

No. 1121

UNITED STATES OF AMERICA
and
FRANCE

Agreed combined statement by the Combined War Settlement Committee constituting an agreement relating to the disposition of certain French claims and certain United States claims. Signed at Washington, on 28 May 1946

Official texts: English and French.

Registered by the United States of America on 2 April 1951.

ÉTATS-UNIS D'AMÉRIQUE
et
FRANCE

Déclaration conjointe du Comité franco-américain pour la liquidation des comptes de guerre constituant un accord relatif au règlement de certaines créances litigieuses françaises et américaines. Signée à Washington, le 28 mai 1946

Textes officiels anglais et français.

Enregistrée par les États-Unis d'Amérique le 2 avril 1951.

No. 1121. AGREED COMBINED STATEMENT BY THE COMBINED WAR SETTLEMENT COMMITTEE CONSTITUTING AN AGREEMENT¹ BETWEEN THE UNITED STATES OF AMERICA AND FRANCE RELATING TO THE DISPOSITION OF CERTAIN FRENCH CLAIMS AND CERTAIN UNITED STATES CLAIMS. SIGNED AT WASHINGTON, ON 28 MAY 1946

The claims presented by the two Governments have been considered by a combined subcommittee on claims, whose report has been reviewed by the Combined War Settlement Committee. The claims described below are finally disposed of as indicated. The following points are also agreed to :

1. The formula for settlement of certain claims represents concessions on both sides from customary operating policies, which concessions are made only in the context of a generally satisfactory settlement of all war accounts.

2. Certain claims relating to the *Modus Vivendi* account are not reflected in the summary of claims attached hereto, as it is assumed that a broad adjustment of those accounts will be made.

3. The Memorandum of Understanding will contain provisions concerning waiver of claims not dealt with herein.

FRENCH CLAIMS

1. *Military Aid in North Africa.* The *Modus Vivendi* of September 25, 1943,² provided that military aid for French North and West Africa would be provided on a straight lend-lease basis, that the French would pay for civilian supplies, and that the distinction between the two would be made by agreement. The French claim that of approximately \$373.8 million billed or to be billed as civilian supplies, \$40.8 million were in fact applied to direct or indirect military use and should be treated as straight lend-lease under the terms of the *Modus Vivendi*. The U.S. side has in general accepted the calculations presented by the French, but believes that the items of \$2.8 million for supplies in West Africa and approximately \$5.5 million for supplies shipped after March 1, 1945, represent excessive allowances for military aid. The French claim is reduced by \$1.4 million of automotive equipment for West Africa and by \$1.5 million representing supplies shipped after July 1, 1945,

¹ Came into force on 28 May 1946, by signature.

² United Nations, *Treaty Series*, Vol. 76, p. 183.

and the claim allowed at \$37.9 million, to be deducted from the *Modus Vivendi* account and added to the military lend-lease account.

2. *Prisoner of War Packages.* Supplies, consisting chiefly of food, were requisitioned by the French under the *Modus Vivendi* for delivery through the International Red Cross to French prisoners of war. The French contend that these deliveries should be considered as military aid and treated as straight lend-lease, and state that in fact \$11 million were never received by them. The French claim of \$25 million is allowed and the *Modus Vivendi* account will be reduced by this sum, to be added to the military lend-lease account.

3. *Monnet-Crowley Adjustment.* Certain goods requisitioned for French North Africa under the *Modus Vivendi* were actually shipped to Metropolitan France in June 1945, during the period of straight lend-lease to that area. The French claim that these items should be charged to straight lend-lease instead of to the Crowley-Monnet account. This claim is allowed in the sum of \$0.4 million.

4. *Freight on Off-shore Goods.* During the period of straight lend-lease to Metropolitan France, the French purchased for cash outside the United States goods which were transported to France on U.S. owned or controlled vessels, and are asked to pay the ocean freight in cash. The French request that these ocean freight charges be changed to a straight lend-lease basis. The U.S. side points out that ocean freight charges on goods not acquired under lend-lease have, as an operating matter, been furnished on a lend-lease basis infrequently and only under special circumstances. However, in view of the fact that the goods in question would have been eligible to lend-lease if acquired in the United States, and in view of the fact that French vessels being under the control of the U.S. or U.K. were not available to carry these goods, it is considered appropriate, as an incident of a general settlement, to allow this claim at \$4 million to be reflected in net claims balance.

