

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

IN THE MATTER OF THE CLAIM OF

THE MARITIME TRADING CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0602

Decision No. CU 390

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 THE MARITIME TRADING CORPORATION in the amount of \$1,316.87 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 charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(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."

An officer of the claimant corporation has certified that the claimant was incorporated in the State of New York on February 4, 1947. Said officer has also certified that he, Walter Hirsch, a United States citizen, owns 50% of the stock of THE MARITIME TRADING CORPORATION and that he is also a 50% owner of the partnership, District Supply Company, a partnership formed by the Stockholders of THE MARITIME TRADING CORPORATION to serve as a "trade style" under which they were conducting business and which was being internally treated as a part of THE MARITIME TRADING CORPORATION. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that all of its three stockholders are nationals of the United States.

The record contains copies of the following invoices reflecting sales to various Cuban consignees:

<u>Consignee</u>	<u>Consignor</u>	<u>Invoice No.</u>	<u>Date</u>	<u>Amount</u>
A. Moller y Compania	District Supply Company	92344	April 17, 1959	\$ 445.68
Meana E. Hijos	District Supply Company	3434	November 17, 1959	393.95
Ely Sinai	Maritime Trading Corp.	3541	December 7, 1959	219.75
Ely Sinai	Maritime Trading Corp.	3523	December 8, 1959	257.49
			Total	<u>\$1,316.87</u>

The record also contains copies of letters from Cuban banks in which it is stated that the collections were paid in local currency by the consignees and that the banks were awaiting dollar reimbursement releases from the Exchange Board, a Cuban Government agency. Such payments are as follows:

<u>Bank</u>	<u>Addressee</u>	<u>Date</u>	<u>Amount</u>
Trust Company of Cuba	District Supply Company	January 25, 1960	\$ 393.95
Bank of Nova Scotia	District Supply Company	September 20, 1960	445.68
First National City Bank of New York	Maritime Trading Corp.	December 14, 1960	477.24

Claimant states that it has not received the funds.

The Government of Cuba, on September 29, 1959, published its law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds, in this and similar cases, 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 into 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 The Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019.)

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on January 26, 1960 as to \$393.95, on September 21, 1960 as to \$445.68, and on December 15, 1960 as to \$477.24, the days after the collections were acknowledged by the respective Cuban banks.

The Commission has decided that in the 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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

CERTIFICATION OF LOSS

The Commission certifies that THE MARITIME TRADING 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 Thousand Three Hundred Sixteen Dollars and Eighty-Seven Cents (\$1,316.87) 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

JAN 10 1968

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Francis M. ...
Clerk of the Commission

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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).)