

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

IN THE MATTER OF THE CLAIM OF

PLANET METAL PRODUCTS CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0425

Decision No. CU-

1547

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 PLANET METAL PRODUCTS CORPORATION, in the amount of \$5,973.32, and is 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 own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

Evidence of record discloses that the claimant was organized in New York. An officer of the claimant corporation has certified that at all times between June 17, 1958 and presentation of this claim on September 13, 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.

Evidence of record discloses that all of the outstanding stock in claimant corporation was owned by nationals of the United States at all times pertinent to this claim.

The record includes copies of correspondence from banks and claimant's representative in Cuba (Marx, Aponte, & Cia.), copies of invoices, and other documents concerning the payment of drafts drawn on Cuban business firms, listed hereafter as the consignees. This evidence discloses that the consignees deposited funds in payment of the drafts with local Cuban banks, and that the dollar reimbursement releases or authorizations were never granted by Cuban governmental authorities. Claimant states that it has not received any of the funds claimed herein.

There follows hereafter a listing of drafts drawn on the Cuban consignees and the dates on which payment was made in local currency, where

ascertained, or the dates on which such payment was acknowledged:

<u>Consignee</u>	<u>Bank Collec- tion No.</u>	<u>Amount</u>	<u>Date Payment Made or Acknowledged</u>
Rivas y Cia.	R-37673	\$572.86	November 27, 1959
Cia. de Accesorios de Auto Garcia	BC-156219	809.37	December 10, 1959
Cia. Riera Toro & Van Twistern, S.A.	C 232447	252.80	January 14, 1960
Pedrosa Hno. y Cia.	48105	436.24	January 15, 1960
Pedrosa Hno. y Cia.	48104	436.24	January 27, 1960
Oscar Garcia	BC-160532	362.18	March 2, 1960
Rivas y Cia.	R 44140	575.66	July 12, 1960
Alvaro Fernandez Garcia	H-176599	888.65	October 8, 1960

The record contains a copy of a letter dated November 4, 1960 from Marx, Aponte & Cia. to claimant. This letter discloses that claimant had authorized the deduction of \$42.88 from the pending remittance of the Cia. Riera Toro & Van Twistern, S.A. collection. Accordingly, the Commission finds that the amount still due claimant on this collection is \$209.92.

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 Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58; [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, 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 absence of such evidence to the contrary, such losses occurred on the days after payments were made to the Cuban banks, where ascertained, or the days after notification of payments were made to claimant corporation.

Claimant has asserted, in addition to the above loss, a claim for interest from the dates of loss to the date of presentation of this claim. However, 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: Claim of Lisle Corporation, 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 date on which the loss occurred, to the date on which provisions are made for the settlement thereof, as follows:

	On \$572.86 from November 28, 1959
	On 809.37 from December 11, 1959
	On 209.92 from January 15, 1960
	On 436.24 from January 16, 1960
	On 436.24 from January 28, 1960
	On 362.18 from March 3, 1960
	On 575.66 from September 13, 1960
	<u>888.65</u> from October 9, 1960
TOTAL	\$4,291.12

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CERTIFICATION OF LOSS

The Commission certifies that PLANET METAL PRODUCTS 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 of Four Thousand Two Hundred Ninety-One Dollars and Twelve Cents (\$4,291.12) 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

APR 10 1968

**CERTIFICATION**  
This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on **MAY 17 1968**  
*James Madison*  
Clerk of the Commission

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

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 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).)