5. *Miscellaneous Freights.* The French have been billed cash for ocean freight in certain cases where they believe that the freight should have been furnished as straight lend-lease or on 3(c) terms. WSA reports that the items

eligible for straight lend-lease have been refunded to the French out of lend-lease funds and that the items chargeable on a 3(c) basis will be so treated as an accounting matter so that they need not be considered as claims. The French have accordingly withdrawn this claim.

6. *Coal.* By agreement dated 25 August 1944, it was established that coal procured by the U.S. Military in Metropolitan France would not be furnished by the French as reciprocal aid, but would be replaced in kind or paid for by the United States. A study has been made of the transactions, and it is agreed that U.S. withdrawals up to VJ Day exceed by 150,000 tons replacement up to 31 December 1945. France requests settlement at \$20 per ton, the approximate landed cost of coal actually purchased for cash by France in the United States to meet French coal deficiencies. The claim is allowed, to be settled by payment on the same basis as other pre-VJ Day procurement ineligible as reciprocal aid.

7. *Other Short Supply Goods.* The French have withdrawn this claim.

8. *Price of Cotton.* For cotton furnished on a cash reimbursable basis and on 3(c) credit, France has been billed the domestic price. France requests that the lower export price be used, and the U.S. side agrees to the principle. The claim is allowed. The Crowley-Monnet account should be reduced by \$1.4 million and the 3(c) account by \$11.2 million, to reflect the appropriate adjustment for cotton furnished on that basis. It is understood that this principle has been borne in mind in pricing cotton in inventory.

9. *Price of Sugar.* Similarly, France requests certain allowances for processing taxes and for drawback of customs duties on sugar exported to France and to French North Africa. These are customarily arranged for on peacetime commercial exports, but the administrative requirements could not be complied with in the case of these shipments, and the allowances are therefore not reflected in the present billings. The claim is allowed; the *Modus Vivendi* account should be reduced by \$7.4 million and the 3(c) account by \$0.1 million.

10. *Price of Locomotives.* Seven hundred locomotives were transferred to France under Schedule II of the 3(c) Agreement, and are billed at a price of approximately \$120,700 each, f.a.s. New York. The French contended

that this charge was excessive, as they had purchased substantially similar locomotives privately for \$110,500 each, f.o.b. plant. The U.S. side explained the computation of the charge, as follows (in approximate figures) :

| | |
|--|-----------|
| Cost of locomotives under War Department Contract | \$110,000 |
| Army Transportation Corps charge for services, inspection, etc. (5%) | 5,500 |
| War Department charge for handling, inland freight, etc. (10%) | 11,550 |
| | 127,050 |
| Less 5% discount under 3(c) Agreement | 6,350 |
| Price billed to French | \$120,700 |

The U.S. side further stated that the War Department charges of 5 and 10 percent were specifically imposed by War Department regulation. Upon this explanation, the French withdrew this claim.

11. *Excise Taxes.* There have been transferred to France, on cash reimbursement and on credit terms, goods subject to U.S. excise tax on domestic sales. These excise taxes are not payable on sales for export, but it was administratively impossible to follow the procedure prescribed by Treasury Department regulations for establishing the exemptions. However, as the fact of export is undisputed, France has requested that the excise tax be eliminated where it appears on the face of the invoice. The claim appears just in principle and the U.S. and French figures are in substantial agreement. The claim is approved for deduction of \$0.13 million from *Modus Vivendi* account and \$0.37 million from 3(c) account.

12. *Petroleum Billing Procedure in North Africa.* Petroleum delivered to the French in North Africa up to the middle of 1943 was billed on the basis of proceeds of sale. It was contemplated that after June 30, 1943, billings would be based on landed cost, and this was in fact done for products other than petroleum. However, petroleum has been billed on a proceeds-of-sale basis until September 30, 1943. The French contend that the three-month extension of this procedure for petroleum alone is without present justification, and claim \$1.2 million as the difference in cost to them under the two methods. The claim is allowed at \$1.2 million, to be deducted from *Modus Vivendi* and charged to straight lend-lease.

13. *Price of Petroleum in North Africa.* The French claim that the prices billed them for petroleum in North Africa from October 1, 1943, were well above current world prices. Explanation of the prices charged has been given to the French by the Army-Navy Petroleum Board, showing that these were

actual landed cost prices. The French have accordingly withdrawn this claim.

