

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

IN THE MATTER OF THE CLAIM OF

THE JOSEPH DIXON CRUCIBLE COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0081

Decision No. CU

313

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 THE JOSEPH DIXON CRUCIBLE COMPANY in the amount of \$3,305.70 based upon the asserted loss of payment of 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 New Jersey and that all times between June 23, 1959 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. Claimant states that 0.9% of its 360,000 shares were held by nonnationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains a copy of claimant's invoice No. 124 of September 21, 1959, reflecting the sale to Impresora Modelo, S.A. of Havana, Cuba of goods totalling \$164.00; a copy of invoice No. 9207 of May 29, 1959 reflecting the sale to Proveedora Comercial America, S.A. of Havana, Cuba of goods totalling \$492.12, as to which freight and shipping increased the total to \$529.98; a copy of invoice No. 9820 of September 22, 1959, reflecting the sale to A. Solares Y Cia. S. En C. of Havana, Cuba of goods totalling \$522.10; a copy of invoice No. 550 of November 13, 1959, reflecting the sale to F. Vigil Y Cia of Havana, Cuba of goods totalling \$493.31; a copy of invoice No. 537 of October 28, 1959 reflecting the sale to Chacon Alvarez Y Cia of Havana, Cuba of goods totalling \$482.49; a copy of invoice No. 9915 of September 21, 1959, reflecting the sale to Cia. Papelera Amistad, S.A. of Havana, Cuba of goods totalling \$227.00; a copy of invoices Nos. 1252, 1260 of November 25, 1959, reflecting the sales to Cuban Air Products Corp. of goods totalling \$742.82 (\$336.92 and \$405.90 respectively); a copy of

invoices Nos. 9366, 9768 of June 23, 1959 and July 20, 1959, respectively, reflecting the sales to Consolidated Railroads of Cuba of Camaguey, Cuba of goods totalling \$144.00 (\$72.00 each). 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 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 intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the losses occurred on

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| November 25, 1959 | as to | \$164.00 |
| August 8, 1959 | as to | 529.98 |
| December 22, 1959 | as to | 522.10 |
| December 10, 1959 | as to | 493.31 |
| February 18, 1960 | as to | 482.49 |
| November 29, 1959 | as to | 227.00 |
| November 25, 1959 | as to | 742.82 |
| June 23, 1959 | as to | 72.00 |
| July 20, 1959 | as to | 72.00 |

The dates when the respective payments became due.

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 respective losses occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that THE JOSEPH DIXON CRUCIBLE 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 Three Thousand Three Hundred Five Dollars and Seventy Cents (\$3,305.70) 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

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

CU-0081

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 8.0 OCT 1967

Jessie M. ...
Clk of the Commission