

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

IN THE MATTER OF THE CLAIM OF

WESTINGHOUSE AIR BRAKE TRADE CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0484

Decision No. CU

3017

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 WESTINGHOUSE AIR BRAKE TRADE CORPORATION in the amount of \$11,206.28 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.

The record discloses that WESTINGHOUSE AIR BRAKE TRADE CORPORATION, organized in Delaware, is a wholly-owned subsidiary of Westinghouse Air Brake Company, organized in Pennsylvania. An officer of the claimant corporation has certified that at all times pertinent to this claim more than 50% of the outstanding capital stock of the claimant corporation has been owned by nationals of the United States. Additionally, an officer of the parent Pennsylvania corporation has certified that 99.6% of its corporate stock is held of record by United States nationals and 0.4% is held by persons who are presumed to be foreign nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant has submitted invoices and other evidence of record concerning the transactions included in this claim with the Cuban consignees. Such data discloses the dates of shipment, invoice numbers, sales amounts specified with freight charges, certain credits given to the Cuban consignees, and the terms of the sales as being open accounts with payment due in 30 days. These transactions include the following:

<u>Date of Invoice</u>	<u>Invoice Number</u>	<u>Consignee</u>	<u>Amount</u>
10/15/58	RR-015-1342	Cia Distribuidora G de la fe S. A.	\$ 26.14
10/20/59	RR-074-1500	" " " " " "	60.28
11/20/59	RR-074-1500	" " " " " "	6,821.21
12/ 6/59	RR-074-1500	" " " " " "	314.27
12/14/59	RR-079-1511	" " " " " "	711.31
12/14/59	RR-079-1511	" " " " " "	495.50
12/28/59	RR-079-1511	" " " " " "	83.64
12/15/59	RR-084-1524	" " " " " "	1,517.51
10/ 4/60	RR-088-1532	" " " " " "	44.15
11/19/58	682	Ferrocarriles Occidentales de Cuba, S. A.	43.07
5/14/59	817	" " " " " "	12.56
11/30/59	26509-E	Antiga Company	161.98
12/15/59	26509-E	" " "	47.11
7/28/60	26644-E	" " "	318.62
7/28/60	26701-E	" " "	28.33
7/28/60	26698-E	" " "	395.53
8/22/60	26644-E	" " "	58.60
9/ 7/60	26508-E	" " "	66.47
Total			\$ 11,206.28

Claimant states that it has not received the funds and the sum of \$11,206.28 is due and payable by the Cuban consignees.

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, 1967 FCSC Ann. Rep. 46.)

Accordingly, in the instant claim the Commission finds that claimant sustained a loss in the amount of \$11,206.28 as a result of intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the losses arose thirty days after dates of shipment as provided in the terms of the sales. However, as to shipments made prior to September 29, 1959, the Commission finds that these losses occurred on September 29, 1959, which is the date when Law 568 was published. Such dates of loss and the sums lost by claimant, within the meaning of Title V of the Act are set forth hereafter in this decision.

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 the 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 provisions are made for the settlement thereof, as follows:

From 9/29/59 on	\$	81.77
From 11/20/59 on		60.28
From 12/20/59 on		6,821.21
From 12/30/59 on		161.98
From 1/ 6/60 on		314.27
From 1/14/60 on		1,206.81
From 1/15/60 on		1,564.62
From 1/28/60 on		83.64
From 8/28/60 on		742.48
From 9/22/60 on		58.60
From 10/ 7/60 on		66.47
From 11/ 4/60 on		<u>44.15</u>
Total	\$	11,206.28

CERTIFICATION OF LOSS

The Commission certifies that WESTINGHOUSE AIR BRAKE TRADE 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 Eleven Thousand Two Hundred Six Dollars and Twenty-Eight Cents (\$11,206.28) 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

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).)