

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

IN THE MATTER OF THE CLAIM OF

SABAL-KIELMANN, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1104

Decision No. CU 1820

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 SABAL-KIELMANN, INC. in the amount of \$51,839.69 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."

An officer of the claimant corporation has certified that the claimant was organized in New York and that all times between May 5, 1949 and presentation of this claim on March 13, 1967, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that all three of its stockholders are nationals of the United States. 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 bank correspondence from the Chase Manhattan Bank and the Banco Nacional De Cuba, to claimant, indicating that certain drafts drawn to cover the following invoices to the respective Cuban consignees were paid to collecting banks in Cuba, which banks were awaiting a dollar reimbursement release from the Exchange Board, an agency of the Cuban Government. In those cases where no such payment was acknowledged, the record contains copies of the invoices reflecting sales to the consignees. The sales of merchandise and dates of payment, are as follows:

<u>Invoice No.</u>	<u>Consignee</u>	<u>Amount</u>	<u>Date of Payment</u>
A859/X960	Casa Basulto	\$ 289.53 799.09 798.10 797.10	September 29, 1959 November 12, 1959 December 14, 1959 outstanding
5316/5213	Casa Contreras	490.18	January 7, 1960
5381-82/5533	Casa Contreras	262.67 262.66 262.66 262.66 262.66 262.66	September 8, 1959 October 29, 1959 outstanding outstanding outstanding outstanding
A 1131/X1269	Compania Riera Rora & Van Twistern, S.A.	1,273.90	January 29, 1960
A946/X1015	Rafael Amenguel R. S.A. (Refrigeracion Rafael Amengual)	632.00 628.00	January 10, 1960 February 7, 1960
A854/X959	(as above)	2,231.68	March 17, 1960
A863,64,66/X999	(as above)	2,260.06 2,262.07	March 17, 1960 February 7, 1960
9207,42/X420	(as above)	1,126.39	January 23, 1960
A865/X1259	(as above)	160.00 164.00	August 30, 1960 April 12, 1960
A459-60/X504	Refrigeracion Commercial Empedrado, S.A.	6,742.51	October 23, 1959
A855-67/X937	(as above)	7,324.62	February 19, 1960
A 1178/X1352	Lorenzo Rodriguez	584.20	February 25, 1960
A 1188/X1384	(as above)	226.09 3,900.00	July 20, 1960 March 11, 1960
A 1177/X1520C	(as above)	255.66 2,060.64	February 9, 1960 August 17, 1960
8877/8804	J. F. Sanchez	825.00	July 7, 1960
A962/1152	Sariol Implementos Agricolas, S.A.	1,147.45	February 22, 1960
9625/9581	Raul Rossell	455.00 465.00	December 1, 1959 November 16, 1959
A490/X421	(as above)	318.78	January 28, 1960
A590/X630	(as above)	<u>310.07</u>	July 28, 1960
	Total	\$40,103.09	

The following drafts, all drawn on Raul Rossell of Havana, Cuba, were acknowledged as having been paid by that consignee in a letter of March 8, 1962 from the Banco Nacional De Cuba to the claimant, no dates of payment being mentioned (the stated dates of payment were supplied by the consignee):

<u>Invoice No.</u>	<u>Amount</u>	<u>Date of Payment</u>
A490/X421	\$ 312.78	October 19, 1961
	316.78	October 19, 1961
	314.78	October 19, 1961
	321.78	October 19, 1961
	309.78	October 19, 1961
	322.78	October 19, 1961
	<u>308.78</u>	October 19, 1961

Total \$2,207.46

A590/X630	312.07	October 19, 1961
	306.07	October 19, 1961
	304.07	October 19, 1961
	300.07	October 19, 1961
	298.06	October 19, 1961
	303.06	October 19, 1961
	301.06	October 19, 1961
	<u>299.06</u>	October 19, 1961

Total \$2,423.52

Drafts drawn to cover the following invoices (copies of which are in the record) were stated by the consignee, Raul Rossell, by letter to claimant dated December 6, 1967, as having been paid to the Cuban collecting banks. These invoices and the dates of payment are as follows:

<u>Invoice No.</u>	<u>Date</u>	<u>Amount</u>	<u>Date of Payment</u>
9014/8966	August 18, 1958	\$1,354.50	February 21, 1962
8878/9654	December 17, 1958	842.45	October 31, 1962
9502/9571	December 1, 1958	846.89	October 31, 1962
		842.89	October 31, 1962
A343/X243	March 26, 1959	660.00	December 8, 1961
		660.00	December 8, 1961
		660.00	December 8, 1961
A 1103/X1343	November 3, 1959	<u>1,238.89</u>	October 31, 1961
		Total	\$7,105.62

Claimant states that it has not received the funds.

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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 by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred:

<u>ON</u>	<u>AS TO</u>
September 29, 1959	\$ 262.67
September 30, 1959	289.53
October 24, 1959	6,742.51
October 30, 1959	262.66
October 31, 1959	262.66
November 13, 1959	799.09
November 17, 1959	465.00
November 30, 1959	262.66
December 2, 1959	455.00
December 15, 1959	798.10
December 30, 1959	262.66
January 3, 1960	797.10
January 8, 1960	490.18
January 11, 1960	632.00
January 24, 1960	1,126.39
January 29, 1960	581.44
January 30, 1960	1,273.90
February 8, 1960	2,890.07

<u>ON</u>	<u>AS TO</u>
February 10, 1960	\$ 255.66
February 20, 1960	7,324.62
February 23, 1960	1,147.45
February 26, 1960	584.20
March 12, 1960	3,900.00
March 18, 1960	4,491.74
April 13, 1960	164.00
July 8, 1960	825.00
July 21, 1960	226.09
July 29, 1960	310.07
August 18, 1960	2,060.64
August 31, 1960	160.00
October 20, 1961	4,630.98
November 1, 1961	1,238.89
December 9, 1961	1,980.00
February 22, 1962	1,354.50
November 1, 1962	<u>2,532.23</u>
Total	\$51,839.69

These dates are the date of publication of Law 568 as to those amounts which were paid or became due prior to September 29, 1959; and the days following the dates of payment of those drafts which were paid by the consignees to Cuban collecting banks.

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 Claim of Lisle Corporation, 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 date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that SABAL-KIELMANN, 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-One Thousand Eight Hundred Thirty-Nine Dollars and Sixty-Nine Cents (\$51,839.69) 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

8 MAY 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

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).)