

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

IN THE MATTER OF THE CLAIM OF

DEERE & COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2392

Decision No. CU **1150**

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 DEERE & COMPANY, for \$267,171.50, based upon the nonpayment by the Government of Cuba of a non-interest bearing promissory note in the amount of \$389,591.12 covering a portion of the purchase price of farm machinery sold to the Instituto Nacional de Reforma Agraria, an agency of the Government of 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) 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 DEERE & COMPANY is a Delaware corporation and that at all times between May 1, 1960 and April 1, 1967, more than 50 per cent 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.

An officer of DEERE & COMPANY has further certified that 99.673 per cent of outstanding ownership interests in claimant corporation were held by nationals of the United States on the date of filing of this claim.

On the basis of the evidence of record, the Commission finds that in March, 1960, John Deere Intercontinental, S.A. (now known as Latin American Farm Machinery, S.A.), a wholly-owned Venezuelan subsidiary of claimant, sold certain farm machinery and equipment to the Instituto Nacional de Reforma Agraria of Havana, Cuba (hereafter referred to as INRA), an agency of the Cuban Government. In payment of a portion of the purchase price of the shipment, amounting to 37 per cent thereof, the shipper, John Deere Intercontinental, S.A., received from INRA a promissory note dated May 1, 1960 in the face amount of \$389,591.12, due and payable on May 1, 1961. The evidence of record, including a sworn affidavit from the former

Credit Manager of John Deere Intercontinental, S.A., establishes that, in spite of extensive efforts made on the part of John Deere Intercontinental, S.A. to collect the amount of the outstanding note on and after the maturity date of May 1, 1961, such efforts were without result and the unpaid balance is still outstanding.

The Commission has found that the failure of the Government of Cuba to make obligated payments on the date due, even without express repudiation of the debt, such default having occurred for the first time after January 1, 1959, constituted a taking of the creditor's property as of the date of maturity of the debt within the meaning of the Act, and that this gave rise to a valid claim for the amount of the unpaid indebtedness as of that date. (See the Claim of Clemens R. Maise, FCSC Claim No. CU-3191.)

The Commission finds that the failure of the Government of Cuba to pay the promissory note to John Deere Intercontinental, S.A., in the face amount of \$389,591.12 on or after the maturity date of May 1, 1961, constituted a taking of the claimant's property as of May 1, 1961 within the meaning of the Act.

Claimant asserts claim for an amount less than the face value of the said promissory note of the Government of Cuba, because one William A. Powe (FCSC Claim No. CU-0502) is asserted to have a beneficial interest of \$122,419.62 in the note, representing a commission for his services rendered in the sale of the machinery to the Government of Cuba. The record contains a letter dated December 18, 1964, from John Deere Intercontinental, Ltd., to William A. Powe confirming to the latter that his commission in the amount of \$122,419.62 was included in the amount of the promissory note for \$389,591.12.

The Commission deems the foregoing to have constituted an assignment to William A. Powe of an interest in the amount of \$122,419.62 in the promissory note due from the Government of Cuba and therefore finds that the loss sustained by DEERE & COMPANY from the nonpayment of the \$389,591.12 note is \$267,171.50.

Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$267,171.50 within the meaning of Title V of the Act, as of May 1, 1961, the maturity date of the promissory note.

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 loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from May 1, 1961, the date of loss, to the date on which provisions are made for settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that DEERE & COMPANY suffered a loss, as a result of action 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-Seven Thousand One Hundred Seventy-One Dollars and Fifty Cents (\$267,171.50) with interest thereon at 6% per annum from May 1, 1961 to the date of settlement.

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

FEB 7 1968

Edward S. Re

Edward S. Re, Chairman

Theodore Jaffe

Theodore Jaffe, 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).)

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.

COMMUNICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on --- MAR-13-1969 ---

J. J. MacFarlan
Clerk of the Commission