

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

IN THE MATTER OF THE CLAIM OF

CROWN ZELLERBACH CORP.

Claim No. CU-0733

Decision No. CU -

1138

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Orrick, Dahlquist, Herrington & Sutcliffe

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 CROWN ZELLERBACH CORP. in the amount of \$17,345.23, 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 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 record discloses that this claim was originally owned by the Crown Zellerbach Overseas Corporation, a wholly owned subsidiary of the CROWN ZELLERBACH CORPORATION. All of the shares of outstanding stock of Crown Zellerbach Overseas Corporation were held by CROWN ZELLERBACH CORPORATION. Crown Zellerbach Overseas Corporation was dissolved on March 30, 1962, at which time this claim was acquired by claimant.

An officer of CROWN ZELLERBACH CORPORATION has certified that CROWN ZELLERBACH CORPORATION was organized in the State of Nevada and that at all times pertinent to this claim, more than 50% of the outstanding capital stock of both CROWN ZELLERBACH CORPORATION and its subsidiary was owned by nationals of the United States. The Commission holds that both claimant corporation and its predecessor in interest were and are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that 97.302% of its outstanding capital stock was held by persons who were nationals of the United States.

The record contains copies of invoices and correspondence from banks reflecting the sale of goods to two consignees; Chacon, Alvarez y Cia., and Tous y Matas, both of Havana, Cuba. This evidence discloses that the purchase price of the goods were paid by the consignees to local Cuban banks; and that the dollar reimbursement releases or authorization were never granted by Cuban Government officials. Claimant states that neither it nor its predecessor received any of the funds for such shipments.

There follows hereafter data concerning the shipments made to the two Cuban consignees, together with the dates on which payments were made or acknowledged:

<u>Invoice Date and Number</u>	<u>Consignee</u>	<u>Amount</u>	<u>Date of Payment or acknowledgment</u>
June 2, 1959 TO-414	Tous y Matas	\$ 355.22	April 13, 1960
June 5, 1959 SHO-883	Tous y Matas	3,722.80	April 13, 1960
July 10, 1959 SHO-908	Tous y Matas	1,752.62	April 13, 1960
October 7, 1959 SHO-958	Tous y Matas	2,710.82	January 18, 1960
July 20, 1959 CO-2667	Tous y Matas	4,009.78	February 29, 1960
January 20, 1960 CO-2924	Tous y Matas	4,162.11	September 5, 1960
December 10, 1959 TO-608	Chacon, Alvarez y Cia.	631.88	February 9, 1960

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 losses occurred on the days after payments were made to the Cuban banks, where ascertained, or the days after notification of payments were made to claimant's predecessor.

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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

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:

On \$2,710.82 from January 19, 1960

On 631.88 from February 9, 1960

On 4,009.78 from March 1, 1960

On 5,830.64 from April 14, 1960

On ~~4,162.11~~ from September 5, 1960
\$17,345.23

CERTIFICATION OF LOSS

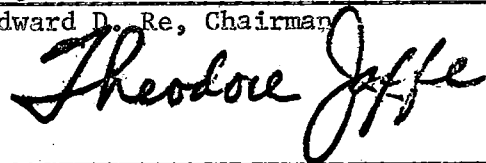
The Commission certifies that CROWN ZELLERBACH CORPORATION succeeded to and suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seventeen Thousand Three Hundred Forty-Five Dollars and Twenty-Three Cents (\$17,345.23) 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

FEB 7 1968



Edward D. Re, Chairman



Theodore Jaffe, 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).)

CU- 0733

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.

CERTIFICATION
This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on MAR 13 1963

Francis Macfarlane
Clerk of the Commission