

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

IN THE MATTER OF THE CLAIM OF

DAN RIVER INTERNATIONAL
CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0928

Decision No. CU 2717

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 DAN RIVER INTERNATIONAL CORPORATION in the amount of \$96,129.82 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)(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 corporation, by an authorized officer, has certified that the claimant was organized in the Commonwealth of Virginia and that at all times between December 13, 1950 and presentation of this claim on December 30, 1966, 100% of the outstanding capital stock of the claimant has been owned by a United States national, to wit, Dan River Mills, Inc., a corporation organized under the laws of the Commonwealth of Virginia, on August 20, 1909. The Commission holds, therefore, that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

An officer of Dan River Mills, Inc. has certified that 34 of its stockholders, who are foreign residents, hold 30,271 shares of its stock out of a total issued of 5,616,139 shares. Those 34 stockholders are assumed to be nationals of their respective countries.

The record includes copies of bank correspondence concerning claimant's shipments of merchandise to Cuban enterprises, listed hereafter as the consignees. This evidence discloses that the purchase price of the goods and that the charges for such shipments were, in many instances, paid by the consignees to local Cuban banks; and that dollar reimbursement releases were never granted by Cuban government officials. Other drafts for shipments made by claimant were not paid to local Cuban banks by the consignees. Claimant states that it has not received any of the funds due for such shipments.

There follows hereafter data concerning the shipments made to the Cuban consignees, including information on paid and unpaid drafts, with the dates on which payments were acknowledged or the dates on which the

Paid Drafts:

<u>Consignee</u>	<u>Date Acknowledged</u>		<u>Amount</u>
Tiendas Los Precios Fijos	December 24, 1959	\$1,216.66	
	Less: credit	<u>178.75</u>	1,037.91
Kaba Hermanos, S en C	January 15, 1960	2,733.72	
	Less: credit	<u>539.08</u>	2,194.64
	January 18, 1960		3,728.97
Simon Lidsky	January 21, 1960	674.31	
	Less: credit	<u>152.40</u>	521.91
Aguirre Villar y Compania, S en C	January 25, 1960	3,374.63	
	Less: credit	<u>189.34</u>	3,185.29
Alvarez Suarez y Compania	January 25, 1960		8,194.98
G. Smolarcik	January 25, 1960	3,066.78	
	Less: credit	<u>151.60</u>	2,915.18
Villar Pica y Compania, S en C	February 16, 1960	1,826.13	
	Less: credit	<u>369.37</u>	1,456.76
Tejidos Karioka	March 10, 1960		3,224.80
Almacenes de Tejidos Riveria	March 10, 1960	1,823.65	
	Less: credit	<u>152.75</u>	1,670.90
Abraham U. Fisch	March 14, 1960	1,522.74	
	Less: credit	<u>145.85</u>	1,376.89
Manufacturas Campallas, S.A.	April 25, 1960	2,959.95	
	Less: credit	<u>94.38</u>	2,865.57
Compania Pantalón, S.A.	May 3, 1960	5,486.98	
	Less: credit	<u>378.89</u>	5,108.09
Villar Pica y Compania, S en C	May 18, 1960		4,201.75
Angel Martinez y Compania	June 8, 1960		1,533.71
G. Smolarcik	August 3, 1960		2,856.84
Angel Martinez y Compania	September 5, 1960		2,158.93
Pernas y Compania	September 8, 1960		4,252.43
Perez R. Maribona	September 28, 1960	1,285.28	
	Less: credit	<u>105.67</u>	1,179.61
Almacenes Ultra	November 3, 1960	1,997.84	
	Less: credit	<u>233.15</u>	1,764.69
Singer Hermanos	November 4, 1960	3,147.14	
	Less: credit	<u>432.18</u>	2,714.96
Matos y Compania, S en C	March 8, 1961		371.85
Pernas y Compania	March 15, 1961	2,827.56	
	Less: credit	<u>1,368.19</u>	1,459.37
Abelis Bakas	March 15, 1961	761.01	
	Less: credit	<u>85.29</u>	<u>675.72</u>

