

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

IN THE MATTER OF THE CLAIM OF

INGERSOLL-RAND COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2871

Decision No. CU 4710

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 INGERSOLL-RAND COMPANY for \$48,737.06 based upon the asserted ownership and loss of a stock interest in a Cuban corporation and loss of payment for merchandise shipped to this corporation in Cuba.

Under Title V of the International Claims Settlement Act of 1949, as amended [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.

An officer of the claimant corporation has certified that the claimant was organized in New Jersey and that at all pertinent times, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that on May 2, 1967 .0046 of its common stock was considered foreign-owned; and on June 1, 1967 .0072 of its preferred stock was considered foreign-owned. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence establishes and the Commission finds that INGERSOLL-RAND COMPANY, the claimant, owned a 100% stock interest in Compania Ingersoll-Rand de Cuba, a corporation organized under the laws of Cuba.

Claimant states that Compania Ingersoll-Rand de Cuba, hereafter called the Cuban subsidiary, was expropriated by the Government of Cuba in 1960 pursuant to Cuban Law No. 851, but was not named in the official nationalization decrees. This law which was promulgated on July 6, 1960 did not result in the immediate nationalization of American owned corporations. Claimant has submitted a balance sheet of its subsidiary as of December 31, 1960 and a profit and loss statement for the year ending December 31, 1960. Accordingly, the Commission finds, in the absence of evidence to the contrary, that the Cuban subsidiary was nationalized on December 31, 1960.

Since the Cuban subsidiary was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that an American stockholder owning an interest in such a corporation may file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, 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". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

In presenting its claim, claimant valued its stock interest at \$25,000.00 which was its initial investment (the cost basis).

The record includes a copy of the company's balance sheet as of December 31, 1960, and statement of profit and loss and earned surplus, and analyses of inventories, property accounts, reserves, and of freight and duty for the year ended December 31, 1960.

In connection with this balance sheet, claimant has pointed out that the capital stock account of \$75,000.00 resulted from an internal recapitalization and not from the introduction of new capital money into the enterprise. Claimant upon reconsideration asked that its claim be amended to include market or book value of the stock.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is

that shown in the balance sheet of December 31, 1960, which reflects the following, the peso being on a par with the United States dollar:

Assets

Property, at cost, less depreciation reserve \$4,930.40		\$ 2,761.89
Inventories, at cost based on New York billing prices, lower than market:		
I-R Stock	\$ 23,327.22	
Locally purchased stock	5,854.31	
Freight and duty	<u>5,105.08</u>	34,286.61
Customers' accounts receivable, less reserve for doubtful debts \$12,000.00		25,242.90
Deferred Charges		36.72
Cash		49,536.60
Sundry accounts receivable		130.00
Investment - Common Stock of Ferrocarriles Occidentales de Cuba, S.A., 9 shares, at cost		900.00
Pending remittances through bank (Drafts in transit)		<u>17,823.35</u>
		<u>\$130,718.07</u>

Liabilities

Capital stock:		
Authorized - 1,000 shares of \$100.00 each issued and outstanding, 750 shares		\$ 75,000.00
Customers' credit balances		1,217.99
Other accounts payable		1,070.00
Ingersoll-Rand Co. - London		1,178.80
Ingersoll-Rand Company, New York		24,124.18
Inventory reserves		3,644.16
Earned surplus		<u>24,482.94</u>
		<u>\$130,718.07</u>

The balance sheet of December 31, 1960 indicates that the net worth of the Cuban subsidiary was the capital stock issued and outstanding (\$75,000.00) plus the earned surplus (\$24,482.94), or \$99,482.94.

Accordingly, the Commission finds that claimant suffered a loss in the amount of \$99,482.94, the value of its stock interest, as a result of the nationalization of the subsidiary by the Government of Cuba.

This balance sheet reflects that one of the liabilities was a debt due claimant in the amount of \$24,124.18. The Commission has held that debts of a nationalized Cuban corporation owed to an American claimant constitute losses occurring on the date of nationalization within the meaning of Title V

of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].) The Commission finds that the claimant also sustained a loss on December 31, 1960 in the amount of this debt. However, the record, including copies of claimant's statement of its account with the Cuban subsidiary, shows that this debt has since been reduced to \$23,737.06.

Section 506 of the Act provides:

In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses.

Accordingly, the Commission finds that claimant is entitled to a certification on this part of the claim in the reduced amount of \$23,737.06.

Claimant's losses may be summarized as follows:

Net worth of subsidiary	\$ 99,482.94
Balance of debt	<u>23,737.06</u>
	\$123,220.00

It will be noted that the total amount of the loss found herein is in excess of the amount asserted by the claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amount which may be asserted by the claimant as to the extent thereof.

The Commission has decided that in certification of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest shall 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 claim, it is so ordered.

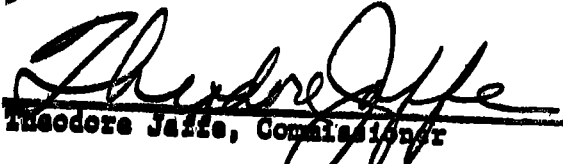
CERTIFICATION OF LOSS


The Commission certifies that INGERSOLL-RAND COMPANY 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 Twenty-Three Thousand Two Hundred Twenty Dollars (\$123,220.00) with interest at 6% per annum from December 31, 1960 to the date of settlement.

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

8 APR 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities for the loss here certified.

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].)