

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

IN THE MATTER OF THE CLAIM OF

JOSE ALFARO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0396

Decision No. CU - **532**

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 \$6,852.80, was presented by JOSE ALFARO, 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 December 22, 1942.

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 following is a list of the copies of claimant's invoices, reflecting the sale and shipment of goods to the named consignees, as they appear in the record:

<u>Consignee</u>	<u>Claimant's No.</u>	<u>Amount of Invoice</u>
Ricardo Gonzalez	277-CU-38 34-CU-11	\$1,136.27 281.58
J. y W. Hernandez Muniz	93/41-CU-34/3	785.53
Jose Saladrigas	1297/92-CU	398.38
Importadora Gorbea, S.A.	288-CU-93 14/304/42/38-CU	1,080.00 1,162.48
Cabrera y Hno.	85-CU-1291	372.77
Argemiro Lope Villarrubia Pinon	94-CU-35	140.77
Motor Auto Co., Ltd.	1300/96-CU-37	391.42
F. A. Vda. de Puron	30-CU-6	364.38
Jose Diaz Ferrera	1298/95-CU-36	371.16
Angel Garcia Cueto	155/157-CU	195.12
F. Vigil y Cia.	7-CU-2	164.50

In addition to the above invoices, there is correspondence which establishes that a shipment was made to Jose Saladrigas under a letter of credit which did not provide enough money for the shipping expenses. The claimant therefore billed Jose Saladrigas for the additional expenses in the amount of \$8.44 and this collection is designated by claimant's number 109-CU-39/A

The record contains correspondence from the collecting banks confirming that the consignees had paid specific collections on or before the following dates, and that dollar reimbursement releases were pending:

<u>Consignee</u>	<u>Amount of Collection</u>	<u>Date of payment or confirmation of payment</u>
Ricardo Gonzalez	\$ 281.58 1,136.27	February 11, 1960 November 7, 1960
J. y W. Hernandez Muniz	785.53	February 8, 1960
Jose Saladrigas	398.38 8.44	December 30, 1959 September 27, 1960
Importadora Gorbea, S.A.	1,162.48	January 19, 1960

<u>Consignee</u>	<u>Amount of Collection</u>	<u>Date of payment or confirmation of payment</u>
Cabrera y Hno.	372.77	July 5, 1960
Argemiro Lope Villarrubia Pinon	140.77	July 5, 1960
Motor Auto Co., Ltd.	391.42	July 5, 1960
Jose Diaz Ferrera	371.16	July 5, 1960
Angel Garcia Cueto	195.12	February 2, 1960
F. Vigil y Cia.	164.50	November 18, 1959

The confirmation of payment, by Ricardo Gonzalez, of the \$1,136.27 collection is indirect. Banco Financiero's letter of November 7, 1960, confirming payment, refers only to its number EA-6882 and the name Ricardo Gonzalez Salas. By reference to a list submitted by claimant to the United States Department of State with a letter dated April 11, 1961, it is clear that Banco Financiero's letter refers to the collection of claimant's No. 277-CU-38.

Claimant submitted a copy of a letter dated June 22, 1960, addressed to the Cuban exchange authorities by his Cuban representative, Mario Marquez. This letter refers to the payment, by F. A. Vda. de Puron, of claimant's collection 30-CU-6 on April 14, 1960. However, the payment was only of the cost of goods, \$325.00, and did not include the \$39.38 shipping charges.

Claimant asserts that his collection 288-CU-93 in the amount of \$1,080.00 was paid by Importadora Gorbea, S.A., but he is unable to provide documentary evidence confirming payment. In the absence of such evidence reference is made to the terms of credit as set forth in claimant's invoice. The terms are stated as "90 Day-Clean-Sight Draft". The bill of lading was dated September 21, 1959. Payment was therefore due on December 21, 1959. Claimant states that he 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 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 the following dates:

On November 19, 1959 as to \$	164.50
On December 21, 1959 as to	1,080.00
On December 31, 1959 as to	398.38
On January 20, 1960 as to	1,162.48
On February 3, 1960 as to	195.12
On February 9, 1960 as to	785.53
On February 12, 1960 as to	281.58
On April 15, 1960 as to	325.00
On July 6, 1960 as to	1,276.12
On September 28, 1960 as to	8.44
On November 8, 1960 as to	1,136.27

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 dates 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 \$ 164.50 from November 19, 1959
On 1,080.00 from December 21, 1959
On 398.38 from December 31, 1959
On 1,162.48 from January 20, 1960
On 195.12 from February 3, 1960
On 785.53 from February 9, 1960
On 281.58 from February 12, 1960
On 325.00 from April 15, 1960
On 1,276.12 from July 6, 1960
On 8.44 from September 28, 1960
On 1,136.27 from November 8, 1960

CERTIFICATION OF LOSS

The Commission certifies that JOSE ALFARO 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 Six Thousand Eight Hundred Thirteen Dollars and Forty-Two Cents (\$6,813.42) 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

CERTIFICATION
THIS IS A COPY OF
OF THE COMMISSION'S
DECISION ON

4 DEC 1967
via 880
as the file
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).)