

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

IN THE MATTER OF THE CLAIM OF

FRIDEN, INC.
FRIDEN, INC. - ROCHESTER DIVISION

Claim No. CU - 0398
CU - 0821

Decision No. CU 1525

**Under the International Claims Settlement
Act of 1949, as amended**

PROPOSED DECISION

These claims against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, were presented by FRIDEN, INC. and FRIDEN, INC. - ROCHESTER DIVISION in the amounts of \$7,167.48 and \$324.81, respectively, and are 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."

The record discloses that FRIDEN, INC. was organized under the laws of California in 1934 and that Friden Western Export Corporation, a wholly owned subsidiary of FRIDEN, INC. operated as the parent company's export division until December 31, 1960, when it was dissolved by merger into the parent company. In 1956 FRIDEN, INC. acquired a wholly owned subsidiary, Commercial Controls Corporation, which was merged into the parent company in 1963 at which time it became known as FRIDEN, INC. - ROCHESTER DIVISION. In 1963 FRIDEN, INC. was acquired as a wholly owned subsidiary by The Singer Company, a New Jersey corporation. Concurrent with its acquisition by Singer, all of the assets of FRIDEN, INC. (California) were transferred to a newly organized Delaware corporation, the present claimant, FRIDEN, INC.

These claims were presented by FRIDEN, INC. and FRIDEN, INC. - ROCHESTER DIVISION on August 30, 1965 and September 13, 1966, respectively. An officer of the claimant corporation has certified that at all times pertinent to these claims, more than 50% of the outstanding capital stock of claimant corporation has been owned by nationals of the United States. The record discloses that since 1963 all of the outstanding capital stock of claimant corporation has been held by The Singer Company, a New Jersey corporation. An officer of The Singer Company has certified that as of August 19, 1966, 10,296,922 or 97.13% of its outstanding shares were held by domestic shareholders and that 303,988, or 2.87% were held by foreign shareholders. The Commission holds that claimant and its predecessors were and are nationals of the United States within the meaning of Section 502(1) of the Act.

These claims are based on the shipment of merchandise by claimant's predecessors to Maquinas Automaticas de Oficina, S.A. (previously known as Sucesores de Casteleiro y Vizoso, S.A.) of Havana, Cuba. The record shows that the consignee firm was the distributor for Friden products in Cuba under a sales agreement. Claimant has submitted copies of distributor sales agreements, correspondence with the consignee, invoices reflecting shipments of goods to the consignee, statements of account and other documents. This evidence discloses that on March 1, 1960 there were balances due on the accounts of claimant's predecessors against Maquinas Automaticas de Oficina, S.A. Claimant states that neither it nor its predecessors have received the funds described as due herein.

FRIDEN, INC. - (FCSC Claim No. CU-0398)

The evidence of record shows that claimant's predecessor shipped machines, parts, and supplies to the Cuban distributor in 1958 and 1959, and that in March, 1960, claimant's predecessor made the last debit entries in its statement of account against the distributor. The record shows that the total amount due claimant's predecessor on March 1, 1960, reduced by one subsequent credit, was \$7,167.48.

FRIDEN, INC. - ROCHESTER DIVISION (FCSC Claim No. CU-0821)

The evidence of record shows that on various dates in 1959, claimant's predecessor, then known as Commercial Controls Corporation, shipped goods to Maquinas Automaticas de Oficina, S.A. and that on March 1, 1960, the amount due to claimant's predecessor on its account against that consignee was \$324.81.

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 and its predecessors 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's predecessors, which resulted in the taking of American owned property within the meaning of Section 503(a) of the Act. (See the Claim of 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 the property of claimant's predecessors 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 March 1, 1960 as to \$7,492.29.

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's predecessors shall be increased by interest thereon at the rate of 6% per annum from the date of loss, March 1, 1960, to the date on which provisions are made for the settlement thereof.

CU-0398
CU-0821

CERTIFICATION OF LOSS

The Commission certifies that FRIDEN, INC. succeeded to and 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 Seven Thousand Four Hundred Ninety Two Dollars and Twenty-Nine Cents (\$7,492.29) with interest thereon at 6% per annum from the date of loss to the date of settlement.

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

APR 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on MAY 17 1968

Francis Masters

Clerk of the Commission

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).)