

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

IN THE MATTER OF THE CLAIM OF

GERBER INTERNATIONAL CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 0236

Decision No. CU **350**

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 GERBER INTERNATIONAL CORPORATION in the amount of \$15,240.36 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."

The record reflects that GERBER INTERNATIONAL CORPORATION was organized under the laws of the State of New Jersey on February 26, 1953. The Vice President of claimant corporation has certified that at all times between February 26, 1953 and the presentation of this claim on July 15, 1965, all of the outstanding capital stock has been owned by Kokomo Sanitary Pottery Corporation, a corporation organized under the laws of the State of Indiana. The Vice President of Kokomo Sanitary Pottery Corporation has certified that at all times between October 8, 1932 and the presentation of this claim to the Commission on July 15, 1965, all of the outstanding capital stock of that corporation was 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 several of claimant's invoices which reflect the following sales, including freight, shipping and other attendant fees in the aggregate amount of \$15,240.36:

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<u>Invoice Number</u>	<u>Consignee</u>	<u>Amount</u>
7568-W	Suc. De Celestino	\$ 730.28
6678-A	Jose Varela	810.77
7964-W	Marce Y Cia	1,476.99
7978-W	Angel Llaurado Y Hno	933.28
7850-W	Jose Efron	1,765.64
7919-W	Ferreteria Enrique Costa, S. A.	931.31
7668-W	Sanitarios Capra	1,767.69
7901-W	Avelino Brey Y Hno	4,060.31
7966-W	Cabada, Ceballos Y Cia	2,764.09

Additionally, the record includes several letters from the Chase Manhattan Bank, to claimant, in which it is stated that the collections in the subject accounts were paid by the consignees to its Havana branch and that such branch was awaiting a dollar reimbursement from the appropriate Cuban exchange authorities. Claimant states that it has not received the funds.

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 following dates:

December 23, 1959	as to	\$ 730.28
October 15, 1959	as to	810.77
January 5, 1960	as to	1,476.99
January 6, 1960	as to	933.28
March 3, 1960	as to	1,765.64
December 17, 1959	as to	931.31
February 5, 1960	as to	1,767.69
December 24, 1959	as to	4,060.31
January 30, 1960	as to	2,764.09

the day after the collections were made.

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 respective dates on which the loss occurred, to the date on which provisions are made for the settlement thereof.


#### CERTIFICATION OF LOSS

The Commission certifies that GERBER INTERNATIONAL CORPORATION 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

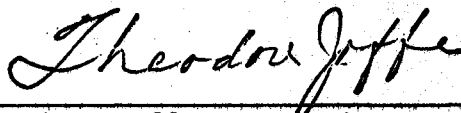
amount of Fifteen Thousand Two Hundred Forty Dollars and Thirty-Six Cents (\$15,240.36) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

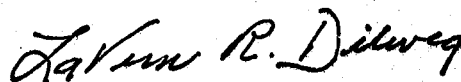
OCT 4 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner




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).)

COMMUNICATION

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This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on 6 NOV 1967

  
Francis M. [unclear]  
Clerk of the Commission