

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

IN THE MATTER OF THE CLAIM OF

RAYES MANUFACTURING COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-2612

Decision No. CU 878

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 RAYES MANUFACTURING COMPANY in the amount of \$1,021.67 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 change 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 "(B) 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 New York in May, 1939 and that all times between May, 1939 and presentation of this claim on April 27, 1967, 100% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant asserts that it shipped goods to the below-listed consignees in Cuba and that payment therefor was to be by sight drafts:

<u>Date</u>	<u>Consignee</u>	<u>Amount</u>
September 21, 1959	Marco Fernandez Escanell	\$ 78.37
October 21, 1959	Almacenes Pereda	34.65
October 22, 1959	Ramon Valls y Compania	180.66
October 26, 1959	Agricola Internacional, S. A.	297.66
November 5, 1959	Oscar de la Campa	195.05
November 17, 1959	Felipe Ros Romagosa	139.10
December 14, 1959	Genservera Antillana, S. A.	148.77
December 31, 1959	La Oriental Ramon Wall	124.31
	TOTAL	\$1,031.67

The record contains copies of bank correspondence from the First National City Bank of New York which show that various drafts in the total amount of \$999.67 were paid by the consignees in Cuban currency to local Cuban banks but that the Cuban banks were awaiting dollar reimbursement releases from the Exchange Board, a Cuban Government agency. 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 transfers of funds in this and similar cases, 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 the Claim of The Schwarzenbach Huber Company, MISG Claim No. 63-0019).

The record reflects the claimed amount of \$124.42 for the sale of goods to La Oriental Ramon Wall was reduced under authorization of claimant by \$22.00, and that the amount of \$102.42 only was thereupon paid by the consignee to the local Cuban bank. Accordingly, that portion of this claim in the amount of \$22.00 is hereby denied.

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 loss occurred

<u>ON</u>	<u>AS TO</u>
September 29, 1959	\$ 78.37
December 5, 1959	297.66
December 19, 1959	106.06
January 9, 1960	378.48
April 5, 1960	139.10

the date of Cuban Law 568 as to \$78.37 and the date following the date of acknowledgment of payment by the Cuban banks as to the remainder amounts.

The Commission has decided that in the 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 Hisle Corporation, EGSC 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 loss occurred, to the date on which provisions are made for the settlement thereof.

The Commission certifies that RAYES MANUFACTURING 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 Nine Hundred Ninety-Nine Dollars and Sixty-Seven Cents (\$999.67) 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

3 JAN 1968

Edward S. Re

Edward S. Re, Chairman

Theodore Jaffe

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 6 1968

Francis M. Anderson

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).)