

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

IN THE MATTER OF THE CLAIM OF

AVNET, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0754

Decision No. CU 1229

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 Valley Forge Products Company, Division of AVNET, INC., in the amount of \$51,980.29, 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) 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."

The record discloses that this claim was originally owned by the Valley Forge Products Company, a New York corporation, and was acquired by AVNET, INC. by purchase for full value on August 13, 1964.

An officer of AVNET, INC. has certified that both corporations were organized in the State of New York, and that at all times pertinent to this claim, more than 50% of the outstanding capital stock of both corporations was owned by nationals of the United States. The Commission holds that both claimant corporation and its successor in interest were and are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant, AVNET, INC., states that more than 99% of its outstanding stock was held by persons who were nationals of the United States.

The record contains copies of claimant's statements of account with various Cuban business firms listed hereafter as consignees. The evidence does not disclose that the purchase prices of the goods were paid by the consignees to local Cuban banks. Claimant states that these items remain unpaid.

There follows hereafter data concerning the amount owed on goods sold to the various consignees, with the respective due dates included therein:

<u>CONSIGNEE</u>	<u>INVOICE AMOUNTS</u>	<u>DELIVERY DATES</u>
Garcia y Hermanos	\$ 999.52	October 14, 1959
Cia de Muelles para Automoviles, S.A.	3,090.26	October 8, 1959
Cia Riera Toro & Van Twistern, S.A.	2,567.86 1,922.01 3,955.04	August 28, 1959 September 2, 1959 November 2, 1959
Diaz y Rodriguez	1,595.87	September 4, 1959
Angel Couto Garcia	2,896.54	November 2, 1959
Garage "La Lisa, S.A."	3,605.79	October 9, 1959
Garage Marti	1,010.82	July 21, 1959
Godoy & Compania, S.A.	415.39	October 19, 1959
Candido Gonzalez	2,132.48	September 3, 1959
Miguel y Bacardi, S.A.	5,615.99	September 25, 1959
Jorge Villarreal	1,651.23	July 21, 1959
Domingo Bolanos	403.48	October 15, 1959

In addition, there follows hereafter data concerning goods sold to Cuban business firms in various amounts after payments were made on account. Claimant has not received any of these funds:

<u>CONSIGNEE</u>	<u>NET BALANCE AFTER PAYMENT ON ACCOUNT</u>	<u>DUE DATE</u>
Ferreteria Lisamar, S.A.	\$ 716.14	August 28, 1959
Gran Garage Vives, S.A.	2,554.49	June 6, 1960
Juan B. Herrera	9,272.78	August 24, 1960
I. D. E. S. A.	1,338.17	June 29, 1960
Importadora Cabrera	1,107.84	June 12, 1959
Jose Saldrigas	1,283.72	September 11, 1959
Berenthal, S.A.	1,314.39	August 25, 1960
Casa Daubar, S.A.	2,441.15	May 11, 1960
Lopez & Leira	113.56	March 9, 1960

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 the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC 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 loss occurred on September 29, 1959, the effective date of Law 568 as to those debts maturing prior to September 29, 1959.

However, with respect to the dates of loss as to those debts maturing after September 29, 1959, the Commission finds that as to the net balances owing after payment on account, the dates of loss were the respective due dates. The Commission further finds that in those instances where shipments were made and remained unpaid, the loss occurred 30 days after the respective delivery dates.

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, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof, as follows:

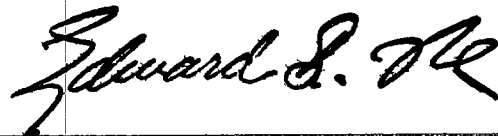
\$7,053.89	from September 29, 1959
1,922.01	from October 2, 1959
2,132.48	from October 3, 1959
1,595.87	from October 4, 1959
1,283.72	from October 11, 1959
5,615.99	from October 25, 1959
3,090.26	from November 7, 1959
3,605.79	from November 8, 1959
999.52	from November 13, 1959
403.48	from November 14, 1959
415.39	from November 18, 1959
6,851.58	from December 2, 1959
113.56	from March 9, 1960
2,441.15	from May 11, 1960
2,554.49	from June 6, 1960
1,338.17	from June 29, 1960
9,272.78	from August 24, 1960
1,314.39	from August 25, 1960
\$52,004.52	Total

CERTIFICATION OF LOSS

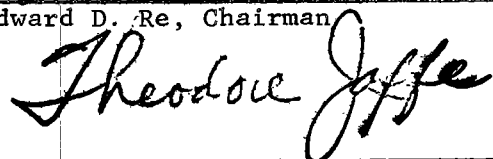
The Commission certifies that AVNET, INC., suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fifty-Two Thousand Four Dollars and Fifty-Two Cents (\$52,004.52) with interest thereon 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

FEB 14 1968



Edward D. Re, Chairman



Theodore Jaffe, 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).)

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on MAR 18 1968

CU-0754


Francis Macfarlane
Clerk of the Commission