

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

IN THE MATTER OF THE CLAIM OF

PENDLETON TOOL INDUSTRIES, INC.,
P & C TOOL COMPANY AND
FLEET TOOL CORPORATION

Claim No. CU -1186

Decision No. CU 2039

Under the International Claims Settlement
Act of 1949, as amended

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 PENDLETON TOOL INDUSTRIES, INC., in the amount of \$15,032.06, based upon the asserted loss of payment for merchandise shipped to Cuba.

P & C TOOL COMPANY and FLEET TOOL CORPORATION having petitioned to be allowed to join in this claim, and the matter having been considered, it is

ORDERED that the petitions be and they are hereby granted.

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 reflects that PENDLETON TOOL INDUSTRIES, INC., was first incorporated in California in 1937, under the name Plomb Tool Co., and adopted its present name on January 8, 1957. It was reincorporated in Delaware on February 3, 1964. On February 28, 1964, it became a wholly owned subsidiary of Ingersoll Rand Company. It has shipped goods under the trade name Proto Tool Company, a division of PENDLETON TOOL INDUSTRIES, INC.

An officer of PENDLETON TOOL INDUSTRIES, INC., has certified that from October 1, 1958 to February 28, 1964, more than 50 per cent of its stock was owned by persons who were United States nationals. Moreover, an officer of the Ingersoll Rand Company has certified that at all times between February 28, 1967 to the date the claim was filed, more than 50 per cent of its stock has been owned by United States nationals.

The record before the Commission further shows that in the Claim of Ingersoll-Rand Company (CU-2871) an officer of the corporation states that .0046 of its common stock was foreign owned; and .0072 of its preferred stock was foreign owned.

FLEET TOOL CORPORATION was incorporated in California in 1942 as Plomb Tool Contracting Company, a wholly owned subsidiary of the former Plomb Tool Company (now PENDLETON TOOL INDUSTRIES, INC.). The name was changed to Penens Corporation on September 8, 1943 and to Penens Tool Corporation on February 28, 1956. The name was thereafter changed to FLEET TOOL CORPORATION on November 26, 1963.

P & C TOOL COMPANY was incorporated in Oregon on April 7, 1923 and was acquired as a subsidiary of PENDLETON TOOL INDUSTRIES, INC. on September 11, 1941.

The Commission holds that PENDLETON TOOL INDUSTRIES, INC., P & C TOOL COMPANY and FLEET TOOL CORPORATION are nationals of the United States within the meaning of Section 502(1)(B) of the Act.

The record reflects that the aforementioned claimants made shipments of goods to various Cuban consignees, the details of which are shown below:

PENDLETON TOOL INDUSTRIES, INC.: (as Proto Tool Company)

		Due or paid to Bank
Cia. Importadora Vaughn & Wright	\$3,036.95	February 17, 1960 (due)
Cia. Importadora Vaughn & Wright	1,409.53	November 17, 1959 (due)
Ferreteria Trans America	465.39	July 18, 1960
Ferreteria Trans America	465.39	July 18, 1960
Garage 'Oua' de Oria Moro	571.48	December 3, 1959
Antonio Martinez Moya	1,046.85	March 30, 1960
Claudio Pascual Ferrer	904.24	February 26, 1960
Salvador Valdes Velez	628.86	June 9, 1960
	<u>\$8,528.69</u>	

FLEET TOOL CORPORATION: (as Penens Tool Corporation)

Cia. Riera Toro & Van Twistern, S.A.	\$1,188.10	November 23, 1959
Delgado Alonso & Cia.	748.05	March 25, 1960
Delgado Alonso & Cia.	748.05	March 25, 1960
Francisco Garcia de los Rios	236.98	April 21, 1960
Mario Martinez Moyo	556.47	July 15, 1960
Alfonso Suarez Garcia	<u>1,398.02</u>	January 19, 1960
	\$4,875.67	

P & C TOOL COMPANY

Cia. Riera Toro & Van Twistern, S.A.	\$ 809.44	March 10, 1960
Cia. Riera Toro & Van Twistern, S.A.	809.44	April 11, 1960
Cia. Riera Toro & Van Twistern, S.A.	<u>8.82</u>	November 22, 1959 (due)
	\$1,627.70	

The claimants state that they have 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 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. [July-Dec. 1966] 58; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049.)

Accordingly, in the instant claim, the Commission finds that claimants' property was lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the contrary, the losses occurred on the dates shown below:

PENDLETOON TOOL INDUSTRIES

February 17, 1960	as to	\$3,036.95
November 17, 1960	as to	1,409.53
July 19, 1960	as to	930.78
December 4, 1959	as to	571.48
March 31, 1960	as to	1,046.85
February 27, 1960	as to	904.24
June 10, 1960	as to	<u>628.86</u>
		\$8,528.69

FLEET TOOL CORPORATION

November 24, 1959	as to	\$1,188.10
March 26, 1960	as to	1,496.10
April 22, 1960	as to	236.98
July 16, 1960	as to	556.47
January 20, 1960	as to	<u>1,398.02</u>
		\$4,875.67

P & C TOOL COMPANY

March 11, 1960	as to	809.44
April 12, 1960	as to	809.44
November 22, 1959	as to	<u>8.82</u>
		\$1,627.70

The above dates are either the dates payment was due, or the days after payment was made to the collecting bank.

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 Claim of Lisle Corporation, 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 PENDLETON TOOL INDUSTRIES, INC. 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 Eight Thousand Five Hundred Twenty-Eight Dollars and Sixty-Nine Cents (\$8,528.69) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

the Commission certifies that FLEET TOOL CORPORATION 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 Four Thousand Eight Hundred Seventy-Five Dollars and Sixty-Seven Cents (\$4,875.67) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

CU-1186

the Commission certifies that P & C TOOL 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 One Thousand Six Hundred Twenty-Seven Dollars and Seventy Cents (\$1,627.70) 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

9 JUL 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Eneidberg

Sidney Eneidberg, Commissioner

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).)