

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

IN THE MATTER OF THE CLAIM OF

STEPHENS-ADAMSON MFG. CO.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0155

Decision No. CU

880

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 STEPHENS-ADAMSON MFG. CO. in the amended amount of \$39,702.01, 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."

An officer of the claimant corporation has certified that the claimant was organized in the State of Illinois, and that all times between March 4, 1902 and presentation of this claim on July 1, 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.

Claimant has submitted a schedule setting forth the percentage of claimant's capital stock held by United States nationals and foreign nationals from December 1958 to 1965, inclusive. This schedule shows that as of December 1960, 99.62% of the outstanding stock was held by United States nationals, and that as of December 1965, 97.90% of the stock was held by United States nationals.

The record includes copies of invoices, credit and debit memos, and account ledgers reflecting the shipment of goods by claimant's two divisions, Engineering and Sealmaster, to the Iberia Machinery Company, S.A. of Havana, Cuba. The record also contains copies of correspondence between claimant and the consignee, as well as copies of 1960 accounting statements of the consignee. The evidence discloses that the purchase price of the goods and the accompanying charges for such shipments were, in a few instances, paid by the

consignee to local Cuban banks; and that the dollar reimbursement releases or authorizations were never granted by Cuban governmental officials. Most of the shipments made by claimant were on a 30 day net basis and claimant states it has not received the funds for any of the shipments for which data is hereafter listed.

The following list includes the claimant's invoice or other reference number, the invoice date, the amount and the due date or date of payment to a Cuban bank, for shipments made by claimant to said consignee, Iberia Machinery Company, S.A. of Havana, Cuba:

I ENGINEERING DIVISION

<u>INVOICE DATE AND NUMBER</u>	<u>AMOUNT</u>	<u>DUE DATE (UNLESS STATED PAID)</u>
March 21, 1958 110884 CSF	\$5,600.15	April 21, 1958
August 6, 1958 112968 CSF	3,361.90	September 6, 1958
August 26, 1958 113242 CSF	2,839.68	September 26, 1958
August 18, 1958 350394 F	45.20	September 18, 1958
August 22, 1958 Credit Memo	(127.50)	Credit
September 22, 1958 113803 CSF	233.66	October 22, 1958
October 15, 1958 114196 CSF	4,031.25	November 15, 1958
October 13, 1958 351303 F	51.90	November 13, 1958
October 29, 1958 114490 CSF	1,107.12	November 29, 1958
November 18, 1958 114888 CSF	997.40	December 18, 1958
December 3, 1958 115151 CSF	996.15	January 3, 1959
December 17, 1958 115277 CSF	1,417.50	January 17, 1959
December 5, 1958 115121 CSF	419.87	January 5, 1959

<u>INVOICE DATE AND NUMBER</u>	<u>AMOUNT</u>	<u>DUE DATE (UNLESS STATED PAID)</u>
December 4, 1958 Debit Memo 43455	\$ 42.30	December 4, 1958
January 27, 1959 351657 F	106.86	February 27, 1959
January 26, 1959 115754 CSF	579.60	February 26, 1959
January 8, 1959 115665 CSF	124.50	February 8, 1959
January 8, 1959 115666 CSF	644.68	February 8, 1959
January 15, 1959 115672 CSF	1,389.18	February 15, 1959
March 11, 1959 353597 F	100.86	April 11, 1959
March 23, 1959 116833 CSF	941.52	April 23, 1959
June 12, 1959 118318 CSF	1,335.36	July 12, 1959
July 31, 1959 Credit Memo 109	(13.36)	Credit
September 14, 1959 120013 CSF	30.10	October 14, 1959
September 14, 1959 120014 CSF (Net 90 days)	521.50	December 14, 1959
December 21, 1959 121661 CSF	278.60	Paid June 6, 1960
December 11, 1959 121331 CSF	152.92	Paid April 4, 1960
March 8, 1960 112907 CSF	842.04	
Less credit	Less credit - 816.00	
	Net balance \$ 26.04	April 8, 1960
	This collection	

