

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

IN THE MATTER OF THE CLAIM OF

ONEIDA LTD.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0283

Decision No. CU

189

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 ONEIDA LTD, in the amount of \$21,979.68 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 and that all times between the dates of loss and presentation of this claim on July 26, 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 to the best of its knowledge, over 90% of its stock was owned by nationals of the United States on the date of loss and at the time its claim was filed with the Commission.

The record contains a copy of claimant's undated invoice No. 1665 reflecting the sale to Tiendas Los Precios Fijos S.A. Havana, Cuba, of goods totalling \$918.90, a copy of invoice No. 1831 of November 18, 1959 reflecting the sale to Loceria y Cristaleria La Vajilla, S. A. of Cuba, of goods totalling \$674.16; a copy of invoice No. 1836 of December 2, 1959 reflecting the sale to Loceria y Cristaleria La Vajilla, S. A. of goods totalling \$668.76, a copy of invoice No. 1815 of December 4, 1959 reflecting the sale to Fernando Granda Canto of goods totalling \$1,553.61 as to which freight, shipping and other fees increased the total to \$1,622.38 and a copy of invoice No. 1651 of December 10, 1959 reflecting the sale to Gustave Kates e Hijos of goods totalling \$18,095.48.

Further, the file contains a copy of letters from the First National City Bank of New York acknowledging payment to its branch bank in Cuba by the above-designated consignees in behalf of claimant as follows:

dated June 10, 1960 acknowledging collection of \$918.90  
dated May 5, 1960 acknowledging collection of \$668.76  
dated March 18, 1960 acknowledging collection of \$1,622.38  
dated July 11, 1960 acknowledging collection of \$12,063.65  
dated March 11, 1960 acknowledging collection of \$6,031.83.

In all of said letters claimant was advised that the Cuban bank was awaiting authorization from the Cuban exchange authorities to transmit said funds. Claimant states that it has never received these funds on any part thereof.

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 June 11, 1960 as to \$918.90, on January 19, 1960 as to \$674.16, on April 29, 1960 as to \$668.76, on March 9, 1960, as to \$1,622.38, on July 5, 1960 as to \$12,063.65 and on March 12, 1960 as to \$6,031.83.

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 from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof, as follows:

March 9, 1960 as to \$1,622.38  
March 12, 1960 as to \$6,031.83  
April 29, 1960 as to \$668.76  
June 11, 1960 as to \$918.20  
July 5, 1960 as to \$12,063.65  
one day after payment was made  
to the Cuban bank, and

January 19, 1960 as to \$674.16,  
one day after payment became due.

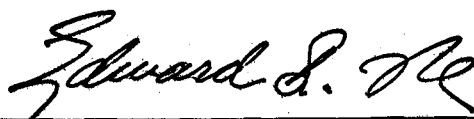
CERTIFICATION OF LOSS

The Commission certifies that ONEIDA LTD. 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 Twenty-One

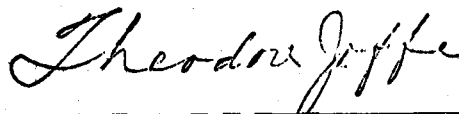
Thousand Nine Hundred Seventy-Nine Dollars and Sixty-Eight Cents (\$21,979.68)  
with interest thereon at 6% per annum from the respective dates of loss to  
the date of settlement.

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

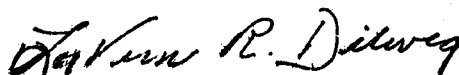
**AUG 23 1967**



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 De-  
cision, 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. 412-13 (1967).)

**CERTIFICATION**

This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on SEP 25 1967



Clerk of the Commission