14. *French Petroleum Deliveries to the North African Pool.* 93,000 tons of French-owned petroleum were contributed to the North African pool through the British. The French claim derives from that of a private French company against which France will agree to indemnify the United States. The French felt that petroleum is a product in such short supply in French territory as not to be a subject of reciprocal aid, and they therefore claim for the full value of these petroleum deliveries. The U.S. side maintained that in view of the large volume of petroleum products furnished by the United States to France on a straight lend-lease basis, the United States should not be required to pay for the comparatively small amount of petroleum furnished to the pool by France, and that France's contributions to the pool must be treated in the same way as those of other members. The U.S. side therefore believed the French contribution should be considered as applied first against French military withdrawals, which considerably exceeded the tonnage of petroleum put into the pool by France. The claim was withdrawn.

15. *Price of Rubber.* It is agreed that the price charged to the French should be the same as that paid by the United States, subject to adjustment for accrued charges, etc. The U.S. side states that necessary revisions will be made as a routine accounting matter.

16. *Missing or Damaged Goods.* France has abandoned this claim.

17. *Cost of Procurement.* France has waived its claim for reduction of the 15% accessorial charge (to cover inland transportation, handling, etc.) on cash reimbursable and 3(c) goods.

However, with respect to coal procured under « Q » requisitions, the U.S. procuring agency requests reimbursement for actual expenses instead of adding 15% to the purchase price. The French point out that the 15% charge is an average designed to cover the overall procuring expenses on a group of commodities. If therefore actual cost of services is to be the rule for coal, the same rule should apply for all other commodities procured under « Q » requisition.

The U.S. side replies that 15% is clearly inadequate to cover accessorial charges in the case of coal and that coal constitutes \$23 million of \$62 million of « Q » requisitions. Application of the 15% rule could therefore result in a loss to the United States which no appropriations are available to cover. On the other hand a complete departure from such rule would create a precedent

which would have to be extended to other countries and would greatly disturb the accounting procedure followed by the U.S. procuring agency.

While it seems that technically the accessorial charge should be consistent throughout, the French side recognizes the problem facing the American administration. Upon the request of the U.S. side, France has consented to withdraw this claim.

18. *Petroleum delivered to Metropolitan France for Civilian Use from February 28 to September 2, 1945.* The French request that such of the petroleum delivered by the combined military supply agencies as was derived from U.S. sources be considered as delivered under the lend-lease agreement of February 28, 1945, rather than under Plan A. The French state that there was no Plan A target program for petroleum and that there was a substantial petroleum program under Schedule I of the lend-lease agreement, which would not be met unless this claim is allowed. The U.S. side replies that in fact these deliveries were made and have been recorded as Plan A deliveries under tripartite supply arrangements under which Great Britain and Canada also have rights. In the light of a satisfactory general settlement of Plan A, France withdraws the claim.

19. *North African Petroleum Stockpile—November 1942.* This French claim for compensation for petroleum taken over by the U.S. military at the time of the landings in 1942 is based on the same contention noted under 14 above, that petroleum is not a subject of reciprocal aid by France. The U.S. position is also the same, that the U.S. cannot pay the French for this stockpile when the U.S. has since that date furnished very much larger amounts of petroleum to the French on a straight lend-lease basis. France has withdrawn the claim.

U. S. CLAIMS

1. *Maritime Claims (Knock-for-Knock).* The United States has requested the French to enter into an agreement providing for mutual waiver of inter-governmental claims arising from maritime accidents, and for the handling by each country on a lend-lease and reverse lend-lease basis of claims asserted in its courts by its nationals against the other country. France consents to this principle. The draft of the agreement is still under consideration of both Governments. It is recommended that the agreement be completed and signed as soon as possible, and that, if this cannot be done before a general settlement,

the general settlement contain a statement of intention to enter into an agreement covering the lend-lease period.

2. (a) *Tort Claims.* The United States has requested France to assume processing and payment of all presently unpaid claims against the United States, arising out of acts or omissions in France or French overseas territories of members of the United States Armed Forces or civilian personnel attached to such forces, including not only line-of-duty claims, but also off-duty claims of types previously handled by the United States. No claim is made with respect to such claims already paid by the United States. France agrees to assume this obligation as regards items arising from incidents prior to July 1, 1946.

(b) *Patents.* The United States War and Navy Departments have incurred obligations for patent royalties and possible infringement liabilities to French residents on United States patents used in war production, and France has been requested to assume this liability as a matter of reciprocal aid. France agrees to assume this obligation.

(c) *Requisitioned Property.* The United States requisitioned, for use in the war program, property located in the United States and in which French residents had interests, thus incurring liability for payment of the fair value of the property interests requisitioned. France agrees to assume this liability.

(d) Information necessary to the processing of claims assumed by the French Government under this paragraph 2 will be furnished by the United States Government to the French Government on its request.

