

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

IN THE MATTER OF THE CLAIM OF

ABBOTT MACHINE CO., INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0064

Decision No. CU -

374

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 ABBOTT MACHINE CO., INC. in the amount of \$3,529.62 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 the State of New Hampshire and that all times between December 28, 1950, 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 100% of its corporate stock is held by nationals of the United States.

The record contains copies of the following invoices reflecting sales, by claimant, to three Cuban consignees in the total amount of \$3,529.62:

Goods sold to Tejedos Capitalinos S.A., Havana, Cuba;

<u>Invoice No.</u>	<u>Amount</u>	<u>Due Date</u>
N 205	\$ 26.00	June 6, 1957
N 208	419.78	June 10, 1957
SP 39-47	2.45	May 6, 1959

Goods sold to Compania Distribuidora de Calzado, S.A., Matanzas, Cuba;

<u>Invoice No.</u>	<u>Amount</u>	<u>Due Date</u>
SP-14355	\$ 9.07	April 18, 1960
SP-5617	122.55	May 11, 1959
SP-12225	33.89	June 8, 1959
SP-11185	203.83	June 8, 1959
SP-5047	2,144.69	May 28, 1959
SP-14355	292.36	November 24, 1959

Goods sold to Ribbon Fabric Co. of Cuba, S.A., Havana, Cuba;

<u>Invoice No.</u>	<u>Amount</u>	<u>Due Date</u>
SP-10189	\$123.10	August 15, 1960
SP-10462	13.20	August 19, 1960
SP-10461	138.70	August 19, 1960

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, such losses occurred on the respective invoice due dates with regard to those transactions occurring after September 29, 1959. However, with respect to the date of loss as to those goods sold prior to September 29, 1959, the Commission finds that these transactions were governed by Law 568, published by the Government of Cuba on September 29, 1959, which effectively precluded transfers of the funds to creditors abroad.

Therefore, the Commission finds that claimant's property was lost on the following dates:

<u>Invoice No.</u>	<u>Amount</u>	<u>Date of Loss</u>
N-205	\$ 26.00	September 29, 1959
N-208	419.78	September 29, 1959
SP-39-47	2.45	September 29, 1959
SP-14355	9.07	April 18, 1960
SP-5617	122.55	September 29, 1959
SP-12225	33.89	September 29, 1959
SP-11185	203.83	September 29, 1959
SP-5047	2,144.69	September 29, 1959
SP-14355	292.36	November 24, 1959
SP-10189	123.10	August 15, 1960
SP-10462	13.20	August 19, 1960
SP-10461	138.70	August 19, 1960

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 respective dates 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, as follows:

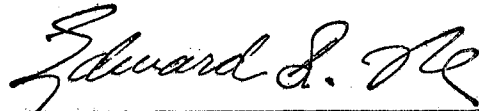
On \$2,953.19 from September 29, 1959
On 292.36 from November 24, 1959
On 9.07 from April 18, 1960
On 123.10 from August 15, 1960
On 151.90 from August 19, 1960

CERTIFICATION OF LOSS

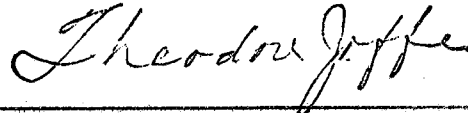
The Commission certifies that ABBOTT MACHINE CO., INC. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Thousand Five Hundred Twenty-Nine Dollars and Sixty-Two Cents (\$3,529.62) 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

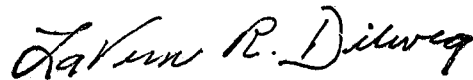
OCT 4 1967



Edward D. Re, Chairman



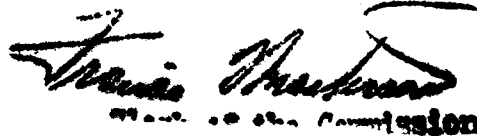
Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on 6 NOV 1967


Francis Thurston
Member of the Commission

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).)