

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

IN THE MATTER OF THE CLAIM OF

FRENOS OVERSEAS CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU 0080

Decision No. CU 272

Counsel for claimant:

Daniel K. Saltzer, Esq.

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 FRENOS OVERSEAS CORPORATION in the amount of \$3,114.30, 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 York and that all times between January 14, 1953 and presentation of this claim on June 18, 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 are nationals of the United States.

The record contains copies of claimant's invoices reflecting the sale of goods to the consignee indicated in the amounts specified as follows:

<u>Date of Invoice</u>	<u>Number of Invoice</u>	<u>Consignee</u>	<u>Amount</u>
July 2, 1958	1084	Accesorios de Omnibus, Carlos Mesa, S.A.	\$1,600.00
October 29, 1958	1086	"	1,236.00
May 29, 1959	1089	"	1,831.22

The record also contains copies of letters to claimant from The First National City Bank of New York indicating that either payment had been made in local currency to a correspondent bank by the consignee, Accesorios de Omnibus Carlos Mesa, S.A., and that it was awaiting dollar reimbursement release from the Cuban Government, or

that the same consignee had accepted each draft as follows:

<u>Date of Letter or Payment</u>	<u>Accepted to Mature</u>	<u>Number of Draft</u>	<u>Bank</u>	<u>Amount</u>
	June 23, 1959	1084D	The First National City Bank of New York	\$241.50
	July 23, 1959	1084E	"	241.50
	August 22, 1959	1084F	"	241.50
	September 21, 1959	1084G	"	241.50
	October 21, 1959	1084H	"	241.50
	November 20, 1959	1084I	"	241.50
	December 20, 1959	1084J	"	241.50
	January 19, 1960	1084K	"	241.50
November 17, 1959		1084A	"	241.49
November 17, 1959		1084B	"	241.50
November 17, 1959		1084C	"	241.50
December 24, 1959		1089C	"	457.81

Claimant states that it has not received any of the aforementioned 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 the intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on September 29, 1959 the date when Cuban Law 568 was published, as to \$966.00; and on October 21, 1959 as to \$241.50, on November 20, 1959 as to \$241.50, on December 20, 1959 as to \$241.50, on January 19, 1960 as to \$241.50, on November 18, 1959 as to \$724.49, and on December 25, 1959 as to \$457.81, the dates of maturity or the dates after notice of payment to collecting 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 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.

CU-0080

CERTIFICATION OF LOSS

The Commission certifies that FRENOS OVERSEAS 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 One Hundred Fourteen Dollars and Thirty Cents (\$3,114.30) 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

SEP 20 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

La Vern R. Dilweg

La Vern 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).)

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CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on 20 OCT 1967

Jessie Anderson
Member of the Commission