

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

IN THE MATTER OF THE CLAIM OF

EATON YALE & TOWNE, INC.

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1452

Decision No. CU 2473

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 EATON YALE & TOWNE, INC. in the amount of \$71,757.71 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 504 of the Act provides:

(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.

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 Yale & Towne Manufacturing Company was incorporated in Connecticut on February 2, 1883 as the Yale Manufacturing Company, and the Eaton Manufacturing Company was incorporated in Ohio on August 28, 1916. A series of corporate structure changes, started in 1963, resulted in the merger of the two corporations on December 31, 1965 in Ohio, the surviving corporation being EATON YALE & TOWNE INC., the claimant.

An officer of the claimant has certified that at all times between 1920 and presentation of this claim on April 13, 1967, more than 50% of the outstanding capital stock of the respective corporations 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 approximately 0.5% of its 15,241,133 shares are held by persons who were not nationals of the United States.

The record contains copies of invoices of Yale & Towne Manufacturing Company, claimant's predecessor (except where the invoices could not be located, in which cases the items are noted as evidenced by copies of accounts receivable ledgers) to the following Cuban consignees for the sale of merchandise in the stated amounts. In some cases, where noted, drafts covering these invoices were paid to collecting banks in Cuba, which banks were awaiting dollar reimbursement releases from the Exchange Board, an agency of the Cuban Government:

A. Yale Materials Handling Division:

<u>Invoice No.</u>	<u>Date</u>	<u>Consignee</u>	<u>Amount</u>	<u>Date of Payment</u>
892691wp	September 21, 1959	Azucarera Camajuani, S.A. (shown on Accounts Receivable ledger)	\$ 816.42	None
S8700727	November 30, 1959	Cuba Industrial & Comerciale, S.A. (shown on Accounts Receivable ledger)	954.01	None
D700699	December 17, 1959	Cia Cubana De Electricidad	516.38	April 8, 1960
D700649	November 25, 1959	Ferreteria Enziqua Costa, S.A.	610.26	December 4, 1959
892693/4wp	November 12, 1959	Ferreteria Lorido, S.A.	820.58	November 16, 1959
893899S	February 23, 1960	Oriente Comercial Y In- dustrial, S.A.	114.31	March 3, 1960
893716G	August 20, 1959	Productos Cabanos De Bagazo	1,270.78	None
D700416/7) 893748)	October 21, 1959	A. Solares Y Cia	1,180.25	November 2, 1959
		Total	\$6,282.99	

B. Yale Lock and Hardware Division

<u>Invoice No.</u>	<u>Date</u>	<u>Consignee</u>	<u>Amount</u>	<u>Date of Payment</u>
49009A	November 25, 1959	Sr. Benigno Zulueta & Cia	\$ 578.93	February 19, 1960
49053A	October 30, 1959	Anton & Hijos	640.05	February 6, 1960
49069A	August 19, 1959	Consolidated Railroads of Cuba	151.85	None
49616A	November 27, 1959	(same as above)	26.77	None
48583A	April 10, 1959	Ferreteria La Vasconia	27.35	None
49209A	November 25, 1959	Sres. A. Rodriguez & Cia	725.51	March 4, 1960
48961A	November 17, 1959	Sres. Aviles & Cia	253.21	May 11, 1960
48962A	August 19, 1959	Sres. Ferreteria La Sucural, S.A.	386.08	None
49224A	November 24, 1959	Gonzalez & Sanchez	10,368.41	May 4, 1960
B49107B	October 19, 1959	Comercial Oxford, S.A.	47.70	March 23, 1960
49133A	September 25, 1959	Sres. Fernandez & Gutierrez	2,211.08	December 14, 1959
47469B	September 26, 1959	Panam Products Co.	1,531.66	None
V49290B	November 30, 1959	Sr. Roberto Rodriguez	149.30	June 20, 1960
49007A	November 25, 1959	Sres. Serra & Dominguez, S.en C.	623.73	December 18, 1959
49012A	September 22, 1959	Sres. Manuel Gayol & Cia S. en C.	320.60	None
49011A	November 25, 1959	Sres. Mercantil Casa Arenas, S.A.	781.24	February 9, 1961
48574	May 8, 1959 (\$233.41 less \$114.30 paid)	Sr. E. Iturriga	119.11	None
Total			\$18,942.58	

