

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

IN THE MATTER OF THE CLAIM OF

ASGROW SEED COMPANY INTERNATIONAL

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0721

Decision No. CU **187**

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 ASGROW SEED COMPANY INTERNATIONAL in the amount of \$4,169.95 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 Connecticut and that at all times between January 2, 1945 and presentation of this claim on March 29, 1967, 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 all of its stockholders were residents of the United States and assumes that substantially all of them were United States nationals; and that no stockholders were residents of foreign countries and assumed to be citizens of those countries.

The record contains copy of claimant's invoice No. 2-162 of September 28, 1960 reflecting the sale to Hdos de Alberto R. Langwith y Cia., S. L. Havana, Cuba, of goods totalling \$746.05, as to which freight, shipping and other attendant fees increased the total to \$812.37; and copy of its invoice No. 1-952 of June 28, 1960 reflecting the sale to the same Cuban firm of goods totalling \$1,656.12 and as to which freight, shipping and other fees increased the total to \$1,829.54; and a copy of claimant's invoice No. 2-161 of September 27, 1960 reflecting a third sale to the same firm of goods totalling \$1,374.81 and as to which freight, shipping, and other fees increased the total to \$1,528.04.

Additionally, the record includes three letters from the Trust Company of Cuba dated December 29, 1960, March 27, 1961 and October 5, 1961 acknowledging receipt of payment of the above sums. Therein the claimant was informed that the Trust Company was awaiting approval of the exchange authorities for transmittal of said funds.

The record also includes a letter of July 29, 1965 from the Banco Nacional de Cuba, to claimant, in which it is stated that the overdue collections of \$4,169.95 was paid by the consignees and that the Banco Nacional was holding the collections until such time as favorable developments take place. Claimant states that it has not received the funds.

The Government of Cuba, of 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 30, 1960 as to \$812.37, on September 29, 1960 as to \$1,829.54, and on December 28, 1960 as to \$1,528.04, the days after the payments were 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, as follows:

December 30, 1960 as to \$812.37
September 29, 1960 as to \$1,829.54
December 28, 1960 as to \$1,528.04

CERTIFICATION OF LOSS

The Commission certifies that ASGROW SEED COMPANY INTERNATIONAL 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 Four Thousand One Hundred Sixty-Nine Dollars and Ninety-Five Cents (\$4,169.95) 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

Edward D. Re
Edward D. Re, Chairman

CERTIFICATION

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

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).)