

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

IN THE MATTER OF THE CLAIM OF

THE DOW CHEMICAL COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3082

Decision No. CU 4544

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$18,170.50 was presented by THE DOW CHEMICAL COMPANY based upon the asserted loss of payment for merchandise shipped to customers 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 claimant was organized in Delaware and that at all pertinent times more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that on March 14, 1967, 296,238 shares of its 29,956,195 shares were held by stockholders with residence in foreign countries. 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 contains copies of invoices and ledger extracts which reflect the sale by Dow Chemical International, S.A., of Venezuela, owned by Dow Chemical, A.G. of Switzerland, a wholly-owned subsidiary of claimant, of various chemicals to Cuban consignees as follows:

<u>Consignee</u>	<u>Date Payment Was Due</u>	<u>Amount</u>
Cia. Minera Buena Vista, S.A.	Aug. 28, 1959	\$3,307.50
Fabrica Nacional de Fibras, S.A.	Feb. 10, 1960	\$1,665.00
	July 18, 1960	1,341.00
	July 21, 1960	<u>1,774.50</u>
Defonitro, S.A.	Sept. 25, 1959	183.00
Fibras Kliper, S.A.	Aug. 15, 1959	\$3,046.75
	Sept. 15, 1959	6,718.25
	Nov. 20, 1959	<u>134.50</u>
		9,899.50

Neither Dow Chemical International, S.A., of Venezuela, Dow Chemical, A.G., of Switzerland, nor claimant has received the funds.

Section 505(c) of the Act provides:

A claim under section 503(a) of this title based upon an indirect ownership interest in a corporation, association, or other entity for loss shall be considered, subject to the other provisions of this title, only if at least 25 per centum of the entire ownership interest thereof at the time of such loss was vested in nationals of the United States.

The evidence of record establishes that the Cuban corporations were indebted to Dow Chemical International, S.A., of Venezuela (which, as stated above, was owned by Dow Chemical, A.G., of Switzerland, a wholly-owned subsidiary of claimant) in the amount of \$18,170.50, and pursuant to Section 505(c) of the Act, claimant would be entitled to the aforesaid sum which was due and payable to the Venezuelan corporation (see Claim of Avon Products, Inc., Claim No. CU-0772, 1967 FCSC Ann. Rep. 35.)

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, 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 claim 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 the Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]) and the Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46).

Accordingly, in the instant claim, the Commission finds that the aforesaid sums totalling \$18,170.50 were lost as a result of intervention by the Government of Cuba, and that 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 losses as to those goods sold prior to September 29, 1959, the Commission finds that the losses occurred on September 29, 1959, the effective date of Law 568.

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	\$13,255.50
November 20, 1959	134.50
February 10, 1960	1,665.00
July 18, 1960	1,341.00
July 21, 1960	<u>1,774.50</u>
Total	\$18,170.50

CERTIFICATION OF LOSS

The Commission certifies that THE DOW CHEMICAL COMPANY 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 Eighteen Thousand One Hundred Seventy Dollars and Fifty Cents (\$18,170.50) 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 Proposed
Decision of the Commission

MAR 4 1970

Lyle S. Garlock

 Lyle S. Garlock, 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).)