

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

IN THE MATTER OF THE CLAIM OF

DEARBORN CHEMICAL COMPANY OF CUBA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1974

Decision No. CU

3154

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$273,187.10 was presented by DEARBORN CHEMICAL COMPANY OF CUBA based upon the asserted loss of its assets 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 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.

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.

CONTINUOUS OWNERSHIP BY UNITED STATES NATIONALS

Claimant asserts that its assets in Cuba were taken by the Government of Cuba on January 30, 1963. This claim was filed on April 25, 1967.

Under Section 504, claimant must establish continuous ownership of the claim by United States nationals, as defined in Section 502(1)(B) from January 30, 1963 (the date of loss) to April 25, 1967 (the date of filing).

DEARBORN CHEMICAL COMPANY OF CUBA, the claimant, was incorporated under the laws of the State of Illinois. An officer of the claimant corporation has certified that at all times between January 30, 1963 and April 1, 1965 all of its outstanding capital stock was owned by Dearborn Chemical Company, an Illinois corporation. An officer of the parent company has certified that at all times between January 30, 1963 and April 1, 1965, more than 50% of its outstanding capital stock was owned by United States nationals.

On April 1, 1965, all the assets of Dearborn Chemical Company, including the capital stock of the claimant corporation, were transferred to W. R. Grace and Company, a Connecticut corporation. An officer of W. R. Grace and Company has certified that at all times between April 1, 1965 and April 25, 1967, more than 50% of its outstanding capital stock was owned by United States nationals. In particular, on March 24, 1967 90% of its 46,178 stockholders were residents, and presumed to be nationals, of the United States.

Accordingly, the Commission finds that the claimant and its two successive parent corporations qualify at all pertinent times as nationals of the United States within the meaning of Section 502(1)(B) and that the requirement of continuous ownership of the claim from the date of loss to the date of filing, as prescribed by Section 504, has been fulfilled.

NATIONALIZATION OF CLAIMANT'S PROPERTY

Claimant corporation was in the business of manufacturing chemicals. It maintained a branch in Cuba which specialized in making chemicals for water conditioning and lubricating oils. Claimant asserts that its assets in Cuba were taken by the Government of Cuba on January 30, 1963.

The evidence of record contains a letter dated February 1, 1963, from J. F. Sanchez, in Cuba, manager of the Dearborn Chemical Company in the United States. Therein, Mr. Sanchez stated that the DEARBORN CHEMICAL COMPANY OF CUBA had been under stringent governmental supervision since September 20, 1962, but was officially expropriated by virtue of a Presidential Decree of January 30, 1963, on which date all the assets of the DEARBORN CHEMICAL COMPANY OF CUBA became the property of the Cuban state. Further, by affidavit dated January 8, 1968, Mr. Sanchez reaffirmed these facts and stated that on January 31, 1963, he was summoned to the Office of the Minister of Industries and was advised that claimant corporation would immediately "cease to operate as a private entity." That same day, an administrator, appointed by the Cuban Government, took possession of the premises. The record does not contain evidence that a resolution or decree was officially published by the Cuban Government which effectuated the taking of claimant's assets in Cuba on a specific date.

The Commission finds, in the absence of evidence to the contrary, that the business and properties of claimant corporation in Cuba were effectively nationalized by the Government of Cuba on January 30, 1963 within the meaning of Title V of the Act.

VALUATION

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 circumstances, is "most appropriate to the property and equitable to the claimant." The Commission has concluded that the phraseology does not differ from the international legal standard which would normally prevail in the valuation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation which the Commission shall consider: i.e., fair market value, book value, going concern value, or cost of replacement.

