

**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES  
ARBITRALES**

**El Emporio del Café, S. A. (United Mexican States) v. United States of America**

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4. The Memorandum, the Memorial and the documents and proofs in support thereof, filed by the American Agent, read together, bring these cases clearly within the jurisdiction of the Special Claims Commission. This being true, this Commission is without jurisdiction to hear and decide them and the motion of the Mexican Agent to dismiss must be sustained.

5. These claims are two out of several hundred, which have been filed by the American Agent with both this Commission and the Special Claims Commission. As the jurisdiction of this Commission is general and as many cases may arise in which, from the facts alleged, it is not clear within which jurisdiction they fall, it will prove helpful to this Commission to have before it, in considering such claims, the opinions of the Special Claims Commission in the series of test cases, already submitted to it, in which it is believed opinions will be rendered at an early date. Such opinions on legal points are entitled to and will have great consideration and will be given great weight by this Commission in construing the exceptions contained in Articles I and VIII and in the preamble of the General Claims Convention.

6. In the cases here presented, however, the allegations contained in the memorandum and supporting exhibits numbered 4, 9, 15, 22, 23, 25, and 29 filed by the American Agent, leave no room to doubt that they fall within the jurisdiction of the Special Claims Commission, and hence that this Commission is without jurisdiction to decide them.

7. It is hereby ordered that docket Nos. 195 and 284, the United States of America on behalf of Clara W. Roney and George E. Boles, respectively, *v.* United Mexican States, be, and they are, hereby dismissed without prejudice to the right of the United States of America to espouse and prosecute them elsewhere.

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EL EMPORIO DEL CAFÉ, S.A. (UNITED MEXICAN STATES) *v.*  
UNITED STATES OF AMERICA.

(March 2, 1926. Pages 7-9.)

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PROCEDURE, MOTION TO DISMISS. Upon a motion to dismiss, allegations of memorial to which it is addressed must be taken as confessed.

UNLAWFUL COLLECTION OF CUSTOMS DUTIES BY OCCUPYING MILITARY AUTHORITIES. Claimant paid to occupying American military authorities at Vera Cruz export duties on shipment to Mexican destination *via* port of Vera Cruz. Under Mexican law claimant was entitled to refund of such shipment when it reached its final Mexican destination but respondent Government failed to make such refund after demand. Motion to dismiss for lack of jurisdiction *denied*.

*Cross-reference:* Annual Digest, 1925-1926, p. 234.

*Comments:* Edwin M. Borchart, "Decisions of the Claims Commissions, United States and Mexico," Am. J. Int. Law, Vol. 20, 1926, p. 536 at 542.

This case is before the Commission on the American Agent's motion to dismiss. For the purposes of this motion only, the truth of all the allegations in the Memorial filed by the Mexican Agent must be taken as confessed.

1. From the Memorial it appears that the Government of Mexico has espoused and filed this claim on behalf of *El Emporio Del Café, S. A.*, a Mexican corporation, to recover moneys held by the American Government which were paid to it as export duties on shipments of coffee at the customhouse at Veracruz, Mexico, in August, 1914, while it was in military occupation of that city. It is alleged that during such military occupation the Government of Mexico established a temporary customhouse at Orizaba for the collection of customs passing through the port of Veracruz and that the claimant was required to pay, and did pay, to the Mexican customs authorities at Orizaba the same amount paid by claimant to the American authorities at Veracruz; that the shipments of coffee on which these customs duties were paid had for their final destination Ciudad Juarez, Chihuahua, Mexico, and after passing through the ports of Veracruz and New Orleans were delivered to this final destination through this Northern Mexican gateway; that under the laws of Mexico then in effect the claimant became entitled to have refunded it all export duties paid on shipments passing out of Mexico in transit to final destination in Mexico; that the Mexican Government did refund claimant the said customs duties paid to it by claimant at Orizaba, but that a like sum paid by claimant to the American authorities at Veracruz is still withheld by the American Government.

2. The American military forces in occupying Veracruz and in establishing all proper rules and regulations for the government of the occupied territory saw fit to adopt and enforce the laws then prevailing in Mexico for levying and collecting customs duties. Had Mexico on behalf of the claimant merely alleged that the American authorities were not entitled to perform any act of administration at Veracruz, and stopped there, then the Commission would have dismissed this claim; not, to be sure, because of the political background of said occupation, for the Commission shall have to decide very likely several controversies with political backgrounds. Neither does the mere fact that the occupation had been directed by the President of the United States, whose action was approved by the Congress, affect the question presented, for in determining the jurisdiction of this Commission the rank, be it high or low, of the national authorities whose acts are made a basis for complaint is immaterial. While the individual claimant was twice compelled to pay customs duties on the basis of the Mexican tariff laws which, according to these very laws, were due only once; and while one of these payments must therefore have been unlawfully enforced, the Commission is not clothed, by the terms of the Convention under which it is constituted, with jurisdiction to inquire and decide which payment was legal and which illegal. A controversy of this character, constituting a controversy between the two Governments themselves, does not change its nature when presented by either Government in the shape of the claim of an individual, and such a controversy has not been submitted to this Commission by the provisions of the Convention under which it is acting.

3. But the administrative acts of the American representatives during such occupation can and must be examined to determine to what, if any, extent they invaded the rights of Mexican nationals to their damage. The Memorial alleges that while the Mexican tariff laws which the American authorities undertook to administer authorized the collection of export duties which were actually collected, they also required that the duties so paid should be refunded to the shipper when and if the shipments on which duties were paid were reshipped into Mexico. Assuming the truth of said

allegations, it follows that the claimant was entitled to such refund from the American authorities, which has not been made.

4. For the reasons stated, the motion to dismiss is denied, and the respective Agents are directed to prepare this case for final submission in accordance with this interlocutory decision. The running of time for filing the Answer has been suspended from September 18, 1925, to March 2, 1926.

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DAVID GONZALEZ (UNITED MEXICAN STATES) *v.* UNITED STATES OF AMERICA.

*(March 2, 1926. Pages 9-10.)*

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UNLAWFUL COLLECTION OF CUSTOMS DUTIES BY OCCUPYING MILITARY AUTHORITIES. Double payment of export duties to Mexican authorities and occupying American military authorities in and of itself does not give rise to a claim within the jurisdiction of the tribunal. Motion to dismiss *denied* without prejudice to amendment of memorial to set forth any other facts bringing claim within jurisdiction of tribunal.

*(Text of decision omitted.)*

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THOMAS O. MUDD (U.S.A.) *v.* UNITED MEXICAN STATES.

*(March 2, 1926. Pages 10-11.)*

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PROCEDURE, MOTION TO DISMISS.—JURISDICTION.—CONTRACT CLAIMS.—CALVO CLAUSE.—ACTS OF MUNICIPALITIES. Motion to dismiss, on ground that claims based on nonperformance of contractual obligations, claims involving Calvo clause, or claims arising from the acts of municipalities in their civil capacity, are outside jurisdiction of tribunal, *dismissed* without prejudice when it appeared on the face of the record that at least some phases of claim were of a character to be within jurisdiction of tribunal. No ruling was thereby made that claims of the character objected to were without the jurisdiction of the tribunal.

*(Text of decision omitted.)*