

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

IN THE MATTER OF THE CLAIM OF

AMERICAN & EFIRD THREAD MILLS, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0260

Decision No. CU **415**

Counsel for claimant:

Helms, Mulliss, McMillan & Johnston

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 AMERICAN & EFIRD THREAD MILLS, INC. in the amount of \$46,373.99, 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) 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."

Claimant has submitted evidence which shows that it was organized in the State of Michigan and an officer thereof has certified that at all times between September 6, 1932 and presentation of this claim on July 21, 1965, 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 it is a wholly-owned subsidiary of American & Efird Mills, Inc., and that 100% of the stockholders of the parent corporation are United States nationals.

The record contains copies of claimant's invoices reflecting the sale of goods to the consignees indicated in the amounts specified, as to which freight, shipping and other attendant fees increased the totals as follows:

| <u>Date of Invoice</u> | <u>Invoice Number</u> | <u>Consignee</u> | <u>Price</u> | <u>Charges</u> | <u>Total</u> |
|------------------------|-----------------------|----------------------------------|--------------|----------------|--------------|
| 10/ 2/57 | 1480 | Materías Primas Amefird, S.A. | \$5,963.50 | \$390.57 | \$ 6,354.07 |
| 12/26/57 | 5075 | " | 1,090.99 | | |
| 12/26/57 | 5076 | " | 842.04 | | |
| 12/26/57 | 5077 | " | 899.80 | 148.52 | 2,981.35 |
| 1/28/58 | 6333 | " | 1,343.96 | | |
| 1/28/58 | 6334 | " | 921.90 | | |
| 1/28/58 | 6335 | " | 1,311.89 | | |
| 1/28/58 | 6336 | " | 1,748.50 | | |
| 1/28/58 | 6337 | " | 4,584.70 | | |
| 1/28/58 | 6338 | " | 1,080.74 | | |
| 1/28/58 | 6339 | " | 898.52 | | |
| 1/28/58 | 6340 | " | 1,063.83 | | |
| 1/28/58 | 6341 | " | 1,117.36 | | |
| 1/28/58 | 6342 | " | 61.05 | | |
| 1/28/58 | 6343 | " | 3,963.00 | 872.42 | 18,967.87 |

| <u>Date of Invoice</u> | <u>Invoice Number</u> | <u>Consignee</u> | <u>Price</u> | <u>Charges</u> | <u>Total</u> |
|------------------------|-----------------------|------------------------------------|--------------|----------------|--------------|
| 6/24/58 | 12742 | Materias Primas Amefird, S.A. | \$3,972.30 | | |
| 6/24/58 | 12743 | " | 5,241.30 | \$470.77 | \$ 9,684.37 |
| 11/ 5/58 | 3214 | " | 2,000.00 | | |
| 11/ 5/58 | 3215 | " | 2,938.97 | | |
| 11/ 5/58 | 3216 | " | 1,553.31 | | |
| 11/ 5/58 | 3217 | " | 5,876.03 | | |
| 11/ 5/58 | 3218 | " | 6,177.50 | 960.57 | 19,452.38 |
| 11/24/59 | 3903 | Importadora de Pieles Maxfer, S.A. | 1,093.09 | 66.07 | 1,159.16 |

Claimant states that all accounts involved herein were running accounts and that after deduction of \$11,360.44, representing payments and commissions attributable to the account of Materias Primas Amefird, S.A., it wrote off the entire amount due and receivable on April 2, 1961 as uncollectible.

Claimant further states that it has never received any of the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government affectively 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 the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC 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 September 29, 1959, the date when Cuban Law No. 568 was published, as to \$46,079.60, and on December 24, 1959 as to \$1,159.16, thirty days after the date of the invoice to Importadora de Pieles Maxfer, S.A.

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 Lisle Corporation, FCSC 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, as follows:

| | |
|----------------------------|-------------|
| From September 29, 1959 on | \$46,079.60 |
| From December 24, 1959 on | \$ 1,159.16 |

The remainder of this claim is asserted for loss of payment for merchandise shipped to Julio S. Boza of Havana, Cuba. Claimant states that its policy is to retain invoices for a period of only six years, and it is for this reason that it was unable to produce evidence, as suggested, for this portion of the claim. In this respect, the record includes only an excerpt from an IBM card showing the amount of \$2,265.90 due for merchandise, less \$1,324.24 in accrued commissions, leaving a balance due of \$941.66. There is no indication in the record of the date or dates of sale of such merchandise or the due dates of payment therefor, and no way of determining from the record that a claim for such indebtedness was not barred under Cuban law by a statute of limitations prior to January 1, 1959.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp.1967).

With regard to the portion of the claim based upon merchandise shipped to Julio S. Boza, the Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership of rights and interests in property which was nationalized, appropriated or otherwise taken by the Government of Cuba. Accordingly, this portion of the claim is denied.

CERTIFICATION OF LOSS

The Commission certifies that AMERICAN & EFIRD THREAD MILLS, 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 Forty-Seven Thousand Two Hundred Thirty-Eight Dollars and Seventy-Six Cents (\$47,238.76), 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

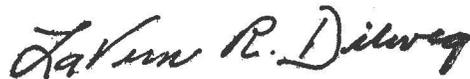
OCT 4 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on 6 NOV 1967



Clerk of the Commission

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).)