

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

IN THE MATTER OF THE CLAIM OF

SHARP EXPORT LTD.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0039

Decision No. CU 732

Counsel for claimant:

Harris and Post
by Harry H. Harris

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 SHARP EXPORT LTD. in the amount of \$6,314.30 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."

An officer of the claimant corporation has certified that the claimant was organized in New York and that all times between March 7, 1942 and presentation of this claim on June 11, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that all of its four stockholders are 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.

The record contains copies of claimant's invoices reflecting the sales to consignees, all of Havana, Cuba, as follows:

<u>INVOICE</u>	<u>DATE</u>	<u>CONSIGNEE</u>	<u>GOODS</u>	<u>TOTAL</u>
38551	March 21, 1958	Cia Commercial San Martin, S.A.	\$ 1,729.41	\$ 1,765.32
39186	November 4, 1959	Suarez Gutierrez y Cia	820.00	916.73
39384	November 6, 1959	Propasel, S.A.	855.00	877.46
39385	November 6, 1959	Casa Iglesias, S.A.	1,345.40	1,377.48
39422	December 2, 1959	Casa Iglesias, S.A.	204.00	238.53
39441	April 28, 1960	Casa Pergamino Gonzales y Cia	1,650.00	1,731.30

(The unpaid balance on invoice No. 38551 is \$1,172.80).

Additionally, the record contains a copy of a letter of July 20, 1966 from the First National City Bank, to claimant, in which it is stated that drafts covering invoices 39186, 39385, 39422, and 39441 for

a total of \$4,264.04 was paid to that bank's Havana Branch as of August 10, 1960, pending approval of the Cuban authorities to forward the collection. 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 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 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 as to \$1,172.80, the date Law 568 was published, on January 7, 1960 as to \$877.46, the date by which invoice No. 39384 should have been paid, and on August 11, 1960 as to \$4,264.04, the day after collections in that amount were acknowledged by the First National City Bank.

The Commission has decided that in the 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 the Claim of Lisle Corporation, FCSC 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 losses occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that SHARP EXPORT LTD. 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 Six Thousand Three Hundred Fourteen Dollars and Thirty Cents (\$6,314.30) 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

30 NOV 1967

CERTIFIED

Final
1-15-68

Edward D. Re
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

William H. ...
Clerk of the Commission

LaVern R. Dilweg
LaVern R. Dilweg, Commissioner

THIS IS A TRUE
COPY OF THE COMMISSION'S
DECISION ON

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).)