

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

IN THE MATTER OF THE CLAIM OF

ARBEKA WEBBING COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0510

Decision No. CU

734

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 ARBEKA WEBBING COMPANY in the amount of \$9,258.20 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."

An officer of the claimant corporation has certified that the claimant was organized in Rhode Island and that all times between November, 1938 and presentation of this claim on October 18, 1965, 100% 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.

The record contains copies of claimant's invoices numbered 5899, 6089, 6149 and 6573 from November 25, 1959 to January 26, 1960 reflecting the sales to Ministerio de Defensa Nacional-Sastreria de la Policia Nacional Revolucionaria in Havana, Cuba of goods totalling \$3,543.19; a copy of his invoice No. 4609 of August 18, 1959 reflecting the sale to Francisco Govantes of Havana, Cuba, of goods totalling \$798.16; a copy of his invoice No. 4155 of July 14, 1959 reflecting the sale to Francisco Govantes for Jose L. Bolinaga y Cia of Havana, Cuba, of goods totalling \$759.52; copies of his invoices numbered 4130 and 4131 of July 13, 1959 reflecting the sale to Francisco Govantes for Agusti Hnos y Cia of Havana, Cuba, of goods totalling \$3,087.83; and copies of his invoices numbered 4922 and 5807 of September 10, 1959 and November 18, 1959 respectively, reflecting the sales to Agusti Hnos y Cia of Havana, Cuba, of goods totalling \$1,069.50.

Additionally, the record contains copies of correspondence from the Bank of Nova Scotia, Havana, Cuba, to the First National City Bank of New York stating that drafts in the following amounts were paid on the stated dates by the respective consignees to Cuban banks, which were awaiting a dollar reimbursement release from the Exchange Board, a Cuban Government agency:

<u>CONSIGNEE</u>	<u>AMOUNT</u>	<u>DATE PAID</u>
Ministerio de Defensa-Sasteria de la Policia Nacional Revolucionaria	\$ 326.76	January 6, 1960
	1,347.55	January 14, 1960
	413.23	February 16, 1960
	1,105.29	May 4, 1960
Francisco Govantes for Agusti Hnos y Cia	1,645.34	February 16, 1960
	1,000.00	May 4, 1960
Francisco Govantes	798.16	August 29, 1960
Agusti Hnos y Cia	148.79	May 4, 1960
	898.42	September 12, 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).

With regard to that portion of the debt owed by the Ministerio de Defensa Nacional which was not paid to the Cuban collecting bank and which is still outstanding the question arises whether or not the non-payment of an external debt of the Cuban Government can be regarded as a nationalization, expropriation, intervention, or other taking of, or special measures directed against property of the claimant within the meaning of Section 503(a) of the Act. This question has been affirmatively decided by the Commission. (See the Claim of Clemens R. Maise, FCSC Claim No. CU-3191).

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	\$ 759.52
January 7, 1960	326.76
January 15, 1960	1,347.55
February 17, 1960	2,058.57
May 5, 1960	3,046.93
August 30, 1960	798.16
September 13, 1960	920.71

With the exception of the above item of \$759.52 which is the effective date of Law 568, the dates of loss are the days immediately following payment of drafts in local currency by the respective consignees.

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 date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that ARBEKA WEBBING COMPANY 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 Nine Thousand Two Hundred Fifty-Eight Dollars and Twenty Cents (\$9,258.20) 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
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, Commissioner

This is a true and correct copy of the decision of the Commission which was entered as the Final Decision on 11/9/67

Wanda M. [unclear] 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).)