

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

IN THE MATTER OF THE CLAIM OF

ARMSTRONG CORK INTER-AMERICAS, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0758

Decision No. CU- **438**

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 ARMSTRONG CORK INTER-AMERICAS, INC., in the amount of \$1,767.96 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, of or 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 Armstrong Panam Corporation (a Pennsylvania corporation) amended its Articles of Incorporation to change its name to ARMSTRONG CORK INTER-AMERICAS, INC. (a Pennsylvania corporation) in March, 1962. In December, 1964, ARMSTRONG CORK INTER-AMERICAS, INC. (a Pennsylvania corporation) was reorganized by means of dissolution and reincorporation as ARMSTRONG CORK INTER-AMERICAS, INC., (a Delaware corporation). ARMSTRONG CORK INTER-AMERICAS, INC. is the claimant herein.

Claimant and its predecessors have at all times been wholly owned subsidiaries of the Armstrong Cork Company, a Pennsylvania corporation. An officer of the parent, Armstrong Cork Company, has certified that at all times between September 1960 and the presentation of this claim, on June 14, 1966, more than 50% of the outstanding capital stock of the Armstrong Cork Company, 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. The Armstrong Cork Company states that 0.65% of its stockholders were residents of foreign countries and assumed to be citizens of those countries.

The record contains copies of the following invoices reflecting sales, by claimant's predecessor, Armstrong Panam Corporation, to three Cuban consignees, in the total amount of \$1,767.96:

Goods Sold to Compania Distribuidora de Calzado, S.A., Matanzas, Cuba

<u>Invoice Number</u>	<u>Net Amount</u>	<u>Due Date</u>
P-8220	\$272.48	February 21, 1959
P-8759	237.83	May 15, 1959
P-8965	204.51	July 28, 1959

Goods Sold to Laboratorios Giol, S.A., Havana, Cuba

<u>Invoice Number</u>	<u>Net Amount</u>	<u>Due Date</u>
P-82995	\$428.34	December 8, 1959

Goods Sold to Juan Augusto Navarro, Marianao, Cuba

<u>Invoice Number</u>	<u>Net Amount</u>	<u>Due Date</u>
P-83069	\$207.93	December 7, 1959
P-83069	207.93	January 6, 1960
P-83069	207.94	January 5, 1960

Claimant states that neither it nor its predecessor has 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's predecessor 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 predecessor corporation, 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 the subject 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 invoice due dates with regard to those transactions occurring after September 29, 1959. However, with respect to the dates of loss as to

goods sold to Compania Distribuidora de Calzado, S.A., prior to September 29, 1959, the Commission finds that the loss occurred on September 29, 1959, the effective date of Law 568.

Therefore, the Commission finds that the claimed property was lost on the following dates:

<u>Invoice Number</u>	<u>Net Amount</u>	<u>Date of Loss</u>
P-8220	\$272.48	September 29, 1959
P-8759	237.83	September 29, 1959
P-8965	204.51	September 29, 1959
P-82995	428.34	December 8, 1959
P-83069	207.93	December 7, 1959
P-83069	207.93	January 6, 1960
P-83069	207.94	January 5, 1960

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 dates of loss to the date of settlement (See the Claim of Lisle Corporation, FGSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss shall be increased by interest thereon at the rate of 6% per annum from the dates on which the losses occurred, to the date on which provisions are made for the settlement thereof, as follows:

On \$272.48 from September 29, 1959

On 237.83 from September 29, 1959

On 204.51 from September 29, 1959

On 428.34 from December 8, 1959

On 207.93 from December 7, 1959

On 207.93 from January 6, 1960

On 207.94 from January 5, 1960

CERTIFICATION OF LOSS

The Commission certifies that ARMSTRONG CORK INTER-AMERICAS, INC., 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 One Thousand Seven Hundred Sixty-Seven Dollars and Ninety-Six Cents (\$1,767.96) 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

OCT 18 1967

*Edward D. Re*

Edward D. Re, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*LaVern R. Dilweg*

LaVern R. Dilweg, Commissioner

This is a true and correct copy of the decision of the Commission which was entered as the Final Decision on 21 NOV 1967

*Francis Anderson*  
Mark of the Commission

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).)