

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

IN THE MATTER OF THE CLAIM OF

AUTOMOTIVE INTERNATIONAL CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-075

Decision No. CU

00058

Counsel for claimant:

Milton H. Gray, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$2,329.55 was presented by AUTOMOTIVE INTERNATIONAL CORPORATION 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 interests 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 Illinois and that at all times between 1938 and presentation of this claim on June 21, 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 all of its stockholders were residents of the United States and assumes that substantially all of them were United States nationals; and that no stockholders were residents of foreign countries and assumed to be citizens of those countries.

The record contains copy of claimant's invoice No. 12511 of June 23, 1959, reflecting the sale to Messrs. Johnnies Rodriguez, S.A. of Havana, Cuba, of goods totalling \$428.74, as to which freight, shipping and other attendant fees increased the total to \$430.82; a copy of its invoice No. 12256 of January 12, 1959, reflecting the sale to Messrs. Arosa Supply Corp. of Havana, Cuba, of goods totalling \$286.73; a copy of claimant's invoice No. 12563 of June 25, 1959

reflecting the sale to Transporte De Colegiales, Havana, Cuba, of goods totalling \$233.43; a copy of claimant's invoice No. 12564 of September 16, 1959 reflecting the sale to Sr. J.M. Rodriguez Arias of Havana, Cuba, of goods totalling \$495.65, as to which freight, shipping and other attendant fees increased the total to \$498.05 and a copy of claimant's invoice No. 12666 of September 18, 1959 reflecting the sale to Srs. Fernandez, Linares Y Cia, Havana, Cuba, of goods totalling \$880.52.

Additionally, the record includes a letter of August 24, 1960 from the First National Bank of Chicago, to claimant, in which it is stated that the collection of \$430.82 was paid by the consignee Messrs. Johnies Rodriguez and that the Banco Agricola E Industrial, by letter of August 15, 1960, had advised that it was still awaiting a dollar reimbursement release from the Currency Stabilization Fund, a Cuban Government agency; a letter of March 26, 1959 from the First National Bank of Chicago, to claimant, concerning maturity on May 19, 1959 of the draft for \$286.73 drawn on and presented to the consignee Messrs. Arosa Supply Corp. according to a Banco Continental Cubana letter of March 23, 1959; a letter of May 26, 1960 from the First National Bank of Chicago, to claimant, in which it is stated that the collection of \$233.43 was paid by the consignee Transporte De Colegiales and that the Banco Gelats, by letter dated May 18, 1960, advised that it was awaiting similar authorization, another letter of May 26, 1960 from the First National Bank of Chicago, to claimant, in which it is stated that the collection of \$498.05 was paid by the consignee Sr. J.M. Rodriguez Arias and that Banco Gelats advised by letter dated May 18, 1960, collection was paid on December 21, 1959, and was awaiting similar authorization. Finally the claimant has submitted delivery receipt No. 44693 of Expresso Aereo dated September 30, 1959 indicating that the consignee Srs. Fernandez, Linares Y Cia had taken delivery of the merchandise set forth in

claimant's invoice No. 12666 and a communication from the First National Bank of Chicago dated September 30, 1959 to claimant indicating that collection of \$880.52 would be made through the Trust Company of Cuba. Claimant states that it has not received the funds from these five transactions.

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, FGSC 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 May 20, 1959 as to \$286.73, on October 1, 1959 as to \$880.52, on May 19, 1960 as to \$233.43, on December 22, 1959 as to \$498.05 and on August 16, 1960 as to \$430.82.

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, FGSC 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 AUTOMOTIVE INTERNATIONAL 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 Two Thousand Three Hundred Twenty-Nine Dollars and Fifty-Five Cents. (\$2,329.55) 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 14 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 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. (FSCS Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

CU-075

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on JUL 14 1967

Travis Mackerson

Clerk of the Commission