

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

IN THE MATTER OF THE CLAIM OF

AMERTOOL SERVICES, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0156

Decision No. CU
811

Counsel for claimant:

Casey, Lane and Mittendorf
By: David Olin, Esq.

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 AMERTOOL SERVICES, INC. in the amount of \$55,178.14 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 Ohio and that at all times between June 1949, 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 claimant corporation is presently owned by 15 member corporations. The record contains certifications from officers of the 15 member corporations stating that more than 50% of their outstanding capital stock are owned by nationals of the United States. The Commission holds that the claimant corporation is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains various invoices reflecting sales by the Cincinnati Shaper Company, one of claimant's member corporations, to various Cuban consignees. The record also discloses that certain monies were paid on account by the Cuban consignees, which resulted in the following balances due and owing to the member corporation:

Goods Sold to Electro Mecanica S.A., Havana, Cuba

<u>Invoice No.</u>	<u>Amount</u>	<u>Invoice Date</u>	<u>Balance Due</u>
C-8422	\$24,974.70	April 22, 1959	\$14,048.19
C-8320	18,458.50	February 3, 1959	6,921.90

Goods Sold to Talleres Samitier, S.A., Havana, Cuba

<u>Invoice No.</u>	<u>Amount</u>	<u>Invoice Date</u>	<u>Balance Due</u>
C-7805	\$18,356.94	November 26, 1967	\$ 7,917.18
C-7837	25,135.47	December 16, 1957	10,558.32

Goods Sold to Enrique Lanio, Havana, Cuba

<u>Invoice No.</u>	<u>Amount</u>	<u>Invoice Date</u>	<u>Balance Due</u>
C-7830	\$23,407.76	December 11, 1957	\$ 8,372.68
C-7773	18,111.53	November 11, 1957	5,341.52

In addition, the record contains an invoice reflecting a sale by another of claimant's member corporations, Cincinnati Milling and Grinding Machines, Inc., to Enrique Lanio, Havana, Cuba. The record establishes that certain payments were made on account by Enrique Lanio resulting in the following balance due to claimant:

<u>Invoice No.</u>	<u>Amount</u>	<u>Invoice Date</u>	<u>Balance Due</u>
410 H 086	\$ 4,305.81	September 5, 1958	\$ 2,018.35

Claimant states that as a result of these transactions with the above-named Cuban consignees, a total balance of \$55,178.14 remained due and owing to claimant. Claimant further states that it has not received 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; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

Accordingly, in the instant claim the Commission finds that claimant's property, having a total value of \$55,178.14, was lost as a result of intervention by the Government of Cuba.

Since the maturity dates governing these transactions occurred prior to September 29, 1959, the Commission further finds that the loss occurred on September 29, 1959, the effective date of Law 568.

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

CU-0156

CERTIFICATION OF LOSS

The Commission certifies that AMERTOOL SERVICES, INC. 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 Fifty-Five Thousand One Hundred Seventy-Eight Dollars and Fourteen Cents (\$55,178.14) with interest thereon at 6% per annum from the date of loss to the date of settlement.

Dated at Washington, D.C.
and entered as the Proposed
Decision of the Commission

14 DEC 1967

COMMUNICATION
THIS IS A COPY FOR THE RECORD OF THE DECISION
ON THE SERVICE OF THIS DECISION AS THE FINAL
DECISION OF THE COMMISSION
15 1967

Edward D. Re
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, 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).)