

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

IN THE MATTER OF THE CLAIM OF

ACE FASTENER CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0130

Decision No. CU 296

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 ACE FASTENER CORPORATION in the amount of \$6,998.36, 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."

Officers of claimant, ACE FASTENER CORPORATION, and Swingline Inc. have certified that the claimant was organized in the State of Illinois and that at all times since September 1, 1957, all of its outstanding stock has been held by Swingline Inc.; that Swingline Inc. was organized in the State of New York and that at all times between 1925 and July 22, 1965, a date subsequent to the presentation of this claim, more than 50% of the outstanding stock of Swingline Inc. 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 Swingline Inc. states that 99.654 per cent of the outstanding stock of Swingline Inc. is held by nationals of the United States.

The record contains copies of letters from the First National Bank of Chicago to claimant, referring to notifications by the collecting banks regarding collections paid by consignees in local currency, as to which they were awaiting permission from the Cuban exchange control authorities for dollar reimbursement to claimant, as follows:

<u>Draft No.</u>	<u>Consignee</u>	<u>Date Notified</u>	<u>Amount</u>
X-217	Domingo Sanchez	August 27, 1959	\$ 377.00
X-443	F. Vigil y Cia	December 3, 1959	425.00
X-511	Fernandez Solana y Cia	December 3, 1959	410.00
X-522	Gutierrez Noriega y Cia	December 14, 1959	558.48

<u>Draft No.</u>	<u>Consignee</u>	<u>Date Notified</u>	<u>Amount</u>
X-487	Fernandez y Cia	January 13, 1960	\$ 664.50
X-528	Suarez Gutierrez y Cia	February 15, 1960	1,583.50
X-510	Tipografia J. Suarez	February 29, 1960	1,250.00
X-531	Fernandez Castro y Cia	September 23, 1960	550.40
X-719	Papeleria Kompostela S.A.	November 23, 1960	<u>1,174.48</u>
			\$6,993.36

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 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 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 September 29, 1959, the date of publication of Law 568, as to \$377.00, and on December 4, 1959 as to \$425.00, on December 4, 1959 as to \$410.00, on December 15, 1959 as to \$558.48, on January 14, 1960 as to \$664.50, on February 16, 1960 as to \$1,583.50, on March 1, 1960 as to \$1,250.00, on September 24, 1960 as to \$550.40, and on November 24, 1960 as to \$1,174.48, the days after the collections were acknowledged by the respective 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.

CERTIFICATION OF LOSS

The Commission certifies that ACE FASTENER 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 Six Thousand Nine Hundred Ninety-Three Dollars and Thirty-Six Cents (\$6,993.36) 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

20 OCT 1967

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).)