

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

IN THE MATTER OF THE CLAIM OF

HONEYWELL INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2678

Decision No. CU 3283

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$77,368.00 was presented by HONEYWELL INC. based upon the loss of assets and debts owing claimant resulting from the nationalization of Honeywell Controls, S.A.

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 under the laws of the State of Delaware and that at all times between 1927 and presentation of this claim on May 1, 1967, more than 50% of the outstanding capital stock of claimant corporation has been owned by United States nationals. Claimant states that 35,531 of its 35,972 stockholders were residents of the United States and assumes that substantially all of them were United States nationals and that 441 stockholders were residents of foreign countries and assumed to be citizens of those countries. 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 reflects that Honeywell Controls, S.A., a corporation organized under the laws of Cuba, and engaged in the sale and distribution of automatic control instruments and equipment, was wholly owned by claimant corporation.

Honeywell Controls, S.A. was nationalized by the Government of Cuba on March 27, 1962, by publication in the Official Gazette, pursuant to Cuban Law 890.

Claimant has stated its loss in the amount of \$77,368.00, asserting that \$67,368.00 represents an amount due and owing on account from Honeywell controls, S.A., and that \$10,000.00 is the book value of its investment in Honeywell Controls, S.A.

In making determinations with respect to the validity and amount of claims and value of properties, rights and interests taken, the Act provides in Section 503(a) that the Commission shall take into account the

basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

In support of the valuations claimed, claimant submitted an audited financial statement for the year ended November 30, 1960, an audited balance sheet for November 30, 1960, a balance sheet for November 30, 1959, and an auditor's report. In addition, claimant has furnished a balance sheet for the period ended June 30, 1961.

The audited balance sheet for Honeywell Controls, S.A. for the period ended November 30, 1959 and November 30, 1960 reflects the following:

A S S E T S	November 30 1960	1959
CURRENT ASSETS:		
Cash on hand and in bank	\$ 5,078.94	\$ 52,409.51
Receivables:		
Trade notes and accounts (less reserve for doubtful accounts - 1960, \$7,490.22; 1959, \$4,016.63)	21,162.70	54,689.46
Affiliated companies		665.90
Employees	112.60	377.15
Other receivables	6,697.88	4,642.82
Inventories:		
On hand - at cost (less reserve - 1960, \$1,000.00; 1959, \$1,000.00)	78,342.92	102,247.05
Suspense items - at invoice cost	2,402.74	
Total current assets	<u>113,797.78</u>	<u>215,031.89</u>
EQUIPMENT - At cost	15,146.52	24,999.21
Less reserves for depreciation	<u>4,906.93</u>	<u>6,713.34</u>
Equipment - net	<u>10,239.59</u>	<u>18,285.87</u>
DEFERRED CHARGES AND OTHER ASSETS	2,689.15	2,828.20
TOTAL	<u>\$126,726.52</u>	<u>\$236,145.96</u>

November 30

L I A B I L I T I E S	1960	1959
CURRENT LIABILITIES:		
Note payable - Bank loan	\$ 77,500.00	\$150,000.00
Accounts payable:		
Trade	4,601.38	4,103.71
Other accounts payable	502.54	916.67
Affiliated companies	67,722.14	66,993.80
Accrued liabilities:		
Taxes - other than income taxes	2,177.02	1,904.66
Salaries and wages		1,640.39
Interest	398.17	104.15
Other accrued liabilities	9.34	50.14
Total current liabilities	<u>\$152,910.59</u>	<u>\$225,713.52</u>
CAPITAL STOCK AND SURPLUS (DEFICIT):		
Capital stock - authorized 100 shares of \$100.00, each; issued and outstanding, 100 shares	10,000.00	10,000.00
Surplus (deficit)	<u>(36,184.07)</u>	<u>432.44</u>
Total capital stock and surplus (deficit)	<u>(26,184.07)</u>	<u>10,432.44</u>
TOTAL	<u>\$126,726.52</u>	<u>\$236,145.96</u>

The balance sheet enumerates the assets, tangible and intangible and the liabilities of the enterprise. The liabilities consist of creditors' claims, which are contractual in nature, and those of the owner, which are residual in nature. The excess of assets, if any, over contractual liabilities represents the owners' equity, or net worth. The same result usually may be reached by adding the capital investment, appropriate surplus reserves (not including reserves for depreciation, taxes and the like), and any undivided profit, as appropriate, and subtracting any outstanding deficit. Accordingly, the calculation of net worth for 1959 is as follows:

Total Assets	\$236,145.96
Less Contractual Liabilities	<u>225,713.52</u>
Net Worth	\$ 10,432.44

However, for 1960, the calculation reflects the following:

Total Assets	\$126,726.52
Less Contractual Liabilities	<u>152,910.59</u>
Net Worth Minus-	\$ 26,184.07

The unaudited balance sheet for June 30, 1961, reflects total assets in the amount of \$106,256.73 and total liabilities in the amount of \$140,501.06 and, therefore, a minus net worth of \$34,244.23.

Claimant asserts that although the balance sheets for November 30, 1960 and June 30, 1961 reflect a deficit, such financial statements do not

reflect the true value of the business, especially good will which would represent the value of an established Honeywell distributorship. Claimant states that after an initial period of establishment, the subsidiary company would have surplus net worth. However, no evidence in this regard was submitted.

The Commission has considered all of the evidence of record and has determined that claimant, HONEYWELL INC., has not met the burden of proof in that it has failed to establish that it sustained a loss based upon the net worth of Honeywell Controls, S.A. due to the nationalization by the Government of Cuba.

The balance sheets reflect, however, that Honeywell Controls, S.A. was indebted to affiliated companies, including the parent corporation. Claimant has itemized these debts and has furnished copies of ledger sheets and memorandums concerning the debt owed to the parent company. The record reflects, therefore, that Honeywell Controls, S.A. was indebted to claimant in the amount of \$67,368.00, and that this debt was owing to claimant on September 29, 1959. In a written report dated November 8, 1961, to claimant from the former manager of Honeywell Controls, S.A. in Cuba, it was stated that Honeywell Controls, S.A. was unable to purchase dollar drafts to pay its debts despite many attempts, due to the restrictions on remittances abroad, which were imposed by the Government of Cuba. Claimant states that it never has received these funds.

The Commission finds that Honeywell Controls, S.A. was indebted to claimant in the amount of \$67,368.00 and concludes that claimant suffered a loss in that amount within the meaning of Title V of the Act as a result of the nationalization of Honeywell Controls, S.A. on March 26, 1962. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

The fact that Honeywell Controls, S.A. apparently had no net worth at the time of nationalization does not preclude making a certification of loss in a situation such as this, particularly inasmuch as the assets of the corporation at that time were more than sufficient to have paid this debt.

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), and it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that HONEYWELL INC. sustained 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 Sixty-Seven Thousand Three Hundred Sixty-Eight Dollars (\$67,368.00) with interest thereon at 6% per annum from March 27, 1962 to the date of settlement.

Dated at Washington, D.C.,
and entered as the Proposed
Decision of the Commission

NOV 6 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).)