

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

IN THE MATTER OF THE CLAIM OF

DOW CHEMICAL INTER-AMERICAN  
LIMITED

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-3083

Decision No. CU 4549

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 DOW CHEMICAL INTER-AMERICAN LIMITED in the amount of \$103,393.88 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.

Evidence available to the Commission establishes that claimant was organized in Delaware and that at all pertinent times 100% of the outstanding capital stock of the claimant has been owned by The Dow Chemical Co., a United States national (see Claim of The Dow Chemical Co., CU-3082). 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 contains copies of invoices and ledger extracts which reflect the sale by claimant of various chemicals to Cuban consignees, and charges for freight, shipping and other attendant fees. Claimant states that it has not received the funds.

The following is a listing of items documented by claimant including amounts and dates payments were due:

| <u>Consignee</u>                   | <u>Date Due</u> | <u>Amount</u>   |
|------------------------------------|-----------------|-----------------|
| Alfredo Chian                      | July 24, 1960   | \$ 4,695.63     |
| Compania de Pinturas Rivarra, S.A. | Feb. 12, 1960   | 1,988.66        |
|                                    | May 26, 1960    | 1,997.21        |
| Detergentes Cubanos, S.A.          | Apr. 14, 1960   | 1,678.97        |
|                                    | July 2, 1960    | 28,616.82       |
| Empresa Transformadors             | June 13, 1960   | 110.19          |
| Fabrica Nacional de Pinturas, S.A. | Aug. 10, 1960   | 13,804.50       |
| Fosfonitro, S.A.                   | Oct. 28, 1959   | 816.38          |
|                                    | Feb. 2, 1960    | 3,202.97        |
|                                    | June 13, 1960   | 490.00          |
|                                    | July 26, 1960   | 490.00          |
|                                    | Aug. 5, 1960    | 7,241.10        |
|                                    | Aug. 12, 1960   | 3,247.59        |
|                                    | Sept. 5, 1960   | 5,841.26        |
|                                    | Sept. 7, 1960   | 3,144.26        |
|                                    | Oct. 5, 1960    | 3,247.81        |
|                                    | Dec. 8, 1960    | 6,555.56        |
| Sherwin Williams Co., S.A. of Cuba | Aug. 10, 1960   | 13,979.78       |
| Soler & Goyanes                    | Dec. 30, 1959   | 86.78           |
| Pinturas Kliper, S.A.              | Sept. 21, 1959  | 595.64          |
|                                    | Oct. 4, 1959    | <u>1,362.77</u> |
|                                    | Total           | \$103,193.88    |

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 the aforesaid sums totalling \$103,193.88 were lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the contrary, such losses occurred on the respective maturity dates with regard to unpaid drafts maturing after September 29, 1959. However, with respect to the dates of loss as to those goods sold prior to September 29, 1959, the Commission finds that the losses occurred on September 29, 1959, the effective date of Law 568.

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

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annum from the date of loss to the date of settlement (see the Claim of Lisle Corporation, FCSC Claim No. CU-0644), and in the instant case, it is so ordered as follows:

| <u>FROM</u>        | <u>ON</u>       |
|--------------------|-----------------|
| September 29, 1959 | \$ 595.64       |
| October 4, 1959    | 1,362.77        |
| October 28, 1959   | 816.38          |
| December 30, 1959  | 86.78           |
| February 2, 1960   | 3,202.97        |
| February 12, 1960  | 1,988.66        |
| April 14, 1960     | 1,678.97        |
| May 26, 1960       | 1,997.21        |
| June 13, 1960      | 600.19          |
| July 2, 1960       | 28,616.82       |
| July 24, 1960      | 4,695.63        |
| July 26, 1960      | 490.00          |
| August 5, 1960     | 7,241.10        |
| August 10, 1960    | 27,784.28       |
| August 12, 1960    | 3,247.59        |
| September 5, 1960  | 5,841.26        |
| September 7, 1960  | 3,144.26        |
| October 5, 1960    | 3,247.81        |
| December 8, 1960   | <u>6,555.56</u> |
|                    | \$103,193.88    |

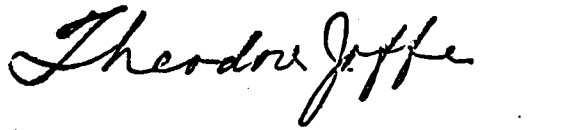
CERTIFICATION OF LOSS

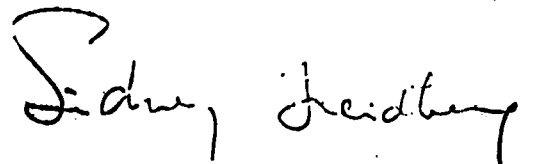
The Commission certifies that DOW CHEMICAL INTER-AMERICAN LIMITED suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Three Thousand One Hundred Ninety-three Dollars and Eighty-eight Cents (\$103,193.88) with interest 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

**MAR 4 1970**

  
Kyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

  
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).)