

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

IN THE MATTER OF THE CLAIM OF

CRADDOCK-TERRY SHOE CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0378

Decision No. CU 1246

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 CRADDOCK-TERRY SHOE CORPORATION in the amount of \$17,378.53 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 Virginia and that all times between December 1938 and presentation of this claim on August 26, 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.

The record discloses that all of claimant's outstanding capital stock was held by nationals of the United States.

The record includes copies of claimant's ledger records and letters from various Cuban enterprises concerning shipments of merchandise made by the claimant to the aforementioned enterprises, listed hereafter as the consignees. This evidence discloses that the purchase price of the goods, except for one item, remained unpaid. Regarding the paid item, the record contains a letter of October 13, 1960, from the consignee, Armco International Corporation to claimant, in which it is stated that the collection of \$324.56 was paid by the consignee, and that the reimbursement releases or authorization were never granted by Cuban governmental officials. Claimant states that it has not received any of the funds.

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There follows hereafter data concerning the shipments made to the Cuban consignees which remained unpaid, together with the dates on which the payments were due. (The listed amounts are net after credit where indicated):

<u>CONSIGNEE</u>	<u>AMOUNT</u>	<u>DUE DATE</u>
Alvarez y Anca	\$ 917.14 (Net after credit)	September 13, 1958
	\$ 298.45	January 15, 1959
Peleterias Arrinda, S.A.	\$ 23.91 (Net after credit)	January 2, 1960
N. Gandarillas e Hijos	\$ 919.76 (Net after credit)	November 30, 1959
B. Garcia y Cia, S.A.	\$ 579.96	December 25, 1959
Pedro L. Gonzalez	\$ 583.66	January 27, 1960
El Buen Gusto, S.A.	\$2,743.92	December 21, 1959
	\$ 506.08 (Net after credit)	December 25, 1959
	\$ 899.36 (Net after credit)	December 9, 1959
	\$ 607.24	January 14, 1960
	\$ 581.50	January 13, 1960
	\$ 197.95	January 20, 1960
	\$ 428.20	April 1, 1960
	\$ 386.55	October 1, 1960
Manuel Matalobos	\$ 144.30	October 1, 1959
	\$ 541.50	April 1, 1960
	\$ 832.50	October 1, 1960
Sucesores de A.Miranda y Cia	\$2,040.00	October 9, 1959
	\$ 836.33	October 1, 1959
	\$ 559.72	April 1, 1960
	\$ 675.90	October 1, 1960
Gutierrez Velasco & Co.	\$1,750.04 (Net after credit)	March 1, 1960

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 14, 1960 as to the paid draft, the day after claimant was notified of payment by the consignee. Regarding the unpaid drafts, the Commission finds that as to those maturing prior to September 29, 1959, the losses occurred on September 29, 1959, the effective date of Law 568. The Commission further finds, that in those instances where the unpaid drafts matured after September 29, 1959, the losses occurred on the respective maturity dates thereof.

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, as follows:

On \$1,215.59 from September 29, 1959

On \$2,040.00 from October 9, 1959

On \$ 919.76 from November 30, 1959

On \$ 899.36 from December 9, 1959

On \$2,743.92 from December 21, 1959

On \$1,086.04 from December 25, 1959
 On \$ 23.91 from January 2, 1960
 On \$ 581.50 from January 13, 1960
 On \$ 607.24 from January 14, 1960
 On \$ 197.95 from January 20, 1960
 On \$ 583.66 from January 27, 1960
 On \$1,750.04 from March 1, 1960
 On \$1,529.42 from April 1, 1960
 On \$2,875.58 from October 1, 1960
 On \$ 324.56 from October 13, 1960
TOTAL \$17,378.53

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 Francis M. ...
 Clerk of the ...

CERTIFICATION OF LOSS

The Commission certifies that CRADDOCK-TERRY SHOE 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 Seventeen Thousand Three Hundred Seventy-Eight Dollars and Fifty-Three cents (\$17,378.53) 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

FEB 14 1968

Edward S. Re
 Edward S. Re, Chairman
Theodore Jaffe
 Theodore 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).)