

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

IN THE MATTER OF THE CLAIM OF

KENROY EXPORT COMPANY, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 3374

Decision No. CU 5406

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 KENROY EXPORT COMPANY, INC. in the amount of \$19,487.03 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 stated that the claimant was organized in New York and that at all pertinent times 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 contains bank letters, a summary of accounts of claimant corporation submitted to the United States Department of State in 1961 and other evidence reflecting sales to consignees in Cuba in the amounts shown below, including dates payments were reported made to collecting banks:

<u>Consignee</u>	<u>Date Reported Paid</u>	<u>Amount</u>
Comercial Electrica Cubana, S.A.	November 2, 1959	\$ 867.00
Edelmiro Rivera	April 21, 1960	611.07
P. I. Zayas Cia. Mercantil, S.A.	June 17, 1960	1,351.22
Roberto Neira Barreiro	July 5, 1960	1,318.35
Reciprocity Trading Co.	July 12, 1960	1,260.93
Kress Electrico Importadores	July 26, 1960	1,988.10
Roberto Neira Barreiro	August 31, 1960	340.08
Roberto Neira Barreiro	September 30, 1960	614.66
Antonio Avedo	October 13, 1960	405.00
Vicente Rivera	October 17, 1960	497.62
Cia. Comercial Winston, S.A.	October 24, 1960	4,298.84
Roberto Neira Barreiro	October 31, 1960	610.70

<u>Consignee</u>	<u>Date Reported Paid</u>	<u>Amount</u>
Importadora Lucardi, S.A.	November 28, 1960	1,412.01
Roberto Neira Barreiro	November 30, 1960	167.79
Roberto Neira Barreiro	December 31, 1960	185.71
Roberto Neira Barreiro	January 31, 1961	1,788.73
Robert Neira Barreiro	February 28, 1961	<u>1,778.22</u>
	Total	\$19,496.03

Claimant states that it has not received the funds which had been paid for its account to local banks and not transmitted to it.

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 in 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)

Accordingly, in the instant claim, the Commission finds that the aforesaid sums totalling \$19,496.03 were lost as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the losses occurred on the days after payment to the collecting banks.

Claimant states that it has asserted an income tax deduction in 1961 for said loss.

It will be noted that the total amount of the loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amount which may be asserted by claimant as the extent thereof.

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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), and in the instant case it is so ordered from the dates shown below:

<u>FROM</u>	<u>ON</u>
November 3, 1959	\$ 867.00
April 22, 1960	611.07
June 18, 1960	1,351.22
July 6, 1960	1,318.35
July 13, 1960	1,260.93
July 27, 1960	1,988.10
September 1, 1960	340.08
October 1, 1960	614.66
October 14, 1960	405.00
October 18, 1960	497.62
October 25, 1960	4,298.84
November 1, 1960	610.70
November 29, 1960	1,412.01
December 1, 1960	167.79
January 1, 1961	185.71
February 1, 1961	1,788.73
March 1, 1961	<u>1,788.22</u>
	\$19,496.03

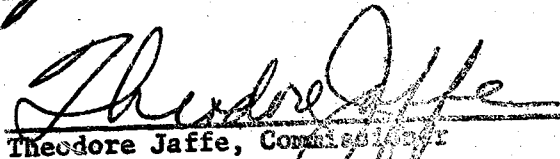
CERTIFICATION OF LOSS

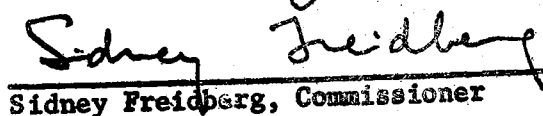
The Commission certifies that KENROY EXPORT COMPANY INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Nineteen Thousand Four Hundred Ninety-six Dollars and Three Cents (\$19,496.03) 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 29 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).)

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