

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

IN THE MATTER OF THE CLAIM OF

ARNOLD, SCHWINN & COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0126

Decision No. CU 417

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 ARNOLD, SCHWINN & COMPANY in the amount of \$68,301.15, 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 Illinois in 1895 and that at all times between 1920 and presentation of this claim on June 25, 1965, the beneficial interest in 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 copy of claimant's invoices and statements of account which reflect the sale of goods to P. Navas y Cia of Havana, Cuba, totalling \$80,843.67, payment of which was due on dates as follows:

<u>Invoice Number</u>	<u>Due Date</u>	<u>Amount of Invoice</u>
M-8311	December 17, 1958	\$ 11,642.00
M-8339	January 3, 1959	11,312.50
M-01468	July 1, 1959	455.22
M-01378	August 12, 1959	634.52
M-7342	September 29, 1959	94.75
M-9107	November 12, 1959	13,977.50
8682	November 14, 1959	2,459.00
M-9022	January 30, 1960	15,992.50
9605	January 28, 1960	1,512.33
9891	February 5, 1960	630.00
M-04444	February 6, 1960	784.05
M-04285	March 9, 1960	101.86
9940	March 10, 1960	1,442.60
9976	March 10, 1960	1,500.00
M-04286	March 11, 1960	767.81
M-9023	March 17, 1960	15,992.50
M-04291	March 22, 1960	399.91
M-10207	April 10, 1960	68.56
M-10219	June 10, 1960	1,006.05
M-11039	July 19, 1960	70.01
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	Total	\$ 80,843.67

In addition, the record indicates receipt by claimant of payments and the application of other credits totalling \$12,542.52, which, in the absence of evidence to the contrary, are deemed applicable to the earliest amounts shown in the above tabulation, thus eliminating the amount of \$11,642.00 due on December 17, 1958, and reducing the amount due on January 3, 1959 to \$10,411.98. Claimant states that it has not received the balance of \$68,301.15.

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 loss occurred on September 29, 1959, the date of publication of Law 568, as to \$11,596.47; and on the due dates of November 12, 1959 as to \$13,977.50, November 14, 1959 as to \$2,459.00, January 30, 1960 as to \$15,992.50, January 28, 1960 as to \$1,512.33, February 5, 1960 as to \$630.00, February 6, 1960 as to \$784.05, March 9, 1960 as to \$101.86, March 10, 1960

as to \$2,942.60, March 11, 1960 as to \$767.81, March 17, 1960 as to \$15,992.50, March 22, 1960 as to \$399.91, April 10, 1960 as to \$68.56, June 10, 1960 as to \$1,006.05, and July 19, 1960 as to \$70.01.

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

CERTIFICATION OF LOSS

The Commission certifies that ARNOLD, SCHWINN & 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 Sixty-Eight Thousand Three Hundred One Dollars and Fifteen Cents (\$68,301.15) 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

OCT 4 1967

Edward D. Re
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, Commissioner

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

Walter M. ...
Chief of the Commission

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).)