

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

IN THE MATTER OF THE CLAIM OF

WITCO INTER-AMERICAN CORP.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0140

Decision No. CU

443

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented originally by Sonneborn Inter-American Corp., now WITCO INTER-AMERICAN CORP., in the amount of \$9,797.64 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."

An officer of the claimant corporation has certified that the claimant was organized in the State of New York on January 29, 1952 as Sonneborn Inter-American Corp., and changed its name to WITCO INTER-AMERICAN CORP. on July 1, 1966; and that at all times between October 6, 1959 and presentation of this claim on June 28, 1965, it was wholly owned by Witco Chemical Company, Inc. An officer of Witco Chemical Company, Inc. has certified in connection with its Claim No. CU-0115 that it was organized in the State of Delaware in 1958 and that at all times between September 7, 1960 and the presentation of that claim more than 50% of its outstanding capital stock was owned by nationals of the United States. 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 99% of the outstanding capital stock of Witco Chemical Company, Inc., was owned by nationals of the United States.

The record contains a copy of claimant's invoice No. 8715 of July 20, 1960, reflecting the sale to Crusellas y Cia, S.A., of Havana, Cuba, of goods totalling \$4,262.48, as to which freight, shipping and other attendant fees increased the total to \$5,287.25; a copy of claimant's invoice No. 8212 of October 6, 1959, reflecting the sale to Matilde Olivera Pujol of Havana, of goods totalling \$1,085.50; a copy of claimant's invoice No. 8286 of October 26, 1959, reflecting the sale of goods to Drogueria y Farmacia Penichet of Havana, in the amount of \$315.00, as to which freight, shipping, and other attendant fees increased the total to \$394.76; and a copy of claimant's invoice No. 8463 of December 12, 1959, reflecting the

sale of goods to Drogueria Taquechel de la Suc, of Havana, totalling \$3,030.13. Terms of sale in each instance were for payment in 90 days.

The record also contains a letter from the Banco Continental Cubano, addressed to claimant and dated November 8, 1961, advising claimant that the payment of \$1,085.50 had been made by M. O. Pujol, and that the funds would be transferred upon approval of exchange; and a letter addressed to claimant from the First National City Bank of New York, dated January 9, 1961, showing that Crusellas y Cia had paid claimant's draft of \$5,287.25, and that the Cuban Exchange Control Board was awaiting further documentation before permitting release of the funds. There is no evidence of payment of the other amounts. Claimant states that it has never received any of the funds.

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 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 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 and that, in the absence of evidence to the contrary, the losses occurred on January 24, 1960, ninety days after the invoice date, as to \$394.76; on March 16, 1960, ninety days after the invoice date as to \$3,030.13; on January 10, 1961, the day after the bank notification of

payment, as to \$5,287.25; and on November 9, 1961, the day after notification of payment, as to \$1,085.50.

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 dates on which the losses occurred, to the date on which provisions are made for the settlement thereof.

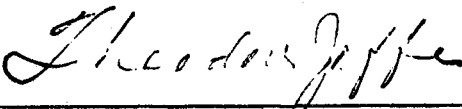
CERTIFICATION OF LOSS

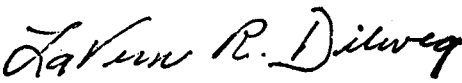
The Commission certifies that WITCO INTER-AMERICAN CORP. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Nine Thousand Seven Hundred Ninety-Seven Dollars and Sixty-Four Cents (\$9,797.64) 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

OCT 18 1967


Edward D. Re, Chairman


Theodore Jaffe, Commissioner


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. 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.

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on 21 NOV 1967

J. M. [Signature]
Clark of the Commission