

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

IN THE MATTER OF THE CLAIM OF

THE BATES MANUFACTURING COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0056

Decision No. CU 271

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 THE BATES MANUFACTURING COMPANY in the amount of \$17,363.76, 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) 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."

The Secretary of State of the State of New Jersey has certified that the claimant was organized in the State of New Jersey on October 26, 1921, and an officer of the claimant corporation has certified that at all times between the dates of loss and presentation of this claim on June 16, 1965, 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 100% of its stockholders are United States nationals.

The record contains copies of claimant's invoices numbered 30017F and 30097F of July 16, 1959 and July 30, 1959, respectively, reflecting the sale to Fernandez y Cia of Havana, Cuba, of goods totalling \$3,112.16, as to which freight, shipping and other attendant fees increased the total to \$3,226.12; copies of its invoices numbered 30391F and 30467F of October 16, 1959 and October 29, 1959, respectively, reflecting the sale to Papeleria Suarez Gutierrez y Cia, S.A. of Havana, Cuba, of goods totalling \$1,543.43, as to which freight, shipping and other fees increased the total to \$1,602.47; copies of its invoices numbered 30561F and 30609F of November 20, 1959 and December 2, 1959, respectively, reflecting the sale to Cultural, S.A. of Havana, Cuba, of good totalling \$4, 823.22, as to which freight, shipping and other attendant fees increased the total to \$5,009.39; and copies of its invoices numbered 30605F and 30667F of December 1, 1959 and December 18, 1959, respectively, reflecting the sale to

Tipografia J. Suarez, S.A. of Havana, Cuba, of goods totalling \$2,541.18, as to which freight, shipping and other attendant fees increased the total to \$2,644.71.

Additionally, the record includes four letters from the Morgan Guaranty Trust Company of New York dated January 19, 1960, August 19, 1960, October 28, 1960, and November 9, 1960, stating that it was advised by its correspondent banks on January 13, 1960, August 16, 1960, October 14, 1960, and October 31, 1960, that the collections of \$2,644.71, \$3,226.12, \$1,602.47 and \$5,009.39 were provisionally paid by the consignees, Tipografia J. Suarez, S.A., Fernandez y Cia, Papeleria Suarez Gutierrez y Cia and Cultural, S.A., respectively, and that the unnamed correspondent collecting banks in each case were still awaiting a dollar reimbursement release from either the Banco Nacional de Cuba or "Exchange Control", both Cuban Government agencies.

Claimant also has submitted evidence to establish that it had shipped merchandise on open account to Gutierrez Marban y Cia, Havana, Cuba, and that the balance due on such account was \$4,881.07 when the debtor enterprise was prevented from making further payments thereon by Cuban governmental measures.

Claimant states that none of the aforementioned funds have been received.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds, in this and similar cases, 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 January 14, 1960 as to \$2,644.71, on August 17, 1960 as to \$3,226.12, on October 15, 1960 as to \$1,602.47, and on November 1, 1960 as to \$5,009.39, the days after the collections were acknowledged by the correspondent banks, and on September 29, 1959, the date when Cuban Law No. 568 was published, as to \$4,881.07.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed 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 loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that THE BATES MANUFACTURING COMPANY 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 Seventeen Thousand Three Hundred Sixty-Three Dollars and Seventy-Six Cents (\$17,363.76) 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

SEP 20 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

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).)

CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on 20 OCT 1967

Thomas M. ... 0056
Chair of the Commission