

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

IN THE MATTER OF THE CLAIM OF

WORTHINGTON CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-0812

Decision No. CU 3202

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 WORTHINGTON CORPORATION in the amount of \$98,426.63, 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.

Claimant corporation, through an authorized officer, has certified that the claimant was organized in the State of Delaware, and that all times between December 31, 1959 and presentation of this claim on June 17, 1966, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that approximately 2% of its stock was registered in foreign ownership. 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 documentation of shipments made by claimant to consignees in Cuba, as follows

<u>Fuerza Industrial S.A.</u>	<u>Amount</u>	<u>Date paid or Acknowledged</u>
credit \$2,137.05		
credit <u>1,546.14</u>	\$ 590.91	January 4, 1960
	1,275.49	January 19, 1960
	6,054.16	January 28, 1960
	3,916.91	February 9, 1960
	101.34	February 12, 1960
	6,021.01	February 23, 1960
	2,095.02	March 16, 1960
	1,166.98	April 13, 1960
	520.34	April 28, 1960
	<u>519.81</u>	April 28, 1960
Total	\$22,261.97	
<u>Cia Agricola Inderra, S.A.</u>		
	\$ 2,715.79	September 4, 1959
	2,793.75	March 9, 1960
	2,754.77	December 31, 1959
	2,832.74	June 10, 1960
	<u>2,871.72</u>	September 6, 1960
Total	\$13,968.77	

Industrias Consolidadas de  
Matanzas, S.A.

	<u>Amount</u>	<u>Date of Invoice</u>
	\$ 1,997.55	August 5, 1959
	67.44	August 20, 1959
	1.42	August 24, 1959
	720.25	August 26, 1959
	<u>207.71</u>	December 17, 1959
Total	\$ 2,994.37	

The record further contains copies of claimant's invoices, credit memoranda, account statements, and account ledger, which establish that claimant was owed funds for shipments of goods to Cuba to the consignee, General Electric Cubana, S.A., as follows:

<u>Invoice No.</u>	<u>Invoice Date</u>	<u>Amount</u>	<u>Terms</u>
(previous credits)	March 12, 1958	\$ (884.37)	
6-13101	June 17, 1958	535.60	Cash
9-10091	September 5, 1958	2,006.86	"
9-19082	September 16, 1958	2,919.38	"
9-19092	September 10, 1958	388.00	"
9-19117	September 16, 1958	3,232.98	"
10-4830	October 16, 1958	71.37	"
10-10212	October 23, 1958	8,069.75	"
10-46028	October 9, 1958	93.00	"
10-34558	October 15, 1958	565.61	"
10-10165	October 21, 1958	10,026.79	"
10-19109	October 20, 1958	4,842.81	"
11-10024	October 20, 1958	4,033.47	"
11-34353	November 12, 1958	8.05	"
11-47501C	November 4, 1958	488.85	"
11-19085	November 17, 1958	10,745.41	"
11-19090	November 26, 1958	1,512.77	"
11-48069	November 13, 1958	1,995.42	"
12-47212 (credit)	December 8, 1958	(803.21)	
12-46009	December 26, 1958	165.00	"
12-10136	December 22, 1958	2,952.60	"
12-264 (credit)	December 31, 1958	(13.98)	
12-265 (credit)	December 31, 1958	(6.99)	
1-10021	January 9, 1959	3,535.10	"
1-10002C	January 10, 1959	850.00	"
----- (credit)	January 30, 1959	(11,800.00)	
----- (credit)	January 30, 1959	(8,000.00)	
2-5 (credit)	February 3, 1959	(2.31)	
2-6 (credit)	February 3, 1959	(21.24)	
2-7 (credit)	February 3, 1959	(20.97)	
2-8 (credit)	February 3, 1959	(27.96)	
2-9 (credit)	February 3, 1959	(9.40)	
2-10 (credit)	February 3, 1959	(58.38)	
6-48467	June 1, 1959	44.00	"
6-10323	June 23, 1959	11,916.04	"
6-10322	June 23, 1959	1,085.40	"
11-19099	November 23, 1959	1,757.16	"
11-46942	November 17, 1959	44.00	"
11-48054	November 23, 1959	44.00	"
PJ-366	December 31, 1959	96.43	"
EDC-7727-8	August 31, 1959	3,309.68	"
10-19057	October 2, 1959	1,700.88	"

<u>Invoice No.</u>	<u>Invoice Date</u>	<u>Amount</u>	<u>Terms</u>
Debit Memo	----- (1960)	\$ . 55.02	Cash
----- (credit)	June 1, 1960	(5.36)	
----- (credit)	August 31, 1960	(3,309.68)	
----- (credit)	----- (1960)	(131.52)	
8-16860	August 16, 1960	<u>33.27</u>	"
	Total	\$53,989.33	

Claimant states that it has not received these funds.

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.)

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 losses occurred:

<u>On</u>	<u>As to</u>
September 29, 1959	\$56,105.61
November 2, 1959	1,700.88
December 17, 1959	44.00
December 23, 1959	1,664.28
December 31, 1959	2,754.77
January 5, 1960	590.91
January 20, 1960	1,275.49
January 29, 1960	6,054.16
January 31, 1960	96.43
February 10, 1960	3,916.91
February 13, 1960	101.34
February 24, 1960	6,021.01
March 10, 1960	2,793.75
March 17, 1960	2,095.02
April 14, 1960	1,166.98
April 29, 1960	1,040.15

<u>On</u>	<u>As to</u>
June 1, 1960	\$ , 55.02
June 10, 1960	2,832.74
September 6, 1960	2,871.72
September 16, 1960	<u>33.27</u>
Total	\$93,214.44

The above dates are those of Cuban Law 568, the dates payment was due as to the unpaid accounts, and the dates following the dates of payment or acknowledgement as to the paid accounts, whichever is later in each instance.

The remainder of this claim is based upon the asserted loss of payment for merchandise shipped to the Havana Office of Cia. Cubana de Electricidad.

Section 505(a) of the Act provides:

... A claim under Section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The records of the Commission reveal that Cia. Cubana de Electricidad is a corporation organized under the laws of the State of Florida. Therefore, this portion of the claim can be considered only if the claimed debt is a charge upon property which was nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant has neither asserted nor submitted evidence to establish that this debt was a charge upon property which was nationalized, expropriated, intervened, or taken by the Government of Cuba, but concedes that the debt was not so secured. The Commission is without authority to consider this portion of the claim, and it is hereby denied.

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), and it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that WORTHINGTON 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 Ninety-Three Thousand Two Hundred Fourteen Dollars and Forty-Four Cents (\$93,214.44) with interest 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

OCT 16 1968

*Leonard v. B. Sutton*  
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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).)