

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

IN THE MATTER OF THE CLAIM OF

PADIN BROTHERS

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0475

Decision No. CU 3201

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 PADIN BROTHERS, in the amount of \$36,486.17 and is based upon the asserted loss of payment for merchandise shipped to various customers in 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.

The record includes a copy of a Partnership Agreement establishing that PADIN BROTHERS is a partnership consisting of five partners to wit: Antonio Padin, Angel Sebastian Padin, Antonio Ferreira Padin, Angel Ferreira Padin and Manuel Padin, all of whom have been nationals of the United States at all times pertinent to this claim. The Commission holds, therefore, that claimant, PADIN BROTHERS, is a national of the United States within the meaning of the Act.

The record includes copies of invoices and other data concerning shipments or merchandise to Cuban business firms, listed hereafter as the consignees. Claimant states that none of the purchase prices and accompanying charges for such shipments were ever received or paid into banks in Cuba.

Claimant's invoices reflect sales to various Cuban enterprises of certain goods totaling \$36,486.17. A listing of the enterprises to which goods were shipped along with the numbers and the dates of the invoices and net balance due after adjustment or credit on each account follows:

| <u>CONSIGNEE</u> | <u>INVOICE DATE</u> | <u>AMOUNT</u> |
|-------------------|---------------------|---------------------|
| LeJarza y Cia. | October 8, 1958 | \$588.32 |
| | credit | <u>29.69</u> |
| | July 22, 1959 | \$ 558.63 688.85 |
| Bernardo Gonzalez | October 21, 1959 | 791.92 |
| Jose Matos & Cia | July 22, 1959 | 9,686.76 |
| Villar Pica & Co. | November 20, 1959 | 1,454.45 |

| <u>CONSIGNEE</u> | <u>INVOICE DATE</u> | <u>AMOUNT</u> |
|------------------------------|---------------------|---------------|
| Ortez Hermanos & Co., S.A. | December 9, 1959 | \$ 1,494.12 |
| Lopez & Co., Muralla 461 | July 29, 1959 | 2,541.88 |
| Jose A. Rodriguez & Co. | October 21, 1959 | 1,271.05 |
| Lopez & Co., Bernaza 244 | July 29, 1959 | 5,026.35 |
| | October 1, 1959 | 1,854.07 |
| | October 1, 1959 | 3,263.69 |
| | November 25, 1959 | 544.37 |
| L. Vivanco & Cia | July 8, 1959 | 1,680.12 |
| | September 9, 1959 | 651.76 |
| Duran Alvarez Vazquez & Cia. | July 29, 1959 | 465.60 |
| Alonso & Cia. | October 14, 1959 | 714.34 |
| | October 21, 1959 | 601.74 |
| Sampedro & Cia | September 3, 1958 | 2,126.58 |
| Santiago Garcia | November 11, 1959 | 1,062.89 |
| Villamil, Martinez y Cia. | July 15, 1959 | <u>7.00</u> |
| | Total | \$36,486.17 |

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.)

Accordingly, in the instant claim, the Commission finds that the subject accounts receivable were lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the contrary, such losses occurred on September 29, 1959 with respect to invoices due prior to that date, and thirty days from the invoice date on all invoices due after September 29, 1959.

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 as follows:

| <u>FROM</u> | <u>ON</u> |
|--------------------|-----------------|
| September 29, 1959 | \$22,781.77 |
| November 21, 1959 | 2,664.71 |
| December 20, 1959 | 1,454.45 |
| January 9, 1960 | 1,494.12 |
| November 1, 1959 | 5,117.76 |
| December 25, 1959 | 544.37 |
| October 9, 1959 | 651.76 |
| November 14, 1959 | 714.34 |
| December 11, 1959 | <u>1,062.89</u> |
| Total | \$36,486.17 |

CERTIFICATION OF LOSS

The Commission certifies that PADIN BROTHERS 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-Six Thousand Four Hundred Eighty-Six Dollars and Seventeen Cents (\$36,486.17) 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 16 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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).)