

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

IN THE MATTER OF THE CLAIM OF

KRAEMER MERCANTILE CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 2608

Decision No. CU 2993

Counsel for claimant:

Jerome H. Adler, 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 KRAEMER MERCANTILE CORPORATION in the amount of \$44,055.59 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.

An officer of the claimant corporation has certified that the claimant was organized in the State of New York on September 6, 1955, and that at all times between September 7, 1955 and the presentation of this claim on April 27, 1967, 100% of the outstanding capital stock of the claimant has been owned by Standard Commercial Tobacco Company, Inc. Information available to the Commission reveals that Standard Commercial Tobacco Company, Inc. was organized in the State of Delaware on August 10, 1916, and claimant states Standard Commercial Tobacco Company, Inc. had approximately 480,000 shares of stock outstanding held by approximately 1180 shareholders, of which 1167 shareholders, holding approximately 479,740 shares, or 99% of the shares outstanding, were nationals of 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.

The record includes copies of bank correspondence, drafts, invoices, and other data concerning shipments of merchandise to Cuban business firms, listed hereafter as the consignees. This evidence discloses that the purchase price of the goods and accompanying charges for such shipments were, in many instances, paid by the consignees to local Cuban banks; and that dollar reimbursement releases or authorization were never granted by Cuban government officials. Other drafts for shipments

were paid to the collecting banks by the consignees. Claimant states that it has not received the funds due for such shipments.

There follows hereafter data concerning the shipments made to the Cuban consignees, including information on paid and unpaid drafts, with the dates on which payments were acknowledged or dates on which the unpaid drafts were due and payable.

<u>CONSIGNEE</u>	<u>DATE DUE OR DATE PAYMENT ACKNOWLEDGED</u>	<u>AMOUNT</u>
Gustavo Kates e Hijos, S.A.	December 18, 1959	\$ 2,687.58
	December 31, 1959	7,615.55
	January 20, 1960	12,353.92
Menendez Hermanos	January 22, 1960	694.65
	February 29, 1960	595.34
Cuban American Toys	February 11, 1960	640.63
	February 18, 1960	522.32
Tiendas Los Precios Fijos, S.A.	January 11, 1960	267.00
	January 24, 1960	179.04
	January 27, 1960	143.10
Topp y Compania	November 9, 1959	2,906.00
	November 11, 1959	593.93
Almacenes L. Topp \$790.25 Less payment: 730.00	January 1, 1960	60.25
	January 1, 1960	495.90
	January 1, 1960	<u>1,132.36</u>
	Total	\$ 30,887.57

Claimant states that it has not received the 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 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 by the Government of Cuba and that, in absence of evidence to the contrary, the loss occurred:

<u>ON</u>	<u>AS TO</u>
November 9, 1959	\$ 2,906.00
November 11, 1959	593.93
December 19, 1959	2,687.58
January 1, 1960	9,304.06
January 11, 1960	267.00
January 21, 1960	12,353.92
January 23, 1960	694.65
January 24, 1960	179.04
January 27, 1960	143.10
February 12, 1960	640.63
February 19, 1960	522.32
March 1, 1960	595.34
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TOTAL	\$30,887.57

being the dates after the days on which the payments were acknowledged as to the paid drafts, and the dates on which payment was due as to the unpaid drafts.

Claim has also been asserted in the amount of \$13,167.94, representing additional unpaid drafts due from the consignees, and for interest charged against the consignees' accounts for late payment of the amounts owing.

After careful consideration of all of the evidence of record, the Commission finds that claimant has failed to submit sufficient evidence to substantiate the amounts claimed for unpaid drafts. Further, the Commission finds that claimant has failed to submit sufficient evidence to substantiate the amounts claimed for interest charged against the consignees. Thus, the Commission is constrained to deny this portion of the claim, and it is hereby denied.

However, the Commission has decided that in certifying 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.)

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 date on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that KRAEMER MERCANTILE 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 Thirty Thousand Eight Hundred Eighty-Seven Dollars and Fifty-Seven Cents (\$30,887.57) 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

SEP 4 1968

*Leonard v. B. Sutton*  
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Leonard v. B. Sutton, Chairman

*Theodore Jaffe*  
\_\_\_\_\_  
Theodore Jaffe, Commissioner

*Sidney Freiberg*  
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Sidney Freiberg, Commissioner

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).)

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.

CU-2608