C. German Division (Yale & Towne G.m.b.H.)

<u>Date</u>	<u>Consignee</u>	<u>Amount</u>	<u>Date of Payment</u>
October 26, 1959	Gonzalez Sanchez	\$1,981.26	December 11, 1959
November 24, 1959	A. Rodriguez y Cia	2,284.55	February 21, 1960
November 17, 1959	Ferreteria Canosa, S.A.	3,187.32	January 12, 1960
November 10, 1959	Jose Lopez Fernandez	1,487.94	February 15, 1960
June 18, 1959	Arturo Perez y Cia	1,154.08	November 7, 1960
September 24, 1959	Marce y Cia	2,121.45	December 9, 1959
October 14, 1959	J. Chertudi y Cia	1,094.05	December 22, 1959
October 30, 1959	Mendez, Canarte y Cia	1,101.64	March 24, 1960
October 27, 1959	A. Solares y Cia	3,080.28	February 18, 1960
November 5, 1959	Arce Lastra y Cia	1,719.41	December 10, 1959
October 28, 1959	Antonio Vivaldi	1,734.13	February 4, 1960
November 6, 1959	Gomez Ruiz y Cia	1,104.67	December 18, 1959
October 23, 1959	Santos Bouza y Cia	1,082.16	May 5, 1960
September 30, 1959	Aspuru y Cia, S.A.	1,859.48	December 26, 1959
November 16, 1959	Ferreteria Ramiro Alonso	3,959.30	February 3, 1960
November 5, 1959	V. Mercade y Cia	1,647.88	January 27, 1960
September 11, 1959	Aviles y Cia, S.enC.	1,254.14	March 22, 1960
October 28, 1959	Celestino Joaristi y Cia	4,374.29	December 29, 1959
May 12, 1958	Otegui & Ezquerria	472.50	August 1, 1960
August 31, 1959	Lucas Echevarria	929.67	February 5, 1960
September 11, 1959	Arnaiz Giego y Cia	924.92	November 26, 1959
September 30, 1959	Ramon Alvarez	641.25	January 26, 1960
September 30, 1959	Marcelino Rogueiro	517.81	November 9, 1959
December 3, 1959	Ferreteria Capestany, S.A.	819.54	February 17, 1960

<u>Date</u>	<u>Consignee</u>	<u>Amount</u>	<u>Date of Payment</u>
November 26, 1959	Ferreteria El Sol De Cuba	\$ 620.55	January 8, 1960
October 27, 1959	Machin & Wall Co.	878.37	February 3, 1960
October 30, 1959	(same as above)	412.57	February 3, 1960
November 19, 1959	Sanchez y Hno.	537.17	January 7, 1960
October 19, 1959	Nicolas Lopez	732.49	March 17, 1960
September 9, 1959	Ferreteria La Sucursal	486.78	March 22, 1960
November 10, 1959	Vicente Juan e Hijos	520.98	March 4, 1960
November 6, 1959	Ferreteria Perez Alvarez	823.96	January 5, 1960
August 16, 1960	L. C. Aguilera & Co.	<u>383.11</u>	October 28, 1960
	Total	\$45,929.70	

Claimant states that neither it nor its predecessors in interest have received any of the funds and that the debts remained due and owing.

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 the property of claimant's predecessor in interest was lost as a result of intervention by the Government of Cuba that claimant succeeded to this

claim and that, in the absence of evidence to the contrary, the loss occurred:

<u>ON</u>	<u>AS TO</u>
September 29, 1959	\$ 3,100.75
October 20, 1959	386.08
October 22, 1959	816.42
October 29, 1959	383.11
November 3, 1959	1,180.25
November 10, 1959	517.81
November 17, 1959	820.58
November 23, 1959	320.60
November 27, 1959	924.92
December 5, 1959	610.26
December 10, 1959	2,121.45
December 11, 1959	1,719.41
December 12, 1959	1,981.26
December 15, 1959	2,211.08
December 19, 1959	1,728.40
December 23, 1959	1,094.05
December 27, 1959	1,859.48
December 28, 1959	26.77
December 30, 1959	4,374.29
December 31, 1959	954.01
January 6, 1960	823.96
January 8, 1960	537.17
January 9, 1960	620.55
January 13, 1960	3,187.32
January 27, 1960	641.25
January 28, 1960	1,647.88
February 4, 1960	5,250.24
February 5, 1960	1,734.13
February 6, 1960	929.67
February 16, 1960	1,487.94
February 18, 1960	819.54
February 19, 1960	3,080.28
February 20, 1960	578.93
February 22, 1960	2,284.55
March 4, 1960	114.31
March 5, 1960	1,246.49
March 18, 1960	732.49
March 23, 1960	1,740.92
March 24, 1960	47.70
March 25, 1960	1,101.64
April 9, 1960	516.38
May 5, 1960	10,368.41
May 6, 1960	1,082.16
May 12, 1960	253.21
June 21, 1960	149.30
August 2, 1960	472.50
November 8, 1960	1,154.08
February 7, 1961	640.05
February 10, 1961	781.24
Total	\$71,155.27

The dates of loss include the date of publication of Law 568 as to all losses occurring on or prior to September 29, 1959; the days immediately following the acknowledgment of payment of drafts as to those drafts paid after September 29, 1959; and the dates by which invoices in the stated amounts became due after September 29, 1959 and which were not paid to Cuban collecting banks.

The remainder of this claim, for \$602.44, is based upon the asserted loss of payment for merchandise shipped to the Havana office of Cia Cubana de Electricidad.

Section 505(a) of the Act provides:

A claim under Section 503(a) of this title based upon a debt or other obligation owing by any corporation, association, or other entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico shall be considered only when such debt or other obligation is a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The records of the Commission reveal that Cia Cubana de Electricidad is a corporation organized under the laws of the State of Florida. Therefore this portion of the claim can be considered only if the claimed debt is a charge upon property which was nationalized, expropriated, intervened, or taken by the Government of Cuba (See Claim of Anaconda American Brass Company, Claim No. CU-0112).

Claimant has neither alleged nor submitted evidence to establish that this debt was a charge upon property which was nationalized, expropriated, intervened, or taken by the Government of Cuba. Therefore the Commission is without authority to consider this portion of the claim, and it is hereby denied.

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 Corporation, 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 EATON YALE & TOWNE 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 Seventy-One Thousand One Hundred Fifty-Five Dollars and Twenty-Seven Cents (\$71,155.27) 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

JUL 31 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. Reg. 412-13 (1967).)