

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

IN THE MATTER OF THE CLAIM OF

COLLADO, OZAMIZ COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -1580

Decision No. CU -939

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 COLLADO, OZAMIZ COMPANY in the amount of \$27,586.42, as amended, 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 "(A) a natural person who is a citizen of the United States". Claimant is a partnership, doing business under the laws of the State of New York. Each partner has been a citizen of the United States since prior to January 1, 1959. The Commission holds that the claimant company is a national of the United States within the meaning of Section 502(1)(A) of the Act.

Claimant states that it shipped merchandise to various Cuban consignees, as below, and has submitted copies of invoices, bills of lading, and freight receipts for each transaction. The terms of sale in each case was either "net", "sight" or "30 days", payment to be effected by bank draft. In several transactions, credits due the consignee have been deducted from the invoice amount, and the totals below reflect such adjustments. Claimant states that it has never received payment for the sales and shipments listed.

<u>CONSIGNEE</u>	<u>INVOICE DATE</u>	<u>DUE DATE OR DATE PAYMENT ADVISED</u>	<u>NET AMOUNT DUE</u>
Almacenes Ultra	December 4, 1959	January 3, 1960	\$ 4,157.48
Arara & Granda	August 31, 1959	September 30, 1959	2,162.12
Cia. Onyx de Cuba	November 2, 1959	December 2, 1959	843.00
Manuel Garcia Suarez	December 14, 1959	January 13, 1960	1,412.98
Jose Matos & Co.	September 30, 1959	April 25, 1960	2,985.20
Jose Matos & Co.	October 22, 1959	November 21, 1959	2,762.98

Jose Matos & Co.	October 18, 1959	November 17, 1959	\$ 2,505.94
Jose Matos & Co.	November 13, 1959	December 13, 1959	4,702.28
Jose Matos & Co.	December 10, 1959	January 9, 1959	4,643.81
TOTAL			\$26,175.79

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 a 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 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, in the absence of evidence to the contrary, the loss occurred on

on September 30, 1959 as to \$2,162.12,
on November 17, 1959 as to \$2,505.94,
on November 21, 1959 as to \$2,762.98,
on December 2, 1959 as to \$ 843.00,
on December 13, 1959 as to \$4,702.28,
on January 3, 1960 as to \$4,157.48,
on January 9, 1960 as to \$4,643.81,
on January 13, 1960 as to \$1,412.98, and

on May 25, 1960 as to \$2,985.20, in each case the date of loss being thirty days after the invoice date, or the date upon which claimant was advised of payment.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant states that funds were also due it from Jose a Ruiz and Tiendas Flogar. However, the evidence submitted in support of this portion of the claim is insufficient to support a finding that these firms owed specific amounts to claimant which amounts were lost through certain actions by the Government of Cuba. Accordingly, the portion of the claim based upon funds assertedly due from Tiendas Flogar and Jose A. Ruiz 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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

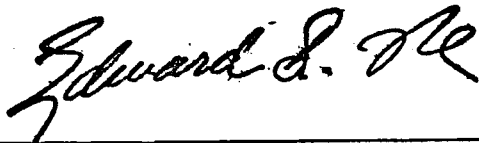
Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the losses occurred, to the date on which provision is made for the settlement thereof.

CERTIFICATION OF LOSS

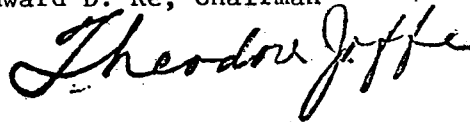
The Commission certifies that COLLADO, OZAMIZ COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-Six Thousand, One Hundred Seventy-Five Dollars and Seventy-Nine Cents (\$26,175.79) 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

JAN 17 1968



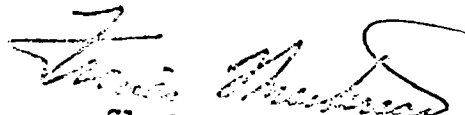
Edward D. Re, Chairman



Theodore Jaffe, Commissioner

CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on FEB 20 1968


Clerk of the Commission

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).)