

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

IN THE MATTER OF THE CLAIM OF

H. G. WATHEN & CO., INC.

Claim No. CU-0613

Decision No. CU 223

Under the International Claims Settlement
Act of 1949, as amended

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 H.G. WATHEN & CO., Inc. in the amount of \$6,538.17 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 the claimant corporation has certified that the claimant was organized in 1946 under the laws of the State of New York and that all times between 1959 and presentation of this claim on December 27, 1965, all 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 a copy of several invoices, bills of lading, an accountant's affidavit and a statement. All of these documents reflect sales in the aggregate amount of \$6,622.84. The purchases are as follows:

<u>Invoice No.</u>	<u>Consignee</u>	<u>Amount</u>
468/N-59	S. Bigelman y Cia.	\$451.36
467/N-59	Cuban American Toy Co.	996.80
447/N-59	Importadora de Saderia y. Quincalla, S. A.	742.50
302/N-59	Manhattan Import Co.	476.33
7/MBS-59	La Casa de Los Trucos	208.78
56/WSM-59	Gustavo Kates E. Hijos, S.A.	285.91
129/FP-59	Gustavo Kates E. Hijos, S.A.	539.10

In addition, the record contains a statement of claimant for the Cuban firm, Importaciones Camacho, S.A., showing an outstanding debt in the amount of \$2,922.06, together with an affidavit from Alfredo J. Cortina, the Cuban sales agent of claimant, who stated under oath that he had collected the sum of \$2,922.06 in behalf of claimant; that this amount was deposited in their bank account and was never remitted to claimant due to exchange regulations of the Cuban Government which prohibited the payment.

The record also contains several letters from The Chase Manhattan Bank of New York addressed to claimant, including a letter dated February 11, 1960, advising that its Cuban branch bank collected \$451.36 from S. Bigelman Y Cia; a letter dated March 10, 1960, wherein it is advised that its Havana branch bank collected \$476.33 from Manhattan Import Company; a letter dated February 8, 1960, advising that its Havana branch bank collected \$966.80 from Cuban American Toy Company; a letter dated January 13, 1960 advising that its Cuban Branch bank collected \$742.50 from Importadora de Saderia y Quincalla; and letters dated December 24 and 28, 1959 advising that its branch bank collected \$539.10 and \$285.91, respectively, from Gustave Kates E. Hijos, S.A. In addition the record contains a letter dated September 27, 1960 from Cromex Transportation Co., S.A., to claimant, wherein it advised that the consignee La Casa de Los Trucos paid \$198.34 to the National Bank in Cuba on March 1, 1960 after the deduction of \$10.44 which was paid to one Costino y Hno as agent's commission. Claimant states that it has never received these funds.

These letters from the bank also stated that its Cuban branch bank applied for a dollar reimbursement release from the Cuban Exchange Control Authority and that the release had not been granted.

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 the following dates:

December 15, 1959 as to \$285.91
December 18, 1959 as to \$539.10
January 6, 1960 as to \$742.50
January 29, 1960 as to \$996.80
February 11, 1960 as to \$451.36
March 2, 1960 as to \$198.34
March 4, 1960 as to \$476.33
October 2, 1961 as to \$2,922.06,
the day after the collection
or acknowledgment of collection
was made.

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 H.G. WATHEN & CO., INC. 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 Six Thousand Six Hundred Twelve Dollars and Forty Cents (\$6,612.40) 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

~~CONFIDENTIAL~~

Edward D. Re
Edward D. Re, Chairman

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

Theodore Jaffe
Theodore Jaffe, Commissioner

Thomas H. ...
Chief of the Commission

LaVern R. Dilweg
LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 14 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. 412-13 (1967).)