

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

IN THE MATTER OF THE CLAIM OF

TEE-PAK, INC.

Claim No. CU-0062

Decision No. CU 225

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$2,025.80 was presented by TEE-PAK, INC. based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Section 503 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 othe 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 Illinois and that at all times between 1959 and presentation of this claim on June 17, 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 on December 31, 1961 not less than 75% of its 40 stockholders were residents of the United States and assumes that substantially all of them were United States nationals; and that less than 25% of its 40 stockholders were residents of foreign countries and assumed to be citizens of those countries.

The record contains copy of claimant's invoice No. 2-12537 of December 3, 1959, reflecting the sale to "Hernandez y Paradelá" of Camaguey, Cuba, of goods totalling \$315.00; and copy of its invoice No. 4-50848 of September 26, 1960, reflecting the sale to "Cia. Ganadera y Empaladora, S.A.", of Havana, Cuba, of goods totalling \$1,710.80.

Additionally, the record includes a letter from the Trust Company of Havana, Cuba, to claimant, in which it is stated that the collection of \$315.00 was paid by the consignee, Hernandez Y. Paradelá, and that the Trust Company of Havana was still awaiting a dollar reimbursement release from the Exchange Control Authorities, a Cuban Government agency. Subsequently, in another letter dated October 3, 1960, to claimant, the Banco Continental Cubano acknowledged receipt of claimant's draft in the amount of \$1,710.80.

Claimant states that with regard to the collection on this draft they were "unable to obtain any further information from the bank or customer" and that in spite of the acknowledgment the debt remained unpaid and 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 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 has ascertained, through the examination of a number of claims against the Government of Cuba, that applications made to foreign exchange authorities of Cuba to transfer funds to the United States were fruitless. Moreover, the Cuban law on foreign exchange control discouraged payment of the amount due and transfer of funds to a creditor within Cuba, as well as payment to such creditors abroad without permission of the Cuban foreign exchange authority (See the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

After having considered this matter, 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 its sovereign authority to regulate its foreign exchange. Rather, the Commission concludes that the application of this law insofar as the rights of claimant are concerned, constituted an intervention by the Government of Cuba into the contractual rights which, in effect, 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.)

Accordingly, in the instant claim the Commission finds that the unpaid balance of the draft owed by "Cia. Ganadera y Empaladora, S.A." on collection to Banco Continental Cubano, in the amount of \$1,710.80, was lost as a result of the intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on November 8, 1960, the day after the due date of the draft accepted by the drawee, "Cia. Ganadera y Empaladora, S.A."

With regard to that portion of the claim for merchandise in the amount of \$315.00, the Commission further 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 13, 1960 as to \$315.00, the day after the collection was acknowledged by the Trust Company of Cuba.

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 American Cast Iron Pipe Company, FCSC Claim No. CU-0249).

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, as follows:

On \$ 315.00 from January 13, 1960

On \$1,710.80 from November 8, 1960.

CERTIFICATION OF LOSS

The Commission certifies that TEE-PAK, 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 Two Thousand Twenty-Five Dollars and Eighty Cents (\$2,025.80) 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

AUG 23 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).)

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on 25 SEP 1967 CU-0062

Termin M. ...
Merk of the Commission