

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

IN THE MATTER OF THE CLAIM OF

U.S. PLYWOOD-CHAMPION PAPERS, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2741

Decision No. CU-1200

Counsel for claimant:

Thomas N. Kindness, Esq.

AMENDED PROPOSED DECISION

Under date of February 7, 1968, the Commission issued its Proposed Decision denying this claim for failure to sustain the burden of proof. Subsequently, new supporting evidence was submitted.

Upon consideration of the new evidence in the light of the entire record, it is

ORDERED that the Proposed Decision be and it is hereby amended.

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.

The record shows that claimant was organized under the laws of New York. It appears from the record that as of February 28, 1967, the United States Plywood Corporation, a New York corporation, and Champion Papers, Inc., formerly known as The Champion Paper and Fibre Company, an Ohio corporation, merged to form claimant corporation. An officer of claimant has certified that from the date of loss until the date of merger at least 50% of the outstanding capital stock of Champion Papers, Inc. (Champion) was owned by United States nationals; that from

February 28, 1967 to the date of filing at least 50% of the outstanding capital stock of claimant was owned by United States nationals; and that as of May 1, 1967, 98.24% of the outstanding capital stock of claimant was owned by United States nationals. The Commission holds that claimant and Champion, in whose favor this claim arose, qualify as nationals of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant asserts the following losses:

227 shares of stock in Envases Perga de Cuba, S.A. (Perga), a Cuban corporation	\$227,000.00
Debts due from Perga, less recoveries of \$23,200.89	<u>695,486.37</u>
Total	<u>\$922,486.37</u>

Envases Perga de Cuba, S.A.

On the basis of stock certificates, and a certificate from the National Bank of Cuba evidencing the payment of \$227,000.00 by Champion for said stock, the Commission finds that Champion owned 227 shares of stock in Perga, to which interest claimant succeeded upon the merger of February 28, 1967.

The record shows that Perga was incorporated in Cuba in 1954, and was engaged in manufacturing waxed paperboard containers used in the packaging of milk and other fluid food products. It further appears that Champion sold paperboard to Perga on a regular basis.

On October 13, 1960, the Government of Cuba published in its Official Gazette Law 890, which listed as nationalized Envases Perga de Cuba, S.A. The Commission therefore finds that Perga was nationalized by the Government of Cuba on October 13, 1960.

Since Perga was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of 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 a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

Claimant asserts a loss of \$227,000.00 on account of its stock interest in Perga, based upon its investment. The Commission has held, however, that while the amount of an investment in stock has some probative value, it is insufficient, in and of itself, to establish the value of such stock years after the date of investment. (See Claim of Warren and Arthur Smadbeck, Inc., et al., Claim No. CU-2465.)

The record includes copies of balance sheets for Perga as of December 31, 1959, July 31, 1960 and August 31, 1960, and statements by officials of Champion to the Department of State. Each of the balance sheets shows that Perga was insolvent, its liabilities being in excess of its assets. Thus, as of December 31, 1959, Perga's assets aggregated \$856,157.55 and its liabilities aggregated \$945,011.12. As of July 31, 1960 and August 31, 1960, Perga's assets aggregated \$881,954.38 and \$883,115.96, respectively, and its liabilities aggregated \$992,924.69 and \$1,001,052.13, respectively.

Accordingly, the Commission finds that on October 13, 1960, the date of loss, Champion's stock interest in Perga had no value. Therefore, the portion of the claim based upon a stock interest in Perga is denied.

Debts Due From Perga

Claimant asserts the loss of debts due from Perga in the amount of \$695,486.37.

The Commission has held that debts due from a nationalized Cuban enterprise which is insolvent constitutes a loss within the meaning of Title V of the Act. (See Claim of The Goodyear Tire and Rubber Company, Claim No. CU-0887.) Further, the Commission has certified such a loss particularly when the assets of the nationalized enterprise were sufficient to cover the debts. (See Claim of Honeywell, Inc., Claim No. CU-2678.)

The balance sheet for Perga as of August 31, 1960, the latest available financial statement, shows that Champion was indebted to Perga in the amount of \$18,847.46, and that Perga was indebted to Champion in the aggregate amount of \$621,178.40. Therefore, the net amount due Champion

from Perga was \$602,330.94. Accordingly, the Commission finds that claimant sustained a loss in the amount of \$602,330.94.

It further appears that Champion advanced additional amounts to Perga which were not shown on the balance sheets. A manufacturer in Germany had sold certain dairy filling machines to Perga. Due to Cuba's currency control laws, Perga could not forward the funds to pay the creditor abroad. The record shows that Champion paid the creditor \$46,829.24. However, Champion was able to recover \$13,748.19 from some of Perga's debtors abroad and \$9,452.70 pursuant to certain insurance claims of Perga. The Commission therefore finds that Champion sustained a further loss in the net amount of \$23,628.35 on October 13, 1960.

It is concluded that claimant's losses on October 13, 1960 aggregated \$625,959.29.

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.


Accordingly, the following Certification of Loss will be entered.

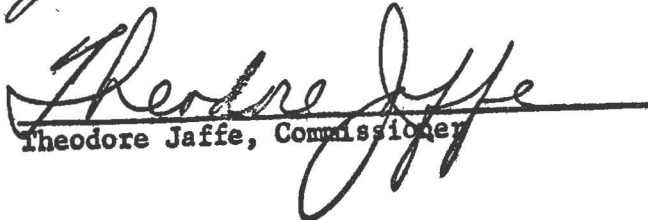
CERTIFICATION OF LOSS

The Commission certifies that U.S. PLYWOOD-CHAMPION PAPERS, 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 Six Hundred Twenty-Five Thousand Nine Hundred Fifty-Nine Dollars and Twenty-Nine Cents (\$625,959.29) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

Dated at Washington, D. C., and entered as the Amended Proposed Decision of the Commission

MAY 19 1971


Lyle S. Garlock, 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 Amended 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. 1.5(e) and (g), as amended (1970).)

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IN THE MATTER OF THE CLAIM OF

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Claim No. CU-2741

Decision No. CU-
1200

Counsel for claimant:

Thomas N. Kindness, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$922,486.37, was presented by U.S. PLYWOOD-CHAMPION PAPERS, INC., and is based upon the asserted loss of stock interests in a Cuban corporation, Envases Perga de Cuba, S. A., and debts owed to claimant corporation by that entity. An officer of claimant corporation has asserted that claimant is a national of the United States.

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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Other than the statements set forth in the claim form filed on May 1, 1967, and copies of correspondence with the United States Department of State, claimant did not submit evidence to establish this claim under the Act. Accordingly, by Commission letter of August 31, 1967, claimant corporation was advised as to the type of evidence proper for submission to establish this claim under the Act. No evidence was submitted in response to this letter.

Subsequently, on October 2, 1967, claimant corporation was invited to submit any evidence available to it within 45 days from that date, and claimant was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. In response to this letter claimant corporation informed the Commission on October 3, 1967, that the previously requested evidence would be submitted; however, no additional evidence has been received since that date.

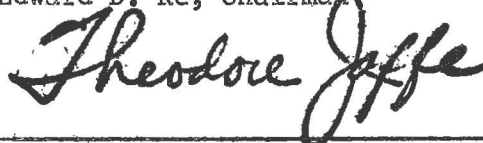
The Commission finds that claimant corporation has not met the burden of proof in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

FEB 7 1968



Edward D. Re, Chairman



Theodore Jaffe, Commissioner

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).)