

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

IN THE MATTER OF THE CLAIM OF

GENERAL ELECTRIC COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2038

Decision No. CU- 6143

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$5,397,303.00 and 4,319,050.00 Cuban Pesos is asserted by GENERAL ELECTRIC COMPANY based upon the asserted loss of investments in Cuba, debts for merchandise shipped to Cuba and payments to employees for losses 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 it was organized under the laws of the State of New York, that at all times pertinent hereto more than 50% of the outstanding capital stock was owned by nationals of the United States and that on June 10, 1966, of the 90,266,639 shares of stock outstanding, 89,507,369 were owned by individuals or firms resident in the United States and presumed to have been United States nationals. The Commission holds that GENERAL ELECTRIC COMPANY qualifies as a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claim is asserted for the following losses:

Nationalization of General Electric Cubana, S.A. Cuban subsidiary of claimant	\$3,164,517.00
Debts owed by Cuban enterprises	2,160,048.00
Expenses resulting from the nationalization acts by the Cuban Government	72,738.00
	<u>\$5,397,303.00</u>
Claimant's Guaranties of Loans to GE Cubana by Canadian Companies	4,319,050.00 Pesos

General Electric Cubana, S.A.

Claimant asserts a loss of \$3,164,517.00 for the nationalization of its wholly-owned Cuban subsidiary, General Electric Cubana, S.A. The record establishes and the Commission finds that General Electric Cubana, S.A. was owned in its entirety by claimant and that it was nationalized with its affiliated companies on October 24, 1960 under Resolution #3 as published in the Official Gazette. The corporation was organized under the laws of Cuba and does not qualify as a corporate "national of the United States" defined under Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that an American stockholder is entitled to file claim based upon an ownership interest

therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.) Therefore claimant is entitled to file this claim for the interest owned in the Cuban enterprise.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

The question in all cases will be to determine the basis of valuation which under the particular circumstances is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

At the time of its nationalization GE Cubana was engaged in the sale and distribution of electrical products in Cuba and was the sole stockholder in three Cuban corporations, Manufacturera General Electric, S.A., Genelectric Rayos-X S.A., and Bombillos General Electric de Cuba, S.A. In support of the values claimed for the properties lost, claimant has submitted a balance sheet for June 30, 1960, an appraisal of the land and buildings made in 1957, affidavits of company employees, correspondence and a copy of the claim filed with the Department of State in 1963.

The consolidated balance sheet of GE Cubana and its three Cuban subsidiaries for June 30, 1960 reflects the following:

<u>Assets</u>	
Cash	\$ 293,000.00
Customer Accounts & Notes Receivable less Reserves	3,771,000.00
Sundry Receivables Less Reserves	337,000.00
Inventories Less Reserves	1,983,000.00
Less Progress Collections on Contracts	(24,000.00)
Deferred Charges Less Reserve	24,000.00
Investments Less Reserve	2,000.00
Fixed Assets Less Reserve	845,000.00
Total Assets	<u>\$7,231,000.00</u>

Liabilities

Income Taxes Accrued	\$ 36,000.00
Accounts Payable	274,000.00
Due to IGE (current)	172,000.00
Notes, Debentures, Bank Loans & Overdrafts Payable	2,697,000.00
Sundry Creditors	34,000.00
Other Liabilities & Accruals	334,000.00
Deferred Income	599,000.00
Other Reserves	277,000.00
	<hr/>
Total Liabilities & Reserves	4,423,000.00
Capital Stock	1,400,000.00
Surplus	379,000.00
Due to IGE	1,029,000.00
	<hr/>
Total Net Worth	2,808,000.00
	<hr/>
Total Liabilities & Net Worth	\$7,231,000.00
	<hr/>

The net worth as calculated from this balance sheet would be \$1,779,000.00, after deducting the additional amount of \$1,029,000.00 owed claimant. The claimant, however, has submitted an appraisal which establishes a value of \$1,089,000.00 for the fixed assets, an increase of \$244,000.00 for the land and buildings owned by GE Cubana. Further, the balance sheet shows Investments Less Reserve to be worth \$2,000.00. These investments consisted of three shares of Series A stock of the Havana Biltmore Yacht and Country Club, determined to have a value of \$3,500.00 each, (See Claim of Arman E. Becker, Jr., Claim No. CU-1094.); one share of Inmobiliaria La Torre, S.A., valued at \$1,000.00 (See Claim of Frederick Snare Corporation, et al., Claim No. CU-2035.); 145 shares of Class D Stock of Ferrocarriles Occidentales de Cuba, S.A. valued at \$14,500.00 (See Claim of Ruth Anna Haskey, Claim No. CU-0849, 1968 FCSC Ann. Rep. 51.); and mortgage bonds of Compania Cubana de Electricidad valued at \$1,300.00 (See Claim of Boise Cascade Corporation, Claim No. CU-3548.). Accordingly, the account for Investments is increased by \$25,300.00.

