

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

IN THE MATTER OF THE CLAIM OF

ALCO MACHINERY AND SUPPLY CORP.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0990

Decision No. CU 111

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 ALCO MACHINERY AND SUPPLY CORP. in the amount of \$4,724.85 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, 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 Secretary of the claimant corporation has certified that the claimant was organized in September 1958 under the laws of the State of New York and that at all times between 1958 and presentation of this claim on February 6, 1967, all of the outstanding capital stock of claimant corporation has been owned by Emanuel Alpern, a national of the United States since his naturalization on June 9, 1952 in New York. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains several letters from the Banco Continental Cubano and The Royal Bank of Canada which reflect the following sales by claimant corporation to certain consignees in Cuba:

Invoice No. 2469, Isaac Moncarz - \$ 667.00;

Invoice No. 2399, Simon Rabinovich - \$2,149.85;

Invoice No. 2858, Andres Cuevas - \$ 526.50;

Invoice No. 2876, Alvarez and Hnos - \$1,381.50;

By letter dated February 20, 1961, The Royal Bank of Canada stated that its branch bank in Cuba on March 10, 1960 received \$667.00 with regard to Invoice No. 2469, and that it was awaiting a dollar reimbursement release from the Cuban Exchange Control.

With regard to the other invoices, the Banco Continental Cubano by letters dated January 7, 1960, October 4, 1960 and October 12, 1960 stated that it had received the monies from the several Cuban consignees and that it was awaiting a dollar reimbursement release from the Cuban Currency Stabilization Fund. 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 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 March 11, 1960 as to \$667.00, one day after payment was made to The Havana Branch of The Royal Bank of Canada; and on January 8, 1960, October 5, 1960 and October 13, 1960 as to \$2,149.85, \$526.50 and \$1,381.50, respectively, one day after receipts of payments by the consignees were acknowledged by Banco Continental Cubano.

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

CERTIFICATION OF LOSS

The Commission certifies that ALCO MACHINE AND SUPPLY CORP. 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 Four Thousand Seven Hundred Twenty-Four Dollars and Eighty-Five Cents (\$4,724.85) 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

JUL 26 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

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, 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).)

CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on AUG-25-1967

James Macgregor

Clerk of the Commission