

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

IN THE MATTER OF THE CLAIM OF

INTERNATIONAL PAPER COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2592

Decision No. CU 1862

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 INTERNATIONAL PAPER COMPANY in the amount of \$1,071,518.32 based upon the asserted loss of payment for merchandise shipped to Cuba, monies due under a guarantee of payment and an unpaid balance on a note.

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.

Claimant, INTERNATIONAL PAPER COMPANY, a corporation organized under the laws of New York on January 3, 1898, states that the loss asserted in this claim was initially sustained by American Paper Exports, Inc., its wholly-owned subsidiary which was organized under the laws of New York on April 10, 1918; that on November 30, 1961 the latter wholly-owned subsidiary merged into the claimant corporation; and that pursuant to this merger the claimant corporation acquired all of the assets of American Paper Exports, Inc., including this claim.

The Assistant Secretary of claimant corporation has certified that at all times between June 23, 1941 and presentation of this claim on April 28, 1967, more than fifty (50) per cent of the outstanding capital stock of claimant corporation has been owned by nationals of the United States. The Commission finds, therefore, that American Paper Exports, Inc., prior to its merger into claimant on November 30, 1961, was a national of the United States and that INTERNATIONAL PAPER COMPANY is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The Assistant Secretary of claimant corporation states further that 83,879 of its 86,152 present stockholders are residents of the United States and presumed to be nationals of the United States and that 2,273 of its present stockholders are non-residents and presumed to be nationals of other countries.

Claimant asserts that American Paper Exports, Inc., sold paper products in Cuba until 1960 and that as of December 31, 1960, its net receivables on Cuban accounts including an unpaid balance on a note owing to American Paper Exports, Inc., by a Cuban entity and monies to which it was entitled under a guarantee of payment, amounted to \$1,071,518.32.

The evidence of record consists of copies of requests for collection, copies of ledger sheets, a copy of a note dated March 25, 1957 and copies of correspondence between American Paper Exports, Inc., and Bibb Manufacturing Company, all of which disclose that American Paper Exports, Inc., had several accounts with certain Cuban consignees and that the balance outstanding on December 31, 1960 for each consignee was as follows:

<u>Consignee</u>	<u>Amount Outstanding</u>	<u>Date and</u>	<u>Amount</u>	<u>Due</u>
Artes Grafica, S. A.	\$ 10,484.27	June 13, 1959	\$ 9,510.97	
		July 13, 1960		973.30
Cia. Internacional de Envases, S. A.	638,762.54	November 24, 1958		17,970.47
		December 2, 1958		41,670.86
		December 7, 1958		5,530.39
		December 8, 1958		42,715.20
		January 26, 1959		23,237.72
		February 13, 1959		23,289.38
		February 14, 1959		27,015.67
		February 29, 1959		17,875.19
		March 6, 1959		5,303.62
		March 8, 1959		35,720.00
		March 17, 1959		8,482.93
		March 21, 1959		34,876.69
		March 30, 1959		33,954.49
		April 13, 1959		17,906.49
		April 14, 1959		5,558.78
		April 30, 1959		44,524.97
		May 23, 1959		23,706.26
		June 1, 1959		17,762.58
		June 22, 1959		53,575.94
		June 29, 1959		17,896.21
July 8, 1959		7,156.19		
July 23, 1959		35,679.51		
August 1, 1959		5,109.95		
August 6, 1959		23,458.78		
August 17, 1959		22,871.59		
November 2, 1960		9,642.94		
November 9, 1960		12,638.87		
December 18, 1960		23,630.87		

<u>Consignee</u>	<u>Amount Outstanding</u>	<u>Date and</u>	<u>Amount Due</u>
Cia. Oriental Papelera, S. A.	\$ 29,377.08	March 27, 1958 December 16, 1958	\$ 5,756.56 23,620.52
Cia. Papelera Trebis, S. A.	3,865.02	December 18, 1960	3,865.02
Convertidora de Papel Lourdes, S. A.	1,162.69	December 30, 1959	1,162.69
Cultural, S. A.	107,193.33	July 4, 1959 July 17, 1959 August 1, 1959 February 1, 1960 October 10, 1960	4,196.49 1,823.08 4,363.35 75,344.73 21,465.68
Editorial Carteles, S. A.	33,476.63	September 28, 1959 November 2, 1959 December 22, 1959 May 21, 1960 July 16, 1960	6,239.39 6,547.66 6,896.52 6,896.53 6,896.53
Revista Romances, Editorial Romances	1,766.64	August 27, 1960	1,766.64
Envases Modernos, S. A.	11,706.82	December 30, 1959	11,706.82
P. Fernandez y Cia.	10,336.82	July 17, 1959 September 5, 1960	4,247.80 6,089.02
Galdo y Gonzalez	11,948.00	December 30, 1959 November 15, 1960	7,974.84 3,973.16
Amado Gonzalez Padron	1,651.42	November 4, 1959	1,651.42
Gutierrez Noriega y Cia.	4,399.21	September 5, 1960 December 17, 1960	2,570.42 1,828.79
Impresora Modelo, S. A.	8,220.19	April 3, 1959 May 22, 1959 June 23, 1959 December 20, 1959 December 22, 1959	2,343.81 308.85 2,336.09 784.64 2,446.80
Muniz Hnos y Cia.	1,391.38	June 20, 1959 September 5, 1959	475.67 915.71
Papelera Crespo, S. A.	5,629.96	August 20, 1960	5,629.96
Papelera Suarez Gutierrez y Cia., S. A.	3,466.17	November 15, 1960	3,466.17

