

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

IN THE MATTER OF THE CLAIM OF

FMC CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-3565

Decision No. CU

806

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 FMC CORPORATION in the amount of \$82,125.50, and is based upon the asserted loss of payment for merchandise shipped to 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."

The record discloses that a portion of this claim was originally owned by the American Viscose Corporation, a Delaware corporation, and was acquired by claimant corporation by purchase for full value on August 5, 1963.

An officer of claimant corporation has certified that both corporations were organized in the State of Delaware, and that at all times pertinent to this claim, more than 50% of the outstanding capital stock of both corporations was owned by nationals of the United States. The Commission holds that both claimant corporation and its predecessor in interest were and are nationals of the United States within the meaning of Section 502(1) (B) of the Act.

Claimant states that 78 of its 31,195 stockholders were residents of foreign countries and assumed to be citizens of those countries.

The record also contains copies of invoices, issued by claimant and its predecessor, reflecting sales of merchandise to various Cuban consignees, and copies of correspondence from collecting banks in Cuba, in which it is acknowledged that payment in local currency had been made against certain of the invoices, and that the banks were awaiting dollar reimbursement releases from Cuban governmental agencies. In other instances, payment was not made by the Cuban consignees. There follows an itemized listing of these transactions, showing the dates of sale, consignees, dates of payment, where made, and the due dates of invoices against which no payment was made:

<u>INVOICE NO. AND DATE</u>	<u>CONSIGNEE</u>	<u>AMOUNT</u>	<u>DUE DATE</u>	<u>DATE OF PAYMENT</u>
494-9465 October 16, 1959	Textilera De Elasticos y Trenzados	\$ 977.96		February 26, 1960
489-9456 October 16, 1959	Textilera De Elasticos y Trenzados	151.80		February 26, 1960
9990-249 October 29, 1959	Textilera De Elasticos y Trenzados	67.75		February 26, 1960
5639-4876 October 14, 1959	Glamour Textile, S.A.	10,416.56		March 18, 1960
5639-4875 October 14, 1959	Glamour Textile, S.A.	2,220.72		March 18, 1960
9990-236 October 21, 1959	Glamour Textile, S.A.	879.36		March 18, 1960
5639-5220 November 5, 1959	Glamour Textile, S.A.	2,241.02		April 21, 1960
9990-262 November 17, 1959	Glamour Textile, S.A.	184.13		April 21, 1960
512-7481 November 13, 1959	Fabrica De Medias Corona, S.A.	371.28		April 30, 1960
513-7481 November 13, 1959	Fabrica De Medias Corona, S.A.	537.24		April 30, 1960
514-7481 November 13, 1959	Fabrica De Medias Corona, S.A.	418.47		April 30, 1960
515-7481 November 13, 1959	Fabrica De Medias Corona, S.A.	439.48		April 30, 1960
9625 June 2, 1960	Impresos Lermo, S.A.	2,297.49		September 1, 1960
9718 July 19, 1960	Impresos Lermo, S.A.	179.51		September 1, 1960
9785 August 10, 1960	Impresos Lermo, S.A.	4,156.72		September 1, 1960
9884 August 18, 1960	Impresos Lermo, S.A.	473.04		September 1, 1960
9846 August 15, 1960	Impresos Lermo, S.A.	5,799.55		September 14, 1960
9893 August 22, 1960	Impresos Lermo, S.A.	434.24		September 14, 1960

<u>INVOICE NO. AND DATE</u>	<u>CONSIGNEE</u>	<u>AMOUNT</u>	<u>DUE DATE</u>	<u>DATE OF PAYMENT</u>
9494 June 8, 1960	Industrial Chacinera, S.A.	\$ 862.64		August 9, 1960
9494 June 8, 1960	Industrial Chacinera, S.A.	863.14		August 9, 1960
9494 June 15, 1960	Industrial Chacinera, S.A.	79.14		August 9, 1960
9796 August 11, 1960	Villamil Santalla & Cia.	6,903.88		March 21, 1961
9883 August 18, 1960	Villamil Santalla & Cia.	491.58		March 21, 1961
3130-540 May 12, 1958	Ribbon Fabric Co. De Cuba, S.A. (\$2,753.75 less \$1,350.00 paid on account)	1,403.75		September 30, 1959
529-9468 November 20, 1959	Tejidos y Confecciones Perro, S.A.	1,106.23		February 26, 1960
9990-284 December 1, 1959	Tejidos y Confecciones Perro, S.A.	41.38		February 26, 1960
9990-308 December 18, 1959	Tejidos y Confecciones Perro, S.A.	22.44		February 26, 1960
9379 May 9, 1960	Cia Licorera D. Del Rio, S.A.	296.00		September 14, 1960
9457 May 24, 1960	Cia Licorera D. Del Rio, S.A.	36.78		September 14, 1960
9244 April 13, 1960	Impresos Lermo, S.A.	3,597.68	October 31, 1960	
9335 April 26, 1960	Impresos Lermo, S.A.	365.57	October 31, 1960	
2885-380 July 24, 1959	Fabrica De Medias Corona, S.A.	337.14	August 24, 1959	
2885-381 July 24, 1959	Fabrica De Medias Corona, S.A.	418.18	August 24, 1959	
9990-176 August 4, 1959	Fabrica De Medias Corona, S.A.	49.35	August 24, 1959	
2885-401 August 7, 1959	Fabrica De Medias Corona, S.A.	381.16	September 7, 1959	
9990-186 August 17, 1959	Fabrica De Medias Corona, S.A.	41.08	September 7, 1959	