The amount of the assets is to be decreased by the sum of \$67,000.00 which represents an amount receivable from IGE, a division of the claimant. Pursuant to Section 505(a) of the Act, debts due from an American concern may not be allowed unless they constituted charges on property nationalized, expropriated, intervened or taken by the Government of Cuba. (See Claim of Anaconda American Brass Co., Claim No. CU-0112, 1967 FCSC Ann. Rep. 60.)

Claimant has also submitted evidence that the accounts payable due claimant from the Cuban companies should be \$902,243.12 instead of the total sum of \$1,201,000.00 shown on the balance sheet as a result of certain recovery actions taken by claimant on goods shipped to the Cuban subsidiaries, reducing the liabilities by \$298,756.88.

Two accounts which are listed under "Liabilities" should be included as assets in part. The amount of \$4,000.00 for self-insurance is listed as a liability under "Reserves", and "Deferred Income", the balance due on installment sales, should be considered as an asset with a deduction for estimated expenses of collection. Claimant computes the balance of its deferred income after an allowance for collection expenses at \$303,000.00, and therefore \$307,000.00 is deducted from the liabilities and added to the assets.

After making the above adjustments, the Commission finds that the total assets of the Cuban subsidiaries on October 24, 1960 were \$7,740,300.00 and the total liabilities were \$4,846,243.12, making a net worth of \$2,894,056.88. The Commission concludes that by reason of its ownership interest of GE Cubana and its Cuban subsidiaries, claimant suffered a loss in the amount of \$2,894,056.88 when the companies were nationalized by the Government of Cuba, within the meaning of Title V of the Act.

The Commission further finds that the Cuban subsidiaries were indebted to claimant in the amount of \$902,243.12 for merchandise shipped. The Commission therefore concludes that claimant suffered an additional loss in that amount on October 24, 1960, making a total loss of \$3,796,300.00 resulting from the nationalization of the enterprises.

The loss of an additional investment in Compania Cubana de Electricidad 4-1/2% Income Debentures was asserted. However, these were not charges upon property taken by the Government of Cuba and, since the issuing corporation qualified as a national of the United States, the debt may not be considered.

Debts Owed by Cuban Enterprises

Claimant asserts a loss in the amount of \$2,160,048.00 for debts owed by Ferrocarriles Occidentales de Cuba, S.A. and Cia. Lamparas

Futuramas S.A. Evidence of record establishes that Ferrocarriles Occidentales de Cuba, S.A. issued promissory notes to claimant for the payment of locomotives, which notes were to be paid at the Chemical Bank New York Trust Company in New York. The notes were for \$121,606.43 each, except the last note due was for \$121,606.40, and they were to be paid at three month intervals. Upon the default in the payment of any note, all immediately became due and payable upon demand of the holder.

Note No. 5 matured March 30, 1961 and no payment was made and the Bank as holder made demand for the payment of the sixteen notes then outstanding.

The Commission therefore finds that Ferrocarriles Occidentales de Cuba was indebted to claimant on March 31, 1961 in the amount of \$2,067,309.28.

The record also establishes that Cia. Lamparas Futurama S.A. of Havana, Cuba was indebted to claimant in the amount of \$940.87 for shipments made on open account, all shipments having been made prior to June 17, 1959.

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 customers, 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 P. zolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, the Commission finds that claimant's property represented by the debts due was lost as a result of the intervention by the Government of Cuba and that, in the absence of evidence to the

contrary, the losses occurred on September 29, 1959 (the date of publication of Law 568) for the \$940.87 owed by Cia. Lamparas Futurama S.A. and on March 30, 1961 for the \$2,067,309.28 owed by Ferrocarriles Occidentales de Cuba S.A.

Expenses Resulting from the Nationalization Acts by Cuba

Claimant has asserted a loss in the amount of \$72,738.00 for additional expense caused by the Cuban Government. The sum of \$14,996.00 represents payments made to Cuban attorneys for their legal services in regard to the continuation of the operations of the subsidiaries in Cuba and obtaining the release of employees personal property for shipment to the United States. The balance of \$57,742 was for shipping charges and storage charges for material returned to claimant which had been enroute to Cuba, reconditioning and scrapping returned material, cost of scrapped material and excess of cost over sale price of distressed material.

In considering these portions of the claim, the Commission must determine whether such losses are certifiable under Title V of the Act.

