

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

IN THE MATTER OF THE CLAIM OF

BORG-WARNER INTERNATIONAL CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU 0171

Decision No. CU 3332

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 BORG-WARNER INTERNATIONAL CORPORATION in the amount of \$114,004.58, as amended, 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)(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 the claimant corporation has certified that the claimant was organized in the State of Delaware and that at all times between February 13, 1934 and presentation of this claim on July 6, 1965, claimant has been a wholly-owned subsidiary of Borg-Warner Corporation. He further certifies that more than 50% of the outstanding capital stock of the Borg-Warner Corporation has been owned by United States nationals. The Borg-Warner Corporation was organized in the State of Illinois in 1928. The Commission therefore holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record contains copies of claimant's invoices reflecting the sale of goods to various consignees in Cuba, and the charges for freight, shipping and other attendant fees, as follows:

<u>Consignee</u>	<u>Due Date of Unpaid Draft</u>	<u>Date of Payment or Acknowledgment</u>	<u>Amount</u>
Rodriguez y Hno	Sept. 26, 1957		\$ 188.03
Lima E. Hijos	Nov. 18, 1958		1,233.40
Importadora Valiente, S.A.	March 15, 1959		2,597.50
Manuel Landrove		June 30, 1959	1,860.69
Ferreteria Orriols, S.A.		Oct. 23, 1959	513.92
Erginio Fernandez Garcia:	Oct. 25, 1959		3,207.13
		Feb. 17, 1960	899.29
Madera Babun, S.A.	Oct. 27, 1959		95.60
Angel y Hno Llauro		Nov. 30, 1959	224.46
Iowa Trading Company:		Dec. 7, 1959	125.12
		March 16, 1960	359.06
		March 16, 1960	553.37
Tejas Infinitas, S.A.	Dec. 7, 1959		468.17

<u>Consignee</u>	<u>Due Date of Unpaid Draft</u>	<u>Date of Payment or Acknowledgment</u>	<u>Amount</u>
M. Ramos y Compania		Dec. 22, 1959	\$ 331.43
Importadora Distribuidora Exportadora:		Jan. 7, 1960	290.21
		Feb. 3, 1960	352.72
Jose Donesteves		Jan. 11, 1960	316.04
Carlos Mesa		Jan. 14, 1960	1,405.60
Stewart Auto Company, S.A.:		Jan. 14, 1960	2,318.92
		Feb. 1, 1960	6,190.52
		Feb. 4, 1960	90.10
		Feb. 18, 1960	1,609.45
		Feb. 29, 1960	2,957.59
		March 15, 1960	2,009.76
		March 24, 1960	877.26
		March 29, 1960	5,563.01
		Sept. 15, 1960	21,730.20
Motor Auto Co., Ltd.		Jan. 19, 1960	2,645.00
Johnnie Rodriguez:		Jan. 20, 1960	847.70
		July 7, 1960	683.27
		July 7, 1960	683.27
		July 7, 1960	850.31
Jose Saladrigas		Jan. 29, 1960	304.43
Miquel & Bacardi, S.A.		Feb. 12, 1960	1,503.58
Lucas Echevarria		Feb. 15, 1960	252.99
Distribuidora Couto		Feb. 18, 1960	1,255.45
Anglo Cubana de Tractores, S.A.		Feb. 23, 1960	7,949.79
Aserrio Sancti-Spiritus, S.A.		March 8, 1960	303.76
Motor & Supply Corporation	March 25, 1960		1,412.58
Vallines y Cia.	March 25, 1960		83.32
Joaquin Martinez		March 30, 1960	638.84
Castro y Compania		April 5, 1960	291.70
Maderas Cupey, S.A.		April 8, 1960	998.01
Ortiz, Lloreda y Cia.		April 8, 1960	336.58
Ferreteria Industrial, S.A.		April 12, 1960	764.94
Maximo Lopez Lopez		April 13, 1960	1,600.48

