2,734.00
	TOTAL ASSETS		<u>\$5,108,055.00</u>

LIABILITIES

Current Liabilities

Accounts Payable	\$	39,867.00	
Res. for Inc. and Prof. Tax		7,131.00	
<u>Miscellaneous Reserves</u>			
Taxes		6,638.00	
Audit and Legal		2,085.00	
Overseas Travel		11,440.00	
Social Laws Liabilities		2,731.00	
Other Reserves		80,514.00	
Total Current Liabilities			\$ 150,406.00

Other Liabilities

Goodyear Tire & Rubber Co.	\$5,007,890.00		
Goodyear Tyre & Rubber Co. Ltd.	(152.00)		
Goodyear S.A. Luxemburgo	145.00		
Goodyear de Brasil	2,482.00		
Goodyear T & R Co. Akron			
Draft Acct.	144,874.00		
Prov. Dep.	140,495.00	4,352.00	
Goodyear Export, S.A.			
Draft Acct.	38,250.00		
Prov. Dep.	40,621.00	(2,371.00)	
Total Liabilities			\$5,012,346.00

CAPITAL

Common Stock Authorized	\$	100,000.00	
			\$ 100,000.00

SURPLUS

Balance at End of Prev. Year	(106,396.00)		
Profit and Loss Year to Date	(48,301.00)		
Net Surplus			(154,697.00)

TOTAL LIABILITIES \$5,108,055.00

The balance sheet enumerates the assets, tangible and intangible, and the liabilities of the enterprise. The liabilities consist of creditors' claims, which are contractual in nature, and those of the owner, which are residual in nature. The excess of assets over contractual liabilities represents the owners' equity, or net worth. The same result may be reached by adding the capital investment, appropriate surplus reserves (not including reserves for depreciation, taxes and the like), and any undivided profit, as appropriate, and subtracting any outstanding deficit. Accordingly, the calculation of net worth is as follows:

Total Assets	\$,108,055.00
Less Contractual Liabilities	<u>5,162,752.00</u>
Net Worth Mins-	\$ 54,697.00

Claimant has submitted a statement of assets for Goodyear de Cuba for September 1, 1960 in the amount of \$6,473,770.00. This statement does not consider any deductions for reserves or depreciation of buildings, machinery, equipment, and fixtures but uses an insured value for these items as set forth on an undated photocopy of an insurance binder. The statement does consider a depreciation of 15% per annum on motor vehicles, a different rate than used for the balance sheet. The claimant further submits an adjusted statement concerning the amount due from Goodyear de Cuba on September 1, 1960 indicating a debt of \$4,973,915.26 instead of the \$5,007,890.00 set forth on the balance sheet.

The Commission has considered all of the evidence of record and has determined that the increased value for motor vehicles and the adjusted debt of \$4,973,915.26 might be substituted in the balance sheet but such changes would not be sufficient to reflect a net surplus for the Cuban enterprise. The Commission concludes that claimant has not sustained a loss based upon the net worth of Goodyear de Cuba due to the intervention by the Government of Cuba.

However, the Commission does find that Goodyear de Cuba was indebted to claimant in the amount of \$4,973,915.26 plus the amount of \$144,847.00 for a draft which had not been paid to claimant although the balance sheet indicates a provisional payment of \$140,000.00, and concludes that claimant sustained a loss in the total amount of \$5,118,762.26 under Section 502(3) of the Act.

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 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 September 1, 1960, the date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that THE GOODYEAR TIRE & RUBBER COMPANY sustained 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 Five Million One Hundred Eighteen Thousand Seven Hundred Sixty-Two Dollars and Twenty-Six Cents (\$5,118,762.26), with interest thereon at 6% per annum from September 1, 1960 to the date of settlement.

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

JAN 10 1968

This is a true and correct copy
of the Commission's Proposed
Decision on January 12, 1968

Edward D. Re

Edward D. Re, 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).)

CU-0887