<u>Consignee</u>	<u>Amount Outstanding</u>	<u>Date and</u>	<u>Amount Due</u>
Prensa Grafica	\$135,872.01	August 12, 1959	\$ 13,748.94
Cubana Revista		September 28, 1959	6,879.57
Bohemia		October 16, 1959	2,302.04
		October 20, 1959	13,748.94
		January 9, 1960	16,498.73
		March 2, 1960	16,498.73
		July 4, 1960	16,588.15
		July 16, 1960	16,553.38
		August 13, 1960	15,023.23
		August 20, 1960	1,495.37
		November 2, 1960	16,534.93
Roca Y Valdes	4,675.19	January 25, 1960	4,675.19
Rodriguez Alvarez Y Cia.	15,485.23	October 24, 1960	15,485.23
Antonio Suarez Y Cia.	26,944.25	November 26, 1960	26,944.25
		Total	\$1,067,814.85

The evidence of record also establishes that on April 21, 1960 American Paper Exports, Inc., entered into an agreement with the Bibb Manufacturing Company of Macon, Georgia guaranteeing payment to Bibb Manufacturing Company for the sale and delivery of merchandise to a Cuban entity; that the said Cuban consignee paid the draft in local currency to the Havana branch of the First National City Bank of New York; and that on June 28, 1960, the said bank advised Bibb Manufacturing Company that they were awaiting a dollar reimbursement release from the Cuban exchange authorities. The record further reflects that the dollar reimbursement release was never authorized and that American Paper Exports, Inc., paid Bibb Manufacturing Company \$6,479.53 (after deduction of commission and shipping expenses) in accordance with the guarantee of payment. Pursuant to the agreement of guarantee, American Paper Exports, Inc., had recourse against the consignee and therefore was entitled to the monies paid by the consignee to the Cuban bank.

The record also establishes that on March 25, 1957, Reciprocity Trading Company of Havana, Cuba, a Cuban entity, borrowed \$20,000.00 from American Paper Exports, Inc. The ledger sheets furnished by claimant reflect that a balance of \$13,000.00 was outstanding on this note as of January 1, 1961 and that this account was transferred to the books of claimant corporation after American Paper Exports, Inc., merged into claimant.

Thus, it appears that the total outstanding debts owed to American Paper Exports, Inc., amounted to \$1,087,294.38 and that claimant as the successor in interest to American Paper Exports, Inc., succeeded to the claim for the payment of such debts. Claimant asserts that neither it nor its predecessor in interest received any payment on these outstanding debts.

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 claimant suffered the above described losses 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 date payment was due with regard to the unpaid drafts maturing after September 29, 1959. As to drafts which matured on or prior to September 29, 1959, the Commission finds that the loss occurred on September 29, 1959, the effective date of Law 568. The Commission finds further that with regard to the amount deposited in the Havana branch of the First National City Bank of New York, the loss occurred on June 29, 1960, one day after acknowledgment of collection was made.

While it appears that the aggregate of claimant's losses totalled \$1,087,294.38, it also appears that certain commissions and credits were owed by American Paper Exports, Inc., to the Reciprocity Trading Company and to Perez Hermanos, S. A., which must be deducted from the outstanding indebtedness.

Under an agreement between American Paper Exports, Inc. and Reciprocity Trading Company, the latter acted as a sales representative for American Paper Exports, Inc.; and the evidence establishes that Reciprocity Trading Company had earned and was entitled to \$14,266.43 in commissions as of December 31, 1960. In addition, certain credits in the amounts of \$634.51 and \$875.12 were owed to Perez Hermanos, S. A. and Reciprocity Trading Co., respectively. Thus, the total amount of credits of \$15,776.06 must be deducted from the outstanding debt. With regard to the commissions and credits owed to Reciprocity Trading Company, no evidence was submitted to establish the individual dates that the commissions were earned. Accordingly, the total amount of the commissions and credits is being credited against the debts owed as of September 29, 1959. The Commission concludes, therefore, that the net amount which was due to claimant was in the sum \$1,071,518.32.

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).

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:

<u>ON</u>	<u>AS TO</u>
September 29, 1959	\$ 677,164.55
October 16, 1959	2,302.04
October 20, 1959	13,748.94
November 2, 1959	6,547.66
November 4, 1959	1,651.42
December 20, 1959	784.64
December 22, 1959	9,343.32
December 30, 1959	20,844.35
January 9, 1960	16,498.73
January 25, 1960	4,675.19
February 1, 1960	75,344.73
March 2, 1960	16,498.73
May 21, 1960	6,896.53
June 29, 1960	6,479.53
July 4, 1960	16,588.15
July 13, 1960	973.30

<u>ON</u>	<u>AS TO</u>
July 16, 1960	\$ 23,449.91
August 13, 1960	15,023.23
August 20, 1960	7,125.33
August 27, 1960	1,766.64
September 5, 1960	8,659.44
October 10, 1960	21,465.68
October 24, 1960	15,485.23
November 2, 1960	26,177.87
November 9, 1960	12,638.87
November 15, 1960	7,439.33
November 26, 1960	26,944.25
December 17, 1960	1,828.79
December 18, 1960	27,171.94
	<u>\$1,071,518.32</u> Total

CERTIFICATION OF LOSS

The Commission certifies that INTERNATIONAL PAPER 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 One Million Seventy-One Thousand Five Hundred Eighteen Dollars and Thirty-Two Cents (\$1,071,518.32) 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

MAY 15 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

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, 32 Fed. Reg. 412-13 (1967).)