

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

IN THE MATTER OF THE CLAIM OF

GARCIA INTERNATIONAL CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0151

Decision No. CU

1716

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 GARCIA INTERNATIONAL CORPORATION, in the amount of \$11,377.61, and is 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."

A certified copy of the Articles of Incorporation of the claimant corporation verifies that claimant was organized in 1946 in the State of Illinois and evidence submitted established that at all times between that date and the presentation of this claim on June 30, 1965, 100% 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.

The record includes copies of correspondence from banks, consignee business enterprises in Cuba, copies of invoices, and other data concerning shipments of merchandise to Cuban business firms, listed hereafter as the consignees. This evidence discloses that the purchase price of the goods and accompanying charges for such shipments were, in many instances, paid by the consignees to local Cuban banks; and that the dollar reimbursement releases or authorization were never granted by Cuban governmental officials. Other drafts for shipments made by claimant were not paid to the collecting bank by the consignee. Claimant states that it has not received any of the funds for such shipments.

There follows hereafter data concerning the shipments made to Cuban consignees, including information on paid and unpaid drafts, with the dates on which payments were acknowledged or dates when the unpaid drafts were due and payable. (The listed amounts are net after adjustment or credit):

<u>Number</u>	<u>Customer</u>	<u>Date Due or Paid</u>	<u>Amount</u>
8489-G	Motor Auto Co., Ltd.	5/29/59	\$ 15.46
8904-G	" " " " "	3/11/60	332.00
8903-G	" " " " "	2/22/60	381.00
8816-G	G. Rivas & Cia.	12/ 4/59	958.50
8824-G	Johnnie Rodriguez	9/15/59	261.00
8857-G	" " " " "	9/29/59	425.00
8971-G	" " " " "	11/23/59	289.50
9058-G	" " " " "	7/ 7/60	2,043.10
9151-G	" " " " "	5/ 4/60	360.62
8751-G	Jose Saladrigas Ferrer	10/ 4/59	1,331.60
8892-G	" " " " " "	8/ 5/60	153.60
8898-G	" " " " " "	2/19/60	1,189.86
8285-G	Andrade Motor Company	11/22/58	181.95
8352-G	" " " " "	1/25/60	89.20
8286-G	" " " " "	11/29/58	215.43
8284-G	" " " " "	1/12/59	482.83
9048-G	Auto Lizmen, S.A.	9/13/60	561.60
7989-G	Importadora Valiente	5/16/60	537.29
8060-G	" " " " "	8/ 9/58	198.75
8123-G	" " " " "	9/29/58	529.70
8427-G	" " " " "	12/26/58	181.71
8432-G	" " " " "	12/26/58	295.00
8420-G	" " " " "	1/ 7/59	276.29
8428-G	" " " " "	1/21/59	612.53
8418-G	" " " " "	5/ 9/59	434.15
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			\$ 12,337.67

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 Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, 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 September 29, 1959, the date of publication of Law 568, as to \$4,109.80, the total of all sums falling due on or before that date; on

October 5, 1959 as to \$1,331.60
November 24, 1959 as to \$289.50
December 5, 1959 as to \$958.50
January 26, 1960 as to \$89.20
February 20, 1960 as to \$1,189.86
February 23, 1960 as to \$381.00
March 12, 1960 as to \$332.00
May 5, 1960 as to \$360.62
May 17, 1960 as to \$537.69
July 8, 1960 as to \$2,043.10
August 6, 1960 as to \$153.60
September 14, 1960 as to \$561.60

in each case the date of loss being either the day after payment came due or the day after payment was acknowledged by the Cuban bank.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of Lisle Corporation, 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 losses occurred, to the date on which provision is made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that GARCIA INTERNATIONAL 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 Twelve Thousand Three Hundred Thirty-Seven Dollars and Sixty-Seven Cents (\$12,337.67) 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

APR 24 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

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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