

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

IN THE MATTER OF THE CLAIM OF

JAMES TALCOTT, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0495

Decision No. CU - 5709

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 JAMES TALCOTT, INC. in the amended amount of \$29,660.81 based upon debts due for merchandise shipped to Cuba, which debts had been assigned to claimant.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 70 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 the claimant was organized in the State of New York and that at all times pertinent to this claim more than 50 per cent of the outstanding stock of the claimant corporation has been owned by nationals of the United States. A corporate officer has stated that the percentage of shares held by residents (of the United States) as of August 18, 1967 was 99.7 per cent. 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 analyses of failed accounts and ten pages of accounts apparently excerpted from claimant's records and other evidence reflecting the sale of goods by various consignees in Cuba and the assignment of the payments due to claimant corporation. Claimant states that except for an item of \$8,763.18 for which arrangements for payment had been made, it has not received the funds. In accordance with claimant's request its claim has been amended to indicate the reduced amount of its original claim.

There follows a listing of items now claimed by claimant, including the dates payments were due:

<u>Consignee</u>	<u>Amount</u>	<u>Date Due</u>
Ribbon Fabrics Co. of Cuba, S.A.	\$16,671.49	
Less credit - <u>4,726.98</u>		
	\$11,944.51	June 4, 1959
	3,401.73	June 12, 1959
Textilera Sylvania, S.A.	2,008.35	September 17, 1959

<u>Consignee</u>	<u>Amount</u>	<u>Date Due</u>
Textilera Versalles, S.A.	\$ 2,138.94 2,152.20	October 9, 1959 November 1, 1959
Consolidated Textile	257.09	October 15, 1959
Almacenes Jessy	526.95	December 16, 1959
Lopez Pay y Cia	2,234.71	December 13, 1959
Jose Colodner	625.32 2,424.01	December 18, 1959 December 28, 1959
American Clothing Corp., S.A.	1,875.99	December 19, 1959
Sima Textilera, S.A.	<u>71.01</u>	January 2, 1960
	<u>\$29,660.81</u>	

The Government of Cuba, on September 29, 1959, published its Law 568 concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfer 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 aforesaid sums totalling \$29,660.81 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 the respective maturity dates with regard to unpaid drafts maturing after September 29, 1959. However, with respect to the dates of loss as to those goods sold prior to September 29, 1959, the

Commission finds that the losses occurred on September 29, 1959, the effective date of Law 568.

Accordingly, in the instant claim, the Commission finds that 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 loss occurred on the dates shown below, September 29, 1955 being used for items which fell due prior to that date.

It appears that claimant has asserted and the United States Internal Revenue Service has allowed an income tax deduction in 1959 and 1960 for said losses.

The Commission has decided that in certifications of loss 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), and in the instant case it is so ordered as follows:


<u>FROM</u>	<u>ON</u>
September 29, 1959	\$17,354.59
October 9, 1959	2,138.94
October 15, 1959	257.09
November 1, 1959	2,152.20
December 13, 1959	2,234.71
December 16, 1959	526.95
December 18, 1959	625.32
December 19, 1959	1,875.99
December 28, 1959	2,424.01
January 2, 1960	<u>71.01</u>
	<u>\$29,660.81</u>


CERTIFICATION OF LOSS

The Commission certifies that JAMES TALCOTT, 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 Twenty-nine Thousand Six Hundred Sixty Dollars and Eighty-one Cents (\$29,660.81) 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

SEP 9 1970


Lyle S. Garlock, Chairman


Theodore Jaffe, 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).)