

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

IN THE MATTER OF THE CLAIM OF

UPJOHN INTER-AMERICAN CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1622

Decision No. CU 2972

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 UPJOHN INTER-AMERICAN CORPORATION, in the total amount of \$132,698.00 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)(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.

Claimant corporation, by an authorized officer, has certified that the claimant was organized in the State of Michigan and that at all times since December 3, 1957, claimant has been a wholly-owned subsidiary of The Upjohn Company. An officer of The Upjohn Company has certified that at all times pertinent to this claim more than 50% of the outstanding capital stock was owned by nationals of the United States. The evidence discloses that as of October 9, 1967, approximately 99% of the outstanding stock of The Upjohn Company was held by United States nationals. Thus, 1% of the stockholders are assumed to be nationals of countries other than 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 includes copies of bank correspondence concerning claimant's shipments of merchandise to Cuban enterprises, listed hereafter as the consignees. This evidence discloses that the purchase price of the goods and the charges for such shipments were, in many instances, paid by consignees to local banks; and that dollar reimbursement releases were not granted by Cuban Government officials. Other drafts for shipments made by claimant were not paid to local Cuban banks by the consignees. Claimant states that it has not received any of the funds due for such shipments.

There follows hereafter data concerning shipments made to Cuban consignees, including information on paid and unpaid drafts, with the dates on which payments were made or acknowledged, or the dates on which the unpaid drafts were due and payable.

<u>Consignees</u>	<u>Date of Payment or acknowledgement</u>	<u>Amount</u>	
Drogueria Cecilia T. Cartaya	December 31, 1959	\$ 5,071.67 Credit <u>744.10</u>	\$4,327.57
Drogueria de Johnson	October 3, 1960	\$ 11,797.07 Credit <u>3.96</u>	11,793.11
Drogueria de Johnson	October 3, 1960		586.08
Drogueria Mestre y Espinosa	October 5, 1960	\$11,944.26 Credit <u>2,455.92</u>	9,488.34
Proveedora de Farm. las Villas	January 13, 1960	\$8,471.41 Credit <u>5,353.29</u>	3,118.12
Proveedora de Farm. las Villas	June 22, 1960		6,838.96
Proveedora de Farm. las Villas	June 22, 1960		543.92
Proveedora de Farm. las Villas	June 22, 1960		9,024.40
Drogueria Santa Clara, las Villas	November 11, 1960	\$16,539.55 Credit <u>13.68</u>	16,525.87
Drogueria Sarra, Havana	September 20, 1960		368.50
Drogueria del Vedado	September 30, 1960		<u>8,089.28</u>
		Total	\$70,704.15

<u>Consignee</u>	<u>Date payment due</u>		<u>Amount</u>
Centro Asturiano de la Habana	October 11, 1960		\$ 681.40
Alvarez Fuentes y Cia	November 15, 1960	\$2,941.63 Credit <u>1,277.80</u>	1,663.83
Drogueria Amiguet	November 22, 1960	\$2,368.18 Credit <u>6.24</u>	2,361.94
Drogueria Berenguer	September 29, 1960	\$3,528.67 Credit <u>615.42</u>	2,913.25
Drogueria Bofill, G.A.	September 29, 1960	\$8,668.37 Credit <u>12.24</u>	8,656.13
Drogueria Continental, C.A.	October 13, 1960	\$ 611.52 Credit <u>90.72</u>	520.80
Drog. Gutierrez-Penin, S.A.	March 17, 1960		785.55
Drog. Gutierrez-Penin, S.A.	September 29, 1960	\$1,843.87 Credit <u>1,341.88</u>	501.99
Drogueria Jesus Alas	November 9, 1960		2,634.01
Drog. Mutualista de Cuba	September 29, 1960	\$6,135.94 Credit <u>171.72</u>	5,964.22
Proveedora de Farmacias	March 17, 1960		8,292.28
Drogueria Reyes	March 12, 1960	\$ 738.13 Credit <u>81.03</u>	657.10
Drogueria Rodriguez y Hnos.	September 29, 1960	\$6,475.98 Credit <u>955.87</u>	5,520.11
Drogueria Sarra	April 12, 1960	\$ 230.40 Credit <u>.50</u>	229.90
Drogueria Sarra	September 26, 1960		1,385.64
Drogueria Sarra	September 29, 1960		2,218.96
Drogueria Sarra	September 29, 1960		298.79
Drogueria Sarra	September 28, 1960		634.88
Drogueria Sarra	September 29, 1960		2,847.09
Drogueria Sarra	September 26, 1960		1,371.45
Drogueria Sarra	September 29, 1960		382.46

<u>Consignees</u>	<u>Date payment due</u>	<u>Amount</u>
Drogueria Sarra	Septembér 29, 1960	\$3,399.01
Drogueria Sarra	Septembér 29, 1960	439.87
Drogueria Sarra	September 29, 1960	391.49
Drogueria Taquechel, S. A.	October 6, 1959	\$8,355.34
	Credit	<u>1,113.45</u> 7,241.89
	Total	<u>\$61,994.04</u>
	Grand Total	<u>\$132,698.19</u>

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, 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:

<u>ON</u>	<u>AS TO</u>
October 6, 1959	\$ 7241.89
December 31, 1959	4327.57
January 13, 1960	3118.12
February 17, 1960	9077.83
March 12, 1960	657.10
April 12, 1960	229.90
June 22, 1960	16,407.28
September 20, 1960	368.50
September 26, 1960	2,757.09
September 28, 1960	634.88
September 29, 1960	33,533.39
September 30, 1960	8,089.26
October 3, 1960	12,379.19
October 5, 1960	9,488.34
October 11, 1960	681.40
October 13, 1960	520.80
November 8, 1960	2,634.01
November 11, 1960	16,525.87
November 15, 1960	1,663.83
November 22, 1960	2,361.94
Total	<u>\$132,698.19</u>

The above dates are the days after the date on which payment was acknowledged as to paid amounts, and the dates payment was due as to the unpaid amounts.

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.)

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.

CERTIFICATION OF LOSS

The Commission certifies that UPJOHN INTER-AMERICAN 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 One Hundred Thirty-Two Thousand Six Hundred Ninety-Eight Dollars and Nineteen Cents (\$132,698.19) 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

SEP 4 1968

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).)