

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

IN THE MATTER OF THE CLAIM OF

ANACONDA AMERICAN BRASS COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0112

Decision No. CU

302

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 ANACONDA AMERICAN BRASS COMPANY in the amount of \$3,299.97, 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."

Claimant corporation has submitted the certificate of the Secretary of State of the State of Connecticut which represents that The American Brass Company was specially chartered in that State on June 7, 1893 and, after judicial change of name to the ANACONDA AMERICAN BRASS COMPANY on October 3, 1960, was in existence and in good standing on October 24, 1966.

An officer of the claimant corporation has certified that the claimant is a wholly-owned subsidiary of the Anaconda Company, a corporation organized and existing under the laws of the State of Montana, and that between 1922 and presentation of this claim on June 23, 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.

An officer of The Anaconda Company certifies that it is a publicly held corporation with approximately 99,190 shareholders of record, 98,670, or 99.476% of whom show United States addresses and are presumably United States nationals.

The record contains copies of letters to claimant from The First National City Bank of New York indicating payment in local currency to a correspondent bank in Cuba by consignees (Cia. Commercial Gancedo, S.A., Havana, and Gonzalez & Sanchez, Havana) for goods sold to them by claimant in amounts as follows:

<u>Date of letter or payment</u>	<u>Consignee</u>	<u>Amount</u>
January 18, 1960	Cia Commercial Gancedo, S.A.	\$ 861.15
April 20, 1960	Gonzalez & Sanchez	\$1,861.62

The letters further indicate the the proceeds were being held for claimant and would be remitted when authorization was obtained from the Cuban Government. Claimant states that it has not received any of these 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).

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 January 19, 1960 as to \$861.15, and on April 21, 1960 as to \$1,861.62, for a total of \$2,722.77.

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.

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.

The remainder of this claim, for \$577.20, is based upon the asserted loss of payment for merchandise shipped to the Havana office of Cia Cubana de Electricidad.

Section 505(a) of the Act provides:

. . . . A claim under Section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The records of the Commission reveal that Cia Cubana de Electricidad is a corporation organized under the laws of the State of Florida. Therefore this portion of the claim can be considered only if the claimed debt is a charge upon property which was nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant has neither alleged nor submitted evidence to establish that this debt was a charge upon property which was nationalized, expropriated, intervened, or taken by the Government of Cuba. Therefore the Commission is without authority to consider this portion of the claim, and it is hereby denied.

CERTIFICATION OF LOSS

The Commission certifies that ANACONDA AMERICAN BRASS 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 Two Thousand Seven Hundred Twenty-Two Dollars and Seventy-Seven Cents (\$2,722.77) 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

This is a true and correct copy of the decision of the Commission entered as the final decision on 6 NOV 1967

Terrie M. ...
Clerk of the Commission

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