

FOREIGN CLAIMS SETTLEMENT COMMISSION #26
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

UNITED STATES OF AMERICA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2522
CU-2618

Decision No. CU
126

Counsel for claimant:

General Counsel
General Services Administration

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$132,176,907.69 and \$2,473.19, respectively, were presented by the Administrator, General Services Administration, on behalf of the Government of the UNITED STATES OF AMERICA, based upon the nationalization by the Government of Cuba of the assets of Cuban Nickel Company and 300 long tons of nickel ore at Moa Bay, Cuba.

Claimant states that the Cuban Nickel Company was organized as a corporation under the laws of the Republic of Cuba and that on October 24, 1960 and thereafter, all of its outstanding capital stock was owned by the Government of the United States of America. It is also stated that on October 24, 1960 the assets of the Cuban Nickel Company and 300 long tons of nickel ore at Moa Bay, were seized by the Government of Cuba; and that in consequence of such action the Government of the United States, as owner of such properties, sustained losses in the amounts of \$132,176,907.69 and \$2,473.19.

Section 503(a) 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)], provides as follows:

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(1) of the Act provides as follows:

The term 'national of the United States' means (A) a natural person who is a citizen of the United States, or (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. The term does not include aliens.

The issue presented in this claim is whether the Government of the United States is a proper party claimant against the Government of Cuba within the contemplation of Title V of the ~~International~~ Claims Settlement Act of 1949, as amended.

Title I of the International Claims Settlement Act of 1949, as amended (64 Stat. 13 (1950); 22 U.S.C. §§ 1621-1627 (1964)), was described in its opening paragraph as

AN ACT To provide for the settlement of certain claims of the Government of the United States on its own behalf and on behalf of American nationals against foreign governments.

This Title, concerning claims within the terms of the Yugoslav Claims Agreement of 1948 or any similar agreement thereafter concluded between the United States Government and a foreign government

with which the United States was not at war during World War II, provided specifically, in Section 4(a), that

The Commission shall have jurisdiction to receive, examine, adjudicate, and render final decisions with respect to claims of the Government of the United States and of nationals of the United States . . .

Thereafter, Title III of the International Claims Settlement Act of 1949 (69 Stat. 562 (1955); 22 U.S.C. §§ 1641q (1964)), was enacted to provide for certain claims of nationals of the United States against the Governments of Bulgaria, Hungary, Rumania, Italy and the Soviet Union. Under this title, the definition of the term "national of the United States" was substantially the same as the definition contained in Title V of the Act.

Likewise, Title II of the War Claims Act of 1948, as amended (76 Stat. 1107 (1962); 50 U.S.C. App. §§ 2017-2017p (1964)), under which this Commission was authorized to determine certain claims of nationals of the United States for World War II losses, contained a definition of the term "national of the United States" which was also substantially the same as the one in Title V of the International Claims Settlement Act of 1949, as amended.

In claims by the United States under Title III of the International Claims Settlement Act of 1949, as amended, and Title II of the War Claims Act of 1948, as amended, the Commission held that the United States of America was an eligible claimant and deemed subrogated by virtue of having made payment pursuant to private laws on account of claims allowable under these titles. Accordingly, awards were granted to the United States of America (See Claim of Goerge H. Earle III and United States of America, Claim No. BUL-1094 [10 FCSC Semiann. Rep. 24 (Jan.-June 1959)]; and Claim of United States of America, Claim No. W-20670).

However, in claims under Title V of the International Claims Settlement Act of 1949, as amended, the Commission is confronted with Congressional intention to exclude claims by the Government of the United States. This intention is expressed clearly and unmistakably in the favorable report of the Committee on Foreign Affairs of the House of Representatives on H.R. 9336 which, upon enactment, became Public Law 89-262, amending the International Claims Settlement Act of 1949 by adding Title V thereto (H. Rep. No. 706, 89th Congress, 1st Sess. (1965)). On pages 4 and 5 of that report the following appears:

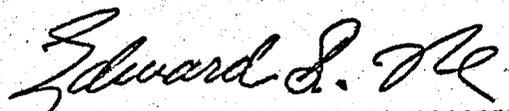
U.S. Government claims against Cuba are not governed by this act and will be handled separately from the U. S. private claims to be adjudicated under this legislation. However, in order that the full extent of the U. S. claim against Cuba be known, it is recommended that the total of U. S. Government claims (including claims arising from official U. S. property, the Moa-Bay nickel development, and Export-Import Bank loans) be promptly compiled and made available to this Committee.

Upon careful consideration of this matter, the Commission concludes that the Government of the United States is not an eligible claimant under Title V of the Act. Accordingly, the present claims must be and are hereby denied.

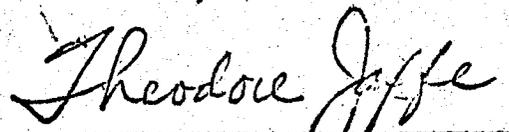
Other elements of these claims have not been considered.

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

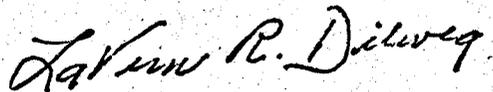
23 AUG 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

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).)