

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

IN THE MATTER OF THE CLAIM OF

WESTINGHOUSE ELECTRIC CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1233

Decision No. CU 4784

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 Westinghouse Electric International Company, a division of WESTINGHOUSE ELECTRIC CORPORATION, in the amount of \$1,075,693.15 based upon the asserted loss of payment for merchandise shipped to consignees in 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 more than 50 per cent of the outstanding capital stock of the claimant, organized in the State of Pennsylvania, was owned by United States nationals at all times since 1872. The Commission finds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence of record includes copies of correspondence from banks in the United States and their collecting banks in Cuba with reference to bank drafts, and claimant's records of invoices and orders shipped to consignees in Cuba. The evidence discloses that invoices for some shipments were paid locally and authorization for dollar reimbursement was not granted by the Cuban Government. Other shipments for which drafts were issued were not paid for, and additional shipments to Cuban consignees were made on an open account basis for which no payment was made for dollar reimbursement to claimant. Claimant states that in all instances it has not received any of the funds for the shipments to Cuba which are the subject of this claim.

Following are the shipments for which payment was made to collecting banks in Cuba with the date information on payment was sent to claimant and the amount paid or balance due (any credits being applied to the earliest shipments):

<u>Consignee</u>	<u>Draft</u>	<u>Date</u>	<u>Amount</u>
Julio Bonet	8247	Sept. 14, 1960	\$ 695.17
	8271	May 19, 1960	1,350.12
	8064	Sept. 14, 1960	2,699.99
	8674	Sept. 14, 1960	677.23
	9253	Dec. 29, 1959	1,018.02
	9316	Aug. 1, 1960	931.65
	9705	Dec. 29, 1959	1,239.17
	N677	Mar. 1, 1960	756.91
	N092	June 6, 1960	175.04
	N093	Jan. 18, 1961	175.04
	N769	Jan. 18, 1961	173.72
	D439	July 6, 1960	<u>1,422.80</u>
			\$ 11,314.86
Importadora Comercial de Cuba	7849	Apr. 30, 1960	\$ 398.11
	7848	Sept. 24, 1960	598.11
	8008	June 8, 1960	1,125.92
	8009	June 8, 1960	1,125.92
	8010	June 8, 1960	1,125.92
	N679	Apr. 7, 1960	1,161.09
	N680	Apr. 7, 1960	1,161.10
	N681	Mar. 8, 1961	<u>1,161.10</u>
			\$ 7,857.27
Importadora de Efectos Electricos Gesa	9065	Dec. 16, 1960	\$ 224.00
	9064	Dec. 16, 1960	224.00
	9063	Dec. 16, 1960	224.00
	9062	Dec. 16, 1960	224.00
	9061	Dec. 16, 1960	224.00
	8046	Feb. 18, 1960	<u>425.20</u>
			\$ 1,545.20
Independent Electric Co.	6761	Jan. 8, 1960	3,786.32
Central San Cristobal	5658	Mar. 29, 1961	562.82
Central Tinguardo	3802	Mar. 18, 1960	1,236.28
Cia. Antillana de Acero	N818	July 13, 1960	1,495.40
Cia. Internacional de Envases	0643	Nov. 18, 1959	1,991.40
Distribuidora El. Indust. S.A.	N761	Feb. 4, 1960	657.93
Powe Equipment Co.	N311	Apr. 5, 1960	116.95
Tecnica Cubana, S.A.	D807	Mar. 29, 1960	12,790.10
Medjor Engineering Corp.	4262	June 30, 1960	78.09
Miranda Sugar Estates	N081	Mar. 22, 1960	196.29
Equipos Electricos	N091	Mar. 31, 1960	1,752.33
	D022	Feb. 29, 1960	1,064.87
	D287	Feb. 26, 1960	<u>2,895.83</u>
			\$ 5,713.03

<u>Consignee</u>	<u>Draft</u>	<u>Date</u>	<u>Amount</u>
Hernandez y Hnos.	D913	Dec. 28, 1959	\$ 4,042.73
	0824	Mar. 18, 1960	<u>4,201.83</u>
			\$ 8,244.56
Industrias de Papel	N343	Jan. 18, 1960	131.79
L. M. Johnson Carretera	0062	July 5, 1960	658.10
Master Electric, S.A.	7334	Nov. 29, 1960	18,540.67
Caribbean Photo Company	0447	Nov. 25, 1960	88.42
	7067	May 23, 1960	<u>294.18</u>
			\$ 382.60
Cia. Electric de Cuba	D894	Feb. 9, 1960	8,325.03
	D895	Feb. 9, 1960	20,690.08
	2008	Sept. 9, 1960	16,798.64
	2035	Sept. 9, 1960	17,035.56
	5234	Sept. 9, 1960	19,436.74
	6212	Sept. 9, 1960	35,592.63
	6246	Sept. 9, 1960	47,781.96
	N239	Sept. 9, 1960	8,196.99
	D896	Sept. 9, 1960	5,336.70
	1836	Sept. 9, 1960	1,532.00
	0812	Sept. 9, 1960	34,632.69
	N806	Sept. 9, 1960	5,798.94
	N805	Sept. 9, 1960	21,348.32
	D803	Sept. 9, 1960	25,580.25
	D849	Sept. 9, 1960	10,035.82
	7419	Sept. 9, 1960	5,070.55
	7703	Sept. 9, 1960	6,984.96
8215	Sept. 9, 1960	395.11	
8696	Sept. 9, 1960	<u>3,620.70</u>	
		\$294,193.67	
Cia. Cubana de Electricidad	N843	Apr. 8, 1960	3,104.00
	N811	Feb. 29, 1960	662.33
	2830	Apr. 21, 1960	<u>91.20</u>
		\$ 3,857.53	
Total drafts paid but not collected			\$375,350.86