Claimant has stated its loss in the amount of \$273,187.10 itemized as follows:

Personal Property (including Petty Cash, Inventories and Fixed Assets)	\$ 21,407.01
Cash on deposit in Banco National de Cuba	204,270.68
Deposits (Cash in Cuban Bank pending reimbursement release for transmittal to parent company in the United States)	9,937.10
Accounts receivable due from nationalized enterprises	11,593.30
Accounts due from employees	8,354.67
Miscellaneous deposits	550.00
Prepaid items	16,474.34
Securities	<u>600.00</u>
Total	\$273,187.10

Claimant submitted audited balance sheets for DEARBORN CHEMICAL COMPANY OF CUBA (Cuban branch) for May 31, 1960 and July 31, 1962 and letters dated June 1, 1961 and June 13, 1961 from the First National City Bank of New York and Bank of Nova Scotia, respectively, concerning the bank balances in Cuba of claimant corporation as of May 31, 1961. The balance sheet for the period ending July 31, 1962 shows the following assets of the Cuban branch of claimant in Cuba.

A S S E T S

CURRENT ASSETS:

Cash in bank and on hand:			
Bank Nacional de Cuba, Agency 4-10-37		\$204,270.68	
Petty Cash		<u>100.00</u>	\$204,370.68

Accounts Receivable:			
Accounts receivable - trade (Schedule "1")	\$12,881.45		
Less reserve for bad debts	<u>9,860.75</u>	\$ 3,020.70	

Accounts receivable - employees	\$ 9,282.97		
Less reserve	<u>3,309.56</u>	<u>5,973.41</u>	8,994.11

Deposits			550.00
Amount deposited in bank to cover merchandise shipment			9,937.10
Inventories			13,359.30
At cost, less reserve (Schedule "2")			<u>\$237,211.19</u>

INVESTMENTS:

Stock of Ferrocarriles Occidentales de Cuba, S.A.	\$ 600.00		
Less reserve	<u>600.00</u>		-

FIXED ASSETS:

At cost, less reserve (Schedule "3")			\$ 7,947.71
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DEFERRED CHARGES:

Advance commission payments	\$14,659.90		
Prepaid insurance, etc.	441.42		
Organization expenses less amortization	521.95		
Leasehold improvements, less amortization	<u>851.07</u>		<u>16,474.34</u>
			\$261,633.24

The Commission has carefully considered all of the evidence, taking into account the basis of valuation most appropriate to the property and equitable to the claimant, and concludes that the value of the assets of the Cuban branch of DEARBORN CHEMICAL COMPANY OF CUBA taken by the Government of Cuba as reflected in the July 31, 1962 balance sheet is the most appropriate basis of valuation. Organizational expenses in the amount of \$521.95, however, cannot be considered an asset of the company which was nationalized. Accordingly, this amount is deducted from the book value of claimant's assets, resulting in a figure of \$261,111.29.

One of the listed assets requires special consideration. Claimant asserts that on February 1, 1960, its Cuban branch had deposited \$9,937.10 in the "Central Bank" in Cuba for transmission to its home office in the United States. Claimant asserts that the money was never remitted or returned. In the Financial Statement of the Cuban branch of the DEARBORN CHEMICAL COMPANY OF CUBA for the period ending July 31, 1962, the certified accountant who prepared the statement affirmed that a payment by check of \$9,937.10 (pesos) was made on February 1, 1960 to the Cuban branch of the National City Bank of New York to cover a 30 day draft drawn in United States dollars on the branch by Dearborn Chemical Company of Chicago, and that to his information, the National Bank of Cuba had not authorized the release of United States dollars to meet this draft.

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].)

Accordingly, the Commission finds that DEARBORN CHEMICAL COMPANY OF CUBA sustained a net loss in the amount of \$261,111.20 within the meaning of Title V of the Act as a result of the nationalization of its assets in Cuba by the Government of Cuba. The Commission finds further that of this total the loss of \$9,937.10 occurred on February 2, 1960, the date following payment to the Cuban bank, and the loss of the remaining \$251,174.19 occurred on January 30, 1963.

The dates of loss are significant because 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 it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that DEARBORN CHEMICAL COMPANY OF CUBA 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 Sixty-One Thousand One Hundred Eleven Dollars and Twenty-Nine Cents (\$261,111.29) with interest at 6% per annum on \$9,937.10 from February 1, 1960, and on \$251,174.19 from January 30, 1963, to the date of settlement.

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

2 OCT 1963

Leonard v. B. Button

Leonard v. B. Button, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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).)