

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

IN THE MATTER OF THE CLAIM OF

CPC INTERNATIONAL INC.

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No. **CU** -0766

Decision No. **CU** 3774

Counsel for claimant:

Clifford B. Storms, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amended amount of \$150,057.24 was presented by Corn Products Company, now known as CPC INTERNATIONAL INC., based upon the asserted loss of certain property 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.

The record shows that claimant was organized under the laws of Delaware and that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. An authorized officer of claimant has certified that as of March 7, 1969, 98.4% of claimant's 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.

The record establishes and the Commission finds that claimant owned at all pertinent times all of the outstanding capital stock of Corn Products Company of Canada, Ltd., and that this Canadian subsidiary of claimant, in turn, owned all of the outstanding capital stock of Compania Refinadora de Productos de Maiz de Cuba, a Cuban corporation.

Since the two said corporations were organized under the laws of Canada and Cuba, respectively, neither qualifies as a corporate "national of the United States", defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. It has been held previously that a stockholder in such a corporation who qualifies as an American national is entitled to file a claim based upon his

direct or indirect ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Real Property

The evidence includes a copy of an audited balance sheet for the Cuban subsidiary, as of September 30, 1960, a report from sources abroad and affidavits and statements from officials of claimant and a former official of the Cuban subsidiary. On the basis of the foregoing evidence, the Commission finds that the Cuban subsidiary purchased on February 15, 1959 certain land in San Jose de las Lajas, Province of Havana, Cuba, having an area of 57,341.58 square meters, which was taken by the Government of Cuba pursuant to the Agrarian Reform Law of May 17, 1959. The affidavit of the former official of the Cuban subsidiary indicates that the land was taken by the local Cuban Agrarian Reform authorities in the latter part of 1961. In the absence of evidence to the contrary, the Commission finds that the Government of Cuba took the land of January 1, 1962, and concludes that claimant thereby sustained a loss within the meaning of Title V of the Act.

The Commission further finds on the basis of the said balance sheet and a report from abroad that the value of the land on the date of loss, was \$72,146.00.

Debts of Cuban Subsidiary

Based upon statements from officials of claimant, an affidavit from the official in charge of claimant's general ledger, and the said balance sheet of September 30, 1960 of the Cuban subsidiary, the Commission finds that the subsidiary was indebted to claimant for merchandise which claimant sold to the subsidiary. The record shows that the sales were maintained in an open account receivable in the books of claimant, that the last sale was made in January 1960 and that this account was due and payable as of February 1, 1960 in the aggregate amount of \$58,180.39.

It further appears from the evidence of record that claimant paid \$19,730.85 for engineering work in Cuba in connection with a proposed new plant to be constructed by the Cuban subsidiary. Because of political conditions, the plant was not constructed. But the Cuban subsidiary was obligated to reimburse claimant for this expenditure. Claimant states that it has not been reimbursed by the subsidiary either with respect to the debts due for the sales of merchandise or the foregoing services, the total amount thus due claimant being \$77,911.24.

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 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 Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, 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 of the contrary the personal property losses occurred on February 1, 1960, the due date with respect to the sales of merchandise, and on September 29, 1959, the effective date of Law 568 with respect to the payments made by claimant on behalf of the Cuban subsidiary; and that the real property loss occurred on January 1, 1962, following the seizure of the Cuban subsidiary's land pursuant to the Agrarian Reform Law.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1959, 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	\$ 19,730.85
February 1, 1960	58,180.39
January 1, 1962	<u>72,146.00</u>
Total	<u>\$150,057.24</u>

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CERTIFICATION OF LOSS

The Commission certifies that CPC INTERNATIONAL INC. 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 One Hundred Fifty Thousand Fifty-seven Dollars and Twenty-four Cents (\$150,057.24) 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

JUL 30 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, 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).)