

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

IN THE MATTER OF THE CLAIM OF

AMERICAN SMELTING AND REFINING COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU 0862

Decision No. CU

000050

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$1,134.13 was presented by AMERICAN SMELTING AND REFINING COMPANY based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Section 503 of the International Claims Settlement Act of 1949, as amended (64 Stat. 12; 69 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 79 Stat. 988) the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. That section 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

(a) . . . 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."

An officer of the claimant corporation has certified that the claimant was organized in the State of New Jersey and that at all times between 1960 and presentation of this claim on October 31, 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 more than 98 percent of its 32,489 stockholders were residents of the United States and assumes that substantially all of them were United States nationals; and that fewer than 2% of its stockholders were residents of foreign countries and assumed to be citizens of those countries.

The record contains a copy of claimant's invoice No. 13339 of January 4, 1960, reflecting the sale to Messrs. Claudio Pascual Ferrer, S. Enc. of Santiago De Cuba, Cuba of goods totalling \$510.50, as to which freight, shipping and other attendant fees increased the total to \$543.97. Moreover, the record contains a copy of a letter dated September 15, 1960, addressed to claimant from The First National City Bank of New York reflecting that it had collected \$590.16 for claimant from Sres. Ferreteria Perez Alvarez, S.A. of Antilla, Cuba for the sale of goods covered by its Invoice No. 13353.

Additionally, the record includes a copy of a letter dated September 14, 1960, from The First National City Bank of New York, to claimant, in which it is stated that collection of \$543.97 was paid to the bank's Cuban branch, and that it was still awaiting a dollar

reimbursement release from the appropriate Cuban Government agency; the aforementioned letter dated September 15, 1960 from The First National City Bank of New York, to claimant advised that it had collected \$590.16 for claimant from the consigner, Sres. Ferreteria Perez Alvarez, S.A., and that said Bank was awaiting similiar authorization from the appropriate Cuban Government agency. 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 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 In the Matter of 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 loss occurred on September 9, 1960, as to \$543.97, and on September 9, 1960 as to \$590.16, the day after the collections were acknowledged by the Cuban branch of The First National City Bank of New York.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement

Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249).

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 September 9, 1960, 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 AMERICAN SMELTING AND REFINING 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 (\$1,134.13) with interest thereon at 6% per annum from September 9, 1960, the date of loss to the date of settlement.

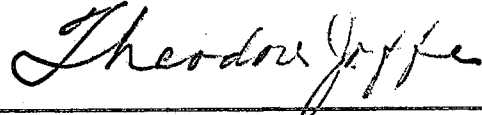
Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

CERTIFICATION ¹⁴ JUN 1967


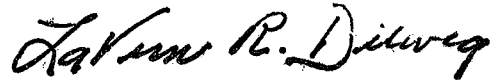
is a true and correct copy of the decision
of the Commission which was entered as the final
decision on JUL 14 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner


Francis Matthews
Clerk of the Commission

LaVern R. Dilweg, 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 upon the expiration of 30 days after such service or receipt of notice, the decision will be entered as the Final Decision of the Commission, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)