

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

IN THE MATTER OF THE CLAIM OF

HUNT FOODS AND INDUSTRIES, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0213

Decision No. CU 188

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$33,138.64 was presented by the HUNT FOODS AND INDUSTRIES, INC., based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949, as amended [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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under Section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

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."

Claimant, HUNT FOODS AND INDUSTRIES, INC., is the surviving corporation following the merger on June 10, 1960, of claimant and Wesson Oil and Snowdrift Co., Inc. A copy of the Merger Agreement and a certified copy of claimant's Certificate of Incorporation, as amended, are part of the record of this claim.

An officer of claimant corporation has certified that at the time of the loss herein described, more than 50% of the outstanding capital stock of each class of Wesson Oil and Snowdrift Co., Inc. was owned by nationals of the United States, and, further, that at all times between the date of loss and presentation of this claim on July 12, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by nationals of the United States. 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 in excess of 99.75% of its stockholders were residents of the United States and assumes that substantially all of them were United States nationals; and that less than 0.25% of its stockholders were residents of foreign countries and assumed to be citizens of those countries.

The basis of this claim is a series of sale transactions between the Wesson Oil and Snowdrift Co., Inc. and certain Cuban entities prior to the merger of that corporation and claimant. The Commission holds that in accordance with the terms of the Agreement of Merger all rights, privileges and property of Wesson Oil and Snowdrift Co., Inc. vested in claimant, HUNT FOODS AND INDUSTRIES, INC., including those arising from the transactions which constitute the basis of this claim. (See the Claim of The Berwind-White Coal Mining Company, FCSC Claim No. CU-0538.)

The record includes a copy of a statement dated May 14, 1959, referring to invoice No. 22 reflecting the sale by Wesson Oil and Snowdrift, Inc. to Cooperativa Provincial De Vaqueros De La Habana, of goods totalling \$4,152.35; a copy of invoice No. 320 of December 21, 1959, reflecting the sale by Wesson Oil and Snowdrift, Inc. to Cia De Alimentos Balanceados "La Favorita", S.A. of goods totalling \$6,900.00, as to which freight, shipping and other attendant fees increased the total to \$8,212.00; copies of invoice Nos. 95 and 98 of June 15 and 16, 1959, each reflecting the sale to Cooperativa Provincial De Vaqueros De La Habana by Wesson Oil and Snowdrift, Inc., of goods totalling \$3,546.45, as to which freight shipping and other attendant fees increased the total to \$4,201.36 each; copies of invoice Nos. 937 and 966 of November 13 and December 2, 1959, each reflecting the sale to Piensos Gibbons, S.A. by Wesson Oil and Snowdrift Inc., of goods totalling \$3,246.75, as to which freight, shipping and other attendant fees increased the total to \$3,860.44 and \$3,861.44, respectively; and copy of invoice No. 984 of December 11, 1959, reflecting the sale to Cia. Productora de Alimentos "El Agro", of Havana, Cuba, by Wesson Oil and Snowdrift Inc., of goods totalling \$3,996.00, as to which freight, shipping and other attendant fees increased the total to \$4,649.69.

Additionally, the record contains a letter of April 3, 1961, from the Cuban agent of claimant indicating that Banco Nacional de Cuba had advised the agent that all of claimant's drafts had been paid. The record also includes a letter from claimant's Cuban agent, dated May 16, 1961, to which is attached a schedule of the aforementioned paid drafts for which dollar

reimbursement applications had been made with Banco Nacional de Cuba. This schedule indicates with respect to invoice No. 22 that the collection of \$4,152.36 was paid to the Pensacola Industrial Bank in Cuba in equal amounts of \$692.06 by the consignee on July 24, August 24, September 24, October 24, November 24 and December 24, 1960; that with respect to invoice No. 320 the collection of \$8,212.00 was paid on January 12, 1960, by the consignee Cia. de Alimentos Balanceados "La Favorita", S.A. to the Pensacola Industrial Bank in Cuba; that with respect to invoice Nos. 95 and 98, collections in the amount of \$1,400.45 were paid by the consignee Cooperativa Provincial De Vaqueros to the Savannah Industrial Bank in Cuba on July 24, August 24, September 24, October 24, November 24, 1960, and that a collection in the amount of \$1,400.47 was paid by the consignee on December 24, 1960; that with respect to invoice Nos. 937 and 966 the collections of \$3,860.44 and \$3,861.44, respectively, were paid by the consignee Piensos Gibbons, S.A., to the New Orleans Continental Cuban Bank on December 3 and December 29, 1959, respectively; and that with respect to invoice No. 984 the collection of \$4,649.69 was paid by the consignee Cia. Productora de Alimentos "El Agro", S.A. to the New Orleans Trust Co. of Cuba on January 14, 1960.

The record also contains three letters from the National Bank of Commerce in New Orleans, Louisiana which confirm the information regarding the payment of invoice Nos. 937, 966, and 984, as stated in the above-mentioned schedule which was attached to claimant's agent's letter of May 16, 1961. Claimant states that it has not received the funds which were paid by the various consignees on these or any of the other invoices.

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 the days after the collections were paid by the consignees, as outlined above in this decision.

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 American Cast Iron Pipe Company, FCSC Claim No. CU-0249).

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:

December 4, 1959 as to \$3,860.44
December 30, 1959 as to \$3,861.44
January 13, 1960 as to \$8,212.00
January 15, 1960 as to \$4,649.69
July 25, 1960 as to \$2,092.51
August 25, 1960 as to \$2,092.51
September 25, 1960 as to \$2,092.51
October 25, 1960 as to \$2,092.51
November 25, 1960 as to \$2,092.51
December 25, 1960 as to \$2,092.53

CERTIFICATION OF LOSS

The Commission certifies that HUNT FOODS AND INDUSTRIES, 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 Thirty-Three Thousand One Hundred Thirty-Eight Dollars and Sixty-Five Cents (\$33,138.65) 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

AUG 23 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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).)