

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

IN THE MATTER OF THE CLAIM OF

THE FAIRBANKS COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3755

Decision No. CU-3943

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 THE FAIRBANKS COMPANY on June 14, 1967 in the amount of \$14,939.68 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.

The Commission's Regulations provide that claims under Title V of the Act (Cuban claims) shall be filed with the Commission on or before May 1, 1967, (FCSC Reg., 45 C.F.R. See 513.1(d) (Supp. 1967)); and further that any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period. (Reg., Sec. 531.1(g))

No claim was filed with this Commission by or on behalf of claimant within the allowable period for timely filing of such claims, nor does the Commission have any record of any communication concerning this asserted loss.

The Commission has held, however, that it will accept for consideration on their merits claims filed after the deadline so long as the consideration thereof does not impede the determination of those claims which were timely filed. (See Claim of John Korenda, Claim No. CU-8255.)

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 New Jersey and that at all times between June 11, 1891, and the presentation of this claim on June 9, 1967, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that as of March 1960, the year of its Cuban losses, it had 366,148 shares of common stock and 2,970 shares of preferred stock outstanding. These shares were owned 99.7% and 99.9% respectively by nationals of the United States. Claimant further states that as of May 1967, the year a claim of loss was filed with the Commission, the

common stock was owned 99.8% by nationals of the United States and the preferred stock was owned 98.8% by such nationals. 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 covering its shipments of merchandise to A. Solares Y Cia. of Havana, a Cuban entity. The invoices are as follows:

<u>Date</u>	<u>Invoice Number</u>	<u>Amount</u>
November 13, 1959	Exp. 148	\$ 4,659.66
November 13, 1959	Exp. 148	1,416.91
November 27, 1959	EX- 146	1,805.85
November 27, 1959	EX- 175	222.78
November 27, 1959	EX- 178	322.53
November 27, 1959	EX- 179	581.34
November 27, 1959	EX- 188	113.21
November 27, 1959	EXP- 189	89.38
December 15, 1959	EX- 201	1,378.35
December 15, 1959	EX- 202	459.45
December 15, 1959	EX- 204	216.26
December 17, 1959	EX- 165	52.66
December 17, 1959	EX- 193	200.80
April 1, 1960	EXP 164	2,164.97
April 1, 1960	EXP 178	69.03
April 1, 1960	EXP 181	143.91
April 1, 1960	EXP 188	381.95
April 29, 1960	EXP 146	660.64
		<u>\$14,939.68</u>

Additionally the file contains a letter of August 26, 1966, from the First National City Bank, to the claimant stating that it received for collection six drafts from the claimant aggregating \$14,939.68 face amount and that they were presented and collected at the bank's Havana Branch, but that the proceeds were received in pesos and the bank never received permission to convert this peso collection into dollars. Further, 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 transfers of funds, in this and similar cases, 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].)

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

<u>ON</u>	<u>AS TO</u>
February 24, 1960	\$ 3,135.09
March 25, 1960	2,054.06
April 8, 1960	253.46
July 6, 1960	2,759.86
July 12, 1960	660.64
November 11, 1961	6,076.57
	<u>\$14,939.68</u>

the days following collection by the Cuban collecting banks.

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, FCSC Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that THE FAIRBANKS 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 Fourteen Thousand Nine Hundred Thirty-Nine Dollars and Sixty-Eight Cents (\$14,939.68) 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

OCT 1 1969

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).)