

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

IN THE MATTER OF THE CLAIM OF

CONSOLIDATED PAINT AND  
VARNISH CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 0212

Decision No. CU

306

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 CONSOLIDATED PAINT AND VARNISH CORPORATION in the amount of \$11,480.43 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 have 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 of 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 1904 and presentation of this claim on July 12, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that all of its stockholders are nationals of the United States. 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 copy of claimant's invoice No. D-69268 of June 3, 1959 reflecting the sale to Georamas Trading Company, S. A. (hereinafter referred to as "Geroamas") of Havana, Cuba, of goods totalling \$3,028.25, as to which freight, shipping and other attendant fees increased the total to \$3,417.28. The record also contains copy of invoice No. D-70789 of September 5, 1959 reflecting the sale to Georamas of goods totalling \$6,127.87 and an insurance charge of \$85.00 which increased the total to \$6,212.87; copy of invoice No. D-71608 of December 2, 1959 reflecting the sale to Georamas of goods totalling \$3,123.05, as to which the insurance charge increased the total to \$3,185.05; and copy of invoice No. D-72710 of February 5, 1960 reflecting the sale to Georamas of goods totalling \$4,353.15, as to which the insurance charge increased the total to \$4,413.15. The copies of invoice Nos. D-70789, D-71608, and D-72710 do not reflect the charges for ocean freight and consular fees which would increase the total amount of the invoices although the terms stated on the invoice clearly indicate Georamas' responsibility for these items.

In a letter of August 14, 1967 to the Commission claimant states that portions of invoice Nos. D-69268, D-70789 and D-72710 had been paid and the proceeds therefrom received by claimant. The claim therefore is for the balance of these three invoices and the entire amount of invoice No. D-71608.

Additionally, the record includes a copy of a letter of November 17, 1960 from the Banco Agricola E Industrial to claimant's bank in which it is stated that the collection of \$1,891.74 was paid by the drawee, Georamas Trading Company on February 2, 1960, and that the collection of \$1,891.73 was paid by the same drawee on May 24, 1960, and that the Banco Agricola E Industrial was still awaiting a dollar reimbursement release from the National Bank of Cuba, a Cuban Government agency. The Cuban Bank's reference number indicates that these drafts were drawn against invoice No. D-71608.

The November 17, 1960 letter from Banco Agricola E Industrial also confirms payment of the drafts drawn against the balance owing on the other invoices. It states that the collections of \$1,708.64, \$3,478.91 and \$2,509.41 were paid by the Georamas Trading Company and that the bank was still awaiting a dollar reimbursement release from the National Bank of Cuba. The Cuban Bank's reference numbers indicate that these collections were for drafts drawn against invoice Nos. D-69268, D-70789, and D-72710, respectively. Also contained in the file is a letter from Banco Agricola E Industrial dated November 7, 1961, wherein it is stated that the bank is still awaiting authority from the National Bank of Cuba to transmit collections.

The record includes claimant's statement that it has not received any of the aforementioned funds collected by Banco Agricola E Industrial.

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 The Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019.)

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 February 3, 1960 as to \$1,891.74; on May 25, 1960 as to \$1,891.73; on October 10, 1959 as to \$1,708.64; on February 13, 1960 as to \$3,478.91; and on August 27, 1960 as to \$2,509.41, the days after the collections were paid to Banco Agricola E Industrial Havana, Cuba.

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 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.

CERTIFICATION OF LOSS

The Commission certifies that CONSOLIDATED PAINT AND VARNISH 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 Eleven Thousand Four Hundred Eighty Dollars and Forty-Three Cents (\$11,480.43) 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

*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).)

COMMUNICATION

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

*Thomas Masterson*  
Clerk of the Commission