

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

IN THE MATTER OF THE CLAIM OF

DU PONT INTER-AMERICA
CHEMICAL COMPANY, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2372

Decision No. CU
3655

Counsel for claimant:

Gerald E. Kandler, 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 \$2,985,234.00, was presented by DU PONT INTER-AMERICA CHEMICAL COMPANY, INC. based on the asserted losses of certain real and personal property in Cuba and stock interests in two Cuban corporations.

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.

An authorized officer of claimant has certified that at all pertinent times all of claimant's outstanding capital stock was owned by E. I. du Pont de Nemours & Company. The record shows that claimant and its parent were organized under the laws of Delaware. An authorized officer of the parent corporation has certified in connection with its own claim against Cuba (Claim No. CU-2371) that as of October 14, 1960 and March 31, 1967, 98.94% and 99.06% of its outstanding capital stock was owned by nationals of the United States. 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 shows that claimant maintained a branch in Cuba which was engaged in manufacturing protective coatings. The Commission finds on the basis of the evidence of record that claimant owned a plant consisting of certain real and personal property in San Jose, Cuba, where it carried on its manufacturing operations; that claimant rented premises in Havana, Cuba, where its main office and one of its two stores were located; that claimant also rented premises in Santiago, Cuba, where its district sales office and the other store were located; and that at each rented location, claimant owned furniture, fixtures, and store inventories; and that claimant also owned bank accounts in Cuba and accounts receivable due from Cubans, all discussed in detail below.

On October 14, 1960, the Cuban Government issued Resolution No. 60-352, pursuant to Law 890, which nationalized all of claimant's assets in Cuba.

The Commission concludes that as a result of Cuba's action, claimant sustained a loss within the meaning of Title V of the Act on October 14, 1960, except as indicated below.

Claimant has computed its claim on the basis of its books and records as of September 25, 1960, maintained at the Home Office in the United States, it appearing that all of the branch's records were left in Cuba and are not available. Pertinent extracts from claimant's books and records are contained in an affidavit to the Department of State in 1963 by one of claimant's officials, which affidavit was accompanied by detailed schedules and other supporting material.

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". 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.

Upon careful 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 claimant's submission to the Department of State in 1963, which reflected the values appearing in claimant's books and records with respect to its Cuban branch.

The Commission finds that claimant's Cuban branch owned bank accounts with the First National Bank of Boston, Havana, Cuba Branch, having a credit balance of \$278,849.00; with the Trust Company of Cuba at Havana, having a

credit balance of \$500.00; and with the Banco de Fomento Agricola at San Jose, Cuba, having a credit balance of \$100.00. Accordingly, the Commission finds that the aggregate amount of claimant's bank accounts in Cuba was \$279,449.00 on October 14, 1960, the date of loss, the peso being on a par with the United States dollar.

The record establishes and the Commission finds that claimant's Cuban branch owned accounts receivable and notes receivable, certified to be due from nonnationals of the United States, in the amounts of \$580,460.00 and \$24,431.00, respectively, as well as other miscellaneous receivables from Cubans, including, inter alia, certain deposits and amounts due from the National Bank of Cuba on account of letters of credit, in the aggregate amount of \$83,635.00. The Commission, therefore, concludes that the value of claimant's receivables on the date of loss was \$688,526.00.

The evidence establishes that claimant's branch owned inventories at its plant and two stores, consisting of raw materials, semi-finished products, finished products, containers and other inventories, in the aggregate amount of \$973,246.00. The value of these inventories is supported by claimant's records, statements from claimant's officials and an insurance policy in existence on the date of loss, insuring such personal property in the amount of \$980,000.00. The Commission, therefore, finds that claimant owned inventories in Cuba, having an aggregate value of \$973,246.00 on the date of loss.

It further appears from the evidence of record that claimant's branch owned 4 shares of stock in Havana Biltmore Yacht & Country Club, S.A., a Cuban corporation, and 33 shares of stock in Ferrocarriles Occidentales de Cuba, S.A., another Cuban corporation. The Commission has determined that the value of a share of stock in Havana Biltmore Yacht & Country Club, S.A. was \$3,500.00 on March 19, 1960, when this corporation was intervened by the Government of Cuba. (See Claim of Arman E. Becker, Jr., Claim No. CU-1094.) Accordingly, the Commission finds that the value of claimant's four shares in this Cuban corporation was \$14,000.00 on March 19, 1960, when claimant sustained a loss within the meaning of Title V of the Act.

The Commission has also held that the value of a share of stock in Ferrocarriles Occidentales de Cuba, S.A. was the face value or cost of such stock. (See Claim of Ruth Anna Haskew, Claim No. CU-0849.) Accordingly, the Commission finds that the value of claimant's 33 shares of stock of this Cuban corporation was \$3,300.00, the par value of the stock, on October 14, 1960, the date of loss.

The Commission further finds that claimant's branch owned deferred charges, having a value of \$21,532.00 on October 14, 1960, the date of loss.

The record establishes and the Commission finds that claimant's branch owned furniture and fixtures and other personalty at its leased premises in Havana and Santiago de Cuba; and that the value of said property was \$105,280.00 on the date of loss, October 14, 1960.

The Commission further finds that claimant owned land on which its plant was constructed, which had a value of \$19,370.00 on October 14, 1960, the date of loss.

Claimant's plant consisted of a building in which its branch's manufacturing operations were conducted, and sundry structures for storage, supplying power and servicing the plant, as well as roads, fences, water tanks, power lines and related facilities attached to its land. On the basis of all the evidence of record, the Commission finds that the manufacturing building had a value of \$80,209.00 and the other structures and facilities attached to the realty had a value of \$269,911.00, or an aggregate value of \$350,120.00 on October 14, 1960, the date of loss.

The evidence establishes that claimant's branch owned equipment used in connection with its manufacturing operations, such as mills, pre-mixers, mixers, blenders, large kettles, tubs, portable mixers, various other tanks, lift trucks, laboratory and packing equipment, furniture and fixtures at its plant offices, transportation equipment and sundry power and service equipment. On the basis of the entire record, the Commission finds that the aggregate value of said equipment was \$540,860.00 on the date of loss, October 14, 1960.

Claimant's losses may be summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
Bank Accounts	October 14, 1960	\$ 279,449.00
Receivables	October 14, 1960	688,526.00
Inventories	October 14, 1960	973,246.00
4 shares Biltmore Yacht & Country Club, S.A.	March 19, 1960	14,000.00
33 shares Ferrocarriles Occidentales de Cuba, S.A.	October 14, 1960	3,300.00
Deferred Charges	October 14, 1960	21,532.00
Furniture and fixtures	October 14, 1960	105,280.00
Land	October 14, 1960	19,370.00
Buildings	October 14, 1960	350,120.00
Equipment	October 14, 1960	<u>540,860.00</u>
	Total Loss	<u>\$2,995,683.00</u>

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

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 as follows:

<u>FROM</u>	<u>ON</u>
March 19, 1960	\$ 14,000.00
October 14, 1960	<u>2,981,683.00</u>
	<u>\$2,995,683.00</u>

CERTIFICATION OF LOSS

The Commission certifies that DU PONT INTER-AMERICA CHEMICAL COMPANY, INC. 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 Two Million Nine Hundred Ninety-five Thousand Six Hundred Eighty-three Dollars (\$2,995,683.00) 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

MAY 21 1969

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

Theodore Jaffe
Theodore Jaffe, Commissioner

Sidney Feidberg
Sidney Feidberg, 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).)