

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

IN THE MATTER OF THE CLAIM OF

J. P. STEVENS & CO., INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0507

Decision No. CU - 3823

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by J. P. STEVENS & CO., INC. in the amount of \$261,864.18 based upon the asserted loss of payment for merchandise shipped to 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.

An officer of the claimant corporation has certified that the claimant was organized in Delaware and that at all times between September 29, 1959 and presentation of this claim, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that .0125 per cent of its capital stock is held by residents of foreign countries who are assumed to be citizens of those countries. 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 contains copies of claimant's invoices and other records reflecting the sale of goods to various consignees in Cuba, and charges for freight, shipping and other attendant fees. Claimant states that it has not received the funds.

There follows a listing of items documented by claimant, including the dates items were due, or were paid, less credits reflected:

<u>CONSIGNEE</u>	<u>DATE PAID OR DUE</u>		<u>AMOUNT</u>
<u>Almacenes Ultra, S.A.</u>	August 20, 1959	\$ 43.11	
	Credit	<u>14.82</u>	\$ 28.29
	December 20, 1959	586.33	
	Credit	<u>122.20</u>	464.13
	January 2, 1960	1,425.18	
	Credit	<u>682.69</u>	742.49
	March 23, 1960	4,251.00	
	Credit	<u>76.34</u>	<u>4,174.66</u> \$ 5,409.57
<u>Alvarez & Suarez & Cia.</u>	September 7, 1960	2,227.20	
	Credit	<u>408.91</u>	1,818.29
<u>Delis Bakas</u>	July 14, 1960	658.26	
	Credit	<u>43.37</u>	614.89

<u>CONSIGNEE</u>	<u>DATE PAID OR DUE</u>		<u>AMOUNT</u>
<u>Cimble e Hijo</u>	May 5, 1959		\$ 3,684.07
<u>Confecciones Nieman, S.A.</u>	August 17, 1960	\$ 1,084.62	
	Credit	<u>89.50</u>	995.12
<u>Farre & Cia.</u>	June 8, 1960		1,190.59
<u>Idro Fernandez</u>	January 1, 1959	4,358.29	
	May 2, 1959	3,590.90	
	May 6, 1959	1,189.74	
	April 28, 1959	2,922.47	
	April 28, 1959	<u>2,584.50</u>	14,645.90
<u>Garcia Hnos & Cia.</u>	July 19, 1960	2,803.39	
	Credit	<u>174.62</u>	2,628.77
<u>Gonzalez Tamargo & Cia</u>	April 5, 1959	530.55	
	Credit	<u>40.62</u>	489.93
<u>Simon Lidsky</u>	July 12, 1960	1,681.02	
	Credit	<u>71.86</u>	\$ 1,609.16
	September 1, 1960	17,684.09	
	Credit	<u>2,415.18</u>	<u>15,268.91</u>
			16,878.07
<u>Matos & Cia. S en C.</u>	September 6, 1960	1,642.21	
	Credit	<u>127.05</u>	1,515.16
<u>Perez Orta Rodriguez y Cia.</u>	December 24, 1958		434.96
<u>Pernas y.Cia.</u>	August 26, 1960	1,630.08	
	Credit	<u>534.75</u>	1,095.33
<u>Delago Irastorza & Cia</u>	August 4, 1959		3,833.52
	September 23, 1959		<u>1,587.90</u>
			5,421.42
<u>Jose A. Rodriguez & Co.</u>	July 19, 1960	4,930.14	
	Credit	<u>657.75</u>	4,272.39
<u>Modas Sanchez Mola y Cia., S.A.</u>	March 29, 1960	1,458.06	
	Credit	<u>16.78</u>	1,441.28
<u>Tejidos Capitalinos</u>	January 26, 1960		28,897.72
	September 2, 1960		<u>57,549.98</u>
			86,447.70
<u>Textiles Britanicos, S.A.</u>	August 2, 1960	5,613.17	
	Credit	<u>214.85</u>	5,398.32
<u>Eusebio Viera</u>	July 12, 1960	1,382.64	
	Credit	<u>128.25</u>	<u>1,254.39</u>
			\$155,636.15

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, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, in the instant claim, the Commission finds that the aforesaid sums totalling \$155,636.15 were lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the contrary, such losses occurred on the respective maturity dates with regard to unpaid drafts maturing after September 29, 1959. However, with respect to the dates of loss as to those goods sold prior to September 29, 1959, the Commission finds that the losses occurred on September 29, 1959, the effective date of Law 568. The Commission further finds that in those instances in which payments were made by Cuban consignees, the losses occurred on the days after payments were made to the Cuban banks, where ascertained, or the days after notification of payments were made to claimant corporation.

A portion of the claim, in the amount of \$25,750.53 is also based on asserted debts of Cuban consignees. In this connection claimant has only been able to furnish the name and amount and has not been otherwise able to document the items. By its letter of December 11, 1967, it requested the Commission to determine the claim on the basis of the record. In view of the fact that claimant has shown it was "in business" in Cuba and has its other supporting evidence for claims made

herein as to goods sold, it is held by the Commission that such is prima facie evidence of the asserted loss and that an award should be made therefore for the amount asserted, i.e., \$25,750.53.

One item documented by claimant is for \$80,477.50, for goods shipped to the Cuban Ministry of the Interior on April 25 and June 23, 1958. Although Section 503(a) of the statute, supra, ostensibly would seem to bar the allowance of claims which arose prior to January 1, 1959, the amendment to Title V in 1965 which created the Cuban Claims Program must be interpreted in the instant case to permit such. This is so because REPORT No. 706, which accompanied H.R. 9336 in the House of Representatives, in describing Section 1 of the Bill, expressed the pertinent Congressional intent as follows:

"In short, pre- and post-Castro creditor interests of American nationals based on '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' are eligible for consideration by the Foreign Claims Settlement Commission under this title so long as the 'taking' (i.e. refusal to pay) of such property interests arose for the first time after January 1, 1959." (Underscoring added.)

The Commission therefore finds that the Cuban Government was indebted to claimant in the amount of \$80,477.50 and that claimant sustained a loss in that amount.

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 the instant case it is so ordered as follows:

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$ 130,932.60
December 20, 1959	464.13
January 2, 1960	742.49
January 26, 1960	28,897.72
March 23, 1960	4,174.66
March 29, 1960	1,441.28
June 8, 1960	1,190.59
July 12, 1960	2,863.55

<u>FROM</u>	<u>ON</u>
July 14, 1960	614.89
July 19, 1960	6,901.16
August 2, 1960	5,398.32
August 17, 1960	995.12
August 26, 1960	1,095.33
September 1, 1960	15,268.91
September 2, 1960	57,549.98
September 6, 1960	1,515.16
September 7, 1960	1,818.29
	<u>\$ 261,864.18</u>

CERTIFICATION OF LOSS

The Commission certifies that J. P. STEVENS & CO., 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 Two Hundred Sixty-One Thousand Eight Hundred Sixty-Four Dollars and Eighteen Cents (\$261,864.18) 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 1960

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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(c) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)