

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

IN THE MATTER OF THE CLAIM OF

ASECO CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0222

Decision No. CU 295

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 ASECO CORPORATION in the amount of \$4,075.56, 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 New York State in 1942 and that at all times between 1942 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 the outstanding capital stock is held by the American Stock Export Company, Inc. of which the outstanding capital stock is owned entirely by United States nationals.

The record contains copy of claimant's invoice No. C64 and C64A of November 25, 1959 reflecting the sale to Distribuidora Mercantil Panacarbon S.A. of Havana, Cuba, of goods totalling \$2,111.40, as to which freight, shipping and other attendant fees increased the total to \$2,397.88; copy of its invoice No. B8102 of March 31, 1958 reflecting the sale to La Casa de la Correas of Havana, Cuba, of goods totalling \$588.35; and copy of its invoice No. B9220 of October 13, 1959 reflecting the sale to Tiendas Flogar S.A. of Havana, Cuba, of goods totalling \$1,096.46, payment of which amount was due in 30 days.

Additionally, the record includes a letter dated March 15, 1960 from the Royal Bank of Canada in Havana, Cuba, informing claimant that the amount of \$1,598.58 had been received from the debtor Distribuidora Mercantil Panacarbon S.A. on March 2, 1960, and a notice dated June 28, 1960 from the Irving Trust Company of New York stating that it had been informed by letter dated June 24, 1960 of the payment by Distribuidora Mercantil Panacarbon S.A. of the balance due in the amount of \$799.30. The record includes also a letter dated December 8, 1960 from the Royal Bank of Canada stating that payment of \$588.35 had been made by the debtor La Casa de la Correas. Claimant was further informed that the collecting bank was awaiting authorization to effect reimbursement of the collected funds.

The record includes a memorandum issued by claimant which indicates a credit of \$7.13 to the consignee La Casa de la Correas for discounts due on shipment made in 1958 which amount should be deducted from the sum owed claimant by that debtor.

There is no evidence of payment to a collecting bank of the amount due from Tiendas Flogar S.A. Claimant states that it has received none of the above-mentioned 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 lost property 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 due date of November 13, 1959 as to \$1,096.46, and on March 3, 1960 as to \$1,598.58, on June 25, 1960 as to \$799.30, and on December 9, 1960 as to \$581.22 (\$588.35 less the credit of \$7.13), the days following advice of receipt of payment by the collecting bank.

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 ASECO CORPORATION 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 Four Thousand Seventy-Five Dollars and Fifty-Six Cents (\$4,075.56) 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

*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).)

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

*Thomas Anderson*  
Clerk of the Commission