

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

IN THE MATTER OF THE CLAIM OF

AMKO TRADING CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1436, CU-1437,
CU-1438, CU-1920

Decision No. CU 226

Counsel for claimant:

Harry Kroll, Esq.

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 AMKO TRADING CORPORATION for the total amount of \$7,588.98, 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 submitted evidence indicating that the claimant was organized in the State of Illinois and said officer has stated that at all times between July, 1951 and presentation of these claims 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 has submitted evidence which shows that all of its stockholders are nationals of the United States.

The record contains copies of claimant's invoices as to which freight, shipping and other attendant fees increased the total amounts due as follows:

<u>Number</u>	<u>Date</u>	<u>Consignee</u>	<u>Total</u>
5284	11/13/59	Piezas y Accesorios, K.W.S.A., Havana, Cuba	\$ 897.07
5307	11/30/59	Piezas y Accesorios, K.W.S.A., Havana, Cuba	\$ 848.31
5348	12/21/59	Linea Cubana de Omnibus, S.A. Santiago de Cuba, Cuba	\$2,183.18
5585	6/6/60	Miguel & Bacardi, Santiago de Cuba, Cuba	\$2,154.75
5243	10/22/59	Felipe Valls Bravo, Santiago de Cuba, Cuba	\$1,505.66

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The record also contains copies of letters to claimant from The American National Bank and Trust Company of Chicago indicating that payment had been made in local currency to a correspondent bank by consignees (Piezas y Accesorios, K.W.S.A.; Linea Cubana de Omnibus, S.A.; and Miguel & Bacardi) and that they were awaiting a dollar reimbursement release from the Cuban Government, as follows:

<u>Date of letter or payment</u>	<u>Bank</u>	<u>Amount</u>
1/19/60	American Nat'l Bank and Trust Company of Chicago	\$897.07 \$848.31
3/ 9/60	"	\$2,183.18
8/19/60	"	\$2,154.75

The record further includes a copy of a draft for \$1,505.66 drawn on consignee, Felipe Valls Bravo, Santiago de Cuba, and accepted thereby on November 19, 1959.

Claimant states that it has not received any of the aforementioned 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 the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

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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 January 20, 1960 as to \$1,745.38, on March 10, 1960 as to \$2,183.18, on August 20, 1960 as to \$2,154.75, and on November 20, 1959 as to \$1,505.66, the days after the collections were paid or acknowledged by the bank and the day after consignee Felipe Valls Bravo accepted the draft for \$1,505.66.

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, as follows:

From January 20, 1960 on \$1,745.38
From March 10, 1960 on \$2,183.18
From August 20, 1960 on \$2,154.75
From November 20, 1959 on \$1,505.66.

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CERTIFICATION OF LOSS

The Commission certifies that AMKO TRADING 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 Seven Thousand Five Hundred Eighty-Eight Dollars and Ninety-Seven Cents (\$7,588.97) 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

AUG 23 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. 412-13 (1967).)

This is a true and correct copy of the decision of the Commission entered as the final decision on 25 SEP 1967.

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Victoria Mackerran
Secretary of the Commission