<u>INVOICE NO.</u> <u>AND DATE</u>	<u>CONSIGNEE</u>	<u>AMOUNT</u>	<u>DUE DATE</u>	<u>DATE OF PAYMENT</u>
885-368 July 20, 1959	Fabrica De Medias Corona, S.A.	\$ 272.32	August 20, 1959	
885-376 July 20, 1959	Fabrica De Medias Corona, S.A.	352.50	August 20, 1959	
990-171 July 28, 1959	Fabrica De Medias Corona, S.A.	46.01	August 20, 1959	
885-454 September 21, 1959	Fabrica De Medias Corona, S.A.	338.03	October 21, 1959	
885-457 September 21, 1959	Fabrica De Medias Corona, S.A.	509.70	October 21, 1959	
990-231 October 6, 1959	Fabrica De Medias Corona, S.A.	54.80	October 21, 1959	
778 December 3, 1958	Productos Feden, S.A.	453.68	January 17, 1959	
840 December 3, 1958	Productos Feden, S.A.	36.33	January 17, 1959	
969 February 16, 1959	Productos Feden, S.A.	451.68	March 27, 1959	
902 August 23, 1960	Drogueria Sarra	273.36	September 23, 1960	
936 March 1, 1960	Star Knitting Mills, S.A. (\$554.63 less \$50.00 paid)	504.63	May 27, 1960	
943 March 14, 1960	Star Knitting Mills, S.A.	46.07	May 27, 1960	
772 November 10, 1959	Esso Standard Oil, S.A. (Div. De Cuba)	14,189.12		December 15, 1959
773 November 10, 1959	Esso Standard Oil S.A. (Div. De Cuba)	6,132.37		December 15, 1959
771 DM November 10, 1959	Esso Standard Oil, S.A. (Div. De Cuba)	32.45	December 10, 1959	
871 November 19, 1959	Carlos Corbo	262.50	December 19, 1959	
873 November 19, 1959	Carlos Corbo	76.90	December 19, 1959	
8266 August 12, 1959	Envases Industriales y Comerciales	801.61	September 12, 1959	
819 November 17, 1959	Cia Pasteurizadora Green Spot De Cuba	12.92	December 17, 1959	
890 October 12, 1960	Industrial De Papal Carton y Envasis, S.A.	1,281.32	November 12, 1960	
86-849 June 8, 1959	Teneria Modelo, S.A.	605.00		May 18, 1960

-1814 ember 23, 1959	Comercial La Curtidora, S.A.	\$ 605.00	December 10, 1959
1239 y 20, 1960	Importaciones Gispert, S.A.	1,802.34	August 8, 1960
15, 1958	Ribbon Fabric Co. of Cuba, S.A.	1,756.42	September 11, 1958
8, 1959	Comercial La Curtidora, S.A.	605.00	July 8, 1959

The record also discloses that, as of October 31, 1960, the claimant owed the sum of \$1,080.00 by Cia Interamericana de Cosméticos, S.A., metal drums shipped to that consignee on various dates prior to October 31, 1960.

Claimant states that neither it nor its predecessor received any of the funds in question.

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 assignees, 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 in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into 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, FCSC Claim No. CU-0019; and the claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba. In the absence of evidence to the contrary, the Commission finds that the losses accrued on the respective maturity dates with regard to unpaid drafts maturing after September 29, 1959. With respect to those items maturing prior to that date, the Commission finds that the loss 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 acknowledged by the collecting Cuban banks.

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 the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the respective dates on which the losses occurred, to the date on which provisions are made for the settlement thereof, as follows:

- On \$6,002.46 from September 29, 1959
- On \$1,403.75 from September 30, 1959
- On \$ 902.53 from October 21, 1959
- On \$ 637.45 from December 10, 1959
- On \$20,321.49 from December 15, 1959
- On \$ 12.92 from December 17, 1959
- On \$ 1,339.40 from December 19, 1959
- On \$ 2,367.56 from February 26, 1960
- On \$13,516.64 from March 18, 1960
- On \$ 2,425.15 from April 21, 1960
- On \$ 1,766.47 from April 30, 1960
- On \$ 605.00 from May 18, 1960
- On \$ 550.70 from May 27, 1960
- On \$ 1,802.34 from August 8, 1960
- On \$ 1,804.92 from August 9, 1960
- On \$ 7,106.76 from September 1, 1960

On \$ 6,566.57 from September 14, 1960

On \$ 273.36 from September 23, 1960

On \$ 5,043.25 from October 31, 1960

On \$ 1,281.32 from November 12, 1960

On \$ 7,395.46 from March 21, 1961.

CERTIFICATION OF LOSS

The Commission certifies that FMC 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 Eighty-Two Thousand One Hundred Twenty-Five Dollars and Fifty Cents (\$82,125.50) 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

14 DEC 1967

*Edward D. Re*

Edward D. Re, Chairman

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the decision on \_\_\_\_\_

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*LaVern R. Dilweg*

LaVern R. Dilweg, Commissioner

*Francis M. ...*

... of the Commission

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).)