

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

IN THE MATTER OF THE CLAIM OF

WELLINGTON SEARS COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0347

Decision No. CU **1693**

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 WELLINGTON SEARS COMPANY in the amount of \$22,607.43 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 evidence of record reflects that the WELLINGTON SEARS COMPANY was organized in Massachusetts and that all times between 1955 and presentation of this claim on August 12, 1965, it has been wholly owned by the West Point Manufacturing Company, a Georgia corporation, which merged with the Pepperell Manufacturing Company, a Massachusetts corporation, on March 29, 1965, forming West Point - Pepperell, Inc., the surviving Georgia corporation. An officer of West Point - Pepperell, Inc., has certified that since June 29, 1955, more than 50% of its outstanding capital stock as well as its stock of the West Point Manufacturing Company and the Pepperell Manufacturing Company 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 99.85% of West Point - Pepperell, Inc.'s 10,000 stockholders are nationals of the United States.

The record contains copies of claimant's invoices as well as drafts drawn on the Cuban consignees as stated below for merchandise sold. In many cases, the Hanover Bank in New York advised the claimant that these drafts covering the invoices had been paid in local currency to its correspondent collecting bank in Cuba, which bank was awaiting dollar reimbursement releases from the Monetary Stabilization Fund, an agency of the Cuban Government.

<u>Draft Date</u>	<u>Consignee</u>	<u>Amount</u>	<u>Date of Payment</u>
December 31, 1959	Rey, Fraga & Co.	\$ 4,317.50	April 1, 1960
October 14, 1959	Ferreteria Orriols, S. A. (\$2,924.95 less \$281.69 paid)	2,643.26	March 15, 1960
May 21, 1959	Agusti Hermanos & Co.	3,253.58	April 29, 1960
October 28, 1959	Serra & Domingues, S. en C.	1,073.38	February 12, 1960
November 23, 1959	Martinez & Cia.	1,202.51	January 25, 1960
November 5, 1959	Cia. Ferreteria Los Aliados	1,303.27	April 19, 1960
October 28, 1959	Cia. Pantalón "X", S. A.	690.14	November 26, 1959
December 30, 1959	Victor G. Mendosa Co.	2,417.23	August 15, 1960
June 5, 1959 (Date of Invoice)	Ferreteria Orriols, S. A.	1,853.25	None
November 4, 1959 (Date of Invoice)	V. Mercade & Co.	3,421.85	None
September 30, 1959 (Date of Invoice)	M. Llano & Co.	431.46	None
	Total	<u>\$22,607.43</u>	

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	\$ 1,853.25
October 11, 1959	431.46
November 27, 1959	690.14
January 6, 1960	3,421.85
January 26, 1960	1,202.51
February 13, 1960	1,073.28
March 16, 1960	2,643.26
April 2, 1960	4,317.50
April 20, 1960	1,303.27
April 30, 1960	3,253.58
August 16, 1960	<u>2,417.23</u>
Total	\$22,607.43

These dates of loss include September 29, 1959, the date of publication of Law 568 for all payments made or accounts falling due prior to September 29, 1959; the days following payment of drafts for payments made after September 29, 1959; and the due dates of those drafts which were not paid and which fall due after September 29, 1959.

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 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 WELLINGTON SEARS COMPANY 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 Twenty-Two Thousand Six Hundred Seven Dollars and Forty-Three Cents (\$22,607.43) with interest 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

APR 24 1968

Leonard V. B. Sullivan

LEONARD V. B. SULLIVAN, Chairman

Thodore Jaffe

THODORE JAFFE, 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).)

CU- 0347