

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

IN THE MATTER OF THE CLAIM OF

PERFECTO GARCIA & BROTHERS, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-1852

Decision No. CU 4555

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 PERFECTO GARCIA & BROTHERS, INC. in the amount of \$517,126.38 based upon the asserted loss of certain personalty in 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)(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.

An officer of the claimant corporation has certified that the claimant was organized in Illinois and that at all times between the date of loss and presentation of this claim 100% 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.

The record discloses that the claimant was a manufacturer of cigars prepared from Cuban tobacco, and that it purchased its entire tobacco requirements through one Cuban supplier, Junco y Cia., which also acted as agent and broker.

Claimant states that although its Cuban supplier was formally intervened on September 15, 1960 preliminary to expropriation, the supplier continued its business relationship with claimant including the shipment of tobacco, until March, 1961 when Junco y Cia. was taken over by Instituto Nacional de Reforma Agraria.

The affidavit of claimant's accountant states:

"The inventory on hand in Cuba at March 31, 1961, that belonged to Perfecto Garcia & Bros., Inc., had a cost of \$517,126.38. As against this amount, the claimant was indebted to the expropriated supplier in the amount of \$321,905.92, representing a net equity of \$195,220.46."

Claimant states and the evidence reflects that the Cuban supplier, acting for Instituto Nacional de Reforma Agraria, continued to perform

stripping and other services and made six shipments of the expropriated tobacco to claimant in the United States between May 23, 1961 and January 18, 1962, for which claimant was required to pay in advance a total of \$515,393.87. Regulations of the United States Treasury Department in 1962 prohibited the further importation of tobacco from Cuba.

At this point, claimant had paid \$195,220.46 to the Cuban supplier and \$515,393.87 to the agency of the Cuban Government. Since claimant had received tobacco worth the latter amount, its actual loss was then \$195,220.46.

In 1963 the Cuban supplier, having come to the United States, demanded that claimant pay the balance of the agreed purchase price--\$321,905.92. Claimant, on the advice of its attorneys, acceded to the demand. Hence, claimant's out-of-pocket loss was now the total amount paid to the Cuban supplier, \$517,126.38.

Claimant has asserted, and the Commission is satisfied, that the United States Internal Revenue Service has allowed claimant an income tax deduction in the above amount.

On the basis of the entire record, the Commission holds that title to the tobacco purchased by the Cuban supplier for claimant's account was transferred to claimant when the tobacco was delivered to the warehouse of the supplier in Cuba, and that the said tobacco was seized by the Government of Cuba on March 31, 1961. The Commission further holds that the value of the tobacco which the claimant lost as a result of the said action by the Government of Cuba on March 31, 1961 was \$517,126.38.

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, FCSC Claim No. CU-0644), and in the instant case, it is so ordered.

CU-1852

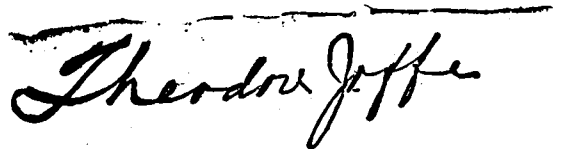
CERTIFICATION OF LOSS

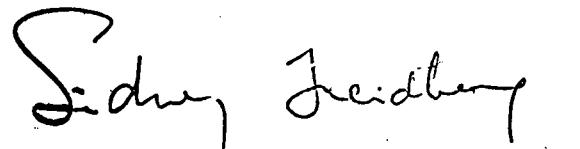
The Commission certifies that PERFECTO GARCIA & BROTHERS, INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Hundred Seventeen Thousand One Hundred Twenty-six Dollars and Thirty-eight Cents (\$517,126.38) with interest thereon at 6% per annum from March 31, 1961 to the date of settlement.

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

MAR 4 1970

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

  
Sidney Freidberg, 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).)