

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

IN THE MATTER OF THE CLAIM OF

THE WEST BEND COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0074

Decision No. CU 92

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$9,564.99, was presented by THE WEST BEND COMPANY, based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Section 503 of the International Claims Settlement Act of 1949, as amended (64 Stat. 12; 69 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 79 Stat. 988), the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. That section 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

(a) . . . 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 West Bend Aluminum Company was organized in the State of Wisconsin in 1911; that the corporate name was changed to THE WEST BEND COMPANY in 1961; and that at all times between 1911 and presentation of this claim on June 21, 1965, more than 50% of the outstanding capital stock of the corporation 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 at all times material hereto, 100% of its 618 stockholders have been nationals of the United States.

The record contains copies of letters to claimant from The Chase Manhattan Bank, principal branch in Cuba, and The First National Bank of Miami, International Department, indicating payment of collections by consignees (Diego Zuloaga, S. en C.; Arce Lastra y Cia; Laverne Ware de Cuba, S.A.; and Atienza y Cia) for goods sold to them by claimant in amounts as follows:

| <u>Date of letter or payment</u> | <u>Bank</u> | <u>Amount</u> |
|--------------------------------------|-------------------------------------|---------------|
| December 21, 1959 | The Chase Manhattan Bank | \$ 327.16 |
| December 23, 1959 | " " " " " | 1,580.06 |
| January 12, 1960 | The First National Bank of Miami | 1,204.30 |
| January 27, 1960 | The Chase Manhattan Bank | 354.00 |
| February 17, 1960 | " " " " " | 1,075.53 |
| February 23, 1960 | The First National Bank of Miami | 174.30 |
| March 10, 1960 | The Chase Manhattan Bank | 1,013.80 |
| July 7, 1960 | The First National Bank of Miami | 4,646.68 |

The letters further indicate that the proceeds were being held for claimant and would be remitted when authorization was obtained. Claimant states that it has not received any of these funds, but had authorized payment therefrom of agents' commissions totalling \$810.84, reducing its total claim to \$9,564.99. The commissions were as follows:

| <u>Amount of Collection</u> | <u>Amount of Commission</u> |
|---------------------------------|---------------------------------|
| \$ 327.16 | \$ 32.72 |
| \$ 1,580.06 | \$ 130.86 |
| \$ 1,204.30 | \$ 90.32 |
| \$ 354.00 | \$ 35.40 |
| \$ 1,075.53 | \$ 80.66 |
| \$ 174.30 | \$ 13.07 |
| \$ 1,013.80 | \$ 75.79 |
| \$ 4,646.68 | \$ 352.02 |

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 In the Matter of the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019.)

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 December 22, 1959 as to \$294.44, on December 24, 1959 as to \$1,449.20, on January 13, 1960 as to \$1,113.98, on January 28, 1960 as to \$318.60, on February 18, 1960 as to \$994.87, on February 24, 1960 as to \$161.23, on March 11, 1960 as to \$938.01, and on July 8, 1960 as to \$4,294.66, the days after the collections were paid or acknowledged by the banks.

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:

CERTIFICATION OF LOSS

The Commission certifies that THE WEST BEND 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 Nine Thousand Five Hundred Sixty-Four Dollars and Ninety-Nine Cents (\$9,564.99) 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

JUN 28 1967

CERTIFICATION

is a true and correct copy of the decision
of the Commission which was entered as the final
decision on JUL 28 1967

Francis Mackerson
Clerk of the Commission

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 upon the expiration of 30 days after such service or receipt of notice, the decision will be entered as the Final Decision of the Commission, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)