

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

IN THE MATTER OF THE CLAIM OF

A. TORRES EXPORT, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1211, CU-1215,
CU-1216, CU-1217, CU-1218

Decision No. CU

938

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, were presented by A. TORRES EXPORT, INC. in the total amount of \$8,618.56 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."

An officer of the claimant corporation has certified that the claimant was organized in Illinois and that all times between April 3, 1947, and the presentation of this claim on March 24, 1967, 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 stock is held by one person who is a national of the United States.

Claimant has submitted five claims for losses suffered in Cuba. Four of the claims are for unpaid drafts covering merchandise shipped to consignees in Cuba, and the fifth is for both paid and unpaid drafts. The record contains copies of the claimant's invoices as follows:

<u>Claim No.</u>	<u>Invoice No.</u>	<u>Invoice Date</u>	<u>Amount</u>	<u>Consignee</u>
CU-1211	E-1010	December 10, 1959	\$ 983.57	Srs. Iaso, Zorrilla & Cia.
CU-1215	E-627	October 27, 1959	2,776.34	Master Electric, S. A.
CU-1216	B-4221	August 19, 1960	1,511.75	Marcelino Ponte
CU-1217	B-3977	November 4, 1959	334.51	La Mariposa
CU-1218	B-3915	November 19, 1959	1,239.95	Importadora Electrica Gonzalez Solis y Co., S. A.

The total of the above merchandise shipments is \$6,846.12. Freight, shipping and other attendant fees increase the total to \$7,423.39.

Claimant has stated that it has never received these funds.

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Claim GS-1215 also contains a copy of claimants invoice No. T-636 evidencing the sale to Master Electric, S. A. of goods totalling \$1,337.33, as to which freight, shipping, and other attendant fees increased the total to \$1,390.63. The record contains a copy of a letter from the Banco Continental Cubano, Havana, Cuba, dated December 24, 1959, to the First National Bank of Chicago, advising that the draft for \$1,390.63 had been paid by the Cuban consignee. Banco Continental further advised therein that as soon as it obtained the necessary authorization from the Currency Stabilization Fund the proceeds would be remitted. The claimant states that it has never received this payment.

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, 1953 (Claim No. GS-0019; and the Claim of Etna Pozzolana Corporation, 1953 (Claim No. GS-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 the following dates:

<u>Date</u>	<u>Amount</u>
December 4, 1959	\$ 334.51
December 19, 1959	1,272.88
December 25, 1959	1,390.63
December 27, 1959	3,091.32
January 10, 1960	1,091.38
September 19, 1960	1,633.30

being the day after the Cuban bank acknowledged payment by the consignee as to the \$1,390.63 amount and the date that payment became due as to the remaining amounts.

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, FCSB Claim No. CU-0844).

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 A. TORRES EXPORT, 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 Eight Hundred Fourteen Dollars and Two Cents (\$8,814.02) 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

JAN 17 1968

Edward S. Re

Edward S. Re, Chairman

Theodore J. Jaffe

Theodore J. Jaffe, Commissioner

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on FEB 20 1968

John H. ...

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).)