

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

IN THE MATTER OF THE CLAIM OF

TRANSPORTATION PARTS
COMPANY OF NEW YORK, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0394

Decision No. CU -0627

AMENDED PROPOSED DECISION

This claim against the Government of Cuba, in the amount of \$18,459.00, was presented by TRANSPORTATION PARTS COMPANY OF NEW YORK, INC., hereinafter referred to as TRANSPORTATION PARTS COMPANY, and is based upon the asserted loss of merchandise sold and delivered to Cuban consignees and a bank account. The Commission issued its Proposed Decision in this matter on November 15, 1967, denying the claim for the reason that claimant failed to establish ownership of rights and interests in property which was nationalized or otherwise taken by the Government of Cuba.

Claimant has submitted additional supporting evidence, including data to establish that shipments were made to Cuban consignees and that claimant maintained a bank account in Cuba. The matter has been considered and the Proposed Decision is hereby amended.

Section 502(1)(B) of the Act defines the term "national of the United States" as 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 affidavit of a company official establishes that all of the stock of claimant, TRANSPORTATION PARTS COMPANY, a New York corporation, was purchased in 1962 by Motor Parts Industries, Inc., also a New York corporation; and that 100% of the stock of TRANSPORTATION PARTS COMPANY and Motor Parts Industries, Inc. have been owned by nationals of the United States at times pertinent to this claim. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

On May 12, 1961, the claimant prepared a recapitulation for the State Department of "Outstanding Accounts in Cuba", in the total amount of \$16,993.66, as corrected herein to \$16,537.71. This sum represented the total unpaid accounts of Cuban firms which were due and payable to claimant for merchandise shipped by claimant. Claimant also submitted to the Commission income tax data, copies of invoices and drafts and affidavits in support of this portion of the claim. The Cuban consignee firms and the amounts due are as follows:

A. K. Durant, Havana	\$ 1,374.15
Hnos Obret, Havana	476.63
Alfonso Suarez Garcia, Guantanamo Ote	239.70
Louis Latour, Havana	4,605.99
Pupo y Llovet	302.34
Miguel Barcardi	244.43
Piezas y Accesorios	1,193.86
Marinez Hijo y Cia	306.43
Charles Ferran Jaen	453.07
Guerra y Pinera	2,065.31
Importadora Distribuidora	1,275.74
Solor Motors, S.A.	<u>4,000.06</u>

T O T A L . . . \$16,537.71

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 in 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, 1967 FCSC Ann. Rep. 46.)

The Commission finds that the claimant's right to receive payment for the aforesaid shipments was lost as a result of the intervention by the Government of Cuba. The evidence establishes that the shipments were made by invoices on open accounts or by drafts, some of which were paid in part to local Cuban banks, although the amount of local payments has not been established by the evidence of record. These accounts arose from shipments made by claimant between April 1959 and March 1960, payment for which would ordinarily be due and payable within sixty days after shipment. Claimant states that it has not received payment for these outstanding balances.

With respect to the loss of shipments arising prior to the effective date of Law 568, including the accounts which were payable by the Cuban consignees in a total amount of \$1,275.74, the Commission finds that such losses actually arose on September 29, 1959, the date of publication of Law 568. The Commission also finds that with respect to shipments in the total amount of \$15,261.97, made subsequent to September 29, 1959, all accounts were due and payable on May 1, 1960, or sixty days after the due date of the last shipment which was made by claimant on or about March 1, 1960, to the Solar Motors, S.A.

Accordingly, the Commission finds that the claimant's property in the amount of \$16,537.71 was lost as a result of the intervention by the Government of Cuba within the meaning of Title V of the Act, on the dates above-mentioned, subject of this claim and as described above, on the respective dates of taking.

The record, including the aforesaid recapitulation of losses in Cuba, copy of ledger entries of claimant's records in 1960 and a Balance Sheet of December 31, 1961, discloses that claimant had an account with a balance of \$1,465.34 in the Banco Cubano, Havana, Cuba.

On December 6, 1961, the Cuban Government published its Law 989 which provided for confiscation of all assets, real and personal, including bank accounts of persons or business enterprises who had left the country.

