

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

IN THE MATTER OF THE CLAIM OF

EAGLE PENCIL COMPANY, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0331

Decision No. CU 0773

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 EAGLE PENCIL COMPANY, INC. in the amount of \$51,963.96 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 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 Delaware and that all times between December 26, 1922 and presentation of this claim on August 9, 1965, more than 50% of the outstanding capital stock of the claimant 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 all of its eight stockholders are nationals of the United States.

The record contains a copy of claimant's accounts receivable ledger for Confecciones La Mina, S.A. of Havana, Cuba reflecting a charge to that consignee of December 31, 1959 in the amount of \$157.54 of which \$63.22 is the unpaid balance; and a copy of his accounts receivable ledger for Gonzalez y Cia "El 35" of Havana, Cuba reflecting sales to that consignee of December 10, 1959 in the total amount of \$1,892.25.

Additionally, the record contains copies of claimant's invoices (except the invoice to Los Tiroleses which could not be located, but which is substantiated by a copy of a letter of May 31, 1960 from the Trust Company of Cuba acknowledging that a draft drawn on that consignee in the stated amount was paid to that bank) reflecting sales to the respective Cuban consignees in the amounts stated. Also in the record are copies of correspondence from collecting banks in Cuba stating that drafts drawn on several of the above consignees were paid (as indicated below) and that those collecting banks were awaiting a dollar reimbursement release from an agency of the Cuban Government:

<u>INVOICE DATE</u>	<u>CONSIGNEE</u>	<u>TOTAL</u>	<u>DATE OF PAYMENT</u>
June 18, 1959	Hnos. Rodriguez Arias	\$3,135.48	August 31, 1959
July 14, 1959	Hnos. Rodriguez Arias	330.45	August 31, 1959
July 7, 1959	Hnos. Rodriguez Arias	2,403.21	June 9, 1960
September 14, 1959	Hnos. Rodriguez Arias	1,327.34	None
September 22, 1959	Hnos. Rodriguez Arias	2,547.29	None
October 9, 1959	Hnos. Rodriguez Arias	775.24	None
June 18, 1959	Muniz y Cia.	676.99	None
November 20, 1959	Muniz y Cia.	642.90	None
October 20, 1959	Novedades Deportivas y Culturales, S.A.	929.21	None
November 30, 1959	Novedades Deportivas y Culturales, S.A.	1,036.08	March 28, 1960
May 19, 1959	Cardenas y Cia.	656.36	March 24, 1960
May 13, 1959	Domingo Sanchez	1,619.50	June 24, 1960
June 18, 1959	Domingo Sanchez	920.00	June 24, 1960
June 4, 1959	Papelera Regla, S.A.	60.00	November 6, 1959
May 13, 1959	Papelera Regla, S.A.	1,285.00	November 6, 1959
June 19, 1959	Impresora Modelo, S.A.	300.40	March 11, 1960
June 27, 1959	Andres Rodriguez	1,027.81	None
October 8, 1958	Andres Rodriguez (\$968.15 less \$484.10 paid)	484.05	None
August 6, 1959	Fernandez y Cia.	1,826.00	April 13, 1960
August 12, 1959	Cia. Papelera Amistad, S.A.	1,020.20	April 4, 1960
August 12, 1959	J. Suarez y Cia	1,440.75	May 19, 1960
September 14, 1959	Celestino Gutierrez	375.00	May 6, 1960
September 4, 1959	Celestino Gutierrez	647.00	May 6, 1960
November 14, 1958	Del Campo y Alonso	79.90	March 16, 1960
October 20, 1959	Jose Lopez Gonzalez	850.96	March 23, 1960
May 26, 1958	P. Fernandez y Cia.	550.00	None
July 8, 1957	Manuel Perez Fernandez	1,326.10	None
October 1, 1958	Cia. Impresora y Papelera	534.50	None

<u>INVOICE DATE</u>	<u>CONSIGNEE</u>	<u>TOTAL</u>	<u>DATE OF PAYMENT</u>
March 12, 1958	Papeleria Kompostela, S.A.	\$2,159.20	None
July 18, 1958	Los Tiroleses	1,614.00	May 31, 1960
April 20, 1959	H. Piloto Hno y Cia.	1,134.37	None
December 7, 1959	Editora Colegial, S.A.	748.38	May 5, 1960
December 1, 1959	Cultural, S.A.	3,125.35	None
December 7, 1959	Papelera Suarez Gutierrez	5,787.12	April 11, 1960
November 18, 1959	A. Lopez Cruz	875.01	October 13, 1960
December 1, 1959	H. Piloto Hno. y Cia.	1,353.34	None
November 18, 1959	Gutierrez Noriega	2,027.00	March 23, 1960
November 17, 1959	P. Fernandez & Co.	2,377.00	June 10, 1960

Claimant states that it has not received the 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 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:

<u>ON</u>	<u>AS TO</u>
September 29, 1959	\$11,358.95
November 7, 1959	1,345.00
November 10, 1959	775.24
November 15, 1959	663.67
November 23, 1959	1,273.64
December 15, 1959	663.67
December 21, 1959	929.21
December 23, 1959	1,273.65
January 3, 1960	3,125.35
January 11, 1960	1,892.25
February 1, 1960	63.22
February 2, 1960	1,353.34
February 21, 1960	642.90
March 12, 1960	300.40
March 17, 1960	79.90
March 24, 1960	2,877.96
March 25, 1960	656.36
March 29, 1960	1,036.08
April 5, 1960	1,020.20
April 12, 1960	5,787.12
April 14, 1960	1,826.00
May 6, 1960	748.38
May 7, 1960	1,022.00
May 20, 1960	1,440.75
June 1, 1960	1,614.00
June 10, 1960	2,403.21
June 11, 1960	2,377.00
June 25, 1960	2,539.50
October 14, 1960	875.01,

these dates being the date of publication of Law 568, the days following acknowledgment of payment in local currency by the collecting banks, or,

in those cases where no payment was made, the days by which the invoices should have been paid.

The Commission has decided that in the 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 losses occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

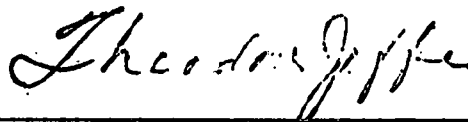
The Commission certifies that EAGLE PENCIL COMPANY, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fifty-one Thousand Nine Hundred Sixty-Three Dollars and Ninety-Six cents (\$51,963.96) 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

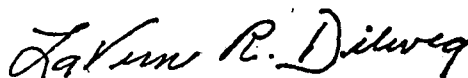
30 NOV 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



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).)

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.

RECEIVED
U.S. DEPARTMENT OF STATE
JUL 9 1953
The Commission's report of the decision
which was entered on the record