

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

IN THE MATTER OF THE CLAIM OF

PHILIP INTERNATIONAL CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2366
2369

Decision No. CU
2086

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 PHILIP INTERNATIONAL CORPORATION in the amount of \$21,381.76 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 November 1957 and the presentation of this claim on April 25, 1967, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that all of its stock is owned by nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

A portion of this claim pertains to shipments of merchandise to the Cuban American Toys Company, S. A., of Havana, Cuba, in the amount of \$11,614.94. With regard to this portion of the claim, the record contains copies of the drafts drawn on the Cuban entity, collection instructions to the Chase Manhattan Bank, and copies of customer acceptance advices. Claimant advises that due to the conditions in Cuba, the drafts originally presented through the Chase Manhattan Bank were recalled and the collections were effected through its agent in Cuba, the Hermes Trading Company. The record additionally includes a receipt dated October 29, 1959, signed by the claimant's Cuban agent, evidencing the collections it made for the claimant's account from the Cuban consignee for the above shipments. Claimant's agent advised that the funds were seized by the Government of Cuba at the offices of a Cuban law firm where they had been deposited for safekeeping.

The drafts collected cover the following shipments of merchandise:

<u>Invoice Number</u>	<u>Amount</u>
1270	\$ 1,237.94
1277	978.60
1281/5/1302	1,571.07
1283A/1312A/1327A	852.50
1296/5	1,658.05
1330	898.74
1333/1329	637.69
1333A/1329A	353.64
1336	384.49
1338	334.86
1351	904.59
1363	657.90
1396	331.68
1469/1449/1468	625.86
1508/98	187.33
TOTAL	<u>\$ 11,614.94</u>

Claimant states that it has not received any of the above funds.

The remaining portion of this claim is for \$9,766.82, and is based on the amount owing claimant for additional shipments of merchandise to the Cuban American Toys Co., S. A. Evidence of record establishes that \$7,402.73 of the above amount was covered by drafts drawn by claimant on the Cuban consignee. Information as to the Invoices representing the shipments on which the drafts were drawn, the dates of payment as to those drafts which were paid to Cuban banks and the due date of the unpaid drafts is as follows:

<u>Invoice No.</u>	<u>Amount</u>	<u>Date Paid</u>	<u>Date Due</u>
1369A/68A/64A	\$ 537.30	9/5/60	-
1412A/27A/26A	361.26	3/16/60	-
2087/2100/DN124/26	1,167.54	-	12/18/59
2088/DN125	2,046.24	-	12/17/59
2136/DN127	387.30	11/10/59	-
2248/DN146	1,105.37	-	12/10/59
2249/DN148	1,420.28	12/3/59	-
2250/DN147	377.44	12/3/59	-
TOTAL	<u>\$7,402.73</u>		

Claimant further states that it has not received any of these funds.

The remaining sum of \$2,364.09 represents the amount owing claimant for three shipments on a C.O.D. basis to the Cuba American Toys Co., S. A. Evidence of record reflects that the goods were delivered and collections were made by the Cuban office of the freight company (Rediker Air Cargo) which shipped the goods to Cuba and that the actions of the Government

of Cuba prevented the monies from being forwarded to the claimant.

These shipments are as follows:

<u>Invoice No.</u>	<u>Amount</u>	<u>Date</u>
2212/2224/DN129/144	\$1,101.80	10/30/59
2223/DN143	350.46	10/30/59
2286/DN149	911.83	11/18/59
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TOTAL	\$2,364.09	

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 Etma Pozzolana Corporation, Claim No. CU-0049).

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 the following dates:

<u>Date</u>	<u>Amount</u>
10/30/59	\$11,614.94
11/11/59	387.30
11/30/59	1,452.26
12/4/59	1,797.72
12/10/59	1,105.37
12/17/59	2,046.24
12/18/59	2,079.37
3/17/60	361.26
9/6/60	537.30
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TOTAL	\$21,381.76

being either the day following the date on which the claimant's Cuban agent effected the above listed collections, the day following the dates on which the evidence indicates collections by Cuban banks, or the days on which the remaining drafts fell due.

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.

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CERTIFICATION OF LOSS

The Commission certifies that PHILIP INTERNATIONAL 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 Twenty-One Thousand Three Hundred Eighty-One Dollars and Seventy-Six Cents (\$21,381.76) 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

JUL 24 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

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).)