

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

IN THE MATTER OF THE CLAIM OF

F. R. SCHWANKE CO., INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0426

Decision No. CU

539

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 F. R. SCHWANKE CO., INC. in the amount of \$32,930.33 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 Illinois and that at all times between 1944 and presentation of this claim on September 13, 1965, 50% or more of the outstanding capital stock of the claimant has been owned by United States nationals. The claimant corporation is presently owned entirely by Mr. F. R. Schwanke, a United States national since his birth in Cleveland, Ohio on November 4, 1908. 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 contains copies of claimant's invoices reflecting the sale of goods to various consignees in Cuba as follows:

<u>Consignee</u>	<u>Total</u>
Manuel Alonso	\$2,496.35
Autos Camayd S. A.	790.42
Camaguey Motor	4,711.89
Angel Couto Garcia	3,146.13
Distribuidoria Autopartes Garbu, S. A.	785.47
Maximino Lopez Lopez	3,136.92
Jose Luis Garcia	1,872.52
Gomez y Estrada S en C	585.06
Importadora del Campo S. A.	215.09
Rogeleo La Rosa	3,948.64
Miquel & Bacardi	2,194.60
Soler Motors S. A.	9,047.24

Additionally, the record includes letters to the claimant from The First National Bank of Chicago notifying claimant that all of the above-mentioned debts have been paid by the various consignees to Cuban banks.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded transfers of funds, in this and similar cases, 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.)

For each debt owed, claimant is making a claim for the entire amount paid by the consignee to the Cuban collecting bank. However, the evidence submitted reflects that claimant authorized The First National Bank of Chicago to instruct the Cuban collecting bank to pay a certain stated percentage of the sum collected from each consignee to claimant's representative in Cuba as his commission. The Commission finds, therefore, that claimant's loss resulting from the intervention of the Cuban Government is the amount collected by the Cuban banks from the various consignees, less the amount claimant authorized the collecting banks in Cuba to pay its representatives as commission.

Accordingly, in the instant claim the Commission finds that claimant lost property as a result of intervention by the Government of Cuba in the following amounts and in the absence of evidence to the contrary, the losses occurred the days after the collections were acknowledged, as follows;

<u>ON</u>	<u>AS TO</u>
November 17, 1959	\$1,791.25
December 15, 1959	607.94
December 19, 1959	437.97
December 30, 1959	625.65
December 31, 1959	2,487.51
January 14, 1960	917.31
January 22, 1960	921.71
January 26, 1960	1,404.72
February 2, 1960	1,447.20
February 4, 1960	2,271.43
March 18, 1960	858.32
February 27, 1960	1,404.71
March 2, 1960	2,040.98
March 4, 1960	1,088.92
March 5, 1960	478.22
March 9, 1960	731.14
March 12, 1960	126.49
March 16, 1960	408.47
March 24, 1960	322.91
March 25, 1960	541.60
March 29, 1960	610.65
April 5, 1960	967.81
April 12, 1960	408.46
April 14, 1960	967.81
April 20, 1960	1,742.47
April 27, 1960	1,254.74
May 25, 1960	967.81
August 9, 1960	437.97
October 4, 1960	2,149.20
October 13, 1960	200.04

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 the provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that F. R. SCHWANKE CO., 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 Thirty Thousand Six Hundred Twenty-One Dollars and Twenty-One Cents (\$30,621.21) 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

RECEIVED
This is a true and
correct copy of the contents
of the Commission
Decision on
A DEC 1967
Marie 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).)