II SEALMASTER DIVISION

<u>INVOICE DATE AND NUMBER</u>	<u>AMOUNT</u>	<u>DUE DATE (UNLESS STATED PAID)</u>
January 28, 1958 Credit Memo 237731	\$ (13.38)	Credit
June 24, 1958 251595 CCF	2,444.16	July 24, 1958
June 30, 1958 Debit Memo 42952	5.86	June 30, 1958
July 14, 1958 253337 CCF	892.08	August 14, 1958
August 6, 1958 255279 CCF	994.44	September 6, 1958
August 18, 1958 256001 CCF	119.16	September 18, 1958
September 9, 1958 257956 CCF	649.50	October 9, 1958
September 26, 1958 259434 CCF	3.92	October 26, 1958
September 30, 1958 259995 CCF	9.60	October 30, 1958
October 13, 1958 260980 CCF	79.36	November 13, 1958
October 22, 1958 262027	1,125.42	November 22, 1958
October 31, 1958 Debit Memo 43290	8.10	October 31, 1958
December 31, 1958 268272 CCF	205.60	January 31, 1959
January 8, 1959 269130 CCF	9.93	February 8, 1959
January 19, 1959 270139 CCF	618.00	February 19, 1959
January 19, 1959 270140 CCF	1,191.54	February 19, 1959
February 9, 1959 273163 CCF	1,429.94	March 9, 1959
March 13, 1959 276035 CCF	442.74	April 13, 1959

II SEALMASTER DIVISION

<u>INVOICE DATE AND NUMBER</u>	<u>AMOUNT</u>	<u>DUE DATE (UNLESS STATED PAID)</u>
March 24, 1959 277359 CCF	\$ 45.68	April 24, 1959
April 14, 1959 260619 CCF	14.54	May 14, 1959
August 17, 1959 297724 CCF (90 days net)	13.84	November 17, 1959
September 21, 1959 302818 CCF	27.68	October 21, 1959
October 21, 1959 307934 CCF (terms stated as "Cash")	19.02	October 21, 1959
November 6, 1959 311348 PPF	721.26	Paid on March 11, 1960
November 20, 1959 313586 CCF	66.72	December 20, 1959
December 16, 1959 318195 CCF	629.50	Paid on June 6, 1960
December 19, 1959 318445 PPF	338.54	Paid on June 6, 1960
February 5, 1960 326107 CCF	312.22	Paid on June 1, 1960
May 11, 1960 343116 CCF	188.74	
June 1, 1960	<u>42.37</u>	
Debit Memo 44993 (relates to above invoice)	211.11	
less credit	<u>169.01</u>	
Net Balance this collection	62.10	June 11, 1960

The reduction by \$169.01 of the amount due on June 11, 1960 reflects claimant's amendment of its claim to credit Iberia Machinery Company, S.A. with commissions due the consignee but not otherwise credited to its account.

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 the respective due dates with regard to invoices due after September 29, 1959. However, with respect to the dates of loss as to those goods shipped under invoices with due dates prior to September 29, 1959, the Commission finds that the loss occurred on September 29, 1959, the effective date of Law 568. The Commission further finds that in those instances in which the consignee notified the claimant that drafts had been paid on certain dates to Cuban banks, the loss occurred on the days after such payments were made.

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 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, as follows:

On \$36,501.97 from September 29, 1959  
On 30.10 from October 14, 1959  
On 46.70 from October 21, 1959  
On 13.84 from November 11, 1959  
On 521.50 from December 14, 1959  
On 66.72 from December 20, 1959  
On 26.04 from March 8, 1960  
On 721.26 from March 12, 1960  
On 152.92 from April 5, 1960  
On 312.22 from June 2, 1960  
On 1,246.64 from June 7, 1960  
On 62.10 from June 11, 1960

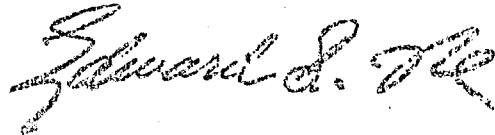


CERTIFICATION OF LOSS

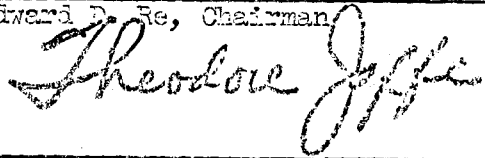
The Commission certifies that STEPHENS-ADAMSON MFG. CO. suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949 as amended, in the amount of Thirty-Nine Thousand Seven Hundred Two Dollars and One Cent (\$39,702.01) 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

10 JAN 1968



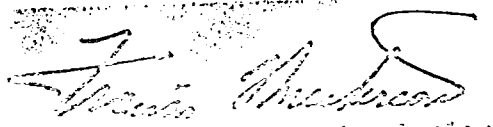
Edward D. Re, Chairman



Theodore Jaffe, Commissioner

CERTIFICATION

This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on FEB 12 1968

  
Francis M. Anderson  
Clerk of the Commission

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).)