

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

IN THE MATTER OF THE CLAIM OF

INDUSTRIAL RAW MATERIALS CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0560

Decision No. CU 000115

Counsel for claimant:

Nathan, Mannheimer, Asche,
Winer and Friedman
By Robert P. Wittes, Esq.

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 INDUSTRIAL RAW MATERIALS CORPORATION in the amount of \$5,806.47 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."

The President of claimant corporation has certified that the claimant was organized on January 4, 1946 under the laws of the State of New York and that at all times between March 1, 1946 and presentation of this claim on November 12, 1965, all of the outstanding capital stock of the claimant has been owned by Alfred Aufhauser, a national of the United States since his naturalization on November 12, 1943 in New York. The Commission holds that claimant corporation is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains copy of claimant's invoice No. 33481 dated October 16, 1959 reflecting the sale to Pedro Pens Casanovas, Apartado No. 2, Jiguani, Oriente, Cuba, of goods totalling \$2,175.00; and copy of his invoice No. 33742 dated December 16, 1959 reflecting the sale to J. Ruiz y Cia, S.L., Gloria 701, Havana, Cuba, of goods totalling \$3,564.00 and as to which freight, shipping and other fees increased the total to \$3,631.47.

Additionally, the record includes a letter of April 11, 1960 from the Chemical Corn Exchange Bank, in which it is stated that the collection of \$2,175.00 was paid by the consignee (Pedro Pons Casanovas) and another letter dated January 12, 1961 from Lorenzo G. Naya, claimant's agent in Cuba, stating that the collection of \$3,631.47 was paid by the consignee (J. Ruiz y Cia) to the Banco Agricola e Industrial, and that the banks were awaiting a dollar reimbursement release from the National Bank. 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 transfers of funds, in this and similar cases, 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.)

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 December 17, 1959 as to \$2,175.00, and March 9, 1960 as to \$3,631.47, the day after payment was made by the consignees to the Cuban banks.

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 INDUSTRIAL RAW MATERIALS 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 Five Thousand Eight Hundred Six Dollars and Forty Seven Cents (\$5,806.47) 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

JUL 26 1967

Edward D. Jaffe

Edward D. Jaffe, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

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).)

CERTIFICATION

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

Francis MacKinnon
Clerk of the Commission