

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

IN THE MATTER OF THE CLAIM OF

CUMMINS ENGINE COMPANY, INC.

Claim No. CU -0745

Decision No. CU - 803

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

R. B. Bush, Esq.

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 CUMMINS ENGINE COMPANY, INC., in the amount of \$37,308.46, 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 national 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 claimant is an Indiana corporation. An officer of the claimant corporation has certified that all times between February 1919 and presentation of this claim on May 3, 1966, 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 approximately 1.08% of its stockholders have addresses listed outside of the United States, and these stockholders, 50 in number, hold approximately .132% of the claimant's capital stock.

The record contains copies of drafts with attached copies of bank correspondence confirming that payment was made by the Cuban drawees to Cuban banks in local currency on or before the following dates:

<u>Draft No.</u>	<u>Drawee</u>	<u>Amount</u>	<u>Date of Payment or Acknowledgment</u>
534	Agencia de Tractores y Equipos, S. A., Havana, Cuba	\$3,284.42	September 10, 1959
1257	Importadora de Piezas la Federal, S.A., Havana, Cuba	1,365.70	December 16, 1959
1286	Agencia de Tractores y Equipos, S. A., Havana, Cuba	5,336.97	December 16, 1959
1397	Importadora de Piezas la Federal, S. A., Havana, Cuba	116.96	January 22, 1960
1492	Importadora de Piezas la Federal, S. A., Havana, Cuba	1,284.06	January 22, 1960

<u>Draft No.</u>	<u>Drawee</u>	<u>Amount</u>	<u>Date of Payment or Acknowledgment</u>
1394	Agencia de Tractores y Equipos, S. A., Havana, Cuba	\$1,037.68	January 29, 1960
1457	Consolidated Railroads of Cuba, Camaguey, Cuba	2,772.38	February 11, 1960
1435	Agencia de Tractores y Equipos, S. A., Havana, Cuba	3,163.57	March 3, 1960
1458	Agencia de Tractores y Equipos, S.A., Havana, Cuba	2,268.13	March 3, 1960
1315	Importadora de Piezas la Federal, S.A., Havana, Cuba	1,465.46	March 24, 1960

Evidence of record discloses that Draft No. 1286 was drawn and paid in the amount of \$5,528.23. Subsequent to payment, claimant acknowledged an error in computing the amount and authorized the Royal Bank of Canada, Havana, Cuba, to reduce the amount to \$5,336.97. Accordingly, claimant asserts its claim for the reduced amount. It should be noted that in computing its claim, claimant has asserted that Draft No. 534 was in the amount of \$3,284.24; however, evidence of record establishes that the correct amount is \$3,284.42.

The record also contains copies of two sight drafts drawn by claimant against Agencia de Tractores y Equipos, S.A., which claimant asserts were paid in local currency. These drafts are identified as follows:

<u>Draft No.</u>	<u>Invoice No.</u>	<u>Amount</u>	<u>Draft Date</u>
1420	42548	\$13,453.97	November 17, 1959
2920	83285	1,070.06	June 21, 1960

Although claimant has submitted copies of bank correspondence, as well as invoices evidencing shipment, this correspondence establishes only that these drafts had been received by Cuban banks for presentment to the drawee. The correspondence does not firmly establish dates of presentment and payment. Accordingly, in absence of evidence to the contrary, the Commission finds that these drafts were presented and due for payment 30 days after their respective dates of issuance.

Additionally, the record contains copies of claimant's invoices as follows:

<u>Invoice No.</u>	<u>Amount</u>	<u>Invoice Date</u>
150886	\$ 78.67	April 21, 1960
151443	35.61	June 14, 1960
83849	136.00	June 30, 1960
152693	82.39	July 13, 1960
151989	71.17	September 22, 1960
152048	247.59	September 22, 1960
152049	31.85	September 22, 1960

Invoice No. 83849 reflects the sale and shipment of merchandise to Agencia Tractores y Equipos, S.A.; the remaining invoices reflect the shipping charges for material shipped to that consignee under other invoices. The terms stated on the above invoices as "sight draft". In the absence of evidence to the contrary, the Commission finds that the collections based on these invoices were due 30 days after the respective invoice dates.

Claimant states that it has not received the 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 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, such losses occurred on the respective maturity dates with regard to the unpaid collections maturing after September 29, 1959. The Commission further finds that in those instances in which payments were made by Cuban consignees, 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 corporation. However, with respect to the date of loss for the payment made by the drawee of Draft No. 534, prior to September 29, 1959, the Commission finds the loss 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 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 \$ 3,284.42 from September 29, 1959  
On 20,156.64 from December 17, 1959  
On 1,401.02 from January 23, 1960  
On 1,037.68 from January 30, 1960  
On 2,772.38 from February 12, 1960  
On 5,431.70 from March 4, 1960  
On 1,465.46 from March 25, 1960  
On 78.67 from May 21, 1960

On \$ 35.61 from July 14, 1960  
On 1,070.06 from July 21, 1960  
On 136.00 from July 30, 1960  
On 82.39 from August 13, 1960  
On 356.61 from October 22, 1960

CERTIFICATION OF LOSS

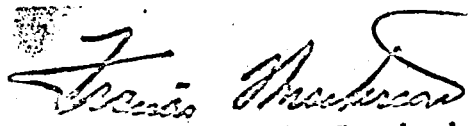
The Commission certifies that CUMMINS ENGINE COMPANY, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-Seven Thousand Three Hundred Eight Dollars and Sixty-Four Cents (\$37,308.64) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

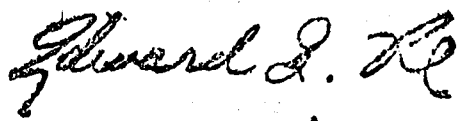
Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

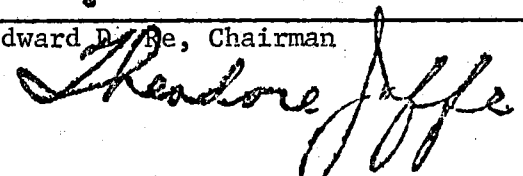
7 DEC 1967

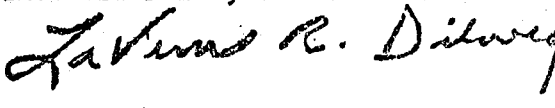
CERTIFICATION

This is a true and correct copy of the decision  
of the Commission which was entered as the Final  
Decision on July 9, 1968

  
Francis Anderson  
Clerk of the Commission

  
Edward D. Re, Chairman

  
Theodore Jaffe, Commissioner

  
LaVern R. Dilweg, 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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