

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES

WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

CENTURY MERCHANDISING CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0314

Decision No. CU 181

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$3,606.58, was presented by the CENTURY MERCHANDISING CORPORATION, successor in interest to the Century Distributing Company, 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) 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."

Claimant has submitted evidence to establish that the loss was sustained by the Century Distributing Company, which was solely owned by Maurice Richard Thieberger, a national of the United States since his naturalization on March 24, 1947; that in 1964 claimant corporation was organized in New York State, as successor to the Century Distributing Company, with 200 shares of stock outstanding; and that all of the shares of stock in CENTURY MERCHANDISING COMPANY are owned by three persons, all of whom are nationals of the United States. The Commission therefore 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 claimant's invoice No. 4042 of September 29, 1959, reflecting the sale to Cuban American Toys Company of Havana, Cuba, of goods totalling \$795.24, as to which freight, shipping and other attendant fees increased the total to \$812.58; a copy of claimant's invoice No. 4163 of November 5, 1959, reflecting the sale to Abraham Wagner of Santiago de Cuba, Cuba, of goods totalling \$1,519.00 and as to which freight, shipping and other fees increased the total to \$1,666.68; and a copy of claimant's invoice No. 4204 of December 4, 1959, reflecting the sale to Suarez Gutierrez and CIA of Havana, Cuba, of goods totalling \$1,007.68, with no data submitted on other fees.

Additionally, the record includes letters of December 17, 1959, January 8, 1960, and September 13, 1960, from the International Department of the Chase Manhattan Bank of New York City, to claimant's predecessor in interest, in which it is stated that the aforesaid sums of \$812.58 and

\$1,007.68 were paid by the aforesaid consignees, and that the International Department of the Chase Manhattan Bank was awaiting a dollar reimbursement release from the Exchange Board, a Cuban governmental agency; and further advising that the sum of \$1,666.68 was paid by the consignee and the International Department of the Chase Manhattan Bank was awaiting similar authorization from the Exchange Department of the Banco Nacional de Cuba. Claimant states that it has not received the funds in question.

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 September 14, 1960, as to \$812.58; on January 9, 1960, as to \$1,666.68; and on December 18, 1959, as to \$1,007.68, the days after the collections were acknowledged by the Chase Manhattan Bank.

The record also includes a copy of an invoice dated November 2, 1959, disclosing toys were sold to the Cuban American Toys Company of Havana, in the amount of \$116.64, as to which freight charges increased the total to \$119.64. Claimant asserts that although the goods were delivered to the consignee in Havana no payment was made due to restrictions imposed by the Cuban Government.

Paragraph (6), Article 1 of Cuban Law No. 568, designates as an offense, inter alia, the transferring of funds abroad, by any means, whatever might be the origin of the funds, except in authorized cases, or those which the Currency Stabilization Fund might authorize, through the channels of an associated bank or entity authorized by the National Bank of Cuba. Paragraph (9) of Article 1 prohibited making payments in national money in favor of foreign residents, making payments to their account in national money, and creating orders for payment in bank accounts whose officially named account holders reside abroad, without the permission of the Currency Stabilization Fund.

From the foregoing it is clear that not only the transfer of funds to a creditor abroad but also payment to such creditor within Cuba required the permission of the Cuban foreign exchange authority. While payment was not made by the consignee in the amount of \$119.64, the application of Law No. 568, insofar as the rights of claimant are concerned, constituted an intervention by the Government of Cuba into the contractual rights which, in effect, resulted in the taking of American owned property within the meaning of Section 503(a) of the Act. (See the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049.)

Evidence of record in the instant claim, including copy of claimant's invoice and an affidavit of an official of the corporation, discloses that the due date for payment of the \$119.64 by the Cuban American Toys Company was on January 2, 1960; and that when payment was not made by the consignee claimant herein suffered a loss in this amount. In the absence of evidence to the contrary, therefore, the Commission finds that the loss occurred as to \$119.64 on January 3, 1960, the day after payment was due.

The Commission has decided that in payment of loss 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:

\$1,007.68 from December 18, 1959

\$ 119.64 from January 3, 1960

\$1,666.68 from January 9, 1960

\$ 812.58 from September 14, 1960

CERTIFICATION OF LOSS

The Commission certifies that the CENTURY MERCHANDISING 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 Three Thousand Six Hundred Six Dollars and Fifty-Eight Cents (\$3,606.58) 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

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).)

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

Frank Anderson