

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

IN THE MATTER OF THE CLAIM OF

AIRTEX PRODUCTS DIVISION  
UNITED INDUSTRIAL  
SYNDICATE, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 0666

Decision No. CU - 3403

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 AIRTEX PRODUCTS DIVISION UNITED INDUSTRIAL SYNDICATE, INC. in the amount of \$37,134.00 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 503(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 the claimant was organized in the State of New York and that all times between December 13, 1945 and presentation of this claim on January 27, 1966, 100% 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.

The record contains copies of claimant's invoices and a letter from the First National Bank of Boston reflecting the payment by the consignees of drafts in local currency but on which payments in United States dollars were not received by claimant as follows:

<u>DUE DATE</u>	<u>DRAWEE</u>	<u>AMOUNT</u>
11/23/59	Salvador Valdes Velez	\$1,026.44
7 /14/59	Solar Motors, S.A.	2,105.78
9 /11/59	Inversiones Dubreuil Y Rodriguez, S.A.	474.00
11/27/59	Rivas Y Cia.	2,903.11
12/ 9/59	Garage La Lisa, S.A.	2,150.27
9 /10/59	Ergenio Fernandez Garcia	575.01
9 /10/59	Ergenio Fernandez Garcia	575.01
9 / 2/59	Garage La Lisa, S.A.	651.54
9 / 2/59	Garage La Lisa, S.A.	548.07
9 / 2/59	Garage La Lisa, S.A.	548.07
11/20/59	Francisco Hernandez	2,278.06
11/27/59	Armando Garcia	403.80
11/27/59	Alfredo Suarez Garcia	1,763.86

<u>DUE DATE</u>	<u>DRAWEE</u>	<u>AMOUNT</u>
11/27/59	Armandez Fernandez Godinez	\$1,107.12
8 /27/59	Mario Martinez Moya	612.94
8 /27/59	Mario Martinez Moya	612.95
8 /27/59	Mario Martinez Moya	612.95
8 /27/59	Juan B. Herrera	2,383.16
8 /27/59	Juan B. Herrera	2,383.16
8 /24/59	Neira & Gonzales	862.29
8 /24/59	Neira & Gonzalez	862.29
8 /24/59	Neira & Gonzalez	862.29
8 / 3/59	Antonio Garcia & Cia. S.L.	1,743.98
8 /17/59	Hermanos Marin Sierra	1,545.46
8 /17/59	Hermanos Marin Sierra	1,545.46
8 /17/59	Inversiones Dubreuil Y Rodriguez	1,583.34
9 /10/59	Diaz Y Rodriguez	932.63
9 /10/59	Diaz Y Rodriguez	932.64
11/13/59	Alvaro Fernandez	1,821.85
11/20/59	Jose Saladrigas	270.62
11/27/59	Jose Saladrigas	424.17

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 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].)

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 the following dates, being the dates of payment to banks in Cuba, or due dates, or the date of Law 568 as to dates prior to its enactment:

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$22,953.02
December 13, 1959	1,821.85
December 20, 1959	2,548.68
December 23, 1959	1,026.44
December 27, 1959	6,602.06
January 9, 1960	<u>2,150.27</u>
	\$37,102.32

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 allowed 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 claim.

CERTIFICATION OF LOSS

The Commission certifies that AIRTEX PRODUCTS DIVISION UNITED INDUSTRIAL SYNDICATE, 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 of Thirty-Seven Thousand One Hundred Two Dollars and Thirty-Two Cents (\$37,102.32) 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 8 1969

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