

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

IN THE MATTER OF THE CLAIM OF

ALLIED CHEMICAL CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3213

Decision No. CU - 3821

Counsel for claimant:

James H. Bennett, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$86,377.37, was presented by ALLIED CHEMICAL CORPORATION, based upon the asserted loss of payment for merchandise shipped to Cuban consignees.

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.

The record shows that claimant was organized under the laws of New York. An authorized officer of claimant has certified that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States, and that as of April 26, 1967 and May 2, 1967, less than 10% of claimant's outstanding capital stock was owned by non-nationals of the United States or persons with foreign addresses. 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 invoices, bills of lading, sight drafts, bank statements, reports from claimant's Cuban agent, and extracts from claimant's books and records relating to this claim. The evidence discloses that in some instances the consignees paid for their purchases from claimant by deposits in local banks and that dollar reimbursement to claimant was denied by Cuban officials. Claimant states that it has received neither the funds representing payments made to local banks by consignees nor any payments for the outstanding debts due from the other Cuban consignees.

The following information concerning the shipments made to the Cuban consignees, supported by the evidence of record, shows the paid and the unpaid accounts; the dates on which payments were made or acknowledged by the banks and the net amounts thereof after adjustments for commissions paid to claimant's Cuban agent; and with respect

to the unpaid accounts, the invoice dates or the dates on which the accounts were due, if known, or the dates of the last debit entries in the case of open accounts, and the amounts thereof:

PAID ACCOUNTS

<u>Consignee</u>	<u>Date Paid or Acknowledged</u>	<u>Net Amount</u>
Cia. de Vidrios	September 9, 1960	\$16,546.17
Drougeria Sarra	August 30, 1960	300.11
Drougeria Sarra	September 16, 1960	345.78
Drougeria Sarra	October 5, 1960	577.18
Fabrica Nacional de Pinturas	December 14, 1959	807.97
Fabrica Nacional de Pinturas	February 26, 1960	672.01
Fabrica Nacional de Pinturas	April 14, 1960	210.00
Fabrica Nacional de Pinturas	August 5, 1960	305.25
	Total Paid	<u>\$19,764.47</u>

UNPAID ACCOUNTS

Cia. de Vidrios:

<u>Invoice Date</u>	<u>Amount</u>
August 15, 1960	\$16,796.58

Electro Quimica del Caribe:

<u>Open Account</u>	
December 16, 1960	39,726.22

Oleos, S.A.:

<u>Due Date</u>	
August 21, 1960	1,293.68
October 16, 1960	8,629.50
Total Unpaid	<u>\$66,445.98</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, Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba. In the absence of evidence to the contrary, the Commission finds that the losses occurred on the days after payments were made to or acknowledged by the banks, or on the due dates where shown, or 30 days from the invoice dates, or from the last debit entries in the open accounts.

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 in this case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
December 15, 1959	\$ 807.97
February 27, 1960	672.01
April 15, 1960	210.00
August 6, 1960	305.25
August 21, 1960	1,293.68
August 31, 1960	300.11
September 10, 1960	16,546.17
September 14, 1960	16,796.58
September 17, 1960	345.78
October 6, 1960	577.18
October 16, 1960	8,629.50
January 15, 1961	<u>39,726.22</u>
TOTAL	<u>\$86,210.45</u>

CERTIFICATION OF LOSS

The Commission certifies that ALLIED CHEMICAL 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 Eighty-Six Thousand Two Hundred Ten Dollars and Forty-Five Cents (\$86,210.45) 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

AUG 27 1969

Leonard v. B. Sutton
Leonard v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Freidberg
Sidney Freidberg, Commissioner

NOTICE TO TREASURY DEPARTMENT: This claimant may be the subject of another certification of loss in Claim No. CU-2169.

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).)