

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

IN THE MATTER OF THE CLAIM OF

MATHIESON PAN-AMERICAN CHEMICAL CORPORATION

Claim No. CU-2470

Decision No. CU
3680

Under the International Claims Settlement
Act of 1949, as amended

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 \$1,928,683.24 plus interest, was presented by MATHIESON PAN-AMERICAN CHEMICAL CORPORATION and is based upon the asserted loss of certain assets of claimant's Cuban branch which were taken by the Government of 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.

The record shows that claimant was organized under the laws of Delaware and that at all pertinent times all of the outstanding stock of claimant was owned by Olin Mathieson Chemical Corporation, organized under the laws of Virginia. An authorized officer of Olin Mathieson Chemical Corporation has certified that as of April 25, 1967, approximately 99% of the outstanding capital stock of Olin Mathieson Chemical Corporation 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 evidence of record establishes that claimant owned a branch office in Havana, Cuba, where it maintained certain personal property which is the subject of this claim. It further appears from the record that by virtue of Resolution No. 20037 of September 7, 1960, the Cuban Ministry of Labor intervened claimant's Cuban branch office pursuant to Law 647 of November 24, 1959. The Commission, therefore, finds that claimant's assets in Cuba were intervened on September 7, 1960, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

Claimant has computed its claim as follows:

Cash in Banks and on Hand	\$ 892,540.39
Accounts Receivable - Trade	860,892.24
Other Accounts Receivable	21,789.32
Inventories	37,316.45
Investments and Advances	2,224.00
Property, Plant & Equipment	13,920.84
Total Assets	<u>\$1,828,683.24</u>

In addition, claimant has asserted claims for interest from the date of loss, and costs and expenses, including attorney's fees, in the amount of \$100,000.00. The record indicates that this portion of the claim is based upon expenditures involving an appeal in the courts of Cuba from the order intervening the branch herein, and claimant's former subsidiary, E. R. Squibb & Sons International Corporation, which is the subject of Claim No. CU-2469 and will be decided on its own merits. The evidence shows that claimant's appeal to the highest court of Cuba was rejected.

Upon careful consideration of this portion of the claim, the Commission holds that it does not involve a loss of property sustained as a result of actions by Cuba within the meaning of Title V of the Act. Accordingly, this portion of the claim is denied.

The record contains a balance sheet for claimant's branch office in Havana, Cuba, as of July 25, 1960, bank statements as well as other statements from officials of claimant concerning the assets claimed herein.

The bank statements disclose that as of September 9, 1960, claimant's branch owned a bank account with the First National City Bank of New York, Havana, Cuba Branch, with a credit balance of \$330,399.34 (the peso being on a par with the United States dollar); and other bank accounts with the Royal Bank of Canada, Havana, Cuba Branches, in the amounts of \$9,902.26 and \$643,483.83, respectively. The aggregate amount of all bank accounts in favor of claimant's Cuban branch was, therefore, \$983,785.43. Claimant has stated that its claim was based upon its July 25, 1960 balance sheet which did not reflect normal operating transactions between that date and the date

of loss. Accordingly, the Commission finds that on September 7, 1960, the date of loss, claimant's branch in Cuba owned bank accounts in the amount of \$983,785.43.

In this connection, claimant has stated that "In the absence of the cash journals and other supporting records, we would expect that the increase in cash was offset by reductions in both accounts receivable and inventory." The said balance sheet as of July 25, 1960 shows the items "Accounts Receivable - Trade" in the amount of \$860,892.24, "Other Accounts Receivable" in the amount of \$21,789.32, and "Inventories" in the amount of \$37,316.45, or the aggregate amount of \$919,998.01.

On the basis of the entire record and in the absence of evidence to the contrary, the Commission concludes that the aggregate amount of \$919,998.01, constituting accounts receivable and inventories owned by claimant's Cuban branch, should be reduced by \$91,245.04, representing the increase in cash as indicated above. Accordingly, the Commission finds that claimant's Cuban branch owned accounts receivable (due from Cuban nationals) and inventories, having an aggregate value of \$828,752.97 on the date of loss.

The Commission further finds that said branch owned other assets, such as "Investments and Advances" in the amount of \$2,224.00, representing Cuban securities in the amount of \$1,500.00 and security deposits of \$724.00, and "Property, Plant & Equipment" in the amount of \$13,920.84, on the date of loss.

The Commission, therefore, finds that the total value of the assets owned by claimant's Cuban branch on the date of loss was \$1,828,683.24.

It is noted that claimant is an American corporation and the claim is for the nationalization of its assets in Cuba and not for the taking of a Cuban corporation. The claimant is therefore entitled to recover in full for the seizure of its assets less the value of setoffs such as taxes due to the Cuban Government or valid liens against the Cuban assets.

Claimant has stated that its Cuban branch was indebted to Cuba for taxes in the amounts of \$103.21 and \$33,869.76, or a total of \$33,972.97. The Commission, therefore, finds that the aggregate amount of claimant's losses within the meaning of Title V of the Act was \$1,794,710.27.

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 in this case.

CERTIFICATION OF LOSS

The Commission certifies that MATHIESON PAN-AMERICAN 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 One Million Seven Hundred Ninety-four Thousand Seven Hundred Ten Dollars and Twenty-seven Cents (\$1,794,710.27) with interest thereon at 6% per annum from September 7, 1960 to the date of settlement.

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

JUN 4 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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).)