

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

IN THE MATTER OF THE CLAIM OF

CHIEFTAIN-UNIWORLD CORP.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0296

Decision No. CU 2448

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 CHIEFTAIN-UNIWORLD CORP. in the amended amount of \$39,190.95, and is 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)(B) of the Act defines the term "national of the United States" as 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.

Claimant states that the losses involved in this claim were sustained by a corporation known as Unimundo Industrial Mart; Inc., that this corporation was dissolved; and on April 8, 1965, all of the assets, including accounts receivable, of the dissolved corporation were transferred to CHIEFTAIN-UNIWORLD CORP., claimant herein.

An officer of the claimant corporation has certified that Unimundo Industrial Mart, Inc., was organized in New York and that at all times between December 18, 1951 and April 8, 1965, more than 50% of the outstanding capital stock of that corporation had been owned by United States nationals.

An officer of the claimant corporation has also certified that at all times between 1951 and presentation of this claim on July 29, 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 and that the claim in question has been owned by a national or nationals of the United States at all pertinent times.

Claimant states that all of its stockholders are nationals of the United States.

The record contains copies of invoices of claimant's predecessor to the following Cuban consignees in the stated amounts, and also copies of correspondence from collecting banks in Cuba acknowledging that these banks were awaiting a dollar reimbursement release from an agency of the Cuban Government:

<u>INVOICE</u>	<u>DATE</u>	<u>CONSIGNEE</u>	<u>AMOUNT</u>	<u>DATE PAID</u>
7919	June 30, 1959	Accesorios de Omnibus, Carlos Mesa, S.A.	\$ 305.50	January 28, 1960
8155	November 24, 1959	Couto y Ferrara	3,335.17	June 14, 1960
8030	August 14, 1959	Provadora Diesel de Perez-Palacio y Cia.	1,329.50	February 16, 1960
(only 1/2 (\$664.75) acknowledged as paid)				
7965	July 21, 1959	"	725.28	May 19, 1960
8092	September 30, 1959	"	1,718.96	May 19, 1960
7876	June 15, 1959	"	1,071.85	February 11, 1960
7822	May 13, 1959	Inversiones Debreuil y Rodriguez, S.A.	1,565.04	May 19, 1960
7892) 5175)	June 1, 1959	"	436.00	March 9, 1960
8103	October 14, 1959	Soler Motors, S.A.	1,832.70	March 14, 1960
(Only 1/2 (\$916,35) acknowledged as paid)				
8103 A	October 21, 1959	"	320.00	March 7, 1960
8111	October 21, 1959	"	305.68	March 7, 1960
8115	October 26, 1959	"	530.50	March 7, 1960
7952	July 15, 1959	Manuel Alonso	721.50	January 7, 1960
7949	July 15, 1959	Miguel & Bacardi, S. A.	829.00	January 7, 1960
7860	June 4, 1959	Francisco Hernandez	320.00	October 6, 1960
8156	November 24, 1959	Casa Garcia de Sireno Garcia	595.17	February 3, 1960
8151	November 10, 1959	A. Perez Munoz	268.15	February 29, 1960

Additionally, the record contains copies of invoices to the following Cuban consignees in the stated amounts, and copies of correspondence from the Colonial Trust Company in New York, acknowledging receipt of drafts (and the tenor thereof) covering the invoices:

<u>INVOICE</u>	<u>CONSIGNEE</u>	<u>DATE OF ACKNOWLEDGMENT</u>	<u>AMOUNT</u>	<u>DUE DATE</u>
8118	Provedora Diesel de Cuba de Perez Palacio y Cia.	November 5, 1959	\$ 734.76	February 6, 1960
7649	"	January 29, 1959	200.00	April 30, 1959
7806	Manuel Alonso	May 21, 1959	292.76	August 22, 1959
(\$585.52 less \$292.76 paid)				
7856	Cabrero y Hno.	June 11, 1959	563.98	August 12, 1959
7966	Accesorios de Omnibus Carlos Mesa, S.A.	August 4, 1959	348.80	October 5, 1959
8096	"	October 29, 1959	1,143.70	December 30, 1959
8135	"	November 27, 1959	629.68	January 28, 1960
7867	"	June 23, 1959	2,316.59	August 24, 1960
6413	Eloy Vila Vazquez	August 6, 1957	541.98	October 7, 1957
(\$650.00 less \$108.02 paid)				
6672)	Guerra &	November 27, 1957	469.51	January 28, 1958
6686)	Pinera		469.50	February 28, 1958
(amounts remaining unpaid)				
6840	"	January 23, 1958	525.00	March 25, 1958
			525.00	April 25, 1958
6930	"	March 5, 1958	940.00	May 6, 1958
7431	"	October 26, 1958	146.50	December 27, 1958
			146.50	January 27, 1959

