

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

IN THE MATTER OF THE CLAIM OF

LOUIS NIEWEG

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0045

Decision No. CU- 16

AMENDED PROPOSED DECISION

This claim against the Government of Cuba was denied by Proposed Decision of the Commission issued on October 26, 1966. The matter having been reconsidered, it is

ORDERED that the Proposed Decision be and it is amended as follows:

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by Compania Centroamericana de Comercio, S.A., for \$38,380.00 based upon shipments of goods to Cuban customers.

Under Section 503 of the International Claims Settlement Act of 1949, as amended (64 Stat. 12; 60 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 79 Stat. 988) the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. That section 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

(a) . . . 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 504 of the Act provides, as to Ownership of Claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The record reflects and the Commission finds that LOUIS NIEWEG, a national of the United States since July 1947, was the sole owner of Compania Centroamericana de Comercio, S.A., of Panama. Accordingly, LOUIS NIEWEG is substituted as claimant in this matter.

Claimant states that his loss arose from the sale of jute sugar bags to Rancho Veloz Sugar Company, of Havana, Cuba, in the amount of \$11,618.00 and to Cia. Azucarera Central Resulta, S.A., also of Havana, in the amount of \$26,762.00.

The record contains copy of invoice No. 4100 of Cia. Centroamericana de Comercio, S.A., of December 29, 1959 reflecting the sale to Cia. Azucarera Central Resulta, S.A., of Havana, Cuba, of goods totalling \$26,762.00; and copy of its invoice No. 4100a of November 10, 1958 reflecting the sale to Rancho Veloz Sugar Company., of Havana, Cuba, of goods totalling \$12,213.00 and showing a credit of \$595.00, which decreased the total due to \$11,618.00.

The record also contains copy of a communication from a Cuban agent, under date of October 14, 1960 stating that approval for remittance of the item of \$11,618.00 on account of Rancho Veloz Sugar Co., had not yet been received from the Banco Nacional.

The record also contains copy of a letter from The Chase Manhattan Bank, of Havana, under date of November 24, 1960, to the Banco Nacional de Cuba, Fondo de Estabilizacion de la Moneda, referring to requests for

transfers of dollar funds which had been sent to the Banco Nacional on October 8, 1960 in the case of Cia. Azucarera Central Resulta, S.A., and on October 19, 1960 apparently for the second time, in the case of Rancho Veloz Sugar Company. Claimant states that he 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 In the Matter of the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019.)

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 October 14, 1960 as to \$11,618.00, and on October 8, 1960 as to \$26,762.00.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement (See the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249).

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, as follows:

\$26,762.00 from October 8, 1960

\$11,618.00 from October 14, 1960

CERTIFICATION OF LOSS

The Commission certifies that LOUIS NIEWIG 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-Eight Thousand Three Hundred Eighty Dollars (\$38,380.00) with interest thereon at 6% per annum from the respective dates of loss to date of settlement.

Dated at Washington, D. C.,
and entered as the Amended Proposed Decision of the Commission

MAY 10 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, 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 Amended Proposed Decision upon the expiration of 30 days after such service or receipt of notice, the decision will be entered as the Final Decision of the Commission, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

CERTIFICATION

This is a true and correct copy of the decision of the Commission which was entered as the final decision on JUL 10 1967

Jennie Masterson
Clerk of the Commission

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

IN THE MATTER OF THE CLAIM OF

COMPANIA CENTROAMERICANA DE COMERCIO, S.A.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 0045

Decision No. CU -16

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 COMPANIA CENTROAMERICANA DE COMERCIO, S.A., for \$38,380.00 based upon shipments of goods to Cuban customers.

Claimant corporation is an entity of the Republic of Panama. It is said to be wholly owned by Louis Nieweg, who states that he is a United States citizen.

Under Section 503 of the International Claims Settlement Act of 1949, as amended (64 Stat. 12; 69 Stat. 562; 72 Stat. 527; 78 Stat. 1110; 79 Stat. 988) the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. That section 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

(a) . . . 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 504 of the Act provides, as to Ownership of Claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

In order for the Commission to favorably consider claims under Section 503(a) of Title V of the Act, it must be established that the subject property was owned in whole or in part by a national of the United States on the date of nationalization or other taking.

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

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

The record contains copies of invoices reflecting sales by COMPANIA CENTROAMERICANA DE COMERCIO, S.A., to two customers in Cuba of goods having a total value of \$38,975.00 with a credit of \$595.00 to one customer. The record further indicates that collections were made by the Chase Manhattan Bank in Havana, but funds were not remitted.

The shipments were made by COMPANIA CENTROAMERICANA DE COMERCIO, S.A., of the Republic of Panama, from an address in New York. COMPANIA CENTROAMERICANA DE COMERCIO, S.A., is not a Cuban corporation whose corporate entity has been destroyed by Cuba. In such case its possible American stockholder might have a claim against the Government of Cuba. On the contrary, however, so far as the record shows, the Panamanian corporation remains intact, an entity capable of transacting business, incurring debts and holding property.

The Commission finds it unnecessary to determine the status of the Cuban accounts, holding that any claim which may have arisen under international law in connection therewith, belongs to COMPANIA CENTROAMERICANA DE COMERCIO, S.A., of the Republic of Panama, and that COMPANIA CENTROAMERICANA DE COMERCIO, S.A., is not a corporation which qualifies as a national of the United States under the provisions of the Act. (See the Claim of Becton, Dickenson and Co., FCSC Claim No. CU-0113, and the Claim of Cia. Ganadera Becerra, S.A., FCSC Claim No. CU-0726.)

Accordingly, the Commission concludes that this claim is not valid under Title V of the Act in that it was not owned by a national of the United States on the date of filing with the Commission and, therefore, it is hereby denied.

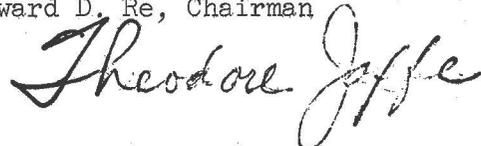
The Commission deems it unnecessary to make specific findings with respect to other elements of this claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission.

OCT 26 1966



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 20 days after service or receipt of notice of this Proposed Decision upon the expiration of 30 days after such service or receipt of notice, the decision will be entered as the Final Decision of the Commission, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) (1964))