

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

IN THE MATTER OF THE CLAIM OF

EXCELOTEX PRODUCTS CORPORATION

Claim No. CU-1977

Decision No. CU 1959

Under the International Claims Settlement  
Act of 1949, as amended

Counsel for claimant:

Albert J. Cohen, Esquire

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 EXCELOTEX PRODUCTS CORPORATION in the amount of \$7,001.80 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) (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 the State of New York and that at all times between 1955 and the presentation of this claim on April 20, 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 owned by nationals of the United States.

The record contains a copy of claimant's invoice No. R/1131 of February 11, 1960, reflecting the sale to Industria Sinesio Rojo, S. A., Havana, Cuba, of goods totalling \$28,400.00, as to which freight, shipping and other attendant fees increased the total to \$29,275.00. The terms of the sale called for the payment of \$10,000.00 by sight draft and for the balance by promissory notes, eleven for \$1,600.00 and one for \$1,675.00 with interest at 6% per annum.

Claimant states that it received payment for the sight draft and for the first nine notes plus interest. Additionally, the record includes a letter of September 27, 1965 from the National Bank of Cuba, to the claimant, in which it is stated that the collection of \$1,607.90 (\$1,600.00 principal plus 30 days interest at 6% or \$7.90) was paid by the consignee in local currency and that a dollar reimbursement release was pending with the Exchange Control, a Cuban Government agency.

Another letter dated September 6, 1966 from the National Bank of Cuba, to the claimant, states that the remaining two promissory notes, one for \$1,600.00 due January 18, 1961 and one for \$1,675.00 due February 18, 1961, were paid by the consignee in local currency on August 31, 1966, and that a similar dollar reimbursement release was awaiting authorization from the Foreign Exchange Control. 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 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 Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049).

Claimant computes the amount of its loss as follows:

Note due 12/18/60	\$1,600.00
Note due 1/18/61	1,600.00
Note due 2/18/61	1,675.00
Correction of prior computation of interest due and unpaid notes #1-9	288.90
Interest on notes #10-12 from 12/18/60 to 4/30/67 at 6% per annum	<u>1,837.90</u>
Total	<u><u>\$7,001.80</u></u>

By letter of December 1, 1967, the Commission suggested to claimant, through its attorney, that evidence be submitted in support of that portion of its claim in the amount of \$288.90 assertedly due from the Cuban consignee for interest due on the first nine notes. This suggestion was repeated in the Commission's letter of January 3, 1968, to the claimant's attorney; however, no evidence in support of this amount has been submitted except for claimant's own statements. Accordingly, the Commission is constrained to deny this portion of the claim, and it is hereby denied.

As to the amount of \$1,837.90 for interest due on notes #10 through and including #12, the record contains evidence to establish that the terms of the shipment in question included an interest charge of 6% per annum for any delay in payment. Accordingly, the Commission finds that the claimant was entitled to interest on the outstanding notes at 6% per annum from the dates payment on the notes was due to the dates on which the consignee made a deposit in local currency at a local Cuban bank.

Computation of the interest is as follows:

Note #10:

Principal Amount	\$1,600.00
Maturity Date	12/18/60
Date of payment	1/18/61
Interest due on date of payment	\$7.90

Note #11

Principal Amount	\$1,600.00
Maturity Date	1/18/61
Date of Payment	8/31/66
Interest due on date of payment	\$539.18

Note #12

Principal Amount	\$1,675.00
Maturity Date	2/18/61
Date of Payment	8/31/66
Interest due on date of payment	\$555.85

Accordingly, in the instant claim the Commission finds that claimant's property (the principal amount of Notes #10 through #12, plus interest due on the date of payment) 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 in the following amounts:

<u>Date</u>	<u>Amount</u>
1/19/61	\$1,607.90
9/1/66	4,370.03
Total	<hr/> \$5,977.93

being the day after the consignee made a deposit in local currency to a local Cuban bank.

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).

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 EXCELOTEX PRODUCTS 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 Five Thousand Nine Hundred Seventy-Seven Dollars and Ninety-Three Cents (\$5,977.93) 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

JUN 13 1968

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, 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).)