

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

IN THE MATTER OF THE CLAIM OF

PAN AMCEL CO., INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU- 0441

Decision No. CU

2449

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 PAN AMCEL CO., INC. in the amount of \$130,831.53, and is 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)(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 officer of the claimant corporation has certified that the claimant was organized in the State of Delaware, and that at all times between 1955 and the presentation of this claim on September 20, 1965, 100% of the outstanding capital stock of the corporation has been owned by the Celanese Corporation of America. The Celanese Corporation of America was organized in the State of Delaware, and an officer of that corporation has certified that 95% of its outstanding capital stock is owned by nationals of the United States. 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, letters to claimant from its banks, and similar evidence reflecting the sale and delivery of merchandise to various Cuban enterprises. In each of these transactions, payment was to have been effected by bank draft.

In the summary of these transactions set out below, the amount due from Jose Palaez Rodriguez on No. 1769 has been reduced by \$273.46, the amount of commission due claimant's Havana agent on the sale. Claimant states that it has never received the proceeds from any of the listed transactions.

<u>No.</u>	<u>Customer</u>	<u>Payment Due or Payment Advised</u>	<u>Net Amount Due</u>
1769	Jose Palaez Rodriguez	1-29-60	\$ 5,673.04
1577	" " "	3-1-60	4,406.50
1702	" " "	3-1-60	1,154.22
1744	" " "	3-1-60	2,998.50
1740	" " "	3-1-60	15,366.94
40146	Textilera Tricana, S.A.	2-16-60	15,068.86
52269	" " "	2-16-60	14,744.74
1117	Concordia Textil, S.A.	9-29-59	9,270.82
1124	" " "	9-29-59	6,446.00
1202	" " "	9-29-59	6,885.28
1203	" " "	9-29-59	6,885.28
1535	Zippy Products Co. of Cuba	9-29-59	944.67
1560	" " " "	9-29-59	472.36
20023	" " " "	9-29-59	840.00
21293	" " " "	9-29-59	104.67
20033	" " " "	9-29-59	840.00
21309	" " " "	9-29-59	104.72
1851	Emilo Loreda	3-8-60	1,643.98
1856	Boat Evanses Plas. Pol., S.A.	6-21-60	3,090.13
1742	Fabrica Tex, Antex, S.A.	6-21-60	661.78
			<u>\$ 97,602.49</u>

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 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.)

Accordingly, in the instant claim the Commission finds that claimant sustained property losses in the total amount of \$97,602.49 as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the losses occurred on September 29, 1959, the date of the publication of Law 568 as to \$32,793.80; on January 29, 1960 as to \$5,673.04; on February 16, 1960 as to \$29,813.60; on March 1, 1960 as to \$23,926.16; on March 8, 1960 as to \$1,643.98; and on June 21, 1960 as to \$3,751.91, the latter dates being either the date upon which payment became due, or the date on which payment was advised by the appropriate bank.

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 has stated that it made sales and shipments of merchandise to Cuban customers in addition to those referred to above. The evidence submitted in support of such other transactions is insufficient to support findings favorable to claimant. Accordingly, this portion of the claim is hereby denied.

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 Claim of Lisle Corporation, Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the losses occurred to the date on which provision is made for settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that PAN AMCEL CO., INC. suffered a loss, as a result of the 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 Ninety-Seven Thousand Six Hundred Two Dollars and Forty-Nine Cents (\$97,602.49) 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

JUL 31 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Feidberg

Sidney Feidberg, 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).)