

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

IN THE MATTER OF THE CLAIM OF

INTER AMERICA ASSOCIATES, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3253

Decision No. CU 2040

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 INTER AMERICA ASSOCIATES, INC. in the amount of \$30,769.77 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 and that at all times between 1953 and the presentation of this claim on April 26, 1967, more than 50% 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 states that all of its stockholders are nationals of the United States.

The record contains copies of correspondence between the claimant and the Chase Manhattan Bank of New York wherein claimant was advised of the status of the numerous drafts which it had outstanding with several Cuban consignees as the result of shipments of merchandise to Cuba. Details of the drafts, including payment of a portion of them to Cuban banks are set out below:

| <u>DRAFT NO.</u> | <u>DATE</u> | <u>AMOUNT</u> | <u>DATE PAID</u> | <u>MATURITY DATE</u> |
|--|-------------------|-----------------|-------------------|----------------------|
| Consignee: Distribuidora Nacional de Ferreteria y Efectos Sanitarios, S.A. | | | | |
| 1275 | September 4, 1959 | \$ 1,744.17 | July 4, 1960 | - |
| 1289 | October 30, 1959 | 2,145.62 | February 10, 1960 | - |
| 1300 | December 1, 1959 | 741.46 | March 10, 1960 | - |
| 1305 | November 25, 1959 | 4,128.29 | February 26, 1960 | - |
| 1317 | December 15, 1959 | <u>1,275.47</u> | April 5, 1960 | - |
| | | Total | \$10,035.01 | |

Consignee: Sergio Loredo, Havana, Cuba

| | | | | |
|------|--------------------|---------------|-------------------|-------------------|
| 1269 | August 6, 1959 | 2,700.74 | February 5, 1960 | - |
| 1274 | September 4, 1959 | 2,283.29 | March 15, 1960 | - |
| 1277 | September 11, 1959 | 3,180.02 | - | December 10, 1959 |
| 1278 | September 11, 1959 | 1,742.57 | - | December 10, 1959 |
| 1283 | October 26, 1959 | 1,377.19 | June 20, 1960 | - |
| 1284 | October 5, 1959 | 1,301.27 | - | January 3, 1960 |
| 1294 | November 5, 1959 | 1,612.87 | - | February 3, 1960 |
| 1303 | November 19, 1959 | 548.83 | February 23, 1960 | - |
| 1329 | January 7, 1960 | 463.44 | April 16, 1960 | - |
| 1358 | January 26, 1960 | <u>570.66</u> | May 4, 1960 | - |
| | | Total | \$15,780.88 | |

Consignee: Publicaciones Lopez Ortiz, S.A.

| | | | | |
|--------|--------------------|-----------------|------------|-------------------|
| 1249 | May 29, 1959 | 1,894.16 | - | August 27, 1959 |
| 1281-A | September 22, 1959 | 1,029.86 | - | December 21, 1959 |
| 1281-B | September 22, 1959 | <u>1,029.86</u> | - | January 20, 1960 |
| | | Total | \$3,953.88 | |

Consignee: Raul Rossell

| | | | | |
|------|------------------|-----------------|----------------|---|
| 14-R | January 25, 1960 | <u>1,000.00</u> | April 25, 1960 | - |
|------|------------------|-----------------|----------------|---|

Total All Drafts \$30,769.77

As stated above, the evidence of record (bank advices) reflects that payments of many of the above drafts were made to Cuban banks who were unable to remit said monies to claimant due to currency exchange restrictions. Claimant states that it has not received any of the above-stated 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 the absence of evidence to the contrary, the loss occurred on the following dates:

| <u>DATE</u> | <u>AMOUNT</u> |
|--------------------|-----------------|
| September 29, 1959 | \$ 1,894.16 |
| December 10, 1959 | 4,922.59 |
| December 21, 1959 | 1,029.86 |
| January 3, 1960 | 1,301.27 |
| January 20, 1960 | 1,029.86 |
| February 3, 1960 | 1,612.87 |
| February 6, 1960 | 2,700.74 |
| February 11, 1960 | 2,145.62 |
| February 24, 1960 | 548.83 |
| February 27, 1960 | 4,128.29 |
| March 11, 1960 | 741.46 |
| March 16, 1960 | 2,283.29 |
| April 6, 1960 | 1,275.47 |
| April 17, 1960 | 463.44 |
| April 26, 1960 | 1,000.00 |
| May 5, 1960 | 570.66 |
| June 21, 1960 | 1,377.19 |
| July 5, 1960 | <u>1,744.17</u> |
| Total | \$30,769.77 |

being either the effective date of Law 568, the maturity date of the unpaid drafts, or the day after the Cuban bank advised the claimant's bank of a payment.

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 Corp. 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.

CERTIFICATION OF LOSS

The Commission certifies that INTER AMERICA ASSOCIATES, 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 Thirty Thousand Seven Hundred Sixty-Nine Dollars and Seventy-Seven Cents (\$30,769.77) 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 JUL 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. 412-13 (1967).)