

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

IN THE MATTER OF THE CLAIM OF

OWENS-ILLINOIS INTER-AMERICA CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -2645

Decision No. CU

3700

Counsel for claimant:

Fuller, Seney, Henry & Hodge

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$133,346.63, was presented by OWENS-ILLINOIS INTER-AMERICA CORPORATION based upon the asserted loss of payment for merchandise shipped to certain Cuban consignees. Of this amount, \$95,932.83 represents the debts claimed and \$37,413.80 represents interest thereon at 6% from October 24, 1960 to April 24, 1967.

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.

The record shows that claimant was organized under the laws of Ohio and that at all pertinent times all of claimant's outstanding capital stock was owned by Owens-Illinois, Inc., also organized under the laws of Ohio and until April 28, 1965 known as Owens-Illinois Glass Company. The record further shows that at all pertinent times more than 50% of the outstanding capital stock of the parent corporation was owned by nationals of the United States. An authorized officer of the parent corporation has certified that as of August 20, 1967, .17% of the parent's outstanding preferred shares of stock were owned by nonnationals of the United States, and that as of August 11, 1967, .41% of the parent's outstanding common shares of stock was owned by nonnationals 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 evidence includes certified extracts from claimant's accounts receivable records and statements from officials of claimant concerning the debts for which claim is made. Claimant has stated that it has not received any payments on account of the outstanding debts due from the Cuban consignees.

The following information concerning the debts, supported by the evidence of record, shows the consignees, the date of the last debit entry in these open accounts, and the net amounts due.

<u>Consignee</u>	<u>Date of Last Entry</u>	<u>Net Amount</u>
Aguas de Amaro, S.A.	June 26, 1957	\$ 1,919.77
Antiga Co., S.A.	July 1, 1960	79.33
Arce, Lastra & Cia.	July 1, 1960	161.80
Equipos de Bar y Cafeteria, S.A.	September 21, 1959	4,225.53
Laboratorios Corpas, S.A.	March 1, 1960	885.35
Cristalera Industrial, S.A.	April 26, 1960	12,421.16
Loceria y Cristaleria La Vajilla, S.A.	January 19, 1960	1,935.10
La Filosofia	December 3, 1959	133.72
Industrial y Distribuidora Gratama, S.A.	May 19, 1959	813.56
Garcia Gutierrez	April 23, 1960	899.39
Herederos del Dr. Sergio Herrera	June 23, 1960	15.46
La Mascota	December 11, 1959	1,114.96
Comercial Leanti, S.A.	September 2, 1959	3,562.29
Laboratorios Leti	May 4, 1960	709.10
Laboratorios Magnesurico	February 8, 1960	4,002.47
Le Paz, S.A.	June 1, 1960	24,327.92
Embotelladora Quinabeer, S.A.	August 18, 1959	1,133.57
Ribot y Cia., S.A.	September 13, 1960	473.12
Soto, Rodriguez & Cia.	December 1, 1959	1,353.11
Sanso y Cia.	July 19, 1960	5,356.75
Manantiales Santa Ana	March 4, 1960	3,804.82
Drogueria Sarra	February 9, 1960	189.85
Eno-Scott & Bowne, Inc. of Cuba, Ltd.	November 1, 1960	289.62
Laboratorios Pancar, S.A.	May 13, 1958	2,620.43
Sterling Products International, Inc.	April 27, 1960	395.91
Vidal & Co.	August 31, 1960	50.00

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<u>Consignee</u>	<u>Date of Last Entry</u>	<u>Net Amount</u>
Laboratorios Vieta-Plasencia, S.A.	May 13, 1960	\$ 12,102.69
Vitrico Industrial, S.A.	December 9, 1959	10,507.54
Diego Zulualaga	December 1, 1959	<u>448.51</u>
Total		<u>\$ 95,932.83</u>

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.)

The Commission finds that claimant's property was lost as a result of intervention by the Government of Cuba. In the absence of evidence to the contrary, the Commission finds that the losses occurred 30 days after the date of the last debit entry in the foregoing open accounts; except that with respect to those items that would otherwise be deemed lost prior to September 29, 1959, the effective date of Law 568, the loss is found to have occurred on September 29, 1959.

Claim has also been made for interest at 6% per annum from October 24, 1960 to April 24, 1967 in the amount of \$37,413.80. 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 dates 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>
September 29, 1959	\$ 6,487.33
October 2, 1959	3,562.29
October 13, 1959	473.12
October 21, 1959	4,225.53
December 31, 1959	1,801.62
January 2, 1960	133.72
January 8, 1960	10,507.50
January 10, 1960	1,114.96
February 18, 1960	1,935.10
March 10, 1960	4,002.47
March 11, 1960	189.85
March 31, 1960	885.35
April 3, 1960	3,804.82
May 23, 1960	899.39
May 26, 1960	12,421.16
May 27, 1960	395.91
June 3, 1960	709.10
June 12, 1960	12,102.69
July 1, 1960	24,327.92
July 31, 1960	241.13
August 18, 1960	5,356.75
September 30, 1960	50.00
December 1, 1960	<u>289.62</u>
	\$ 95,932.83

CERTIFICATION OF LOSS

The Commission certifies that OWENS-ILLINOIS INTER-AMERICA 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 Ninety-five Thousand Nine Hundred Thirty-two Dollars and Eighty-three Cents (\$95,932.83) 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

JUN 19 1969

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).)