

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

IN THE MATTER OF THE CLAIM OF

UNITED-GREENFIELD CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0066

Decision No. CU- **353**

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 UNITED-GREENFIELD CORPORATION in the amount of \$4,031.05, 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 Delaware and that at all times between January 1, 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 99.58% of its outstanding stock was owned by residents of the United States and assumes that substantially all of them were United States nationals; and that .42% of its outstanding stock was owned by residents of foreign countries, who are assumed to be citizens of those countries.

The record contains the following list of drafts drawn by the claimant's divisions, Greenfield Tap & Die, Greenfield, Massachusetts and J. H. Williams & Co., Buffalo, New York:

<u>Draft Number</u>	<u>Date Drawn</u>	<u>Drawee</u>	<u>Amount</u>
227	October 12, 1959	A. Solares y Cia. S.en C. Concha 258, Havana, Cuba	\$222.37
272	December 22, 1959	T. Gonzales y Hno. S.en C. Maximo Gomez No. 780-782, Havana, Cuba.	212.62
281	November 17, 1959	Alfonso y Cia. S. en C. Republica No. 552, Camaguey, Cuba.	118.45
285	November 19, 1959	J. Fernandez y Cia. S. A. Calle B. Entre Matadero y Calz. De Guanabacoa, Havana, Cuba.	605.91

<u>Draft Number</u>	<u>Date Drawn</u>	<u>Drawee</u>	<u>Amount</u>
301	December 8, 1959	J. Boix y Cia. S.A. Estrada Palma 451 Santiago de Cuba, Oriente, Cuba	305.30
4295	September 16, 1959	M. Ramos & Cia. Egido No. 611, Havana, Cuba.	127.29
4309	October 15, 1959	A. Solares y Cia. S.en C. Concha No. 258, Havana, Cuba.	1,866.79
4323	October 29, 1959	Carlos Perez, Jr. Republica No. 602, Camaguey, Cuba.	240.85
4324	October 29, 1959	Ferreteria Alba, S. A. Monserrate No. 417, Havana, Cuba.	36.90
4333	December 1, 1959	Francisco Garcia de Los Rios Monte No. 988, Havana, Cuba.	239.87

Additionally, the record includes letters from the collecting banks, to claimant, in which it is stated that the above drafts were paid by the drawees and that the collecting banks were still awaiting dollar reimbursement releases from the Cuban exchange control authorities. 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 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 losses occurred on the following dates, the days after the collections were acknowledged by the collecting banks:

<u>Draft Number</u>	<u>Amount of Loss</u>	<u>Date of Loss</u>
227	\$ 222.37	January 14, 1960
272	212.62	January 28, 1960
281	118.45	June 14, 1960
285	605.91	August 13, 1960
301	305.30	February 27, 1960
4295	127.29	March 12, 1960
4309	1,866.79	January 14, 1960
4323	240.85	March 3, 1960
4324	36.90	March 22, 1960
4333	239.87	July 13, 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 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, as follows:

On \$ 222.37 from January 14, 1960
On 1,866.79 from January 14, 1960
On 212.62 from January 28, 1960
On 305.30 from February 27, 1960
On 240.85 from March 3, 1960
On 127.29 from March 12, 1960
On 36.90 from March 22, 1960
On 118.45 from June 14, 1960
On 239.87 from July 13, 1960
On 605.91 from August 13, 1960.

Additional portions of this claim are based upon open account items, for claimant's Geometric Tool Company, Greenfield Tap & Die, and J. H. Williams & Co. divisions, invoiced December 28, 1959, January 15, 1960 and November 4, 1959, respectively; the amounts being \$40.58 in the case of Geometric Tool, \$6.72 in the case of Greenfield Tap & Die's account and \$7.40 in the case of the J. H. Williams & Co. open account.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant corporation furnished no evidence regarding these items beyond its own statements in the claim form. In reply to the Commission's letter of June 21, 1966, suggesting the submission of supporting evidence for these items, claimant replied in its letter of September 15, 1966, that, "We are not able to add anything to the small open account claims"

On the basis of the existing record, the Commission is constrained to find that the claimant has not met the burden of proof with regard to the open account items. Accordingly, these portions of the claim are denied.

CU-0066

CERTIFICATION OF LOSS

The Commission certifies that UNITED-GREENFIELD CORPORATION 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 Nine Hundred Seventy-Six Dollars and Thirty-Five Cents (\$3,976.35) 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

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 6 NOV 1967

Francis Masterson
Clerk of the Commission

CU-0066