

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

IN THE MATTER OF THE CLAIM OF

BURLINGTON INDUSTRIES, INC.

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0731

Decision No. CU 3374

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 BURLINGTON INDUSTRIES, INC., in the amount of \$495,979.26 based upon the asserted loss of payment for merchandise shipped to certain Cuban consignees. Of this amount, \$363,036.80 represents the debts claimed and \$132,942.46 represents interest thereon at 6% to July 15, 1965.

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 claimant has certified that claimant was organized under the laws of Delaware and that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. That officer has also certified that as of February 3, 1967, 1.7% of claimant's outstanding capital stock was owned by nonnationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record includes copies of invoices, air waybills, bills of lading, correspondence with consignees in Cuba and banks, extracts from claimant's records and statements from officials of claimant concerning the debts for which claim is made. The evidence discloses that in some instances the consignees paid for their purchases from claimant by deposits in local banks and that dollar reimbursement to claimant was denied by Cuban officials. Claimant states that it has received neither the funds representing payments made to local banks by consignees nor any payments for the outstanding debts due from the other Cuban consignees.

The following information concerning the shipments made to the Cuban consignees, supported by the evidence of record, shows the paid and unpaid accounts; the dates on which payments were made or acknowledged by the banks; and with respect to the unpaid accounts the invoice or shipment dates, and the dates on which the accounts were due and payable, if known. In those cases in which payments were made by the consignees but where the dates of payment or acknowledgment are unknown, the accounts are recorded below in the same manner as the unpaid accounts. One of claimant's officials has

stated that deductions, evidenced by claimant's records, from amounts due, as indicated hereafter, constitute ordinary or customary credits and allowances in the normal course of business, for which no claim is being made. All of the consignees in question had their places of business in Havana, Cuba.

PAID ACCOUNTS

| <u>Consignee</u>   | <u>Date Paid or Acknowledged</u> | <u>Amount</u>                      |
|--------------------|----------------------------------|------------------------------------|
| F. Martin & Cia.   | September 21, 1960               | \$ 1,064.02<br>(\$100.00 deducted) |
| Kaba Hnos S. en C. | August 16, 1960                  | \$ 2,985.32                        |

It is noted that claimant's records indicate with respect to Kaba Hnos S. en C. that two other shipments were made to this consignee in the aggregate amount of \$429.92. However, it appears that this consignee had a credit (deduction) in the amount of \$426.14. In view of the insignificant difference, \$3.78, and the fact that copies of invoices for these two shipments were not submitted by claimant, whereas all others relating to this consignee are of record, no amount is being certified for these two items.

| <u>Consignee</u>              | <u>Date Paid or Acknowledged</u> | <u>Amount</u>                      |
|-------------------------------|----------------------------------|------------------------------------|
| Distribuidora Ro-Ri, S.A.     | February 19, 1960                | \$ 131.26                          |
| Luis Tuchman                  | September 9, 1959                | \$ 1,728.78                        |
| Angel Martinez & Cia.         | January 27, 1960                 | \$ 1,911.80                        |
| Fabrica De Medias Every, S.A. | September 17, 1959               | \$ 5,047.38<br>(\$103.55 deducted) |

UNPAID ACCOUNTS

Gelman & Cia.:

| <u>Invoice or Shipment Date</u>  | <u>Due Date</u> | <u>Amount</u> |
|----------------------------------|-----------------|---------------|
| September 17, 1959               |                 | \$ 219.71     |
| September 18, 1959               |                 | 10.31         |
| September 22, 1959               |                 | 10.31         |
| September 23, 1959               |                 | 37.73         |
| September 24, 1959               |                 | 7.20          |
| September 29, 1959 (5 shipments) |                 | 804.77        |
| September 30, 1959 (3 shipments) |                 | 147.57        |
| October 1, 1959 (2 shipments)    |                 | 830.47        |
| October 3, 1959                  |                 | 11.39         |
| October 7, 1959 (2 shipments)    |                 | 1,197.28      |
| November 18, 1959 (2 shipments)  |                 | 407.86        |
|                                  |                 | \$ 3,684.60   |
|                                  | Deductions      | 29.92         |
|                                  |                 | \$ 3,654.68   |

It appears from the record that this consignee made two payments to local banks on account of the foregoing shipments, one in the amount of \$390.25, and the other in the amount of \$3,294.35, for a total of \$3,684.60. However, neither the dates when these payments were made nor the dates when they were acknowledged by the local recipient banks are known.