Following are the consignees with the dates of the last debit entries for open accounts and unpaid drafts showing the net amounts due:

<u>Consignee</u>	<u>Date of Last Debit Entry</u>	<u>Net Amount</u>
Audrain & Medina	Sept. 22, 1960	\$ 1,890.11
Consolidadas Industriales	Jan. 6, 1960	76.00
Julio Bonet	Nov. 18, 1960	12,535.62
Electroline Agencies of Cuba	Feb. 1, 1960	1,005.37
M. E. Flores "Lorema"	Mar. 2, 1959	6,624.57
Jose A. Tio	Feb. 2, 1959	837.59
Belona Sugar Company	Oct. 2, 1959	14.81
Cooperativa Azu. Estrada Palma	Sept. 16, 1959	31.20
Cia. Agricola Defensa, S.A.	Oct. 20, 1959	29.46
Central Ramona, S.A.	July 7, 1959	66.24

<u>Consignee</u>	<u>Date of Last Debit Entry</u>	<u>Net Amount</u>
Cia. Textilera Ariguanado	July 29, 1960	\$ 54.00
Industrias de Papel Cartony Envases	July 7, 1960	15.09
Nutrimentos Purina de Cuba	July 27, 1959	16.40
Caribbean Photo Company	Feb. 13, 1959	1,676.14
Consolidated Railroads of Cuba	Aug. 12, 1959	162.65
Esso Standard Oil, S.A.	May 3, 1960	4,647.91
Industrias Consolidadas de Cuba	Sept. 24, 1959	<u>12.68</u>
		\$ 29,695.84

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 dates further shown below, September 29, 1959 being used for payments made on amounts due prior to that date.

Among the debts for which claim is made herein but which had not been paid to a Cuban bank for reimbursement in dollars are debts in the amount of \$710,236.98 owed claimant by Cia. Cubana de Electricidad, Westinghouse Electric Company, S.A., and Mr. Alvin Kline all of whom were United States nationals at the times pertinent herein.

Section 505(a) of the Act provides:

A claim under section 503(a) of this title based upon an ownership interest in any corporation, association, or other entity which is a national of the United States shall not be considered. A claim under section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered, only when such debt or other obligation is a charge upon property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Accordingly, these accounts with Cia. Cubana de Electricidad, Westinghouse Electric Company, S.A., and Mr. Alvin Kline can be considered only if those accounts were charges upon property nationalized, expropriated, intervened or taken by the Government of Cuba. Since there is no evidence establishing that these debts were charges upon property taken by the Government of Cuba, claim for the debts must be and hereby is denied.

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), and in the instant case it is so ordered:

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$ 9,427.47
October 2, 1959	14.81
October 20, 1959	29.46
November 18, 1959	1,991.40
December 28, 1959	4,042.73
December 29, 1959	2,257.19

<u>FROM</u>	<u>ON</u>
January 6, 1960	\$ 76.00
January 8, 1960	3,786.32
January 18, 1960	131.79
February 1, 1960	1,005.37
February 4, 1960	657.93
February 9, 1960	29,015.11
February 18, 1960	425.20
February 26, 1960	2,895.83
February 29, 1960	1,727.20
March 1, 1960	756.91
March 18, 1960	5,438.11
March 22, 1960	196.29
March 29, 1960	12,790.10
March 31, 1960	1,752.33
April 5, 1960	116.95
April 7, 1960	2,322.19
April 8, 1960	3,104.00
April 21, 1960	91.20
April 30, 1960	398.11
May 3, 1960	4,647.91
May 19, 1960	1,350.12
May 23, 1960	294.18
June 6, 1960	175.04
June 8, 1960	3,377.76
June 30, 1960	78.09
July 5, 1960	658.10
July 6, 1960	1,422.80
July 7, 1960	15.09
July 13, 1960	1,495.40
July 29, 1960	54.00
August 1, 1960	931.65
September 14, 1960	4,072.39
September 20, 1960	265,178.56
September 22, 1960	1,890.11
September 24, 1960	598.11
November 18, 1960	12,535.62
November 25, 1960	88.42
November 29, 1960	18,540.67
December 16, 1960	1,120.00
January 18, 1961	348.76
March 8, 1961	1,161.10
March 29, 1961	<u>562.82</u>

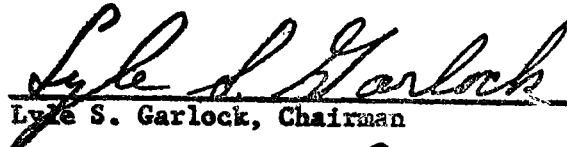
\$405,046.70

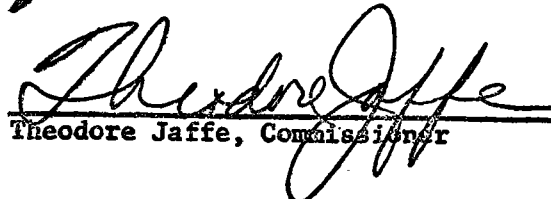
CERTIFICATION OF LOSS

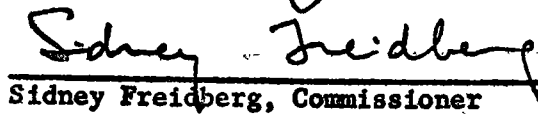
The Commission certifies that WESTINGHOUSE ELECTRIC CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Four Hundred Five Thousand Forty-six Dollars and Seventy Cents (\$405,046.70) 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

APR 29 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner


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).)