

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

IN THE MATTER OF THE CLAIM OF

ALLEN-BRADLEY COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0805

Decision No. CU-
2006

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 ALLEN-BRADLEY COMPANY, in the amended amount of \$16,153.63, 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)(B) of the Act defines the term "National of the United States" as 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 in this claim discloses that claimant corporation is a corporation organized under the laws of the State of Wisconsin. An officer of claimant corporation has certified that at all times between December 14, 1903, and the presentation of this claim on August 22, 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 all of its outstanding stock is beneficially held by nationals of the United States.

Claimant asserts this claim in the amended amount of \$16,153.63. Claimant asserts that it shipped merchandise to its Cuban representative,, Distribuidoras Electro-Industriales, S.A., of Havana, Cuba, and that this Cuban consignee paid the collecting drafts to the Havana Branch of the First National City Bank of New York. Claimant further asserts that \$16,153.63 is the net unremitted proceeds of the payments by the consignee and that these funds have never been received by claimant. Claimant states that it has correspondence from the consignee and the Manufacturers Trust Company which relates that the drafts were paid to the local Cuban bank;; but none of this correspondence is of record.

Claimant has submitted copies of invoices relating to the, assertedly, paid drafts. The amounts stated in these invoices, less a partial payment received by claimant, total \$15,498.38. Claimant has also submitted copies of four invoices representing the shipment of merchandise valued at \$280.65 to the above-named consignee. These four invoices are not included in the computation of the claimed amount of \$16,153.63, and are described as "unpaid invoices not subject of draft collection procedure".

There follows hereafter a listing of the invoices of record including the invoice number, date, amount, the terms stated therein, and where applicable, the total amount of related invoices:

<u>Invoice Date and Number</u>	<u>Invoice Terms</u>	<u>Amounts</u>
December 3, 1958 EX-4432	include in next draft	\$ 29.40
June 11, 1959 EX-5756	2% 10th proximo- 30 days net	33.07
August 20, 1959 EX-6151	2% 10th proximo- 30 days net	145.20
September 29, 1959 EX-6169(A) EX-6169(B) EX-6169(C) EX-6169(D)	60/90/120 - D/S, D.A.	\$1,720.29 1,877.70 758.30 827.91 <u>\$5,184.20</u>
		5,184.20
September 29, 1959 EX-6396	60 D/S, D/A	145.20
October 16, 1959 EX-6449(A) EX-6449(B) EX-6449(C)	60/90/120 - D/S, D/A	788.04 1,655.61 326.70 <u>\$2,770.35</u> less payment received <u>- 923.45</u> <u>\$1,846.90</u>
		1,846.90
October 30, 1959 EX-6477(A) EX-6477(B) EX-6477(C) EX-6477(D)	60/90/120 - D/S, D/A	1,544.73 3,663.00 1,267.86 731.90 <u>\$7,207.49</u>
		7,207.49
November 23, 1959 EX-6612(A) EX-6612(B)	60 D/S, D/A	1,018.99 95.60 <u>\$1,114.59</u>
		1,114.59
December 2, 1959 EX-6734	2% 10th proximo- 30 days net	72.98

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).

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 September 29, 1959, the effective date of Law 568, with respect to the amounts stated in Invoice Nos. EX-4432, EX-5756, and EX-6151, all due prior to that date. The Commission further finds that the loss in connection with the remaining invoices, in the absence of evidence to the contrary, occurred on the respective due dates as determined by the terms stated in the invoices of record.

Another portion of this claim is asserted for handling and shipping charges associated with the shipments reflected in several of the above-listed invoices. These charges, totalling \$552.28, were assertedly included in the collecting drafts related to these invoices. Additionally, claimant asserts the loss of \$102.97 included in 3 drafts with Reference Nos. BC-159752, BC-159753, and BC-165441. No documentary evidence has been submitted in support of these portions of the claim.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

If available, all exhibits and documents shall be filed with and at the same time as the claim, and shall, wherever possible be in the form of original documents. . . (FCSC Reg., 45 C.F.R. §531.3(a) (Supp. 1967).)

By Commission letter of December 6, 1967, the claimant was advised of the type of evidence proper for submission to establish this claim under the Act. Specifically, it was suggested that all available correspondence from banks or the consignee relating to the asserted payment or acceptance of the claimed drafts be submitted. Claimant replied by letter of January 22, 1968, but no documentary evidence was submitted.

On February 1, 1968, the claimant was invited to submit any evidence available to it, within 30 days from that date, and claimant was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since been submitted.

Accordingly, the Commission finds that the claimant has not sustained the burden of proof with respect to these portions of the claim and they are hereby denied.

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

Accordingly, the Commission concludes that the amount of 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 settlement thereof, as follows:

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On \$ 207.67 from September 29, 1959
 On 1,873.26 from November 29, 1959
 On 1,728.07 from December 29, 1959
 On 2,402.49 from December 30, 1959
 On 72.98 from January 2, 1960
 On 923.45 from January 16, 1960
 On 1,114.59 from January 23, 1960
 On 1,728.07 from January 29, 1960
 On 2,402.50 from January 30, 1960
 On 923.45 from February 16, 1960
 On 2,402.50 from March 1, 1960
 \$15,779.03 Total

CERTIFICATION OF LOSS

The Commission certifies that ALLEN-BRADLEY 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 Fifteen Thousand Seven Hundred Seventy-Nine Dollars and Three Cents (\$15,779.03) 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

26 JUN 1968

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

Theodore Jaffe
 Theodore Jaffe, Commissioner

Sidney Freidberg
 Sidney Freidberg, 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).)

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.