Distribuidora Ro-Ri, S.A.:

| <u>Invoice or Shipment Date</u> | <u>Due Date</u>  | <u>Amount</u>      |
|---------------------------------|------------------|--------------------|
| September 21, 1959              | December 1, 1960 | \$ 447.81          |
| September 22, 1959              | December 2, 1960 | 1,196.47           |
| September 28, 1959              |                  | 116.38             |
| October 7, 1959                 |                  | 6.98               |
| November 9, 1959                |                  | 4,075.12           |
| November 17, 1959               |                  | 17.48              |
|                                 |                  | <u>\$ 5,860.24</u> |
|                                 | Deductions       | 15.75              |
|                                 |                  | <u>\$ 5,844.49</u> |

It appears from the record that this consignee made two payments to local banks on account of the foregoing shipments, one in the amount of \$4,194.03, and the other in the amount of \$1,542.85, for a total of \$5,736.88. However, neither the dates when these payments were made nor the dates when they were acknowledged by the local recipient banks are known.

Cia. De Confecciones Clermont, S.A.:

| <u>Invoice or Shipment Date</u> | <u>Due Date</u> | <u>Amount</u>      |
|---------------------------------|-----------------|--------------------|
| November 9, 1959                |                 | \$ 8,483.17        |
| November 20, 1959               |                 | 2,245.92           |
| November 25, 1959               |                 | 18.60              |
|                                 |                 | <u>\$10,747.69</u> |
|                                 | Deductions      | 243.95             |
|                                 |                 | <u>\$10,503.74</u> |

It appears from the record that this consignee made two payments to local banks on account of the foregoing shipments, one in the amount of \$8,483.17, and the other in the amount of \$2,264.52, for a total of \$10,747.69. However, neither the dates when these payments were made nor the dates when they were acknowledged by the local recipient banks are known.

Fermin Fernandez y Cia., S.E.N.C.:

| <u>Invoice or Shipment Date</u> | <u>Due Date</u>   | <u>Amount</u>      |
|---------------------------------|-------------------|--------------------|
| September 26, 1959              | November 25, 1959 | \$ 1,072.71        |
| October 27, 1959                | December 26, 1959 | 72.18              |
|                                 |                   | <u>\$ 1,144.89</u> |
|                                 | Deductions        | 137.26             |
|                                 |                   | <u>\$ 1,007.63</u> |

Textilera Mayabeque, S.A.:

| <u>Invoice or Shipment Date</u>                          | <u>Due Date</u>                    | <u>Amount</u> |
|--|------------------------------------|---------------|
| October 22, 1958 to<br>December 8, 1958<br>(72 invoices) | Six months later<br>(180 days net) | \$315,300.78  |

Ribbon Fabrics of Cuba, S.A.:

| <u>Invoice or Shipment Date</u> | <u>Due Date</u> | <u>Amount</u> |
|---------------------------------|-----------------|---------------|
| April 11, 1958                  | June 11, 1958   | \$ 9,059.47   |
| April 25, 1958                  | June 25, 1958   | 8,963.08      |
| April 28, 1958                  |                 | 501.31        |
| May 12, 1958                    |                 | 496.41        |
| June 13, 1958                   | August 13, 1958 | 7,006.72      |
| June 27, 1958                   |                 | 390.84        |
|                                 |                 | \$ 26,417.83  |
|                                 | Deductions      | 15,567.50     |
|                                 |                 | \$ 10,850.33  |

