

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

IN THE MATTER OF THE CLAIM OF

ALLIS-CHALMERS MANUFACTURING COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0065

Decision No. CU

780

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 ALLIS-CHALMERS MANUFACTURING COMPANY in the amount of \$197,040.10 based upon the asserted loss of payment for merchandise shipped to Cuba, and upon the asserted ownership and loss of certain personal property.

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 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 record discloses that claimant corporation was organized in the State of Delaware on March 15, 1913, and that at all times since then until 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 98.47% of its outstanding capital stock was owned by United States nationals and 1.53% was owned by non-United States nationals.

The record contains copies of claimant's invoices and other commercial documentation reflecting the sale of goods to various consignees in Cuba as follows:

<u>Consignee</u>	<u>Total</u>
Compania Cubana De Electricidad	\$172,163.52
Papelera Damuji, S.A.	20,957.56
Industrial Consolidadas De Matanzas, S.A.	370.00
Compania Minera Yarayao, S.A.	1,002.05
Aspuru y Cia., S.A.	6,621.53
Punta Alegre Sugar Sales Corporation	541.00

Claimant avers that it has not received the above-mentioned funds.

Claimant states that the account of Papelera Damuji, S.A. should be reduced by the amount of \$4,615.56, representing credit allowances and interest waived.

The Commission has considered the evidence submitted by claimant, and finds that the sum of \$331.08, representing a 5% cash discount, should be deducted from the amount due from Aspuru y Cia., S.A.

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).

The record discloses that claimant retained title in the goods consigned to Compania Cubana De Electricidad until the full purchase price had been paid in cash. Claimant has neither recovered the goods nor the purchase price. The Compania Cubana De Electricidad was listed as nationalized by the Government of Cuba by Resolution 1 of August 6, 1960 (pursuant to Law 851, Cuban Official Gazette, July 7, 1960). The record includes a letter of September 2, 1960, from the Instituto Nacional De Reforma Agraria (INRA), to claimant, written on the letterhead of Compania Cubana De Electricidad, "Nacionalizada", which confirms that the goods had been received. The Commission finds that claimant's personal property was taken by the Government of Cuba when the property of Compania Cubana De Electricidad was taken.

The record further discloses that claimant shipped goods to a Cuban affiliate of Punta Alegre Sugar Sales Corporation (a New York corporation which is now known as Bangor Punta Operations, Inc.), that the Cuban affiliate rejected the goods and endeavored to return them to claimant, and that before said goods were returned to claimant, they were taken over by the Government of Cuba.

Accordingly, it is concluded that claimant suffered losses within the meaning of Title V of the Act as a result of intervention, or taking by the Government of Cuba, and that, in the absence of evidence to the contrary, the losses occurred on the following dates:

<u>ON</u>		<u>AS TO</u>
March 22, 1960	(1 day after acknowledgment of collection by collecting bank)	\$8,171.00
June 23, 1960	(1 day after acknowledgment of collection by collecting bank)	8,171.00
December 6, 1959	(30 days from invoice date)	370.00
September 29, 1959	(the effective date of Law 568)	1,002.05
January 6, 1960	(1 day after acknowledgment of collection by collecting bank)	6,290.45
February 15, 1961	(30 days from claimant's debit memorandum)	541.00
August 6, 1960		172,163.52

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 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 ALLIS-CHALMERS 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 One Hundred Ninety-Six Thousand Seven Hundred Nine Dollars and Two Cents (\$196,709.02) 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

6 DEC 1967

CERTIFICATION
FILED AS C. 5110 AND CONTROL COPY OF THIS DECISION
OF THE COMMISSION WHICH WAS ENTERED AS THE FIN-
10015101 ON 12/11/67

Lucius M. ...
Clerk of the Commission

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, 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 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).)