

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

IN THE MATTER OF THE CLAIM OF

PERKINS MARINE LAMP AND HARDWARE CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0232

Decision No. CU 79

Counsel for claimant:

Paul, Landy and Robinson
By B. Robinson, Jr., Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$6,725.29, was presented by PERKINS MARINE LAMP AND HARDWARE CORPORATION, based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Section 503 of the International Claims Settlement Act of 1949, as amended (64 Stat. 12; 69 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 79 Stat. 988) the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. That section 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

(a) . . . 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, rights, 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."

The record shows that claimant corporation was organized in the State of Florida and that all of the outstanding capital stock is 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.

The record contains a copy of the PERKINS invoice of November 5, 1959 reflecting the sale to "Pereda, S.A.," of Havana, Cuba, of goods in the nature of hardware totalling \$6,725.29. Claimant asserts that it has not been paid although the goods were delivered to the company at Havana. A letter of the former general manager of Pereda, S.A., states that he held such position until the company was nationalized on December 5, 1962, and that the shipment was received but not paid for due to Cuban government restrictions on monetary transactions.

On December 5, 1962, the Government of Cuba published its Law 1076 in its Official Gazette. This law authorized the nationalization and appropriation to the Cuban State of private commercial enterprises, and their establishments, stores, deposits, goods and rights, dedicated to clothes, weaving, footwear and hardware. There has not been located any Resolution of the Cuban Minister of Trade effectuating nationalization of "Pereda, S.A." It appears that frequently such Resolutions have not been published in the Cuban Official Gazette. Nevertheless, it clearly appears that "Pereda, S.A.," engaged in a business utilizing hardware, is within the scope of Law No. 1076 (supra). Accordingly, in the absence of evidence to the contrary, the Commission finds that "Pereda, S.A.," was nationalized by the Government of Cuba on December 5, 1962.

Based on the foregoing, the Commission finds that "Pereda, S.A.," owed claimant the sum of \$6,725.29; that said company and its assets were nationalized by the Government of Cuba on December 5, 1962 pursuant to Law 1076 and that this debt of a nationalized enterprise constituted property as the term is used in Section 502(3) of the Act.

Accordingly, it is concluded that claimant suffered a loss in the amount of \$6,725.29 within the meaning of Title V of the Act as a result of nationalization of "Pereda, S.A.," by the Government of Cuba as of December 5, 1962.

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 on \$6,725.29 from December 5, 1962 to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that PERKINS MARINE LAMP AND HARDWARE 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 Six Thousand Seven Hundred Twenty-Five Dollars and Twenty-Nine Cents (\$6,725.29), with interest thereon at 6% per annum from December 5, 1962 to the date of settlement.

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

JUN 28 1967

Edward D. Jaffe

Edward D. Jaffe, Chairman

Theodore A. Jaffe

Theodore A. Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 20 days after service or receipt of notice of this Proposed Decision upon the expiration of 30 days after such service or receipt of notice, the decision will be entered as the Final Decision of the Commission, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) (1964).)

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on 7-28-67

Francis M. ...
Clerk of the Commission
GU-8232