

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

IN THE MATTER OF THE CLAIM OF

AMERICAN BOSCH ARMA CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0537

Decision No. CU 220

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$3,680.06, was presented by AMERICAN BOSCH ARMA CORPORATION 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 the State of New York and that at all times between 1919 and presentation of this claim on November 2, 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 99.91% of its stockholders were residents of the United States and assumes that substantially all of them were United States nationals; and that .09% stockholders were residents of foreign countries and assumed to be citizens of those countries.

The record contains copy of claimant's invoice No. C-19610 of October 19, 1959, reflecting the sale to Cia Accesorios De Autos Garcia Y Hnos S.A. of Havana, Cuba, of goods totalling \$712.01, as to which freight, shipping and other attendant fees increased the total to \$765.49; and copy of its invoice No. C-20390-A of November 17, 1959, reflecting the sale to Jose R. Hernandez of Cuba, of goods totalling \$1,385.00 and as to which freight, shipping and other fees increased the total to \$1,419.05; and a copy of its invoice No. C-20136 of October 12, 1959, reflecting the sale to Powe Machinery Co., S.A. of Cuba, of goods totalling \$1,327.11 and as to which freight, shipping and other fees increased the total to \$1,397.42. The file also contains invoice No. C-664441, dated August 4, 1959,

amending invoice No. C-19160, of June 24, 1969 to Powe Machinery, S. A. increasing the amount thereof by \$98.10 to correct latter invoice.

Additionally, the record includes a letter of March 22, 1960, from the First National City Bank of New York to claimant, in which it is stated that the collection of \$765.49 was paid on January 13, 1960, by the consignee (Cia Accesorios De Autos Garcia Y Hnos S.A.) and the First National City Bank of New York was still awaiting a dollar reimbursement release from the Currency Stabilization Fund a Cuban Government agency; a letter dated April 13, 1961, from the Marine Midland Trust Co. of New York, to claimant, stating that the collection of \$1,419.05 was paid on February 4, 1960, by the consignee (Jose R. Hernandez), and that the Bank was awaiting similar authorization from the Currency Stabilization Fund; a letter dated June 20, 1959, from the First National City Bank of New York to claimant, in which it is stated that the collection of \$1,397.42 was paid on June 9, 1960, by the consignee (Powe Machinery Co., S.A.) and that the Bank was still awaiting a dollar reimbursement release from the Currency Stabilization Fund. 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 on January 14, 1960, as to \$765.49, on February 5, 1960, as to \$1,419.05, and on June 10, 1960, as to \$1,397.42, the days after the collections were acknowledged by the banks and as to \$98.10 on September 29, 1959, the date when Cuban Law No. 568 was published.

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 American Cast Iron Pipe Company, FCSC Claim No. CU-0249).

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 AMERICAN BOSCH ARMA 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 Three Thousand Six Hundred Eighty Dollars and Six Cents (\$3,680.06) 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

**AUG 23 1967**

*Edward D. Re*

Edward D. Re, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*LaVern R. Dilweg*

LaVern R. Dilweg, Commissioner

~~CONFIDENTIAL~~

**This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on 25 SEP 1967**

*Frank M. ...*  
Clerk of the Commission

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).)

CU-0537