

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

IN THE MATTER OF THE CLAIM OF

PHILCO CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

*See Amended P.D. immediately
following*
Claim No. CU-0668

Decision No. CU 3528

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 PHILCO CORPORATION in the amount of \$130,826.05, 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)(B) of the Act defines the term "national of the United States" as 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.

Claimant corporation by an authorized officer has certified that the original creditor with respect to the present claim was Philco International, a Delaware corporation and wholly-owned subsidiary of Philco Pennsylvania, a Pennsylvania corporation; upon liquidation and dissolution of Philco International as of December 31, 1959, Philco Pennsylvania acquired all of its assets, and that the claimant PHILCO CORPORATION, a Delaware corporation, acquired from Philco of Pennsylvania on December 11, 1961 the claim hereinafter set forth. He further certifies that more than 50% of the outstanding capital stock of the aforementioned corporations has been owned by United States nationals and that less than 1% of Philco Pennsylvania was owned by non-nationals of the United States. The Commission holds that the claimant and its predecessors in interest are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains excerpts of the claimant's final accounts receivable ledger, copies of final accounts and open account balances and correspondence concerning the sale of goods to consignees in Cuba, with charges for freight, shipping and other attendant fees incurred prior to September 29, 1959 reflecting numerous transactions and credits, with balances as follows:

<u>Consignee</u>	<u>Amount</u>
Circuito CMQ, S.A.	\$ 129,589.21
Independent Electric Company of Cuba	<u>1,236.84</u>
Total	\$ 130,826.05

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 in 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 Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, in the instant claim, the Commission finds that the subject sums due were lost as a result of intervention by the Government of Cuba and that the losses occurred on September 29, 1959, the effective date of Law 568.

The Commission has decided that in 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 Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that the PHILCO 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 One Hundred Thirty Thousand Eight Hundred Twenty-six Dollars and Five Cents (\$130,826.05), with interest thereon at 6% per annum from September 29, 1959 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

FEB 26 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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).)

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AMENDED PROPOSED DECISION

By Proposed Decision dated February 26, 1969, the Commission certified a loss to PHILCO CORPORATION in the amount of \$130,826.05. Subsequently, the Commission has been advised that claimant changed its name to PHILCO-FORD CORPORATION, on September 21, 1966. Accordingly, the Certification of Loss, as restated below is entered, and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that the PHILCO-FORD 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 One Hundred Thirty Thousand Eight Hundred Twenty-six Dollars and Five Cents (\$130,826.05), with interest thereon at 6% per annum from September 29, 1959 to the date of settlement.

Dated at Washington, D. C., and
entered as the Amended Proposed
Decision of the Commission

MAR 26 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended 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).)