

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

IN THE MATTER OF THE CLAIM OF

UNITED MERCHANTS & MANUFACTURERS, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0759

Decision No. CU-17

Counsel for claimant:

Grant, Herrmann & Schwartz
by Albert M. Herrmann, Esq.

AMENDED PROPOSED DECISION

This claim against the Government of Cuba was denied by Proposed Decision of the Commission issued on October 26, 1966, which was entered on November 30, 1966 as the Commission's Final Decision on the claim. The matter having been reconsidered, it is

ORDERED that the Final Decision of November 30, 1966 be and it is hereby set aside and the Proposed Decision is amended 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 UNITED MERCHANTS & MANUFACTURERS, INC., for \$160,003.67 based upon a debt assertedly due to its Panamanian subsidiary from a Cuban corporation.

Under Section 503 of the International Claims Settlement Act of 1949, as amended (64 Stat. 12; 69 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 79 Stat. 988), the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. That section 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

(a) . . . 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.

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."

The record establishes that UNITED MERCHANTS & MANUFACTURERS, INC., was incorporated in the State of Delaware; and according to a statement by an officer of the claimant corporation, at all times between January 1, 1959 and presentation of this claim on June 14, 1966, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Accordingly, the Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

An officer of UNITED MERCHANTS & MANUFACTURERS, INC., has further certified that on June 14, 1966 there were outstanding 5,980,216 shares of capital stock of all classes of claimant corporation, of which 28,617 shares, constituting approximately .48%, were owned of record by nonnationals of the United States.

The evidence of record shows, and the Commission finds, that Panameritex de Panama, S.A., of the Republic of Panama, is a wholly-owned subsidiary of claimant.

The record reflects that claimant's subsidiary, Panameritex, S.A., entered into an agreement with Estampados Permatex, S.A., a Cuban corporation, whereby the former was to render to Permatex certain technical assistance, engineering and purchasing services, training of personnel and other services for the establishment of a textile plant in Cuba. As compensation for its services Panameritex was to receive certain royalty payments. The agreement also provided that Permatex was permitted to cancel the agreement at any time after the first five years upon six months' advance notice, subject to payment by Permatex of a cancellation fee in cash equivalent to the average yearly remuneration which Panameritex had received for a two-year period immediately prior to the effective date of the cancellation.

In June 1959, Permatex notified Panameritex of its intention to cancel the agreement, in accordance with its terms, as of December 31, 1959. By letter of February 3, 1960, Permatex forwarded to claimant the royalties due to Panameritex for the third quarter of 1959, confirming an amount due for the fourth quarter and stating it was working on liquidation figures.

Accordingly, the Commission finds that under the agreement referred to above, Estampados Permatex, S.A., owed a debt to Panameritex de Panama, S.A.; that this debt constituted property as the term is defined in Section 502(3) of the Act; and concludes that UNITED MERCHANTS & MANUFACTURERS, INC., was the indirect owner of the debt due to its

wholly-owned subsidiary, Panameritex de Panama, S.A., and thus qualifies as the proper party claimant in accordance with the provisions of Section 503(a) of the Act referred to above.

Claimant states that on or about March 9, 1960, a Cuban intervenor took over the Permatex property and business. Claimant further contends that Permatex was thereafter expropriated on June 10, 1960 when notice of such action was published in the Cuban Official Gazette, pursuant to Law 784 (Official Gazette, April 27, 1960); and that by the decree of expropriation the administration of Permatex was assigned to the Instituto Nacional de Reforma Agraria.

The Cuban Government published a number of laws and resolutions concerning the recovery of assertedly misappropriated property. Law 16, published in an Extraordinary Edition of the Cuban Official Gazette on January 17, 1959, provided that Registrars of property should inform the Ministry for Recovery of Misappropriated Goods of all documents purporting to transfer property in order that the property be registered in favor of the State if it should be found that such property was within the jurisdiction of said Ministry.

Law 68, published in the Cuban Official Gazette on February 10, 1959, provided a system for the registration of property within the jurisdiction of the Ministry for the Recovery of Misappropriated Goods, and nullified Law 16 (supra).

Law 78, published in the Cuban Official Gazette on February 19, 1959 concerned the subject of unjust enrichment, established the duties of the Minister for Recovery of Misappropriated Goods, and set up the structure of the Ministry. Among other things, it provided that the Minister should be responsible for the intervention of goods and business of any person or entity, with retroactive effect. Law 689 of December 24, 1959 modified some of the language of Law 78 without affecting the import of Law 78.

Law 715, published in the Cuban Official Gazette on January 26, 1960, provided that the Minister for Recovery of Misappropriated Goods

publish, in the Official Gazette, Resolutions dictating the confiscation of goods or returning to the State the proceeds of unjust enrichment. In this connection Law 716, published on January 26, 1960, provided, among other things, thirty days for the filing of complaints by those affected.

Law 760, published on March 17, 1960, converted the Ministry for Recovery of Misappropriated Goods into a Department of the Ministry of Finance.

