

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

IN THE MATTER OF THE CLAIM OF

SANFORD INK COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1247

Decision No. CU 2005

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 SANFORD INK COMPANY, in the amount of \$8,128.05, and is based upon the asserted loss of payment for merchandise shipped to various customers 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 the claimant was organized in the State of Illinois and that all times between 1856 and presentation of this claim on March 27, 1967, more than 50% 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. Claimant further states that, at all times pertinent to this claim, all of its outstanding stock has been held by nationals of the United States.

Claimant asserts the loss of payment for merchandise shipped to several Cuban consignees on various dates from 1958 to 1960. The record in this claim includes United States Department of State correspondence; a certificate of good standing issued by the State of Illinois; copies of invoices reflecting shipments to Cuban consignees; and certifications and affidavits from officers of claimant corporation. Claimant states that it has not received any of the funds for such shipments.

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There follows hereafter data concerning the shipments made to Cuban consignees, including information on unpaid accounts with the dates on which the items were due and payable:

<u>Invoice Date</u>	<u>Consignee</u>	<u>Amount</u>	<u>Due Date</u>
8/26/58	Papeleria Kompostela	\$1,031.62 (Net after credit)	11/26/58
9/19/58	Senor Andres Rodriquez	289.93 (Net after credit)	12/19/58
6/3/59	Senor Andres Rodriquez	607.92	9/3/59
6/12/59	Senor Andres Rodriquez	545.73	9/12/59
8/7/59	Cia. Papelera Armistad	722.40	10/7/59
8/23/59	Importadora Gorbea, S.A.	2,948.43 (Net after credit)	10/23/59
10/8/59	Papelera Regla, S.A.	273.35	1/8/60
10/29/59	Chacon, Alvarez y Cia.	407.21 (Net after credit)	1/20/60
10/30/59	P. Fernandez y Cia.	466.56	1/30/60
11/9/59	Suarez Gutierrez y Cia.	<u>834.90</u>	3/9/60
	TOTAL	\$8,128.05	

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 the aforementioned accounts receivable were lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the

contrary, such losses occurred on the respective maturity dates with regard to payments maturing after September 29, 1959. With respect to the dates of loss as to those goods sold, and for which payment was due prior to September 29, 1959, the Commission finds that the losses occurred on September 29, 1959, the effective date of Law 568.

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 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, as follows:

On \$2,475.20	From September 29, 1959
On 722.40	From October 7, 1959
On 2,948.43	From October 23, 1959
On 273.35	From January 8, 1960
On 407.21	From January 20, 1960
On 466.56	From January 30, 1960
On <u>834.90</u>	From March 9, 1960
TOTAL \$8,128.05	

CERTIFICATION OF LOSS

The Commission certifies that SANFORD INK COMPANY 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 Eight Thousand One Hundred Twenty-Eight Dollars and Five Cents (\$8,128.05) 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

26 JUN 1968

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).)