

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

IN THE MATTER OF THE CLAIM OF

AMERICAN & EFIRD MILLS, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0259

Decision No. CU - 1067

Counsel for claimant:

Helms, Mulliss, McMillan & Johnston

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 AMERICAN & EFIRD MILLS, INC. in the amount of \$173,385.86, 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) 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 owned, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

The record in the instant claim shows that the American Yarn & Processing Company, incorporated in North Carolina on July 30, 1920, and the Efird Manufacturing Company, organized in North Carolina, merged on May 28, 1952 to form the AMERICAN & EFIRD MILLS, INC., the claimant herein.

An officer of the claimant corporation has certified that at all times between July 31, 1920 and presentation of this claim on July 21, 1965, more than 50% of the outstanding capital stock of claimant and its predecessors has been owned by 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 100% of its stockholders are nationals of the United States.

Claimant assertedly shipped merchandise over a period of years to nine customers in Cuba, full payment for which was never received as a result of actions by the Government of Cuba. Due to loss or destruction of records, claimant has been unable to document its claim completely.

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).)

The record includes copies of invoices reflecting the sale by claimant of merchandise to Materias Primas Amefird S.A., Havana, Cuba, as follows:

<u>Invoice</u>	<u>Date</u>	<u>Amount</u>	<u>Shipping</u>	<u>Total</u>
C193	Aug. 20, 1957	\$ 18,406.04	\$ 854.13	\$ 19,260.17
C194	Aug. 28, 1957	1,629.19	114.23	1,743.42
C1053	Nov. 14, 1957	6,829.92		
C195	Nov. 14, 1957	3,970.40		
C196	Nov. 15, 1957	11,459.70	1,233.85	23,493.87

<u>Invoice</u>	<u>Date</u>	<u>Amount</u>	<u>Shipping</u>	<u>Total</u>
3514	Nov. 19, 1957	\$ 6,023.75	\$ 530.93	\$ 6,554.68
3732	Dec. 11, 1957	7,310.31		
24414	Dec. 11, 1957	2,536.92	638.75	10,485.98
3868	Dec. 26, 1957	14,711.18		
3869	Dec. 26, 1957	12,008.76	1,532.32	28,252.26
4019	Jan. 15, 1958	3,757.44	262.96	4,020.40
25020	Jan. 28, 1958	4,203.80	288.88	4,492.68
206	Apr. 29, 1958	21,555.94	1,302.48	22,858.42
1378	Sept. 16, 1958	13,962.20		
1379	Sept. 16, 1958	3,046.76		
22677	Sept. 16, 1958	398.45		
22678	Sept. 16, 1958	6,369.11	1,692.49	<u>25,469.01</u>
Total				\$ 146,630.89

Admittedly, claimant received payments applicable to the above account totalling \$20,252.47, leaving a balance of \$126,378.42 unpaid.

Claimant has submitted a copy of a letter dated March 26, 1962 from Banco Nacional de Cuba indicating an indebtedness to claimant from Simon Atran of Havana, Cuba, in the amount of \$6,970.60, on which collections had been made by the bank in local currency as follows:

November 3, 1959	\$ 3,485.30
February 8, 1960	485.30
May 11, 1960	300.00

Dollar remittances had not been made to claimant by the bank. The remaining \$2,700.00 was the balance due on a draft which was protested on May 5, 1960, but not paid.

The record further contains copies of invoices reflecting the sale of merchandise on sight drafts to Consolidated Textile Mills, Inc., Havana, Cuba, in the amount of \$3,001.17 on October 20, 1959, and \$2,883.83 on November 25, 1959, and to Textilera Essex S.A. in the amount of \$3,020.54 on November 3, 1959.

As evidence of indebtedness of Ribbon Fabrics Company, Havana, Cuba, claimant has submitted a copy of an unpaid draft in the amount of \$8,729.79, due on December 31, 1958.

Shipments of merchandise to Textilera Sylvania S.A. are evidenced by copies of invoices dated August 26, 1959 for \$1,215.00, September 9, 1959 for \$786.25, and September 15, 1959 for \$935.25, payment for which was due in each case in sixty days.

Indebtedness to claimant from Textilera Versailles S.A. for merchandise is evidenced by copies of three drafts, two invoices, and a letter of April 13, 1961 from the First National Bank of Boston. A draft dated May 13, 1958, due in sixty days, is in the amount of \$9,386.88; but the letter from the bank reveals that the unpaid balance on this draft was \$6,886.88. The other unpaid drafts, each due in sixty days, are dated June 3, 1958 in the amount of \$1,396.60, and October 1, 1958 in the amount of \$3,597.13. The invoices, payable at sight, are dated April 28, 1959 in the amount of \$1,155.00, and May 26, 1959 in the amount of \$1,018.44.

Claimant states that it has not received any of the funds indicated above as unpaid.

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 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 September 29, 1959, the date of publication of Cuban Law No. 568, on all amounts due on or before that date; on the due dates of other payments, or thirty days after the invoice date on sight drafts; and in the case of Simon Atran, on the day following each collection made by the Cuban bank,

and on the day of protest of the balance. Accordingly, the dates of loss are found to have been as follows:

On September 29, 1959 as to \$149,162.26
On October 25, 1959 as to \$1,215.00
On November 4, 1959 as to \$3,485.30
On November 8, 1959 as to \$786.25
On November 14, 1959 as to \$935.25
On November 19, 1959 as to \$3,001.17
On December 3, 1959 as to \$3,020.54
On December 25, 1959 as to \$2,883.83
On February 9, 1960 as to \$485.30
On May 5, 1960 as to \$2,700.00
On May 12, 1960 as to \$300.00

Therefore, the Commission finds that claimant sustained a total loss in the amount of \$167,974.90.

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 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.

The portion of this claim in the amount of \$620.69, based upon a sale of merchandise on June 30, 1955 to Cia Textilera Camelin, S.A., Havana, Cuba, is hereby denied, it appearing that such claim would have been barred, after three years following the accrual of the cause of action, under the pertinent Cuban statute of limitations, Art. 1967 of the Civil Code, before any action was taken by the Government of Cuba to intervene in claimant's contractual right within the meaning of Title V of the Act. (See the Claim of Emilio J. Pasarell, FCSC Claim No. CU-1585.) Other portions of the claim, based upon amounts not substantiated by the evidence of record, particularly certain freight charges and an indebtedness of \$3,876.01 from Republic Hosiery Mills of Havana, Cuba, are denied for claimant's failure to meet 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.

CERTIFICATION OF LOSS

The Commission certifies that AMERICAN & EFIRD MILLS, 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 One Hundred Sixty-Seven Thousand Nine Hundred Seventy-Four Dollars and Ninety Cents (\$167,974.90) 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

JAN 31 1968

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

This is a true and correct copy of the decision of the Commission which was entered as the Proposed Decision on MAR 4 1968

Janis M. ...
Clerk of the Commission

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).)