

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

IN THE MATTER OF THE CLAIM OF

AMERICAN STEEL EXPORT CO., INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0221

Decision No. CU **308**

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 AMERICAN STEEL EXPORT CO., INC. in the amount of \$29,174.24, 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 New York on March 14, 1922 and that at all times between 1922 and presentation of this claim on July 13, 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 states that all of its stockholders were nationals of the United States.

The record contains copies of claimant's invoices Nos. 3533 and 3533A of November 23, 1959 reflecting the sale to Sanitarios Infanta y Manglar S.A. of Havana, Cuba, of goods totalling \$1,676.13 as to which freight, shipping and other fees increased the total to \$1,875.12; copies of its invoices Nos. 3512 and 3512A of November 20, 1959 reflecting the sale to Cia. Distribuidora Victoria of Cuba, of goods totalling \$23,063.41 as to which freight, shipping and other fees increased the total to \$24,825.29; and copies of its invoices Nos. 688, 688A, 2458, 2332 and 2332A reflecting the sale to Fernandez Linares y Cia of Cuba of goods on May 29, 1959 which with the attendant fees totalled \$758.16, on September 15, 1959 of goods totalling \$1,090.21, and on September 21, 1959 of goods totalling \$625.46, payment of which amounts were due in sixty days.

Additionally, the record includes a notice dated March 30, 1960 from the Irving Trust Company of New York stating that payment had been made by the debtor Sanitarios Infanta y Manglar S.A. of the amount of \$1,875.12 on March 7, 1960; and a letter dated October 26, 1960 in which the Irving

Trust Company informed claimant that the collecting bank in Cuba informed them by letter dated October 4, 1960 that the debtor Cia. Distribuidora Victoria S.A. had made payment of its debt of \$24,825.29 in full. The record also includes a notice from the Irving Trust Company dated December 28, 1959 stating that the amount of \$758.16 had been paid by Fernandez Linares y Cia., according to information received from the collecting bank in Cuba on December 21, 1959. Claimant was further informed that the Cuban bank was awaiting authorization to effect dollar reimbursement of the amounts collected. Claimant states that it has not received these funds nor the balance due and owing from Fernandez Linares y Cia.

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 March 8, 1960 as to \$1,875.12, on October 5, 1960 as to \$24,825.29, and on December 22, 1959 as to \$758.16, the days following advice of receipt of payment by the collecting banks; and on November 15, 1959 as to \$1,090.21 and on November 21, 1959 as to \$625.46, the due dates for payment of these amounts.

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 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.

CERTIFICATION OF LOSS

The Commission certifies that AMERICAN STEEL EXPORT CO., 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 Twenty-Nine Thousand One Hundred Seventy-Four Dollars and Twenty-Four Cents (\$29,174.24) 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

SEP 20 1967

*Edward D. Re*

Edward D. Re, Chairman

~~CERTIFICATION~~

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 20 OCT 1967

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*LaVern R. Dilweg*

Clerk of the Commission

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).)