

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

IN THE MATTER OF THE CLAIM OF

A. O. SMITH CORPORATION

Claim No. CU-2524

Decision No. CU 3228

Under the International Claims Settlement  
Act of 1949, as amended

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 A. O. SMITH CORPORATION in the amount of \$58,204.92 and is based upon the asserted loss of payment for merchandise shipped to Cuba and upon the asserted ownership and loss of certain personal property.

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.

An officer of the claimant corporation has certified that the merchandise shipped to Cuba was the property of A. O. Smith International S.A., a wholly-owned Venezuelan subsidiary of the claimant, and that said subsidiary was dissolved on January 1, 1967 and made an operating division of A. O. SMITH CORPORATION, the claimant.

Claimant corporation, by an authorized officer, has further certified that the claimant was organized in New York and that at all times between November 11, 1916 and the presentation of this claim, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that 97-1/3% of its outstanding shares as of October 31, 1967 were owned by stockholders residing in the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act and that its wholly owned former foreign subsidiary was an integral part thereof for the purposes of claiming a loss under the aforementioned statute.

The record contains copies of the accounts receivable ledger sheets of A. O. Smith International S.A., reflecting sales for the period of August 16, 1958 to October 31, 1960 to the following Cuban consignees. Credits and partial payments are also reflected and have been deducted from the gross amount shown on the invoices to arrive at the net amount of the loss suffered by the claimant which is somewhat less than the total claimed.

<u>Consignee</u>		<u>Amount</u>	<u>Due Date</u>
Enrique Lanio Borrego	\$5,077.21		
	Credit <u>744.23</u>	\$ 4,332.98	May 22, 1959
		719.68	May 29, 1959
Steere Brothers	1,018.04		
	Credit <u>705.99</u>	312.05	June 14, 1960
		82.92	June 14, 1960
		4,824.64	October 1, 1960
Armando J. Valdes & Cia	6,118.40		
	Credit <u>2,204.08</u>	1,874.85	June 3, 1959
		2,039.47	July 2, 1959
		2,466.33	July 27, 1959
		3,166.97	August 7, 1959
		865.50	July 5, 1959
		865.50	August 4, 1959
		865.50	September 3, 1959
		976.31	July 31, 1959
		976.30	August 30, 1959
		976.30	September 29, 1959
		751.37	September 28, 1959
		751.36	October 28, 1959
	751.36	November 27, 1959	
		106.13	November 6, 1959
Fernandez y Delgado S. en C.	6,310.22		
	Credit <u>850.98</u>	5,459.24	March 8, 1960
		39.44	November 7, 1959
		<u>1,670.83</u>	January 20, 1960
Total		\$34,875.03	

Additionally, claimant states that its goods having a total value of \$7,565.53 were placed in a warehouse of Compania Cubana de Almacenes in Havana, Cuba. The record contains a photocopy of the warehouse receipt, a list of the goods covered thereby, and business records establishing the value of the goods (including freight and handling charges).

The records of the Commission reveal that Compania Cubana de Almacenes was nationalized on September 13, 1961, pursuant to Cuban Law 890. The Commission finds that the claimant's property on the premises was taken at that time.

Claimant states that it has not received the funds for the above shipments.

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 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 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.) Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of intervention and nationalization by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred:

<u>ON</u>	<u>AS TO</u>
September 29, 1959	\$19,900.76
September 30, 1959	976.30
October 29, 1959	751.36
November 7, 1959	106.13
November 8, 1959	39.44
November 28, 1959	751.36
March 9, 1960	5,459.24
April 21, 1960	1,670.83
June 15, 1960	394.97
October 2, 1960	4,824.64
September 13, 1961	<u>7,565.53</u>
Total	\$42,440.56

The above dates are the date of publication of Law 568 for those drafts due on or before September 29, 1959, the days following the due dates of the later drafts, and the date Compania Cubana de Almacenes was nationalized.

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 in this case.

CERTIFICATION OF LOSS

The Commission certifies that A. O. SMITH 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 Forty-Two Thousand Four Hundred Forty Dollars and Fifty-Six Cents (\$42,440.56) 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

OCT 30 1968

*Leonard v. B. Sutton*

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).)