

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

IN THE MATTER OF THE CLAIM OF

ARMCO STEEL CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1921

Decision No. CU 4709

Counsel for claimant:

Joseph P. Tumulty, Jr., Esq.

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 ARMCO STEEL CORPORATION in the amount of \$367,796.21 based upon the asserted taking of the property of claimant's former subsidiary in 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)(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 Armco International Corporation was organized in Ohio; that at all pertinent times it was a wholly-owned subsidiary of claimant corporation; and that it was merged with claimant corporation on December 31, 1962. The record shows that claimant corporation was also organized in Ohio. Claimant certifies that as of April 1, 1967 more than 99.5% of the outstanding common stock of claimant corporation was owned by nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Based on the evidence of record, including a copy of Resolution No. 3 dated October 24, 1960 promulgated pursuant to Cuban Law No. 851 of July 6, 1960, which listed Armco International Corporation as nationalized, and affidavits by the former office manager and accountant and the former sales manager of the Cuban branch of The Armco International Corporation, the Commission finds that the assets of this branch were taken by the Government of Cuba on October 24, 1960, and that claimant thereby suffered a loss within the meaning of Title V of the Act.

Claimant has computed its claim as follows:

Personal Property - located in Havana:

Bank Accounts	\$ 49,488.49
Petty Cash	535.00
Accounts Receivable	117,625.10
Inventory of steel and steel products	101,968.72
Furniture, fixtures and automobile adjusted to September 30, 1960	32,021.27
Loans to employees	2,256.93
Account due from Public Works Department of Cuba since 1948	60,944.00
Membership stock in Havana Biltmore Yacht and Country Club	1,500.00
Prepaid taxes, unexpired insurance premiums and miscellaneous items	<u>1,456.70</u>
Total	\$367,796.21

Claimant states that The Armco International Corporation asserted on its 1960 return a deduction of \$296,536.39, and that the United States Internal Revenue Service allowed this amount for the said loss.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, 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.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

In support of the asserted value, the record includes a copy of the balance sheet of the Havana branch of The Armco International Corporation as of September 30, 1960, including copies of supporting documents.

Upon consideration of the entire record, the Commission finds that the value most appropriate to the property and equitable to the claimant is that

shown in the balance sheet as of September 30, 1960, which reflects the following, the peso being on a par with the United States dollar:

ASSETS

Cash on hand and in bank accounts			\$ 50,023.49
Accounts Receivable		\$178,569.10	
Less: Reserve for doubtful accounts	\$ 11,490.50		
Less: Account due from Public Works Department of Cuba since 1948	<u>60,944.00</u>	<u>72,434.50</u>	106,134.60
Inventories of steel and steel products			101,968.72
Furniture and fixtures and automobile equipment		67,534.23	
Less: Reserve for depreciation		<u>35,512.96</u>	32,021.27
Loans to employees			2,256.93
Other investments (membership stock in Biltmore Yacht and Country Club)			1,500.00
Prepayments and deferred charges			<u>1,456.70</u>
Total			\$295,361.71

LIABILITIES AND NET WORTH

Accounts Payable	\$ 10,299.15	
Accrued taxes	45,327.61	
Other accrued accounts	<u>10,847.43</u>	
Total Liabilities		\$ 66,474.19
Intercompany accounts payable	41,151.47	
Branch surplus	<u>187,736.05</u>	228,887.52
Total		\$295,361.71

This balance sheet indicates the value of the assets of the Cuban branch of The Armco International Corporation as \$295,361.71. The Commission in this regard has consistently not reduced the value of the assets of an American corporation doing business through a branch in Cuba by any liabilities in its determinations under Title V of the Act except those subject to set-off as debts owing to the Government of Cuba. The reason is that the claimant may remain liable for the debts. (See Claim of Simmons Company, Claim No. CU-2303, 1968 FCSC Ann. Rep. 77.)

Accordingly, no deduction is made for the items of liabilities shown on the balance sheet except for the item of \$45,327.61 for accrued taxes presumably owed the Government of Cuba. Moreover, it is noted that the value adopted for the Cuban branch's membership interest in the Havana Biltmore Yacht and Country Club is \$1,500.00.

The Commission, however, has found that the value of such a membership interest was \$3,500.00. (See Claim of Arman E. Becker, Jr., Claim No. CU-1094.) Accordingly, the Commission finds that the aggregate value of the subsidiary branch's assets in Cuba was \$297,361.71 less \$45,327.61, or \$252,034.10 on October 24, 1960, the date of loss.

It is noted that in computing its claim, claimant includes an item of \$60,944.00 which represents an account due from The Public Works Department of Cuba since 1948. The balance sheet as of September 30, 1960, however, discloses that claimant carried this item as a bad debt. In any event, the debt did not arise after January 1, 1959 and was not a valid debt on that date. It is also noted that in claimant's computation the item of accounts receivable is shown as \$117,625.00. It is evident that this item includes \$11,490.50 which is deducted in the balance sheet of September 30, 1960 as a "reserve for doubtful accounts". The Commission finds that these items of \$60,944.00 and \$11,490.50 are not losses within the purview of the Act and are therefore denied.

In view of the foregoing, the Commission concludes that claimant suffered a loss in the amount of \$252,034.10 on October 24, 1960 within the meaning of Title V 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 Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.


CERTIFICATION OF LOSS

The Commission certifies that ARMCO STEEL 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 Two Hundred Fifty-two Thousand Thirty-four Dollars and Ten Cents (\$252,034.10) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement.

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

8 APR 1970


Lytle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

NOTICE TO TREASURY DEPARTMENT: This claimant may be the subject of another certification of loss in CU-0667.

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).)