

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

IN THE MATTER OF THE CLAIM OF

J. de BEER & SON, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -1262

Decision No. CU -678

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 J. de BEER & SON, INC. in the amount of \$790.80, 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 (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, intervend, 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".

Evidence of record discloses that claimant corporation was organized in the State of New York in 1965, and is the successor in interest to J. de Beer & Son, a partnership of Frederick S. de Beer and Frederick S. de Beer, Jr. At the time of incorporation the two partners became and remain the principal stockholders in claimant corporation. They have been nationals of the United States since their births in the United States. 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) of the Act.

The record contains a copy of the partnership's invoice No. 1046 of October 29, 1959, reflecting the sale to Casa Montero of Havana, Cuba, of goods totalling \$790.80. Additionally, the record includes a copy of a letter of May 8, 1960, from Manuel S. Trigo, Foreign Trade Agent, Havana, Cuba, to Harry Hyman & Son, claimant's foreign freight forwarder, in which it is stated that Casa Montero paid the collection of \$774.98 on February 19, 1960. Claimant states that this represents payment of the invoice for \$790.80, less a 2% discount. The record also contains a copy of a letter dated May 21, 1960 from the Royal Bank of Canada to Harry Hyman & Sons, advising that the transaction of \$774.98 on Casa Montero was still pending before the Exchange Control Board, a 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 The Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019).

Accordingly, in the instant claim the Commission finds that the claimed 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 February 20, 1960 as to \$774.98 the day after payment was made to the bank by the consignee.

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 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 tha J.de BEER & SONS, 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 Seven Hundred Seventy Four Dollars and Ninety Eight Cents (\$774.98) with interest thereon at 6% per annum from the date of loss to the date of settlement.

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

NOV 15 1967

*Edward D. Re*

Edward D. Re, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*LaVern R. Dilweg*

LaVern R. Dilweg, Commissioner

This is a true and correct copy of the decision  
of the Commission which was entered as the Final  
decision on JAN 4 1968

*John M. ...*  
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).)