The Commission finds that claimant's bank account was taken by the Government of Cuba on December 6, 1961, pursuant to Law 989, supra. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

The Commission has decided that in certifications of loss 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), and in the instant case it is so ordered, as follows:

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$ 1,275.74
May 1, 1960	\$15,261.97
December 6, 1961	\$ 1,465.34

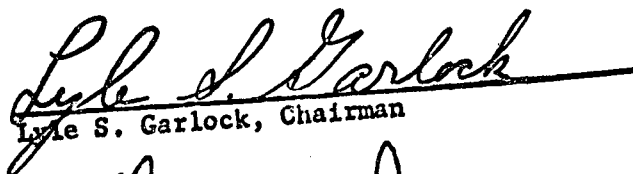
Accordingly, the following Certification of Loss will be entered and in all other respects the Proposed Decision is affirmed.

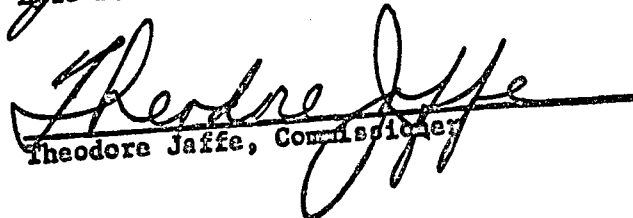
CERTIFICATION OF LOSS

The Commission certifies that TRANSPORTATION PARTS COMPANY OF NEW YORK, 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 Eighteen Thousand Three Dollars and Five Cents (\$18,003.05) 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 Amended
Proposed Decision of the Commission

OCT 7 1970


Lyle S. Garlock, Chairman


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 Amended 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].)

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

IN THE MATTER OF THE CLAIM OF

TRANSPORTATION PARTS
COMPANY OF NEW YORK, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0394

Decision No. CU 627

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$18,459.00, was presented by TRANSPORTATION PARTS COMPANY OF NEW YORK, INC. and is based upon the asserted loss of certain merchandise sold and delivered to Cuba and a bank account.

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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant states that it sold and shipped certain merchandise to several Cuban consignees and that he never received payment for these goods on account of actions by the Government of Cuba. Claimant states further that it maintained an account at the Banco Continental Cubano which account was also taken.

By letter dated July 13, 1966, the Commission requested evidence concerning the United States nationality of claimant corporation, evidence that the goods were sold and delivered to various Cuban consignees, evidence that claimant did not receive payment for these goods and evidence establishing the account at Banco Continental Cubana and the amount therein at the time of loss. Claimant failed to reply to this correspondence and several other letters dated October 14 and November 17, 1966 and January 27, 1967, were sent to claimant concerning the development of this claim.

On July 17, 1967, claimant was invited to submit any evidence available to it within forty-five (45) days from that date, and it was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. By letter dated July 21, 1967, claimant corporation corresponded with the Commission but did not submit any evidence.

Other than a statement by an officer of claimant corporation that all of the outstanding capital stock was presently owned by United States nationals, and an affidavit that the Cuban consignees were not nationals of the United States, no other evidence was submitted. The Commission in a letter dated September 28, 1967, again reminded claimant of the evidence proper for submission. By letter of October 23, 1967, claimant advised the Commission that it did not have evidence to establish the subject losses.

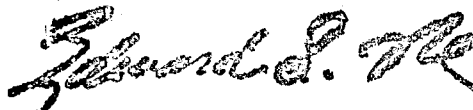
The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership by a national of the United States of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Thus, the

Commission is constrained to deny this claim and it is hereby denied.

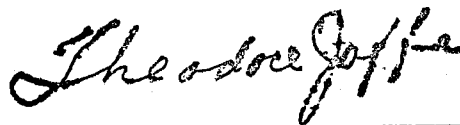
The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

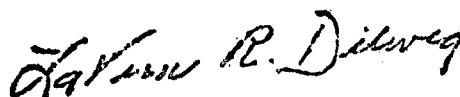
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Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

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CU-0394