

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

IN THE MATTER OF THE CLAIM OF

SUN CHEMICAL CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. **CU** -1368

Decision No. **CU** -672

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 SUN CHEMICAL CORPORATION in the amount of \$24,284.29 based upon the asserted loss of payment for merchandise shipped to Cuba.

By Proposed Decision dated November 15, 1967, this claim was denied for the failure of the claimant to meet the burden of proof. Subsequently, claimant submitted new evidence, consisting of invoices, ledger accounts, a contract of sale and a bank statement, on the basis of which it is

ORDERED that the Proposed Decision be and it is hereby amended as follows:

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 has certified that the claimant was organized in the State of Delaware and that at all times between 1929 and presentation of this claim on April 10, 1967, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that out of its 1,500,000 shares of capital stock of all classes, 4,600 shares are owned by residents of foreign countries and assumed to be citizens of those countries. Accordingly, claimant concludes that more than 99% of its outstanding capital stock is owned by United States nationals, and less than 1% by stockholders who are assumed to be aliens. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record includes copies of invoices, ledger accounts, a copy of a contract and a statement by The First National Bank of Boston. This evidence discloses that the purchase price of the goods and accompanying charges for shipments, made by claimant to purchasers in Cuba, were, in many instances, paid in pesos by the purchasers to a local bank in Cuba; and that the transfer of such peso amounts was never granted by the Government of Cuba. Other amounts due for shipments made by claimant were not paid to the collecting bank by the consignee. Claimant states that it has not received any of the funds for such shipments.

There follows hereafter data concerning the shipments made to Cuban purchasers and consignee, including information on paid and unpaid drafts, with the dates on which payments were due and payable.

<u>Consignee</u>	<u>Draft Date and Number</u>	<u>Due Date</u>	<u>Amount &amp; Date of Payment</u>
Oficio de la Marina	Feb. 29, 1960 3171		\$ 2,458.56 (May 3, 1960)
Impresos Lermo, S.A.	June 15, 1960 3372		\$ 312.20 (June 24, 1960)
Cia. Ferraterra "El Martillo", S.A.	Aug. 12, 1959 2722		\$ 833.00 (Dec. 23, 1959)
	Sept. 3, 1959 2776		\$ 2,097.67 (Jan. 21, 1960)
	Oct. 5, 1959 2861		\$ 2,032.75 (Feb. 17, 1960)
	Oct. 29, 1959 2914		\$ 5,138.08 (Mar. 10, 1960)
Cultural, S.A.	Oct. 6, 1959 2932		\$ 524.16 (Feb. 11, 1960)
Escoto y Cia.	Dec. 9, 1959 3006		\$ 309.13 (Mar. 10, 1960)
Productos Anilinas Americanas de Cuba, S.A.	Dec. 29, 1959 3049		\$ 961.69 (May 3, 1960)
Cia. Ferraterra "El Martillo", S.A., balance of consign- ment account		\$ 1,435.20 (Nov. 30, 1960)	
Envases Corrugados de Cuba, S.A.	Dec. 3, 1958 2023	\$ 500.00 (May 27, 1959)	
	Dec. 3, 1958 2024	\$ 500.00 (June 26, 1959)	
	Dec. 3, 1958 2027		\$ 555.00 (Nov. 17, 1959)
	Dec. 3, 1958 2029		\$ 555.00 (Apr. 30, 1960)
	Dec. 3, 1958 2030	\$ 555.00 (Dec. 23, 1959)	
	Dec. 3, 1958 2031	\$ 555.00 (Jan. 22, 1960)	
	Dec. 3, 1958 2032	\$ 555.00 (Feb. 21, 1960)	
	Dec. 3, 1958 2033	\$ 555.00 (Mar. 22, 1960)	
	Dec. 3, 1958 2034	\$ 555.00 (Apr. 21, 1960)	
	Dec. 3, 1958 2035	\$ 555.00 (May 21, 1960)	
	Dec. 3, 1958 2036	\$ 555.00 (June 20, 1960)	

Total: \$22,097.44

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 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 accounts receivable were lost as a result of intervention by the Government of Cuba, and 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. However, with respect to the dates of loss as to those goods sold to Cuban purchasers prior to September 29, 1959, the Commission finds that the losses occurred on September 29, 1959, the effective date of Law 568. The Commission further finds that in those instances in which payments were made by the Cuban consignees, the losses occurred on the days after payments were made to the Cuban bank.

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 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>
September 29, 1959	\$ 1,000.00
November 17, 1959	555.00
December 23, 1959	555.00
December 24, 1959	833.00
January 22, 1960	2,652.67
February 12, 1960	524.16
February 18, 1960	2,032.75
February 21, 1960	555.00
March 11, 1960	5,447.21
March 22, 1960	555.00
April 21, 1960	555.00
April 30, 1960	555.00
May 4, 1960	3,420.25
May 21, 1960	555.00
June 20, 1960	555.00
June 25, 1960	312.20
November 30, 1960	<u>1,435.20</u>
Total	\$22,097.44

The following certification will be entered and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that SON CHEMICAL CORPORATION 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 Twenty-two Thousand Ninety-seven Dollars and Forty-four Cents (\$22,097.44), 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 Amended Proposed  
Decision of the Commission

AUG 20 1969

*Leonard v. B. Sutton*  
Leonard v. B. Sutton, Chairman

*Theodore Jaffe*  
Theodore Jaffe, Commissioner

*Sidney Froidberg*  
Sidney Froidberg, 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, 32 Fed. Reg. 412-13 (1967).)

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

IN THE MATTER OF THE CLAIM OF

SUN CHEMICAL CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-1368

Decision No. CU - 672

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$24,284.29, was presented by SUN CHEMICAL CORPORATION, and is based upon asserted debts owed by nationalized enterprises or the Cuban Government.

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 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.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

The only information received by the Commission in support of this claim is an incomplete and unsigned claim form accompanied by a certificate of a corporate officer reciting that claimant was organized as a Delaware corporation and that more than 50 per cent of the outstanding capital stock has been held by United States nationals since 1929. This certificate also includes information as to the number of shares outstanding and the number of stockholders. No information or evidence has been submitted to show the basis of the asserted claim.

By Commission letter of June 26, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. However, no evidence in response to this correspondence has been received.

On September 22, 1967, claimant was invited to submit any evidence available to it within 45 days from that date, and claimant was informed

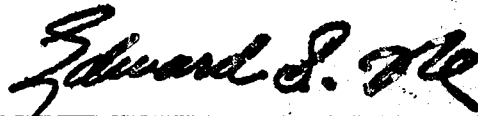


that, absent such evidence it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

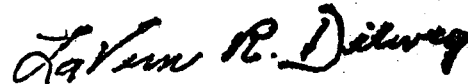
NOV 15 1967



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 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- 1368