

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

IN THE MATTER OF THE CLAIM OF

JUAN DE ARRIETA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0369

Decision No. CU

730

Counsel for claimant:

Friedlander, Mislner and
Friedlander

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 \$12,151.71, was presented by JUAN DE ARRIETA based upon the asserted loss of payment for merchandise shipped to Cuba. Claimant has been a national of the United States since his naturalization on March 19, 1946.

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. That section 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.

The record contains copies of claimant's invoices to Productos De Alambre, S. A., of Havana, Cuba reflecting the sales of goods to that consignee on the stated dates for the stated amounts including freight charges and other expenses:

<u>Invoice</u>	<u>Date</u>	<u>Goods</u>	<u>Total</u>
1626	September 29, 1960	\$ 666.70	\$ 754.24
1665	December 7, 1960	9,799.51	11,284.49
1666	December 7, 1960	97.20	112.98

Additionally, the record includes a copy of a letter of September 26, 1960 from the Manufacturers Trust Company to claimant acknowledging a letter of credit in claimant's favor for \$11,300.00 to cover invoice No. 1665, a letter of December 12, 1960 from the same bank, to claimant, in which it is stated that said letter of credit expired on December 20, 1960, a copy of claimant's letter of December 14, 1960 resubmitting the corrected documents, a copy of the consignee's cancelled check of December 23, 1960 reflecting payment of the amount in question to the Banco Pedroso Nacionalizado, and a copy of a letter of February 21, 1961 from the Banco Nacional De Cuba (formerly the Banco Pedroso) to claimant in which it is stated that the reimbursement of these proceeds had not been authorized by the International Department. Claimant states that he has not received any of the above 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 the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC 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 on October 30, 1960 as to \$754.24, on January 7, 1961 as to \$112.98, the dates by which payment was due on those invoices, and on December 26, 1960 as to \$11,284.49, the first business day after the consignee made payment to the Cuban bank.

The Commission has decided that in the 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 date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that JUAN DE ARRIETA 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 Twelve Thousand One Hundred Fifty-One Dollars and Seventy-One Cents (\$12,151.71) 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

30 NOV 1967

CERTIFICATION
This is a true and correct copy of the decision of the Commission which was entered on the date of _____ 1967.

Travis M. ...
Clerk 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).)