

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

IN THE MATTER OF THE CLAIM OF

STERN AND STERN TEXTILES, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0337

Decision No. CU **823**

Counsel for Claimant:

George Maguire, Esq.

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 STERN AND STERN TEXTILES, INC. in the amount of \$2,165.59 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 1924 and presentation of this claim on August 10, 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 as of December 5, 1967 less than one per cent (1%) of its capital stock was held by residents of foreign countries assumed to be citizens of those countries.

The record contains copies of invoices which reflect sales and attendant fees charged on account to Cuban firms for goods shipped to them by claimant between August 28, 1959 and December 31, 1959. They are as follows:

<u>Customer</u>	<u>Invoice</u>	<u>Date</u>	<u>Amount</u>	<u>Payment Terms</u>
Lopez Y Rio Sen C.	3585	August 28, 1959	\$ 457.79	Net 60 days
Lopez Y Rio Sen C.	3586	August 28, 1959	284.88	Net 60 days
Tiendas Los Precios Frijos S.A.	4438	September 15, 1959	309.00	Net 60 days
Tiendas Los Precios Frijos S.A.	4439	September 15, 1959	296.40	Net 60 days
Tiendas Flogar S.A.	H27303	December 4, 1959	142.97	Net Cash
Tiendas Flogar S.A.	K5017	December 4, 1959	598.13	Net Cash
Tiendas Flogar S.A.	9369	December 21, 1959	76.42	Net Cash

Claimant states that it has not received funds in payment therefore.

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, FGSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FGSC 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>
October 27, 1959	\$742.67
November 14, 1959	605.40
December 4, 1959	741.10
December 21, 1959	76.42

the dates payment on the above accounts became due.

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 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 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 STERN AND STERN TEXTILES, INC. 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 Two Thousand One Hundred Sixty-Five Dollars and Fifty-Nine Cents (\$2,165.59) 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

14 DEC 1967

Edward D. Re
Edward D. Re, Chairman

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on July 18, 1967

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, Commissioner

Wesley Mackerson
Wesley Mackerson
Clerk of the Commission

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).)

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.