Further, the record includes an accounts receivable ledger,
copies of invoices and debit memorandums (DM) reflecting the sales to
the following Cuban consignees on the dates and in the amounts as
stated:

<u>INVOICE</u>	<u>DATE</u>	<u>CONSIGNEE</u>	<u>AMOUNT</u>	<u>DUE DATE</u>
1503 DM	August 28, 1959	Accesorios de Omnibus Concha y Perez	\$ 8.21	September 29, 1959
7626	December 23, 1958	Cooperative de Omnibus Aliados, S. A.	382.37	January 24, 1959
7096	April 22, 1958	Arencibia y Cia.	132.00	June 23, 1958
7927	June 30, 1959	"	40.19	August 31, 1959
8371	June 27, 1960	Cia de Muelles Para Automotive, S. A.	101.32 (balance) due	July 28, 1960
8046	August 26, 1959	Mario Martinez Moya	325.40 (balance) due	October 27, 1959
7195 7425	June 2, 1958) September 15, 1958)	Importadora Valiente, S. A.	450.00 (balance) due	November 16, 1958
5960 6050 6093	February 25, 1957) March 29, 1957) April 9, 1957)	Luis R. Latour	2,217.20 (balance) due	June 10, 1957
6912 7225	February 14, 1958) June 17, 1958)	Candido Gonzalez	2,575.76 (balance) due	September 18, 1958
6893 7930	February 12, 1958) July 7, 1959)	Auto Ayestaran	1,317.08 (balance) due	September 7, 1959
6410	July 31, 1957	Sergio Loreda	270.00	October 1, 1957
6509	September 19, 1957	"	1,950.00	November 20, 1957
6803	January 10, 1958	"	375.84	March 11, 1958
5001	March 17, 1958	"	782.00	May 18, 1958
7596	December 8, 1958	"	900.00	February 9, 1959
1609 DM	August 15, 1960	"	40.00	September 16, 1960
1612 DM	August 25, 1960	"	200.00	September 26, 1960
1617 DM	September 20, 1960	"	51.11	October 21, 1960
1633 DM	November 10, 1960	"	548.21	December 11, 1960
1635 DM	November 25, 1960	"	20.00	December 27, 1960
1639 DM	December 20, 1960	"	270.00	January 21, 1961

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 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 Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, 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:

<u>ON</u>	<u>AS TO</u>
September 29, 1959	\$ 18,537.97
October 5, 1959	348.80
October 27, 1959	325.40
December 30, 1959	1,143.70
January 8, 1960	1,550.50
January 28, 1960	629.68
January 29, 1960	305.50
February 4, 1960	595.17
February 6, 1960	734.76
February 12, 1960	1,071.85
February 17, 1960	664.75
March 1, 1960	268.15
March 8, 1960	1,156.18
March 10, 1960	436.00
March 15, 1960	916.35
March 17, 1960	664.75
April 15, 1960	916.35
May 20, 1960	4,009.28
June 15, 1960	3,335.17
July 28, 1960	101.32
September 16, 1960	40.00
September 26, 1960	200.00
October 7, 1960	320.00
October 21, 1960	51.11
December 11, 1960	548.21
December 27, 1960	20.00
January 21, 1961	270.00
Total	\$ <u>39,160.95</u>

The above dates are the date of publication of Law 568 as to those debts which became due prior to September 29, 1959; the dates immediately following acknowledgment of payment of those drafts which were paid; and the dates on which debts became due after September 29, 1959, but which remained unpaid.

The remaining portion of this claim, for \$30.00, is asserted for the balance owing on invoice No. 7592 to Cia. Distrub., but no evidence has been submitted substantiating this loss.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

The Commission finds that claimant has not met the burden of proof with respect to this portion of the claim. Thus, the Commission is constrained to deny it and it is hereby denied.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (See Claim of Lisle Corporation, Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest there on 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.

CERTIFICATION OF LOSS

The Commission certifies that CHIEFTAIN-UNIWORLD CORP., succeeded to and 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 Thirty-Nine Thousand One Hundred Sixty Dollars and Ninety-Five Cents (\$39,160.95) 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

JUL 31 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Feidberg

Sidney Feidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

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).)