<u>Consignee</u>	<u>Due Date of Unpaid Draft</u>	<u>Date of Payment or Acknowledgment</u>	<u>Amount</u>
Auto Lizmen, S.A.		April 19, 1960	\$ 564.60
Perez Palacio & Cia.		April 20, 1960	700.61
Soler Motors, S.A.:		May 6, 1960	950.86
		May 11, 1960	2,920.33
Herranz y Cia.		May 13, 1960	1,489.76
Infanta Automobile Service	Feb. 1, 1960		1,167.56
Gonzales y Sanchez		May 18, 1960	397.00
Auto y Accesorios Vigia, S.A.		July 20, 1960	1,350.90
Ruben N. Veliz		Sept. 19, 1960	608.38
Francisco Hernandez		Sept. 20, 1960	2,737.79
Distribuidora Cubana de Productos Electricos, S.A.:		Oct. 19, 1960	6,748.02
	Jan. 31, 1961		17,081.72
Powe Machinery Co., S.A.	Nov. 17, 1960		1,255.06
Humara y Lastra	Jan. 1, 1961		211.20
Powe Equipment Co., S.A.	Jan. 9, 1961		<u>5,493.75</u>
		Total:	\$125,452.09

The evidence submitted reflects with respect to the \$43,346.81 owed by Stewart Auto Company, S.A., that the sum of \$11,449.17 was deducted by the claimant as Stewart Auto Company, S.A. commission. Accordingly, the amount authorized as commission is deducted and the above total reduced to \$114,002.92.

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, FCSC Claim No. CU-0049.)

Accordingly, in the instant claim, the Commission finds that the subject sums due were lost as a result of intervention by the Government of Cuba, and that in the absence of evidence to the contrary, such losses occurred on the respective maturity dates with regard to unpaid drafts maturing after September 29, 1959. However, with respect to the dates of loss as to those goods sold prior to September 29, 1959, the Commission finds that the losses occurred on September 29, 1959, the effective date of Law 568. The Commission further finds that in those instances in which payments were made by Cuban consignees, the losses occurred on the days after payments were made to the Cuban banks, where ascertained, or the days after notification of payments were made to claimant corporations.

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 date on which the loss occurred, to the date on which provisions are made for the settlement thereof, as follows:

<u>FROM</u>	<u>ON</u>
September 29, 1959	\$ 7,292.30
October 24, 1959	513.92
October 25, 1959	3,207.13
October 27, 1959	95.60
December 1, 1959	224.46
December 7, 1959	468.17
December 8, 1959	125.12
December 23, 1959	331.43
January 7, 1960	290.21
January 12, 1960	316.04
January 15, 1960	3,724.52
January 20, 1960	2,645.00
January 21, 1960	847.70
January 30, 1960	304.43
February 1, 1960	1,167.56
February 2, 1960	6,190.52
February 4, 1960	352.72
February 5, 1960	90.10
February 13, 1960	1,503.58
February 16, 1960	252.99
February 18, 1960	899.29
February 19, 1960	2,864.90
February 24, 1960	7,949.79
March 1, 1960	2,957.59
March 9, 1960	303.76
March 16, 1960	2,009.76
March 17, 1960	912.43
March 25, 1960	960.58
March 30, 1960	5,563.01
March 31, 1960	638.84
April 6, 1960	291.70
April 9, 1960	1,334.59
April 13, 1960	764.94
April 14, 1960	1,600.48
April 20, 1960	564.60
April 21, 1960	700.61
May 7, 1960	950.86
May 12, 1960	2,920.33
May 14, 1960	1,489.76
May 19, 1960	397.00
July 8, 1960	2,216.85
July 21, 1960	1,350.90
September 16, 1960	10,280.93
September 20, 1960	608.38
September 21, 1960	2,737.79
October 20, 1960	6,748.02
November 17, 1960	1,255.06
January 1, 1961	211.20
January 9, 1961	5,493.75
January 31, 1961	<u>17,081.72</u>

Total \$114,002.92

CERTIFICATION OF LOSS

The Commission certifies that BORG-WARNER INTERNATIONAL CORPORATION 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 One Hundred Fourteen Thousand Two Dollars and Ninety-two Cents (\$114,002.92), 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

NOV 27 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).)