

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

IN THE MATTER OF THE CLAIM OF

LILY-TULIP CUP CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0481

Decision No. CU-1555

AMENDED PROPOSED DECISION

On April 10, 1968, the Commission issued a Proposed Decision in this claim against the Government of Cuba wherein the claim was denied for failure of proof. Thereafter, the claimant submitted additional evidence in support and clarification of this claim. The matter having been reconsidered, it is

ORDERED that the Proposed Decision of the Commission be, and the same is amended to read as follows:

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by LILY-TULIP CUP CORPORATION in the amended amount of \$45,307.18, and is based upon the asserted loss of payment for merchandise shipped to business enterprises in 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.

Officers of the claimant corporation have certified that the claimant was organized in the State of Delaware, and that at all times between the respective dates of loss and presentation of this claim

on October 6, 1965, more than 50% of the outstanding capital stock of the claimant corporation has been owned by nationals of the United States. The evidence of record, including a statement of a corporate official of claimant corporation, discloses that at all times pertinent to this claim approximately 98.5 per cent of the outstanding shares of stock of the LILY-TULIP CUP CORPORATION were owned by shareholders who had registered addresses within the United States, including Puerto Rico, the Canal Zone and the Virgin Islands; and that the persons so residing are assumed to be 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 evidence of record includes copies of correspondence from the claimant corporation to Cuban banks and consignees and to the agents of claimant in Cuba, as well as correspondence from claimant to the Chase Manhattan Bank concerning the payment or non-payment for merchandise shipped by the claimant. The claimant has submitted recapitulations of the transactions involved in this claim, affidavits, copies of general vouchers and a "Schedule of Receivables Written Off"; and also invoices, drafts and other data concerning the shipments of merchandise to the consignees.

The evidence discloses that the purchase price of the merchandise and accompanying charges for such shipments, with certain exceptions, were paid by the consignees to the local Cuban banks for dollar reimbursement to the claimant; that the dates of such local payments are not specified in all instances; and that dollar reimbursement releases or authorization for such reimbursement were never granted by Cuban governmental officials. Other shipments made by claimant on an open account basis were not paid to the collecting banks by the consignees. Claimant states that in all instance it has not received any of the funds for the shipments, enumerated herein.

There follows an enumeration of the shipments made by claimant to the Cuban consignees, including information on the paid drafts

and open accounts. The items listed include information which discloses the name of the consignee, date and number of the draft, invoice number, date of the invoice and the amount due and payable by the consignees.

I. DRAFTS PAID LOCALLY - NO DOLLAR REIMBURSEMENT

<u>Consignee</u>	<u>Draft Numbers</u>	<u>Invoice Numbers</u>	<u>Date of Invoices</u>	<u>Amount</u>
Prospero J. Montane	4907	1481	8/29/59	\$ 527.46
Levadura Medina	4937 4938	1482 1564 1572	9/11/59	9,819.44
Parros Gomez & Cia.	5028	1097 1098	9/25/59	1,065.89
Productos Mosquero	5103	1754 1842	10/21/59	10,198.89
Bigelman & Cia.	5142	1981	11/ 3/59	2,044.62
Rodriguez Moraleda	5242	1504 1505	12/ 1/59	9,367.97
Alvarez Perez & Cia.	5268	2157	12/ 9/59	730.65
Levadura Medina	22165	DM-640	1/29/60	<u>1,290.10</u>
T O T A L				\$ 35,045.02

Claimant has submitted supporting evidence to establish that other shipments were made to Cuban consignees on an open account basis; that payment was not made by the Cuban consignees and no dollar reimbursement was made to the claimant.

II. OPEN ACCOUNTS

<u>Consignee</u>	<u>Draft Numbers</u>	<u>Invoice Numbers</u>	<u>Date of Invoices</u>	<u>Amount</u>
Cia. Ganadera Macco	None	1479 1480 1512 1513	10/16/59	\$ 1,148.66
Baldermo Zas	None	334 337	3/28/59 4/ 6/59 4/19/59	2,603.43 2,633.22 <u>3,876.85</u>
T O T A L				\$ 10,262.16

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.)

The Commission finds that the 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 losses occurred thirty (30) days after the dates of invoice of the locally paid drafts and open accounts. For losses arising prior to the effective date of Law 568 the Commission finds, however, that these losses arose on the date of publication of this law, or on 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 respective dates of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of losses arising from shipments of goods to the Cuban consignees, a total of \$45,307.18, 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 provisions are made for the settlement thereof, as follows:

<u>From</u>	<u>On</u>
September 29, 1959	\$ 9,640.96
October 11, 1959	9,819.44
October 25, 1959	1,065.89
November 15, 1959	1,148.66
November 20, 1959	10,198.89
December 2, 1959	2,044.62
December 31, 1959	9,367.97
January 8, 1960	730.65
February 28, 1960	<u>1,290.10</u>
Total	\$ 45,307.18

The following certification of loss will be entered and in all other respects the Proposed Decision is affirmed.

CU-0481

CERTIFICATION OF LOSS

The Commission certifies that LILY-TULIP CUP CORPORATION 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 Forty-Five Thousand Three Hundred Seven Dollars and Eighteen Cents (\$45,307.18) 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 Amended 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).)

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

IN THE MATTER OF THE CLAIM OF

LILY-TULIP CUP CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0481

Decision No. CU -

1555

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$35,045.02, was presented by LILY-TULIP CUP CORPORATION, and is based upon the asserted loss of payment for merchandise shipped to Cuba.

Claimant asserted that more than 50% of its outstanding capital stock was held by nationals of the United States.

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 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

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 asserts the loss of payment for merchandise shipped to Cuba.

Other than a schedule of the debts owed claimant, no evidence was submitted in support of the claim, filed on October 6, 1965. Accordingly, by Commission letters of July 15, 1966 and October 21, 1966, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, by letters of February 1, 1967, July 13, 1967, November 16, 1967 and November 29, 1967, the Commission made additional suggestions to claimant concerning the submission of supporting evidence in this matter. Other than a letter from claimant's accountant, no evidence in response to this correspondence has been received to date.

On January 8, 1968, claimant was invited to submit any evidence available to it within 30 days from that date, and claimant was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record.

Claimant was subsequently advised by the Commission on January 15, 1968 and March 4, 1968, that original documentation constituting the best evidence should be submitted. An officer of claimant indicated that claimant had such evidence available to it.

An officer of claimant has since stated that the letter from claimant's accountant "is all we have been able to produce".

The Commission is aware of the difficulties some claimants encounter in obtaining evidence in support of their claims; this is not to say, however, that the Commission should issue a favorable determination when such a determination is unsupported by the evidence of record.

The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

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

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CU-0481