

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

IN THE MATTER OF THE CLAIM OF

MAX KING

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0217

Decision No. CU
2367

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 MAX KING, d.b.a. King Purchasing Agency, in the amount of \$34,018.54 based upon the asserted loss of payment for merchandise shipped to Cuba, and for freight charges paid on goods shipped to the Cuban Government. Claimant, MAX KING has been a national of the United States since birth.

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.

A portion of this claim is presented in the amount of \$25,920.22, consisting of merchandise valued at \$16,604.57, interest at 6% in the amount of \$4,195.65 and legal fees in the amount of \$5,120.00.

The record reflects that Domenech & Cia., S.A., of Cuba, bought for the account of Cia. Azucarera Central Regina, S.A. pieces of copper tubing and wire mesh. The goods were shipped and bank drafts were returned without collection so that claimant incurred the following expenses:

	<u>Value</u>	<u>Bank Charge</u>	<u>Total</u>
September 30, 1955 copper tubing	\$7,372.19	9.33	7,381.52
December 19, 1955 wire mesh	2,488.66	25.06	2,513.72
December 19, 1955 wire mesh	<u>6,683.69</u>	<u>27.64</u>	<u>6,711.33</u>
	\$16,544.54	\$62.03	\$16,606.57

Claimant brought suit against Cia. Azucarera Central Regina, S.A. and on September 21, 1959, Court of First Instance of Havana North rendered judgement in favor of claimant in the amount of \$16,604.57 [sic], with interest and legal expenses.

Under date of February 2, 1960, counsel for claimant, set forth the interest due as \$4,195.65, computed at 6%, and legal fees as \$5,120.00.

On August 19, 1960, the Government of Cuba published in its Official Gazette, Resolution No. 4, listing Cia. Azucarera Central Santa Regina, S.A., as confiscated, pursuant to Law No. 715. Accordingly, the Commission finds that Cia. Azucarera Central Santa Regina, S.A. was confiscated by the Government of Cuba on August 19, 1960, and that claimant suffered a loss of its property (debt) within the meaning of Title V of the Act as follows:

\$16,544.54	for goods sold
62.03	bank charges
4,195.65	interest due
<u>5,120.00</u>	legal fees
\$25,922.22	

It is to be noted that the amount of \$5,120.00 is apparently owed by claimant to a non-United States national.

A second part of this claim is presented in the amount of \$8,098.32 described as cash outlay and services rendered for the Government of Cuba, detailed by claimant as follows:

Ocean freight charges	\$3,263.94
Insurance premiums	1,238.39
Freight forwarding fees	<u>3,595.45</u>
	\$8,097.78

According to the record, the Government of Cuba set up Government stores known as Asociacion de Tiendas del Pueblo, to be operated by INRA (Instituto Nacional de Reforma Agraria). Goods purchased by the Cuban Government from suppliers in the United States were to be shipped by King Purchasing Agency. It appears that funds had been deposited in a New York bank from which payments were made to the suppliers and to claimant. Sometime in 1959 payments were discontinued. Claimant states that he later learned that the fund was exhausted.

The record contains copies of claimant's shipping invoices as follows:

August	7, 1959	\$ 75.56
August	19, 1959	1,012.22
August	19, 1959	490.83
September	3, 1959	1,915.24
September	30, 1959	723.06
October	30, 1959	3,718.18
November	5, 1959	<u>163.23</u>
		\$8,098.32

Inasmuch as the above described debts of the Government of Cuba have not been paid, the Commission finds that claimant suffered a loss in the amount of \$8,098.32, within the scope of Title V of the Act on the dates indicated. (See Claim of Clemens R. Maise, Claim No. CU-3191.)

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, 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, as follows:

\$25,922.20	from	August	19, 1960
75.56	from	August	7, 1959
1,012.22	from	August	19, 1959
490.83	from	August	19, 1959
1,915.24	from	September	3, 1959
723.06	from	September	30, 1959
3,718.18	from	October	30, 1959
<u>163.23</u>	from	November	5, 1959
\$34,020.52			

CERTIFICATION OF LOSS

The Commission certifies that MAX KING 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-Four Thousand Twenty Dollars and Fifty-Two Cents (\$34,020.52) 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

Edward v. B. Sutton
Edward v. B. Sutton, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

JUL 31 1968

Sidney Feidberg
Sidney Feidberg, 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).)