

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

IN THE MATTER OF THE CLAIM OF

THE TIMKEN ROLLER BEARING COMPANY

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No. CU-0552

Decision No. CU1250

Counsel for claimant:

**Day, Ketterer, Raley, Wright
& Rybolt, Esquires**

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 THE TIMKEN ROLLER BEARING COMPANY in the amount of \$11,956.51 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 Ohio and that all times between December 16, 1904 and presentation of this claim on November 4, 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 108 of its 31,984 stockholders were residents of foreign countries and assumed to be citizens of those countries.

The record includes copies of correspondence from banks, agents of the claimant, consignee business enterprises in Cuba, copies of invoices, and other data concerning shipments of merchandise to Cuban business firms, listed hereafter as the consignees. This evidence discloses that the purchase price of the goods and accompanying charges for such shipments were, in many instances, paid by the consignees to local Cuban banks, and that the dollar reimbursement releases or authorization were never granted by Cuban Government officials. Other drafts for shipments made by claimant were not paid to the collecting bank by the consignee. Claimant states that it has not received any of the funds for such shipments.

There follows hereafter data concerning the shipments made to Cuban consignees, including information on paid and unpaid drafts, with the dates on which payments were acknowledged or dates when the unpaid drafts were due and payable. (The listed amounts are net after adjustment or credit):

<u>Debit Memo or Invoice No. and Date</u>	<u>Consignee</u>	<u>Unpaid Drafts: Amount and Due date</u>	<u>Paid Drafts: Amount, Date and Acknowledging Bank</u>
11-30079 November 10, 1959	Champion Oil Company		\$ 714.33 January 22, 1960 Chase Manhattan Bank
6-30052 June 5, 1959	Consolidated Railroads of Cuba	\$ 618.00 July 5, 1959	
6-330148 June 16, 1959	"	59.99 July 16, 1959	
7-30081 July 8, 1959	"	80.60 August 8, 1959	
11-32057-B November 19, 1959	Minagro Industrial, S.A.		961.28 March 8, 1960 First National City Bank of New York
10-30202 October 21, 1959	Motores Diamond T de Cuba, S.A.		321.00 December 8, 1959 Banco Gelats
R-850 November 9, 1959	"	40.62 December 21, 1959	
10-30063 October 12, 1959	Pedrosa Hermano y Compania, S.A.		619.97 May 23, 1961 Trust Company of Cuba
11-30120 November 12, 1959	Perez Palacios y Compania, S.A.		1,238.36 April 18, 1960 Chase Manhattan Bank
9-30032 September 3, 1959	Powe Machinery Company, S.A.	58.28 November 3, 1959	
9-30033 September 3, 1959	"	1,066.92 November 3, 1959	
9-30311 September 25, 1959	"	720.48 November 25, 1959	
R-470 September 24, 1959	"	57.93 November 3, 1959	
R-831 October 22, 1959	"	42.69 November 25, 1959	
11-30072 November 9, 1959	Vda. De Alberto Gonzalez y Compania		2,283.19 January 26, 1960 Chase Manhattan Bank
		<hr/> \$2,745.51	<hr/> \$6,138.13 2,745.51 <hr/> \$8,883.64

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	\$ 758.59
November 3, 1959	1,182.13
November 25, 1959	763.17
December 9, 1959	321.00
December 21, 1959	40.62
January 27, 1960	2,283.19
January 23, 1960	714.33
March 9, 1960	961.28
April 19, 1960	1,238.36
May 24, 1960	619.97
	<u>\$ 8,883.64</u>

being the date of Law 568 as to the amount of \$758.59, the dates payment was due as to the unpaid accounts, and the days after the dates on which payment was acknowledged as to the paid accounts.

Although claim has also been asserted for \$3,072.87 as estimated interest for the period between the dates of loss and the date of presentation of this claim, claimant has not submitted evidence to establish that this interest was due from consignees. Accordingly, this part of the claim must be and hereby is denied.

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

CERTIFICATION OF LOSS

The Commission certifies that THE TIMKEN ROLLER BEARING 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 Eight Thousand Eight Hundred Eighty-Three Dollars and Sixty-Four Cents (\$8,883.64) 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

FEB 14 1968

Edward S. Re

Edward S. Re, Chairman

Theodore Jaffe

Theodore Jaffe, 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).)

CU- 0552

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.

CERTIFICATION
This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on MAR 18 1960
Francis Macfarlane
Clerk of the Commission.