

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES

WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

U. S. EXPORT SALES CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0604

Decision No. CU 2075

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 U. S. EXPORT SALES CORPORATION in the amount of \$13,613.61, and is 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.

Claimant has submitted a certificate from the State Treasurer of the State of Michigan establishing that the claimant was organized in the State of Michigan in 1947, and an officer of the claimant corporation has certified that at all times between that date and the presentation of this claim on December 17, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. 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 stockholders were nationals of the United States.

The record includes copies of correspondence from banks, agents of the claimants, consignee business enterprises in Cuba, copies of invoices, and other data concerning shipments of merchandise to Cuban business firms, listed hereafter as the consignees. This evidence discloses that the purchase price of the goods and accompanying charges for such shipments were, in many instances, paid by the consignees to local Cuban banks; and that the dollar reimbursement releases or authorization were never granted by Cuban governmental officials. Other drafts for shipments made by claimants were not paid to the collecting bank by the consignee. Claimants state that they have not received any of the funds for such shipments.

There follows hereafter data concerning the shipments made to Cuban consignees, including information on paid and unpaid drafts, with the dates on which payments were acknowledged or dates when the unpaid drafts were due and payable. (The listed amounts are net after adjustment or credit):

<u>CUSTOMER</u>	<u>AMOUNT</u>	<u>DATE DUE, DATE OF PAYMENT OR ADVISE OF PAYMENT</u>
Cabrera de Cabrera Hijos	\$ 302.70	September 29, 1959
Cabrera de Cabrera Hijos	307.14	September 29, 1959
Cabrera de Cabrera Hijos	129.52	September 29, 1959
Miguel Molina	738.24	September 29, 1959
Sergio Obret Y Hnos	1,303.40	September 29, 1959
Jose Garcia Crespo	1,215.00	November 20, 1959
Accesorios Valles, S.A.	440.03	December 8, 1959
Pascual y Gomez S. en C.	550.45	December 10, 1959
Ferreterra Los Aliados, S.A.	595.50	January 3, 1960
Accesorios Valles, S.A.	109.00	January 11, 1960
Arencibia & Cia	284.50	January 18, 1960
Candido Gonzalez	278.00	January 18, 1960
Pedrosa Hno y Cia.	1,373.71	February 4, 1960
Proveedora Diesel de Cuba	1,584.06	February 16, 1960
Candido Gonzalez	278.00	February 17, 1960
Candido Gonzalez	157.35	February 26, 1960
Cia. Autos y Accesorios, S.A.	467.00	May 5, 1960
Proveedora Diesel de Cuba	733.33	May 11, 1960
Manuel Somoza	392.97	June 21, 1960
Comercial Nasurco, S.A.	208.58	August 17, 1961
TOTAL	<u>\$11,448.47</u>	

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 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 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.)

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 losses occurred on

September 29, 1959	as to	\$2,781.00
November 21, 1959	as to	1,215.00
December 9, 1959	as to	440.03
December 11, 1959	as to	550.45
January 2, 1960	as to	1,373.71
January 4, 1960	as to	595.50
January 12, 1960	as to	109.00
January 19, 1960	as to	562.50
February 17, 1960	as to	1,584.06
February 18, 1960	as to	278.00
February 27, 1960	as to	157.35
May 6, 1960	as to	467.00
May 12, 1960	as to	733.33
June 22, 1961	as to	392.97, and on

August 18, 1961 as to \$208.58, each date being either the date of the publication of Law 568 for those debts coming due on or before September 29, 1959, or the day after the debt became due or was paid.

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 the Claim of Lisle Corporation, Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the losses occurred, to the date on which provision is made for the settlement thereof.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant has asserted the sale and shipment of goods in addition to those hereinbefore enumerated. However, the evidence submitted in support of these contentions is not of sufficient probative value to warrant further findings favorable to claimant, and the remainder of the claim is hereby denied.

CERTIFICATION OF LOSS

The Commission certifies that U.S. EXPORT SALES 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 Eleven Thousand Four Hundred Forty-Eight Dollars and Forty-Seven Cents (\$11,448.47) 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

24 JUL 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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).)

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.

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