

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

IN THE MATTER OF THE CLAIM OF

INDUSTRIA AMERICANA & CO., INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0710

Decision No. CU -

3714

Counsel for claimant:

Petermann & Watterson
By John B. Petermann, Esq.

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 INDUSTRIA AMERICANA & CO., INC. in the amount of \$31,846.40 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 California and that all times between January 1, 1955 and presentation of this claim more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Evidence of record reflects that all of its stockholders are 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 copy of claimant's invoices and bank notices reflecting the sale of goods to and payment by consignees in Cuba, as set out below, after application of credits.

<u>CONSIGNEE</u>	<u>DATE</u> <u>PAID OR DUE</u>	<u>AMOUNT</u>	
Agencia Representativa de Manufactureros, S.A.	October 12, 1959	\$ 214.29	
	February 14, 1960	738.66	
	January 14, 1960	489.58	
	June 30, 1960	970.29	
	December 21, 1959	543.08	
	April 27, 1960	781.80	
	June 30, 1960	1,189.37	
	April 15, 1960	712.90	
	May 25, 1960	1,113.44	
	July 20, 1960	44.70	
	October 6, 1960	<u>522.73</u>	\$ 7,320.84
Camaguey Motors	November 7, 1960	345.32	
	February 15, 1960	535.08	
	March 16, 1960	628.22	
	April 15, 1960	<u>628.22</u>	2,136.84
Distribuidora Losada, S.A.	December 14, 1959	590.96	
	October 31, 1960	<u>951.29</u>	1,542.25

<u>CONSIGNEE</u>	<u>DATE PAID OR DUE</u>	<u>AMOUNT</u>	
Garage Casino, S.A.	January 12, 1960	\$	\$ 298.06
Garage Hermanos Veliz, Ruben N. Veliz	January 2, 1960		898.11
Importadora Accesorios Vedado, S.A.	March 15, 1960		376.13
Importadora Distribuidora Exportadora, S.A.	August 17, 1959		858.13
Inmobiliaria Magev	September 28, 1958		1,358.14
Lopez y Leira	January 29, 1958		254.28
Maximo Lopez Lopez	November 5, 1959	1,115.95	
	December 5, 1959	1,115.95	
	January 5, 1960	1,115.94	
	December 13, 1959	807.49	
	January 13, 1960	807.49	
	February 13, 1960	<u>807.49</u>	5,770.31
Mercantil Accesorios y Repuestos, S.A.	November 29, 1959	347.81	
	December 29, 1959	347.81	
	January 29, 1960	<u>347.80</u>	1,043.42
Millares y Cia.	September 24, 1958	116.06	
	November 6, 1958	25.15	
	January 21, 1960	3,298.99	
	August 22, 1960	4,184.66	
	June 8, 1960	283.52	
	June 13, 1960	188.25	
	June 27, 1960	28.70	
	December 1, 1959	<u>654.56</u>	8,779.89
Motors & Suppliers	June 5, 1959	547.39	
	August 17, 1959	<u>286.86</u>	834.25
Perez Rodriguez y Hnos.	July 20, 1960		12.82
Rafael Figueroa Sosa	January 3, 1960		<u>385.24</u>
			\$31,868.71

The aforesaid amount exceeds the claimed amount by \$22.31 which claimant deducted as credits. However these involved consignees from whom no amount was shown as due, and are not properly to be credited to other accounts. Accordingly no deduction is made in this connection.

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]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

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 the following dates, September 29, 1959 being used for all items paid or due prior to said date:

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$ 3,446.01
October 12, 1959	214.29
November 5, 1959	1,115.95
November 29, 1959	347.81
December 1, 1959	654.56
December 5, 1959	1,115.95
December 13, 1959	807.49
December 14, 1959	590.96
December 21, 1959	543.08
December 29, 1959	347.81
January 2, 1960	898.11
January 3, 1960	385.24
January 5, 1960	1,115.94
January 12, 1960	298.06

<u>FROM</u>	<u>ON</u>
January 13, 1960	\$ 807.49
January 14, 1960	489.58
January 21, 1960	3,298.99
January 29, 1960	347.80
February 13, 1960	807.49
February 14, 1960	738.66
February 15, 1960	535.08
March 15, 1960	376.13
March 16, 1960	628.22
April 15, 1960	1,341.12
April 27, 1960	781.80
May 25, 1960	1,113.44
June 8, 1960	283.52
June 13, 1960	188.25
June 27, 1960	28.70
June 30, 1960	2,159.66
July 20, 1960	57.52
August 22, 1960	4,184.66
August 6, 1960	522.73
October 31, 1960	951.29
November 7, 1960	<u>345.32</u>
	\$31,868.71

The Commission has decided that in certification of loss 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, FCSC Claim No. CU-0644), and in the instant case it is so ordered from the aforesaid dates.

CERTIFICATION OF LOSS

The Commission certifies that INDUSTRIA AMERICANA & 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 of Thirty-One Thousand Eight Hundred Sixty-Eight Dollars and Seventy-One Cents (\$31,868.71) 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

JUN 26 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).)