Unpaid Drafts:

<u>Consignee</u>	<u>Date Payment Due</u>		<u>Amount</u>
Hermanos Ferreiro y Compania	November 21, 1959	\$8,969.24	
	Less: credit	378.06	\$8,591.18
Necuze E. Hijos	November 29, 1959	1,140.66	
	Less: credit	<u>45.26</u>	1,095.40
Tejidos Nina, S.A.	November 30, 1959	1,144.23	
	Less: credit	<u>45.04</u>	1,099.19
Almacenes de Panos el Figurin, S.A.	December 8, 1959	1,164.45	
	Less: credit	<u>59.94</u>	1,104.51
Alberto Behar	December 9, 1959	492.32	
	Less: credit	<u>191.51</u>	300.81
Lopez Paz y Compania, S.A.	December 23, 1959	1,877.76	
	Less: credit	<u>1,189.12</u>	688.64
Tejidos Karioka	January 6, 1960	2,811.30	
	Less: credit	<u>221.17</u>	2,590.13
Compania Confecciones Clearmont	January 9, 1960	4,010.67	
	Less: credit	<u>864.56</u>	3,146.11
Jose Matos y Compania	January 9, 1960	2,306.53	
	Less: credit	<u>189.11</u>	2,117.42
Nivrigod E. Hijo	January 10, 1960	1,363.42	
	Less: credit	<u>94.24</u>	1,269.18
Lopez Paz y Compania, S.A.	January 12, 1960		1,946.35
	January 23, 1960		1,393.62
Angel Martinez y Compania	January 23, 1960	956.15	
	Less: credit	<u>270.19</u>	685.96
Matos y Compania, S en C	January 27, 1960	3,853.54	
	Less: credit	<u>354.74</u>	3,498.80
Lopez Paz y Compania, S.A.	January 30, 1960		5,662.16
Alvarez Suarez y Compania	February 8, 1960	216.32	
	Less: credit	<u>172.62</u>	43.70
Lopez Paz y Compania, S.A.	February 16, 1960		<u>244.91</u>
		TOTAL	\$35,478.07

\$60,651.75	Total Paid Drafts
<u>35,478.07</u>	Total Unpaid Drafts
\$96,129.82	Total Amount Claimed

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; and Claim of Etna Pozzolana Corporation, 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 losses occurred:

<u>ON</u>	<u>AS TO</u>
November 21, 1959	\$ 8,591.18
November 29, 1959	1,095.40
November 30, 1959	1,099.19
December 8, 1959	1,104.51
December 9, 1959	300.81
December 23, 1959	688.64
December 25, 1959	1,037.91
January 6, 1960	2,590.13
January 9, 1960	5,263.53
January 10, 1960	1,269.18
January 12, 1960	1,946.35
January 16, 1960	2,194.64
January 19, 1960	3,728.97
January 22, 1960	521.91
January 23, 1960	2,079.58
January 26, 1960	14,295.45
January 27, 1960	3,498.80
January 30, 1960	5,662.16
February 8, 1960	43.70
February 16, 1960	244.91
February 17, 1960	1,456.76
March 11, 1960	4,895.70
March 15, 1960	1,376.89

<u>ON</u>	<u>AS TO</u>
April 26, 1960	\$ 2,865.57
May 4, 1960	5,108.09
May 19, 1960	4,201.75
June 9, 1960	1,533.71
August 4, 1960	2,856.84
September 6, 1960	2,158.93
September 9, 1960	4,252.43
September 29, 1960	1,179.61
November 4, 1960	1,764.69
November 5, 1960	2,714.96
March 9, 1961	371.85
March 16, 1961	<u>2,135.09</u>
TOTAL	<u>\$96,129.82</u>

The above dates are the days after the date on which payment was acknowledged as to the paid amounts, and the dates payment was due as to the unpaid amounts.

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 losses occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that DAN RIVER INTERNATIONAL CORPORATION 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 Ninety-Six Thousand One Hundred Twenty-Nine Dollars and Eighty-Two Cents (\$96,129.82) 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.

AUG 14 1968

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).)