On March 18, 1960, there was published in the Official Gazette, Resolution 3074 which stated that it had been resolved to confiscate the shares representing the capital issued and in circulation of a number of companies, including Estampados Permatex, S.A., and to arrange their transfer to the Instituto Nacional de Reforma Agraria. This Resolution was stated to be pursuant to Law 78 (supra) inasmuch as the involved companies were considered to be within the area of those unjustly enriched.

Law 784, published on April 27, 1960, nullified Law 68 (supra), and provided that the Minister of Finance would publish lists of those within the jurisdiction of the Ministry for Recovery of Misappropriated Goods.

By Proclamation published in the Cuban Official Gazette on June 10, 1960, the Department for the Recovery of Misappropriated Goods, of the Ministry of Finance, stated that a confiscatory resolution had been dictated against Estampados Permatex, S.A., among others (pp. 37-38 of that issue).

On August 26, 1960, the Department for the Recovery of Misappropriated Goods published another Proclamation in the Cuban Official Gazette stating, among other things, that the laws and resolutions of confiscation had been dictated against Estampados Permatex, S.A., among others (pp. 20919-20920 of that issue); further stating that such action fulfilled the requirements of Law 784 (supra) and substituted for the Proclamation published on June 10, 1960 (supra).

After having considered the import of these laws the Commission finds Estampados Permatex, S.A. was confiscated by the Government of Cuba on June 10, 1960 pursuant to Law 784 (supra). The Commission also concludes that claimant suffered a loss of its property (debt) when this Cuban enterprise was confiscated.

The remaining issue to be determined is the amount of claimant's loss. In this connection Section 503(a) of the Act provides that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

Claimant has stated its loss in the amount of \$160,003.67, itemized as follows:

(a)	Unpaid royalties for the fourth quarter of the calendar year 1959	\$ 12,918.67
(b)	Net cancellation fee pursuant to Article 8 of the said agreement computed as follows:	
	Total royalties for the year	
	1958 - gross	\$82,687.00
	Less: Cuban withholding tax	<u>8,389.00</u>
	Net royalties for year 1958	\$74,298.00
	Total royalties for year	
	1959 - gross	\$81,097.00
	Less: Cuban withholding tax	<u>8,310.00</u>
	Net royalties for year 1959	<u>72,787.00</u>
	Net cancellation fee	<u>147,085.00</u>
	Total amount of claim	\$160,003.67

Among the documentation submitted are the Memorandum of Agreement between Estampados Permatex, S.A. and Panameritex de Panama, S.A., of May 15, 1952; the Supplemental Agreement between the same parties, of July 12, 1956; a letter from Estampados Permatex, S.A., of June 19, 1959,

to Panameritex de Panama, S.A., notifying the latter of its intention to cancel the agreement, in accordance with its terms, as of December 31, 1959; and a letter from Estampados Permatex, S.A., of February 3, 1960, to UNITED MERCHANTS & MANUFACTURERS, INC., stating that a check covering royalty for the third quarter of 1959 had been mailed to the addressee on January 28, 1960, acknowledging that the amount of \$12,918.67 remained due for accrued royalty for the fourth quarter of 1959, and stating that Permatex was working on the liquidation figures.

The record also contains a photocopy of an affidavit executed by the Treasurer of Panameritex on November 10, 1960, setting out the outstanding and unpaid indebtedness of Permatex; and the sworn statement of the former counsel that the November 10, 1960 affidavit was delivered to the appointed Interventor of Permatex. This document reflects on each page the seal of the Instituto Nacional de Reforma Agraria, Departamento de Industrializacion.

This affidavit, in the translation submitted by claimant, sets out, among other things, the following sums due and payable from Estampados Permatex S.A., to Panameritex de Panama, S.A.:

Total of net royalties accrued to Panameritex for the fourth quarter of the year 1959, namely, from September 6 through December 31, 1959, computed after deduction of a Cuban withholding tax	\$ 12,918.67
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Payment as provided by Article 8 of the contract of May 8, 1952, as amended by the agreement of July 12, 1956, for the exercise by Estampados Permatex, S.A. of the right to cancel the same unilaterally, which it did, effective as of December 31, 1959, by a letter addressed to Panameritex dated June 19, 1959, and signed by Mr. Sergio G. Veranes, then Vice President of Estampados Permatex, S.A. Said payment was also computed after deduction of the Cuban withholding tax.	<u>147,085.00</u>
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\$ 160,003.67

The affiant, stating that he has supervision of the finances of Panameritex de Panama, S.A. and personal knowledge of all credits and accounts owing to it, and of their origin, states that the indebtedness of \$160,003.67 is reflected in the accounting of Estampados Permatex, S.A., since the items composing the same were computed by the latter company and communicated by it to the creditor, Panameritex, and that this balance of \$160,003.67, although acknowledged by the debtor, has not been liquidated.

On the basis of the foregoing, the Commission concludes that as a result of the confiscation of Estampados Permatex, S.A., by the Government of Cuba on June 10, 1960, claimant suffered a loss of property in the amount of \$160,003.67 representing its indirectly-owned interest in the debt owed to claimant's wholly-owned Panamanian subsidiary by an enterprise which was confiscated by the Government of Cuba.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (See the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249.)

