

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

IN THE MATTER OF THE CLAIM OF

WOLFF INTERNATIONAL, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1274

Decision No. CU

1674

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 WOLFF INTERNATIONAL, INC., in the amended amount of \$8,247.10 and is based upon the asserted loss of payment for merchandise shipped to 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) 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."

Officers of the claimant corporation have certified that the claimant was organized in the State of Wisconsin and that at all times between the respective dates of loss and presentation of this claim on March 31, 1967, more than 50% of the outstanding capital stock of the claimant corporation has been held by 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 evidence of record also discloses that the claimant herein, WOLFF INTERNATIONAL, INC. had 274 shares of stock outstanding on the asserted dates of loss and 269 shares were held by nationals of the United States and 1.82 per cent, or 5 shares, were held by persons who were not nationals of the United States; and that at the time of filing claim on March 31, 1967, and at the present time 100 per cent of the outstanding shares of stock is and was held by nationals of the United States.

The record includes copies of correspondence from the claimant, bills of lading, copies of invoices, and other data concerning shipments of merchandise to Cuban business firms, listed hereafter as consignees. This evidence discloses that the purchase price of the goods and accompanying charges for such shipments were, in some instances, paid in part by the consignees to the claimant or the Cuban representative

of the claimant, leaving certain balances due and payable. Other accounts for shipments made by claimant were not paid to the claimant's representative or the collecting bank by the consignee. Claimant states that it has not received any of the funds listed hereafter for such shipments.

There follows data concerning the shipments made to Cuban consignees, including information on the unpaid accounts, with the invoice dates and numbers and the amounts outstanding or which were due and payable by the consignees. (The listed amounts are the net balances after adjustment or credit):

<u>Supplier</u>	<u>Invoice No. and Date</u>	<u>Consignee</u>	<u>Amount Due</u>
Special Equipment Company (Illinois)	W.7815 May 14, 1959	Villalobos y Hijos	\$4,316.97
Chemtan Company (New Hampshire)	W.7746 August 31, 1959	Commercial la Curtidora	\$1,009.80
Chemtan Company	W.7964 November 25, 1959	Commercial la Curtidora	\$1,363.56
Wolff International	W.7953 November 23, 1959	Commercial la Curtidora	\$1,556.77

Evidence of record discloses that the claimant herein is the International Division for the Chemtan and Special Equipment suppliers, listed above, and collected certain funds for shipments, including those listed in the amounts of \$4,316.97, \$1,009.80, and \$1,363.56. The evidence also discloses that the balance due of \$4,316.97 on Invoice W.7815 is that balance remaining after partial payments to the representative of claimant in Cuba. Invoice W. 7746 is for the full amount of the shipment including charges; and invoices W.7964 and W.7953 are amounts due after deduction of respective commissions paid to the Cuban representative of claimant.

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 claimants, 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 subject 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 unpaid accounts maturing after September 29, 1959. However, with respect to the dates of loss as to those goods sold to Villalobos y Hijos (Invoice # W.7815) and Commercial la Curtidora (Invoice #W.7746), prior to September 29, 1959, the Commission finds that the losses occurred on September 29, 1959, the effective date of Law 568. The Commission further finds that in connection with Invoices W.7964 and W.7953 that the accounts were due and payable by the consignee within sixty (60) days from the dates of the invoices, or on January 25, 1960, and January 23, 1960, respectively, as recited in these invoices.

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 dates 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 losses arising from shipments of goods to Cuban consignees shall be increased by interest thereon at the rate of 6% per annum from the dates on which the losses occurred, to the date on which provisions are made for the settlement thereof, as follows:

On \$5,326.77 from September 29, 1959

On \$1,556.77 from January 23, 1960

On \$1,363.56 from January 25, 1960

Total - \$8,247.10

CERTIFICATION OF LOSS

The Commission certifies that WOLFF INTERNATIONAL, 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 Eight Thousand Two Hundred Forty-Seven Dollars and Ten Cents (\$8,247.10) 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 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

CERTIFICATION

This is a true and correct copy of the draft
of the Commission which was entered as
decision on MAY 17 1968

Francis Hester

Clerk of the Commission

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).)