

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

IN THE MATTER OF THE CLAIM OF

THE INTERNATIONAL SILVER COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0690

Decision No. CU 777

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 THE INTERNATIONAL SILVER COMPANY in the amount of \$14,432.21 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) of the Act defines the term "national of the United States" as "(B) 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 Connecticut and that all times between 1946 and presentation of this claim on March 3, 1966, more than 50% of the outstanding capital stock of the claimant has been owned by United States 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 states that more than 99% of the capital stock of the Company is held by United States nationals and less than 1% of the Company's capital stock is held by non-United States nationals.

The record contains a copy of claimant's invoice numbers AEX 20343 and HEX 8258 dated August 28, 1959, reflecting the sale of goods totalling \$847.35 to Jose Junquera y Cia. of Cuba; a copy of claimant's invoice numbers HEX 9473 and AEX 20010 dated September 24, 1959 and September 22, 1959, respectively, reflecting the sale of goods totalling \$879.61 to Anton E. Hijos of Cuba; and a copy of claimant's invoice number HEX 12753 dated November 27, 1959, reflecting the sale of goods totalling \$445.70 to San Juan Ferreteria of Cuba. For all of the above shipments claimant states that it has never received payment.

Additionally, the record contains copies of invoices reflecting the sale of goods to consignees in Cuba who made payments to J. M. Masque, claimant's agent in Cuba as follows:

<u>Consignee</u>	<u>Cost of Goods Shipped</u>	<u>Date Goods Shipped</u>	<u>Date J. M. Masque Acknowledged Payment, if any</u>
S. Fondon y Cia	\$ 266.55	June 24, 1959 as to \$ 56.32 August 28, 1959 as to \$ 40.12 November 9, 1959 as to \$170.11	
Meneses Bascuas y Garmendia	\$ 738.00	November 16, 1959	
Garcia Gutierrez y Cia S en C	\$1,356.30	October 19, 1959 as to \$1,036.10 October 29, 1959 as to \$ 138.00 December 8, 1959 as to \$ 138.00 January 11, 1960 as to \$ 52.41 Credit of \$8.21 allowed on October 21, 1959	
Manuel Cotera S en C	\$2,024.13	October 29, 1959 as to \$ 648.05 November 24, 1959 as to \$1,434.37 Credit of \$44.19 allowed on December 7, 1959 Credit of \$14.10 allowed on December 3, 1959	December 22, 1960
Diego Zuloaga S en C	\$ 863.44	November 11, 1959 as to \$231.84 November 1, 1959 as to \$360.00 November 10, 1959 as to \$271.60	June 8, 1961
Mendez Canarte y Cia	\$ 180.00	December 23, 1959	September 16, 1961
Vicente Juan E. Hijos	\$ 164.00	September 18, 1959	
Almacen "La Estrella", S.A.	\$ 765.80	December 1, 1959	November 27, 1961
Cabada Ceballos y Cia	\$1,119.59	October 22, 1959 as to \$248.54 November 30, 1959 as to \$871.05	March 1, 1962
Commercial R. Robayna, S.A.	\$1,038.09	November 24, 1959 as to \$310.84 November 30, 1959 as to \$727.25	May 28, 1962
Aquilino Riestra	\$ 4.37	November 11, 1959	

The record further contains invoices for goods shipped directly to J. M. Masque and billed in his name; on September 14, 1959 goods were shipped in the amount of \$7.25 and on January 21, 1960 in the amount of \$2,838.00.

The record further contains a copy of the claimant's business ledger indicating that J. M. Masque owed the claimant \$893.37, representing charges to his account to cancel commissions on goods returned.

Accordingly, the record shows that J. M. Masque of Havana, Cuba owed the claimant a total of \$12,258.89. Claimant states it has not received the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning the 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-owed property within the meaning of Section 503(a) of the Act. (See the Claim of the Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

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 as follows:

on September 29, 1959 as to \$2,888.02, the date the Government of Cuba published its Law 568 and

<u>On</u>	<u>As To</u>
October 24, 1959	\$1,036.10
November 3, 1959	\$ 138.00
November 14, 1959	\$ 170.11
November 16, 1959	\$ 4.37
November 21, 1959	\$ 738.00
December 2, 1959	\$ 445.70
December 13, 1959	\$ 138.00
January 16, 1960	\$ 44.20
January 26, 1960	\$2,838.00

five days after the goods were shipped and payment became due, and

<u>On</u>	<u>As To</u>
December 23, 1960	\$2,024.13
June 9, 1961	\$ 863.44
September 17, 1961	\$ 180.00
November 28, 1961	\$ 765.80
March 2, 1962	\$1,119.59
May 29, 1962	\$1,038.09

one day after the collections were acknowledged by J. M. Masque.

The Commission has decided that in the 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 the Claim of Lisle Corporation, FCSC 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 loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that THE INTERNATIONAL SILVER COMPANY 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 Fourteen Thousand Four Hundred Thirty-one dollars and Fifty-five cents (\$14,431.55) 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

6 DEC 1967

*Edward D. Re*

Edward D. Re, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*LaVern R. Dilweg*

LaVern R. Dilweg, Commissioner

This is a true and correct copy of the decision of the Commission with all amendments as the final decision on ---- JAN 9 1968

*Theodore Jaffe*

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).)