(e) France also agrees to waive all claims against the United States that the French Government may have with respect to matters described in this paragraph 2.

(f) In the net claims adjustment, an allowance will be made to France in the amount of \$15 million in consideration of such of the obligations assumed by France under this paragraph 2 as are not the subject of reciprocal aid.

3. *Charter Hire.* Recommendations on this subject have been made by a separate combined Shipping Group.

4. *Sugar Barter Agreement.* The so-called "Sugar Agreement No. 2", dated August 1, 1944, between FEA, the French Supply Council, and Commodity Credit Corporation, provided that during the period August 1-December

ber 31, 1944, CCC would furnish approved quantities of refined sugar to the French, would charge FEA's account for refined sugar furnished, and would report to FEA the quantities furnished, for settlement between FEA and the French under cash reimbursement lend-lease. On their side, the French undertook to furnish to CCC 107 pounds of raw sugar from Martinique and Guadeloupe for every 100 pounds of refined sugar furnished to the French, the value of this to be credited against shipments of refined sugar. In fact, the French failed to meet their commitment to the extent of 62,000 tons of raw sugar, and have advised the United States that they will not make such deliveries. CCC has purchased this amount of raw sugar in Cuba, at the higher Cuban price, resulting in an additional cost to CCC of \$669,884.07. CCC has charged this sum to FEA account.

The United States claims that France is liable for this amount as consequential damages resulting from the failure of France to deliver raw sugar in accordance with the agreement. It is recommended that the claim be approved.

5. *Diversions.* The United States has requested France to include in the general settlement an allowance to cover claims arising out of retransfers or diversions of lend-lease articles by France, occurring in France and French overseas territories during the period from March 11, 1941, to September 1, 1945, inclusive, or out of exports during that period, for which the United States would be entitled to reimbursement. The claim is allowed at \$1 million.

6. *Price Clause Revision.* Under the 3(c) Agreement France is entitled to a 5% reduction from the contract price of articles transferred. The original purpose of this provision was to give France the benefit of contract renegotiation recoveries by the United States procuring agencies. It is now believed that recoveries on contract renegotiation average well under 5%. The United States has considered requesting a revision of the 3(c) Agreement to reflect this fact, but has withdrawn the claim in view of the French abandonment of their request to reduce the item of accessorial charges.

7. *Ballast from North Africa.* U.S. vessels carrying goods to North Africa returned in ballast furnished from French sources. Upon arrival in the United States the ballast was sometimes dumped and sometimes sold.

The United States submits that this ballast should be regarded as reciprocal aid. The claim is allowed by France.

For the United States side :
Henry R. LABOUISSÉ JR
May 28, 1946

For the French side :
Christian VALENSI

ANNEX

SUMMARY—U.S.-FRENCH CLAIMS

| | <i>Millions of Dollars</i> |
|--|----------------------------|
| 1. <i>Claims Approved—to be charged to Military Lend-Lease</i> | |
| FRANCE : Military Aid in North Africa | 37.9 |
| POW Packages | 25.0 |
| 2. <i>Claims Approved—to be paid as Military Procurement</i> | |
| FRANCE : Coal | 3.0 |
| 3. <i>Claims Approved—to be reflected in net claims balance</i> | |
| FRANCE : Crowley-Monnet Adjustment | 0.4 |
| Freight on Off-Shore Goods | 4.0 |
| Price of Cotton | 12.6 |
| Price of Sugar | 0.1 |
| Excise Taxes | 0.37 |
| Allowance on account of U.S. Tort, Patent and Requisitioned Property Claims not eligible for reciprocal aid | 15.0 |
| | 32.47 |
| U.S. : Sugar Barter Agreement | .67 |
| Diversions | 1.0 |
| | 1.67 |
| Net claims adjustment in favor of France | 30.80 |
| 4. <i>Claims Agreed to in Principle</i> | |
| U.S. : Maritime Claims (Knock-for-Knock) | |
| Tort Claims | |
| Patents, Requisitioned Property | |
| Ballast from North Africa | |
| 5. <i>Claims Withdrawn</i> | |
| FRANCE : Miscellaneous freights | |
| Short supply goods—other than coal | |
| Price of Locomotives | |
| Price of Petroleum—North Africa | |
| French Petroleum deliveries to North African Pool | |
| Missing or Damaged Goods | |
| Cost of Procurement | |
| Civilian Petroleum to Metropolitan France—February-September, 1945 | |
| North African Petroleum Stockpile—November, 1942 | |
| U.S. : Price Clause Revision | |

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