

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

IN THE MATTER OF THE CLAIM OF

R. J. REYNOLDS TOBACCO COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0684

Decision No. CU 3227

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 \$58,013.35, was presented by R. J. REYNOLDS TOBACCO COMPANY and is 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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

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."

Claimant corporation, by an authorized officer, has certified that the claimant was organized in the State of New Jersey, and that at all times between December 31, 1958 and the presentation of this claim on February 25, 1966, more than 50% of claimant's outstanding capital stock has been owned by United States nationals. An officer of the claimant has certified that at least 99% of the outstanding shares of the corporation are owned by persons believed to be nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act,

Claimant asserts that during 1959 and 1960, it made sales and shipments of merchandise totalling \$58,680.79 to Roberts Tobacco Company of Cuba. Credits in the amount of \$667.44 were applied to the total sales, thus reducing the balance assertedly due claimant to \$58,013.35. Claimant states that it has never received the proceeds from these transactions.

As evidence in support of its assertions, claimant has submitted a copy of its accounting records relating to the sales to Roberts Tobacco Company, which has been certified as accurate by claimant's bookkeeper. The Roberts account shows an outstanding balance due of \$58,680.79 as of April 1, 1960. The accounting records do not reflect the application of the \$667.44 credit.

Claimant has also submitted a copy of a letter sent to it by Ramon Rodriguez, Vice President of Roberts Tobacco Company, dated April 7, 1960. The letter recited that bank drafts had been paid by the consignee at the Havana Branch of the First National Bank of Boston, and that claimant would receive the proceeds after dollar exchange permission had been granted. The drafts in question are as follows:

November 17, 1959	\$ 6,100.01
December 26, 1959	6,101.01
January 14, 1960	4,919.85
January 14, 1960	<u>4,919.85</u>
	\$ 22,040.72

The record contains a copy of a letter from the Royal Bank of Canada, to claimant, dated April 30, 1960, concerning the payment of additional amounts at that bank. The letter states that claimant's drafts had been collected, on the dates and in the amounts set out below, and that dollar exchange authorization was pending before the Exchange Control Board, a Cuban Government agency.

December 28, 1959	\$ 7,378.05
December 28, 1959	7,378.05
January 22, 1960	2,597.70
January 14, 1960	3,537.75
January 14, 1960	<u>6,101.01</u>
	\$ 26,992.56

The record also contains the affidavits of Alex M. Roberts, President of Roberts Tobacco Company, and that of C. F. Benbow, claimant's credit manager. These affidavits recite, in substance, that Roberts Tobacco Company owed claimant a net amount of \$58,013.35, and that claimant has never received these 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 Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Claimant has stated that it is unable to produce documentation relating to \$8,980.07, the amount of the shipments for which no record of collection exists, less the \$667.44 credit applied to the Roberts account. However, claimant's accounting records do show the existence of such a debt, and the affidavit of Alex M. Roberts acknowledges that his company owed claimant the indicated amount. Consequently, the Commission concludes that claimant suffered a loss, in the total amount of \$58,013.35, within the meaning of Title V of the Act, and that the losses occurred on

November 18, 1959	as to \$ 6,100.01
December 27, 1959	6,101.01
December 29, 1959	14,756.10
January 15, 1960	19,478.46
January 23, 1960	2,597.70
April 1, 1960	8,980.07

in each case the date of loss being the day after the drafts were collected by the appropriate Cuban bank, or, in the case of the loss on April 1, 1960, the date of claimant's accounting records showing the indicated past due amount.

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 it is so ordered.

CU-0684

CERTIFICATION OF LOSS

The Commission certifies that R. J. REYNOLDS TOBACCO 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 Fifty-Eight Thousand Thirteen Dollars and Thirty-Five Cents (\$58,013.35) with interest thereon at the rate of 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

**OCT 30 1968**

*Leonard v. B. Sutton*  
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Leonard v. B. Sutton, Chairman

*Theodore Jaffe*  
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Theodore Jaffe, Commissioner

*Sidney Freidberg*  
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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).)