

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

IN THE MATTER OF THE CLAIM OF

INTERNATIONAL MILLING COMPANY INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0809

Decision No. CU - 937

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 INTERNATIONAL MILLING COMPANY INC. in the amount of \$11,616.86, 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 (1965), 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 claimant corporation was organized in 1963 under the laws of New York and is successor in interest to International Milling Company, a Delaware corporation organized in 1923. An officer of the claimant corporation has certified that at all times between 1923 and the presentation of this claim on August 24, 1966, more than 50% of the outstanding capital stock of claimant and its predecessor has been owned by United States nationals. The Commission holds that both claimant corporation and its predecessor are and were nationals of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that at all times pertinent to this claim, at least 80% of its outstanding stock was owned by persons who reside in the United States.

The record includes copies of correspondence from banks and an agent of claimant's predecessor, copies of drafts drawn on consignee business enterprises in Cuba, and copies of invoices and other shipping documents reflecting the shipment of merchandise to two Cuban consignees, Rema Dobarganes Padro and Lorenzo Vidal Pares. All of this correspondence and documentary evidence relates to transactions between the Cuban firms and the Blackwell Milling and Elevator Company. Claimant states that Blackwell Milling and Elevator Company is a trade name used by claimant and its predecessor and that at no time pertinent to this claim did a separate entity exist under that name.

The evidence of record discloses that the merchandise was shipped in 1957 and 1959 under terms of payment stated as "45 days date draft" and that the collecting drafts were not paid at maturity. The record discloses that the agent of claimant's predecessor and Lorenzo Vidal Pares reached an agreement by which periodic payments were to be made on that account through a Cuban bank. However, the record also discloses that the Cuban bank refused to accept such payments while the applications for dollar reimbursement or release were not approved by the Cuban exchange control authorities. There is no indication in the record that the draft drawn on Rene Dobarganes Padro was ever paid to a local Cuban bank. Claimant states that neither it nor its predecessor has received the funds for the shipments to these consignees.

The following is a list of the shipments made to the Cuban consignees by claimant's predecessor and includes information as to the invoice and draft numbers, amounts, and due dates.

Consignee: Rene Dobarganes Padro  
Palma Soriano, Cuba

<u>Invoice and Draft No. and Date</u>	<u>Amount</u>	<u>Due Date</u>
E-3319-2 (July 19, 1959)	\$1,747.98	September 4, 1959

Consignee: Lorenzo Vidal Pares  
El Caney, Cuba

<u>Invoice and Draft No. and Date</u>	<u>Amount</u>	<u>Due Date</u>
KE-6328-3 (March 6, 1957)	\$ 935.22	April 21, 1957
KE-6335 (March 7, 1957)	1,930.18	April 22, 1957
KE-6383 (March 25, 1957)	1,117.38	May 10, 1957
KE-6361-1 (April 4, 1957)	1,865.55	May 19, 1957
KE-6393-2 (May 20, 1957)	1,806.39	July 5, 1957
KE-6737 (June 4, 1957)	1,107.18	July 19, 1957
KE-6741 (June 17, 1957)	1,106.98	August 2, 1957

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, the loss occurred on September 29, 1959, the effective date of Cuban Law 568, as to \$11,616.86.

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 date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that INTERNATIONAL MILLING COMPANY 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 Eleven Thousand Six Hundred Sixteen Dollars and Eighty-Six Cents (\$11,616.86) with interest thereon at 6% per annum from the date of loss to the date of settlement.

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

JAN 10 1968

*Edward D. Re*

Edward D. Re, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

CERTIFICATION

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

*Francis MacKinnon*

Clerk 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).)