Section 501 of the Act states:

It is the purpose of this title to provide for the determination of the amount and validity of claims against the Government of Cuba which have arisen since January 1, 1959, out of nationalization, expropriation, intervention, or other takings of, or special measures directed against, property of nationals of the United States,...

This Section and Section 503(a) of the Act, supra, both refer to losses from the taking of property. The record is clear that claimant has borne these expenses for material ordered and delivery unable to be completed, and for the protection of its subsidiaries in Cuba. The basis of this part of the claim, however, is not for property taken by Cuba but losses resulting indirectly from actions of the Cuban Government. The Commission finds that these expenses are not within the purview of Title V of the Act and this portion of the claim is therefore denied.

Guaranteed Loans

Claim has also been asserted for 4,319,050.00 Cuban Pesos based

upon guaranties made by claimant for loans made to GE Cubana by the Confederation Life Association and the Imperial Life Assurance Company both of Toronto, Canada. According to the evidence of record, the Confederation Life Association made two loans, one on November 23, 1959 for 1,850,000.00 Cuban Pesos and the other on February 16, 1960 for 500,000.00 Cuban Pesos, to GE Cubana. The Imperial Life Assurance Company made one loan of 150,000.00 Cuban Pesos to GE Cubana on December 14, 1959. All loans were to mature fifteen years from date and payments were to be made in Cuban Pesos. Claimant, as guarantor of the loans, guaranteed the punctual payments at maturity of all indebtedness and to make payments of any of any indebtedness owed by the Cuban subsidiary upon prompt notification by the lenders of any failure to make such payments. Payment of annual interest at the rate of 6% per annum was to be made and was made by GE Cubana in advance. The loans have not matured and no action has been brought against claimant to date for the payment of the amounts due. In 1963 claimant advised the lenders that further agreements with respect to the loans could not be made under the Cuban Assets Control Regulations but did advise them that the defense of any statute of limitations or of "laches" would not be raised in any action for the payment of the obligations.

According to the evidence of record, no payments have been made to the lenders by claimant since the nationalization of the Cuban subsidiaries. The amount of any payment which claimant may be required to make can not be ascertained at this time since the amount of interest to be paid is uncertain and the exchange rate for Cuban pesos undetermined.

The Commission therefore finds that claimant has not suffered any loss to date because of the guaranties made and the amount of any future loss indeterminate. Accordingly, this portion of the claim must be and is hereby denied.

Payments to Employees.

Claimant asserted a loss in the amount of \$25,509.12 in its claim filed with the Department of State in 1963 for payments made to certain employees for their property losses resulting from the actions of the Cuban Government. Claimant has submitted an assignment of claim from one of the former employees whose United States nationality has been established and who had suffered a loss exceeding the amount of \$5,886.71 received from claimant as a result of the taking of his personal property by the Government of Cuba on April 8, 1960 when the warehouse in which the property was stored was taken.

Accordingly, the Commission finds that claimant succeeded to an additional loss in the amount of \$5,886.71 within the meaning of Title V of the Act.

RECAPITULATION

The Commission concludes that claimant sustained the following losses within the meaning of Title V of the Act:

<u>Item</u>	<u>Date of Loss</u>	<u>Amount</u>
Nationalization of GE Cubana	October 24, 1960	\$3,796,300.00
Debts, Ferrocarriles Occidentales de Cuba	March 31, 1961	2,067,309.28
Cia. Lamparas Futurama S.A.	September 29, 1959	940.87
Payments to Employee	April 8, 1960	5,886.71
Total		<u>\$5,870,436.86</u>

The Commission has decided that in certifications of loss 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 as follows:


<u>FROM</u>	<u>ON</u>
September 29, 1959	\$ 940.87
April 8, 1960	5,886.71
October 24, 1960	3,796,300.00
March 31, 1961	2,067,309.28
Total	<u>\$5,870,436.86</u>

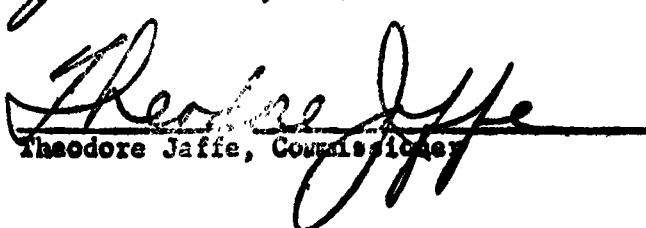
CERTIFICATION OF LOSS

The Commission certifies that GENERAL ELECTRIC 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 Five Million Eight Hundred Seventy Thousand Four Hundred Thirty-Six Dollars and Eighty-Six Cents (\$5,870,436.86) with interest 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

MAR 31 1971


Lyle S. Carlisle, Chairman


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 (1970).)