

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

IN THE MATTER OF THE CLAIM OF

UPLAND INDUSTRIES, INC.

Claim No. CU -1629

Decision No. CU

1631

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 UPLAND INDUSTRIES, INC. in the amended amount of \$502.74, 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, 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 percentum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

The record shows that claimant corporation is organized in Pennsylvania. An officer of the claimant corporation has certified that at all times between April 4, 1946 and presentation of this claim on April 19, 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.

Evidence of record discloses that all of the stockholders of claimant corporation are United States nationals.

The record includes copies of correspondence from banks and consignee business enterprises in Cuba, copies of invoices, and other documents concerning shipments of merchandise to Cuban business firms, listed hereafter as the consignees. This evidence discloses that the purchase price of the goods and accompanying charges for such shipments were paid by the consignees to local Cuban banks; and that the dollar reimbursement releases or authorization were never granted by Cuban governmental authorities. Claimant states that it has not received the funds due for the following shipments:

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<u>Consignee</u>	<u>Invoice Number</u>	<u>Trust Co. of Cuba No.</u>	<u>Amount Due</u>	<u>Date Paid</u>
Ferreteria Capestany, Havana, Cuba	14095	C-235821	\$106.60	Feb. 1, 1960
Cabrera Barrio y Cia., Havana, Cuba	14729	CRE-108455	\$396.14	Feb. 16, 1960

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, 25 FCSC Semiann. Rep. 58 / July - Dec. 1966 /).

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 February 2, 1960 as to \$106.60, and on February 17, 1960 as to \$396.14, the days after the collections were paid to The Trust Company of Cuba.

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 Claim of Lisle Corporation, Claim No. CU-0644.)

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Accordingly, the Commission concludes that the amount of 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 settlement thereof, as follows;

On \$106.60 from February 2, 1960

On \$396.14 from February 17, 1960

CERTIFICATION OF LOSS

The Commission certifies that UPLAND 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 Five Hundred Two Dollars and Seventy Four Cents (\$502.74) 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

APR 10 1968

Leonard v. B. Sutt
Leonard v. B. Sutt, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on MAY 17 1968

Thomas H. Jackson

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).)