

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

IN THE MATTER OF THE CLAIM OF

ATLANTIC EXPORT ENTERPRISES, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1276

Decision No. CU - 812

Counsel for claimant:

Joseph P. Canouse, Esq.

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 ATLANTIC EXPORT ENTERPRISES, INC., in the amount of \$5,671.87, 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."

Evidence of record discloses that claimant corporation was organized in Florida in 1958. An officer of the claimant corporation has certified that at all times between April 1, 1958, and the presentation of this claim on March 31, 1967, more than 50% of the outstanding capital stock has been owned by United States nationals. Additionally, the record discloses that all of claimant's outstanding stock is held by two persons, both of whom are nationals of the United States by birth. 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 claimant's invoices reflecting the sale and shipment of goods to Cuban consignees on sight draft terms. These invoices are as follows:

<u>INVOICE NO.</u>	<u>CONSIGNEE</u>	<u>AMOUNT</u>	<u>DATE</u>
4057	Oscar Ramos, Havana, Cuba	\$4,502.74	November 25, 1959
4064	Garage Avelino, Havana, Cuba	310.49	December 2, 1959
4082	Cia. de Piezas y Accesorios Santiago, S.A., Havana, Cuba	858.64	December 11, 1959

Claimant asserts that these collections were paid by the respective consignees to Banco Continental Cubano and that the funds were never released by the Cuban exchange control authorities; however, claimant has not submitted any bank correspondence advising of payment. Claimant has submitted copies of letters from its representative in Cuba, Carlos Marill Chomat. This correspondence contains general reference to payments made by

the above-named consignees; however, no specific references were made to the collections described above. Accordingly, in the absence of evidence establishing payment of these collections on specific dates or other evidence to the contrary, the Commission finds that these collections were due 30 days after their respective invoice dates. Claimant states that it has not received the funds.

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 the respective due dates of the 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 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:

On \$4,502.74 from December 25, 1959

On 310.49 from January 2, 1960

On 858.64 from January 11, 1960

CERTIFICATION OF LOSS

The Commission certifies that ATLANTIC EXPORT ENTERPRISES, 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 Five Thousand Six Hundred Seventy-One Dollars and Eight-Seven Cents (\$5,671.87) 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

14 DEC 1967

Edward D. Re
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, 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).)