

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

IN THE MATTER OF THE CLAIM OF

PLYMOUTH THREAD & YARN CO., INC.

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No. CU-2594

Decision No. CU 4888

Counsel for claimant:

Firm of Herman Goldman
By Elias Rosenzweig, Esq.

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 PLYMOUTH THREAD & YARN CO., INC., in the amount of \$22,356.54 and is 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.

Statements of officers of claimant establish that this corporation was organized under the laws of the State of New York and that all outstanding shares of stock, being 200 shares of common stock, were owned by nationals of the United States at all times pertinent to this claim. Claimant has also submitted birth records of the stockholders of claimant to establish that 92.5% of the stock was held by persons who were nationals of the United States since birth. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The claimant has submitted company records, invoices and drafts, eleven in number, to establish that merchandise was shipped by claimant to Hilos Piramide, S.A. in Cuba; and that the drafts were accepted and paid in Cuba by the Cuban consignee to a local bank for transmittal to claimant. However, the evidence also establishes that such sums, in the total amount of \$17,932.03, were not received by the claimant.

The following recapitulation, furnished by claimant, is based upon the evidence of record, as discussed above:

<u>DATE OF DRAFT</u>	<u>DUE DATE</u>	<u>AMOUNT</u>
October 9, 1959	November 30, 1959	\$ 1,427.96
October 9, 1959	December 15, 1959	1,200.00
October 9, 1959	December 30, 1959	1,200.00
November 1, 1959	January 17, 1960	1,799.11
November 6, 1959	January 12, 1960	1,600.00
November 6, 1959	January 27, 1960	1,680.73
November 17, 1959	February 1, 1960	1,523.20

<u>DATE OF DRAFT</u>	<u>DUE DATE</u>	<u>AMOUNT</u>
December 1, 1959	March 11, 1960	\$ 1,800.00
December 1, 1959	February 26, 1960	1,932.44
December 7, 1959	March 18, 1960	2,153.72
December 11, 1959	February 25, 1960	<u>1,614.87</u>
		\$17,932.03

All the above-mentioned drafts were paid in Cuban Pesos to the Trust Co. of Cuba, by the consignee Hilos Piramide, of Compostela 510, Havana, Cuba.

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 the losses occurred on the respective due dates listed above and discussed more particularly hereafter.

The claimant has asserted a loss in the amount of \$4,424.51, stating that this sum represents credits of claimant with Hilos Piramide, S.A. for merchandise sold to the Cuban firm based upon the invoice prices of such merchandise net of related credits from the Commodity Credit Corporation.

In Commission letter of November 16, 1967, the Commission suggested, among other things, that claimant submit additional evidence in clarification and support of the above losses, including invoices, drafts, correspondence or similar evidence to establish the nature of these transactions and the subsequent losses arising from such shipments.

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).)

Thereafter, the Commission made additional suggestions to claimant, through counsel, in correspondence dated in 1968 and 1969, toward establishing the losses in the asserted amount of \$4,424.51. However, the claimant did not respond to Commission correspondence or submit evidence to clarify or support this item of claim. Accordingly, the Commission is constrained to deny 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 in the instant case it is so ordered, as follows:

<u>FROM</u>	<u>ON</u>
November 30, 1959	\$ 1,427.96
December 15, 1959	1,200.00
December 30, 1959	1,200.00
January 12, 1960	1,600.00
January 17, 1960	1,799.11
January 27, 1960	1,680.73
February 1, 1960	1,523.20
February 25, 1960	1,614.87
February 26, 1960	1,932.44
March 11, 1960	1,800.00
March 18, 1960	<u>2,153.72</u>
	\$17,932.03

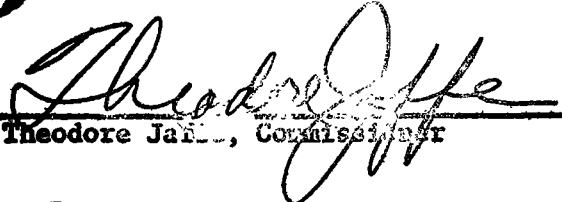
CERTIFICATION OF LOSS


The Commission certifies that PLYMOUTH THREAD & YARN CO., 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 Seventeen Thousand Nine Hundred Thirty-two Dollars and Three Cents (\$17,932.03) 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

MAY 27 1970


Lytle S. Garlock, Chairman


Theodore Jaffe, Commissioner


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).)