

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

IN THE MATTER OF THE CLAIM OF

VIRGINIA CHEMICALS INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2630

Decision No. CU
691

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 VIRGINIA CHEMICALS INC. in the amount of \$25,342.18, plus interest 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 Maine and that all times between November 8, 1909 and presentation of this claim on April 27, 1967, 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 99% of its 800 shareholders are nationals of the United States.

The record contains copies of claimant's invoices reflecting the sales to Cia Rogelio Vocero, S.A. of Havana, Cuba, of goods, including freight, as follows:

<u>INVOICE</u>	<u>DATE</u>	<u>TOTAL (including freight)</u>
8842	June 25, 1958	\$ 2,149.21
8843	June 25, 1958	722.13
9195	June 30, 1958	1,455.58
9196	June 30, 1958	400.00
14885	September 30, 1958	3,265.17
14889	September 30, 1958	2,149.23
717	January 22, 1959	1,461.22
718	January 22, 1959	400.00
2099	February 26, 1959	900.50
2100	February 26, 1959	445.46
2101	February 26, 1959	81.03
2102	February 26, 1959	490.08
2103	February 26, 1959	115.83
2104	February 26, 1959	153.37
2237	February 27, 1959	1,640.49
E66	June 3, 1959	3,461.11
E67	June 3, 1959	800.00
E335	September 30, 1959	3,511.75
E336	September 30, 1959	800.00
E449	December 31, 1959	1,602.95
E500	December 31, 1959	1,134.77

The record also contains a schedule of debit and credit memorandums to that same consignee reflecting a net credit in its favor of \$3,051.20 which had almost entirely accumulated prior to September 29, 1959.

With respect to another consignee, Alquizar Pineapple Company, Inc. of Havana, Cuba, this claim is asserted for handling charges on cylinders previously shipped to that company and returned and for the value of cylinders that were not returned.

The record contains a copy of claimant's debit memorandum No. 312 of August 31, 1960 for \$13.50 reflecting the United States Customs entry and handling charges on 298 empty cylinders previously shipped and returned on August 25, 1960.

Also contained in the record are the following invoices indicating the dates of shipment of cylinders (each valued at \$20.00) used in the transportation of chemicals to this consignee and the dates most of these cylinders were returned to the claimant. The value of those cylinders not returned is included in this portion of the claim:

<u>INVOICE</u>	<u>DATE SHIPPED</u>	<u>DATE RETURNED</u>	<u>NUMBER NOT RETURNED</u>	<u>VALUE</u>
E157	May 13, 1959	June, 1959	1	\$20.00
E46	March 17, 1959	January, 1960	4	80.00
E33/34	January 18, 1960	August, 1960	8	160.00
E100	February 15, 1960	August, 1960	49	980.00

Additionally, the record includes copies of letters from the First National City Bank of New York, to claimant, in which it is stated that the drafts covering invoices for goods shipped to Cia Rogelio Vocero, S.A. numbered 8842, 8843, 9195, and 9196 were paid to its Havana collecting bank as of October 6, 1959 by the consignee (Cia. Rogelio Vocero, S.A.) and that the collecting bank was still awaiting a dollar reimbursement release from the Banco Nacional de Cuba, a Cuban Government agency; and another letter from the First National Bank of Boston, to claimant, stating that the draft drawn to cover invoice No. 14885 was paid as of May 16, 1960 by that same consignee, and that its Havana branch was awaiting similar authorization from the Banco Nacional de Cuba. Claimant states that it has not received 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 loss occurred:

<u>On</u>	<u>As To</u>
September 29, 1959	\$ 9,067.12
October 6, 1959	1,855.58
October 15, 1959	2,871.34
November 12, 1959	4,311.75
February 4, 1960	1,602.95
February 22, 1960	1,134.77
March 3, 1960	80.00
May 17, 1960	3,265.17
September 31, 1960	1,153.50

these dates being computed, in their respective instances, as the date on which law 568 was published, the days after payments of drafts in local currency were acknowledged by the collecting banks, the days following maturity dates of drafts accepted to mature, and the dates by which invoices should have been paid.

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

CERTIFICATION OF LOSS

The Commission certifies that VIRGINIA CHEMICALS 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 Twenty-Five Thousand Three Hundred Forty-Two Dollars and Eighteen Cents (\$25,342.18) 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

22 NOV 1967

CERTIFICATION
This is a true and correct copy of the decision
of the Commission which was entered as the Final
Decision on -- DEC 27 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg
CLERK OF THE COMMISSION

LaVern R. Dilweg

LaVern R. Dilweg, 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).)