

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

IN THE MATTER OF THE CLAIM OF

R. B. CAMPBELL COMPANY, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0366

Decision No. CU 544

Counsel for Claimant:

Murray Sargent, Jr., 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 R. B. CAMPBELL COMPANY, INC. in the amount of \$42,880.62 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 New York and that at all times between January 1, 1958 and the presentation of this claim on August 19, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that both of its stockholders are nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains copies of claimant's invoices reflecting the sales to the corresponding consignees, all of Havana, Cuba, showing the prices of goods sold and the total prices as increased by freight, shipping, and other attendant fees, for which drafts were drawn, which drafts were each paid in local currency on the stated dates to the respective collecting banks in Cuba which, according to a letter of November 22, 1966 from the Manufacturers Hanover Trust Company to the Commission, were still awaiting a dollar reimbursement release from the central bank, a Cuban Government agency.

<u>INVOICE</u>	<u>CONSIGNEE</u>	<u>TOTAL (DRAFT)</u>	<u>DATE PAYMENT ACKNOWLEDGED</u>
4002	Isidro Fernandez	\$1,989.49	December 7, 1959
4009	Martinez Y Cia.	4,100.87	November 26, 1959
4029	Martinez Y Cia.	2,528.47	April 7, 1960
4045	Isidro Fernandez	900.91	December 22, 1959
4050	Matos Y Cia., S. En C.	1,767.13	December 8, 1959
4056	Isidro Fernandez	1,718.75	December 29, 1959
4063	Cia. de Confecciones, S.A.	7,456.45	April 12, 1960
4094	M. Piquero Y. Cia.	3,316.27	December 22, 1959
4098	Matos Y Cia., S. En C.	1,346.29	December 20, 1960
4101	N. Smolansky	2,360.95	January 22, 1960
4108	Berros Y Cia.	586.99	November 25, 1959
4117	I. Yakula & J. Ribak	1,463.03	November 27, 1959
4144	Cimblar Y Hijo	2,796.57	October 12, 1960
4153	Cimblar Y Hijo	2,598.62	February 29, 1960
4156	Textilera Astral, S.A.	983.35	April 21, 1960
4196	Severiano Suarez	1,628.90	February 12, 1960
4197	Isidro Fernandez	1,051.83	January 12, 1960
4205	M. Piquero Y Cia.	4,285.75	February 19, 1960

Claimant states that it has not received any of the funds.

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:

<u>ON</u>	<u>AS TO</u>
November 26, 1959	\$ 586.99
November 27, 1959	4,100.87
November 28, 1959	1,463.03
December 8, 1959	1,989.49
December 9, 1959	1,767.13
December 23, 1959	4,217.18
December 30, 1959	1,718.75
January 13, 1960	1,051.83
January 23, 1960	2,360.95
February 13, 1960	1,628.90
February 20, 1960	4,285.75
February 30, 1960	2,598.62
April 8, 1960	2,528.47
April 13, 1960	7,456.45
April 22, 1960	983.35
October 13, 1960	2,796.57
December 21, 1960	1,346.29

the days after the collections were acknowledged by the collecting banks to the Manufacturers Hanover Trust Company.

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 R. B. CAMPBELL COMPANY, 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 Forty-Two Thousand Eight Hundred Eighty Dollars and Sixty-two Cents (42,880.62) 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

OCT 25 1967

RECEIVED
BY THE COMMISSION
ON OCT 25 1967
AS A COPY OF THE PROPOSED
DECISION ON THE CLAIM
ENTERED AS THE FINAL
DECISION OF THE COMMISSION

Edward D. Re
Edward D. Re, Chairman

Theodore Jaffe
Theodore Jaffe, Commissioner

LaVern R. Dilweg
LaVern R. Dilweg, 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).)