Mario Kriuochey:

| <u>Invoice or Shipment Date</u> | <u>Due Date</u>   | <u>Amount</u> |
|---------------------------------|-------------------|---------------|
| November 28, 1958               | January 27, 1959  | \$ 440.73     |
| December 4, 1958                | February 12, 1959 | 1,793.39      |
| December 4, 1958                | February 12, 1959 | 299.14        |
| December 16, 1958               | February 14, 1959 | 511.02        |
| December 26, 1958               |                   | 43.15         |
|                                 |                   | \$ 3,087.43   |
|                                 | Deductions        | 1,191.42      |
|                                 |                   | \$ 1,896.01   |

Gabriel Sisto y Cia., S.A.:

| <u>Invoice or Shipment Date</u> | <u>Due Date</u>  | <u>Amount</u> |
|---------------------------------|------------------|---------------|
| August 31, 1959                 | October 30, 1959 | \$ 544.83     |
|                                 | Deductions       | 277.86        |
|                                 |                  | \$ 266.97     |

I. Leon & Cia.:

| <u>Invoice or Shipment Date</u> | <u>Due Date</u> | <u>Amount</u> |
|---------------------------------|-----------------|---------------|
| June 9, 1959                    | August 18, 1959 | \$ 490.50     |

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 in 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, 1967 FCSC Ann. Rep. 46.)

Accordingly, the Commission finds that claimant sustained a loss in the aggregate amount of \$362,683.69 as a result of intervention by the Government of Cuba. In the absence of evidence to the contrary, the Commission finds that the losses occurred on the days after payment was received or acknowledgement by the local banks, or on the due dates where shown, or 30 days from the dates of invoice or shipment; except that with respect to those items that would otherwise be deemed lost prior to September 29, 1959, the effective date of Law 568, the loss is found to have occurred on September 29, 1959. Moreover, with respect to the deductions established by claimant's records and admissions, the Commission concludes, in the absence of evidence to the contrary, that these deductions applied to the earliest invoices or shipments.

Claim has also been made for interest at 6% per annum to July 15, 1965 in the amount of \$132,942.46. 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 dates of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:

| <u>FROM</u>        | <u>ON</u>       |
|--------------------|-----------------|
| September 29, 1959 | \$ 335,313.78   |
| October 17, 1959   | 189.79          |
| October 18, 1959   | 10.31           |
| October 22, 1959   | 10.31           |
| October 23, 1959   | 37.73           |
| October 24, 1959   | 7.20            |
| October 28, 1959   | 116.38          |
| October 29, 1959   | 804.77          |
| October 30, 1959   | 414.54          |
| October 31, 1959   | 830.47          |
| November 2, 1959   | 11.39           |
| November 6, 1959   | 1,204.26        |
| November 25, 1959  | 935.45          |
| December 1, 1959   | 432.06          |
| December 2, 1959   | 1,196.47        |
| December 9, 1959   | 12,314.34       |
| December 17, 1959  | 17.48           |
| December 18, 1959  | 407.86          |
| December 20, 1959  | 2,245.92        |
| December 25, 1959  | 18.60           |
| December 26, 1959  | 72.18           |
| January 28, 1960   | 1,911.80        |
| February 20, 1960  | 131.26          |
| August 17, 1960    | 2,985.32        |
| September 22, 1960 | <u>1,064.02</u> |
|                    | \$ 362,683.69   |

CERTIFICATION OF LOSS

The Commission certifies that BURLINGTON INDUSTRIES, 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 Three Hundred Sixty-two Thousand Six Hundred Eighty-three Dollars and Sixty-nine Cents (\$362,683.69) 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

DEC 11 1968

*Leonard v. B. Sutton*  
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Leonard v. B. Sutton, Chairman

*Theodore Jaffe*  
\_\_\_\_\_  
Theodore Jaffe, Commissioner

*Sidney Freidberg*  
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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).)