

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

IN THE MATTER OF THE CLAIM OF

LEMPCO INTERNATIONAL, INCORPORATED

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0009

Decision No. CU 316

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 LEMPCO INTERNATIONAL, INCORPORATED in the amount of \$2,520.26 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:

Ther 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) of the Act defines the term "national of the United States" as "(B) 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 such corporation or entity."

An officer of the claimant corporation has certified that the claimant was organized in the State of Ohio and that at all times between 1940 and presentation of this claim on June 10, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by the United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that all of its 100 stockholders are nationals of the United States.

The record includes a copy of a letter, dated April 9, 1960, from Claimant's agent in Cuba, advising that two drafts had been paid, in Cuban currency, by "Bonachea and Busot, Maquinaria, S.A." of Holquin, Cuba. Other documentation of record establishes that these drafts were each in the amount of \$366.31 for a total of \$732.62.

The record also discloses the sale, by claimant to "Commercial Nasurco, S.A." of Havana, Cuba, of goods totaling \$1,143.45. In addition, the record contains a notice from the National City Bank of Cleveland, addressed to claimant, advising that under date of December 21, 1959, that bank had been advised by its Cuban correspondent of the consignee's inability to obtain permission for the transfer of said funds to claimant corporation.

Finally, the record establishes that on April 9, 1960, claimant was informed by its agent in Cuba that "Oria y Moro", of Santa Clara, Cuba, was unable to obtain permission to transfer funds totaling \$644.19, representing payment for merchandise in the amount, sold by claimant's agent to "Oria y Moro".

Claimant states that it has not received any of the above mentioned funds.

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 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 the Claim of The Schwarzenbach Huber Company, FCSC Claim No CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC 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 loss occurred on April 10, 1960 as to \$732.62, the day after claimant was advised of payment by its agent; on December 22, 1959 as to \$1,143.45, the day after The National City Bank of Cleveland was advised by its correspondent bank in Cuba, of the consignee's inability to obtain permission for the transfer of said funds; and on April 10, 1960 as to \$644.19, the day after the date on which claimant's agent advised of non-payment.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (See the Claim of Lisle Corporation, FCSC Claim CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by the 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:

- on \$732.62 from April 10, 1960
- on 1,143.45 from December 22, 1950
- on 644.19 from April 10, 1960

CERTIFICATION OF LOSS

The Commission certifies that LEMPCO INTERNATIONAL, INCORPORATED 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 Two Thousand Five Hundred and Twenty Dollars and Twenty-Six Cents (\$2,520.26) 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

SEP 20 1967

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 20 OCT 1967

Francis M. ...
Francis M. ...
Member of the Commission

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, 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).)