

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

IN THE MATTER OF THE CLAIM OF

TEXTRON, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3422

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Decision No. CU

1790

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 TEXTRON, INC. in the amounts of \$4,588.36, \$29.37, and \$591.38, respectively, 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 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

Based upon the evidence of record, the Commission finds that Bostitch-Puerto Rico, Inc. and Bostitch, Inc., predecessors in interest of the claimant, were organized in the State of Rhode Island in 1952 and 1936 respectively; that the claimant, **TEXTRON, INC.**, was organized in the State of Rhode Island in 1928; that on June 27, 1964 Bostitch-Puerto Rico, Inc. transferred its assets and business (including the accounts receivable upon which these claims are based in part) to Bostitch, Inc.; that on September 1, 1966 Bostitch, Inc. transferred its assets and business (including the accounts receivable upon which these claims are based) to the claimant, **TEXTRON, INC.**; and that at all times between their respective organizations and presentation of these claims, more than 50% of the outstanding capital stock of the claimant and its predecessors in interest has been owned by United States nationals. The Commission holds that claimant is the legal successor in interest to Bostitch-Puerto Rico, Inc. and Bostitch, Inc., and that claimant and its predecessors qualify as nationals of the United States within the meaning of Section 502(1) (B) of the Act.

Claimant states that 99.69% of its 46,553 shareholders are nationals of the United States.

The record contains copies of invoices and statements of account of claimant's predecessors in interest reflecting the sales on April 9, 1959 and May 6, 1959 to Muniz y Hno. of Havana, Cuba of goods totalling \$99.19

CU-3422
3423
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and \$137.02 respectively, as to which postage and insurance increased the totals to \$100.69 and \$141.20 respectively; the sales on May 20, 1959 and July 24, 1959 to Muniz y Cia. of Havana, Cuba of goods totalling \$4,082.02, \$20.00, and \$560.00 respectively, as to which freight, shipping and other attendant fees increased the totals to \$4,325.12, \$21.35, and \$591.38 respectively; and the sales on December 10, 1959 and January 19, 1960 to C. Perez Galan, S. A. of Havana, Cuba of goods totalling \$341.45 (claimant states that a credit of \$315.93 left a balance of \$25.52 on this item) and \$3.00, as to which postage and insurance increased the total to \$3.85. Claimant states that neither it nor its predecessors in interest have received the aforementioned 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 (and its predecessors in interest), 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.)

Accordingly, in the instant claims 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 September 29, 1959 (the effective date of Law 568)

as to \$5,179.74, on December 10, 1959 as to \$25.52, and on January 19, 1960 as to \$3.85.

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 TEXTRON, INC. succeeded to and 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 Two Hundred Nine Dollars and Eleven Cents (\$5,209.11) 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

MAY 1 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 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Re., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)