Accordingly, the Commission concludes that the amount of the losses suffered by claimant shall be increased by interest thereon at the rate of 6% per annum on \$160,003.67 from June 10, 1960 to the date on which provisions are made for the settlement thereof.

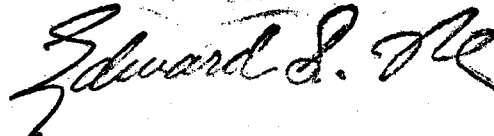
CERTIFICATION OF LOSSES

The Commission certifies that UNITED MERCHANTS & MANUFACTURERS, INC., suffered a loss as a result of actions of the Government of Cuba,

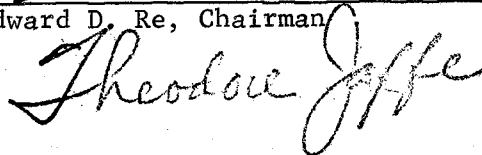
within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Sixty Thousand Three Dollars and Sixty-Seven Cents (\$160,003.67), with interest thereon at 6% per annum from June 10, 1960 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Amended
Proposed Decision of the
Commission

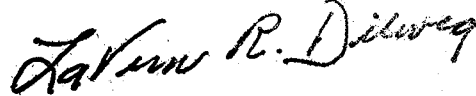
23 AUG 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on 9-26-67



Frank M. ...
Clerk of the Commission

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended Proposed Decision upon the expiration of 30 days after such service or receipt of notice, the decision will be entered as the Final Decision of the Commission, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(d) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

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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 UNITED MERCHANTS & MANUFACTURERS, INC., for \$160,003.67 based upon a debt assertedly due to its Panamanian subsidiary from a Cuban corporation.

Under Section 503 of the International Claims Settlement Act of 1949, as amended (64 Stat. 12; 69 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 79 Stat. 988) the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. That section 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

(a) . . . 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 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.

In order for the Commission to favorably consider claims under Section 503(a) of Title V of the Act, it must be established that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking.

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 at all times between January 1, 1959 and presentation of this claim on June 14, 1966, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. UNITED MERCHANTS & MANUFACTURERS, INC., was incorporated in the State of Delaware. It appears that claimant is a national of the United States within the meaning of Section 502(1)(A) of the Act.

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

The record reflects that Estampados Permatex, S.A., a Cuban corporation, entered into an agreement with Panameritex de Panama, S.A., a Panamanian corporation, whereby the latter was to render to Permatex certain technical assistance, engineering and purchasing services, training of personnel and other services for the establishment of a textile plant in Cuba. As compensation for its services Panameritex

was to receive certain royalty payments.

Panameritex de Panama, S.A., is said by claimant to be its wholly owned subsidiary. It appears that both operated from the same address in New York. In June, 1959 Permatex notified Panameritex of its intention to cancel the agreement, in accordance with its terms, as of December 31, 1959. By letter of February 3, 1960, Permatex forwarded to claimant the royalties due to Panameritex for the third quarter of 1959, confirming an amount due for the fourth quarter and stating it was working on liquidation figures.

It further appears that Permatex was expropriated by the Government of Cuba on June 10, 1960, pursuant to Law 784 (Official Gazette, April 27, 1960).

Panameritex de Panama, S.A., is not a Cuban corporation whose corporate entity has been destroyed by Cuba. In such case its possible American stockholders might have a claim against the Government of Cuba. On the contrary, however, so far as the record shows, the Panamanian corporation remains intact, an entity capable of transacting business, incurring debts and holding property.

The Commission finds it unnecessary to determine the status of the debt assertedly owed by Estampados Permatex, S.A., holding that any claim which may have arisen under international law in connection therewith, belongs to Panameritex de Panama, S.A., of the Republic of Panama, and not to the claimant herein. (See the Claim of Becton, Dickinson and Company, FCSC Claim No. CU-0113.)

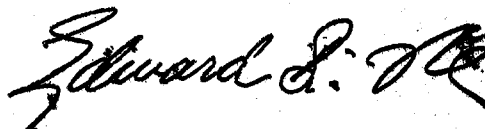
Accordingly, the Commission concludes that this claim is not valid under Title V of the Act in that it was not owned by a national

of the United States on the date of filing with the Commission and, therefore, it is hereby denied.

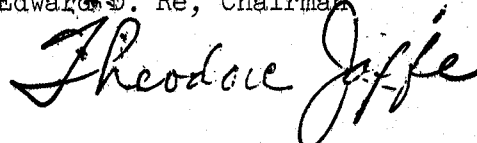
The Commission deems it unnecessary to make specific findings with respect to other elements of this claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission.

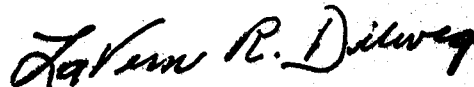
OCT 26 1966



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 20 days after service or receipt of notice of this Proposed Decision upon the expiration of 30 days after such service or receipt of notice, the decision will be entered as the Final Decision of the Commission, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) (1964))