

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES

WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

AMCHEM PRODUCTS, INCORPORATED

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0015

Decision No. CU

135

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 AMCHEM PRODUCTS, INCORPORATED, in the amount of \$14,403.44, based upon the asserted loss of payment for merchandise sold and delivered 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) 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 the claimant was organized in the State of Delaware in 1914, and that at all times between January 1, 1959 and presentation of this claim on June 11, 1965, more than 50% 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. Claimant states that all of its stockholders were nationals of the United States.

Evidence of record establishes a balance due the claimant, AMCHEM PRODUCTS, INCORPORATED, in the amount of \$14,403.44, for shipments of merchandise made to Armor Machinery and Chemical Company, the consignee. Such debt was represented by three notes--BC-27223 in the amount of \$4,891.32, BC-27224 in the amount of \$4,891.32, and BC-27225 in the amount of \$4,891.33, totalling a gross debt of \$14,673.97. Such debt, however, has been reduced to \$14,403.44 by the application of a credit in the amount of \$270.53, which credit is being deducted from draft BC-27223 for determining loss.

The record contains a copy of the pertinent "accounts receivable card" reflecting the activity of claimant with the consignee for the period from May 8, 1958 through December 30, 1960, on which date claimant charged off the existing balance due in the amount of \$14,403.44; a statement by J. M. Zubillaga, former employee of the

consignee concerning the outstanding drafts giving rise to the instant claim; and a letter from the Royal Bank of Canada, Havana, Cuba, dated September 11, 1959, acknowledging receipt of the subject drafts and suggesting to claimant that the latter authorize the Bank to accept provisional deposits in local currency.

Additionally, the record includes a telegram dated June 30, 1960, from the Royal Bank of Canada, in which it is stated that as to drafts BC-27223 and BC-27224, deposits in Cuban pesos were received on January 21, 1960 and on February 29, 1960, and that the Exchange Control approval for reimbursement in dollars was pending; correspondence between the Royal Bank of Canada and the claimant through March 17, 1961, concerning the non-payment of draft BC-27225 which was due on March 3, 1960; a letter dated June 1, 1960 from the consignee to the claimant, referring to unsuccessful efforts made in behalf of dollar transmittal to claimant and to the non-payment of draft BC-27225 in local currency, due to the non-transmittal of dollars to claimant on drafts BC-27223 and BC-27224 by the Banco Nacional de Cuba, a Cuban Government agency; and a copy of sight draft No. 67 AS-3850-3, dated at New York on August 28, 1959, in the amount of \$4,891.33, due 180 days after "sight", Royal Bank of Canada number BC-27225, and accepted by Armor Machinery and Chemical Company on September 16, 1959.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning international exchange. Thereafter, the Cuban Government effectively precluded not only the transfer of funds to creditors abroad, but also payment to creditors within Cuba, 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. Rather, the Commission concludes that the application of this law insofar as the rights of claimant are concerned, constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which, in effect, resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See the Claim of Schwarzenbach Huber Company, FCSC Claim No. CU-0019, and the Claim of the Etna Pozzolano 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, and that, in the absence of evidence to the contrary, the loss occurred on January 22, 1960 as to \$4,620.79, and on March 1, 1960 as to \$4,891.32, the dates after collections were acknowledged by the collecting bank, and on March 4, 1960, the day after note BC-27225 matured, as to \$4,891.33.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249).

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 dates on which the loss occurred, to the date on which provisions are made for the settlement thereof, as follows:

CERTIFICATION OF LOSS

The Commission certifies that AMCHEM PRODUCTS, INCORPORATED, 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 Fourteen Thousand Four Hundred Three Dollars and Forty-Four Cents (\$14,403.44), with interest therein 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

23 AUG 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, 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).)

**This is a true and correct copy of the decision
of the Commission which was entered as the final
decision onSEP 25 1967.....**

Franis M. ...
Clerk of the Commission

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