

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

In the Matter of the Claim of

SOCONY-VACUUM OIL COMPANY, INC.
26 Broadway
New York 4, New York

Under the Yugoslav Claims Agreement
of 1948 and the International Claims
Settlement Act of 1949

Docket No. Y-304

Decision No. 993 & 993-A

Counsel for Claimant:

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Approved
12-29-54

FINAL DECISION

On June 30, 1954, the Commission issued a Proposed Decision, which was interlocutory in nature, with respect to claims for war damage and claims for takings by the Independent State of Croatia. Thereafter, claimant filed objections to that Proposed Decision, with accompanying brief, and, also, without abandoning its claim for the disallowed items, filed an "Alternative Amended Claim".

On November 15, 1954, the Commission issued a Proposed Decision making an award to claimant in the amount of \$2,350,000 plus interest in the amount of \$241,439. The claimant thereafter filed a "statement" with respect to that Proposed Decision, which, while not formal objections, will be treated as such.

In addition, the Government of Yugoslavia filed a brief as amicus curiae, objecting to the amount of the award as being excessive,

and we shall consider certain points there raised.

We are aware that the evaluation submitted by the Government of Yugoslavia was made by experts in great detail and over a considerable period of time. But we point out that the claimant, too, furnished expert opinion of value, and that the Commission also had before it the evidence of its own experts, who were entirely disinterested and qualified. The fact that the Commission finally based its decision on the evidence of its own experts is not intended in any way to impugn the abilities of the experts either of the Government of Yugoslavia or of claimant.

The brief submitted by the Government of Yugoslavia, is, however, under the misapprehension that the Commission did not award compensation on the basis of the net worth of the company. We wish to emphasize that the award here was based on net worth consistent with the Commission's past practice. While our finding approximated closely the evaluation found on a physical basis, we point out that it was less than our experts found on an earnings basis.

We have carefully considered these and all other objections in the brief filed by the Government of Yugoslavia, and while we appreciate the arguments advanced there and the assistance given the Commission in deciding this claim, we do not find in these contentions any basis for disturbing the findings in the Proposed Decision.

The claimant has first objected that the Proposed Decision awarded compensation for only 87 tankcars, although the record establishes that Yugoslavia nationalized at least 114 tankcars. As evidence that, at least 114 tankcars were taken, claimant refers to its Exhibit 89. This document, of Yugoslav origin, is an "inventory of rolling stock of tankcars as of August 31, 1946, after completion of

"changes executed according to the report of the Yugoslav State Railroads of July 15, 1948 (G.D. #17822 executed on August 31, 1948)". While the evidence as to the exact number of tankcars taken is conflicting, we consider claimant's objection well taken, and conclude that the number of tankcars taken by the Government of Yugoslavia was 114.

Claimant's second objection is that the Proposed Decision apparently did not include an adequate valuation for the Lascina land in the enumeration of "Land, Buildings & Equipment" in various localities, including Zagreb. The objection is based on an apparent discrepancy arising from the total of \$490,000 given as "Increase in Land Values over figures at which carried". However, a review of this item shows that it should have been described as "Increase in Land and Other Values over figures at which carried". Accordingly, the apparent discrepancy is removed and we find there is no basis for this objection. Claimant, in the alternative, states that if an adequate valuation of the Lascina parcel was included, the Proposed Decision appears to have awarded negligible or no compensation for claimant's marketing assets, other than tankcars and land. We have carefully reviewed the available evidence of value as to marketing assets and conclude there is no basis for this contention.

Finally, claimant reiterates its objections to the Proposed Decision of June 30, 1954. We shall not go into detail with respect to the sense of these objections, since the subject has been exhaustively treated in the Proposed Decision and previous briefs filed by claimant. We shall, however, comment briefly on the following state-appearing in claimant's brief accompanying the objections to that Proposed Decision:

"In interpretation of the Agreement between the two Governments in this connection, the Proposed Decision (p. 20) erred in giving credence to Yugoslav domestic law or interpretation."

If, to point out the attitude of the Yugoslav Government toward takings by Croatia is "giving credence" to Yugoslav domestic law, the Proposed Decision did so give credence. But to conclude that this was error is non sequitur, for we are not impressed with the suggestion that recourse may never be had to domestic legislation in inquiring as to the intent of a party to an international agreement. We find that there is no merit to claimant's objections to the Proposed Decision of June 30, 1954, and it is affirmed in all respects.

Thirty days having elapsed since the claimant herein and the Government of Yugoslavia were notified of the Proposed Decisions on the above claim and the brief filed by the Government of Yugoslavia and the objections filed by claimant having received due consideration, the Commission hereby adopts such Proposed Decisions as its Final Decision on the claim, except that the value of all property of claimant which was taken by the Government of Yugoslavia is found to be \$2,390,000.

Accordingly, in full and final disposition of this claim, an award is hereby made to Socony-Vacuum Oil Company, Inc., in the amount of \$2,390,000 with interest thereon in the amount of \$245,548.60.

Done at Washington, D. C.

DEC 30 1954

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Washington, D. C.

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PROPOSED DECISION OF THE COMMISSION

This is a claim by Socony-Vacuum Oil Company, Inc., a New York corporation, and is for the taking by the Government of Yugoslavia of its wholly-owned subsidiary, the Standard Vacuum Oil Company of Yugoslavia, Inc. (hereafter referred to as "the Yugoslav Company"), a Yugoslav corporation with its main office at Zagreb.

Initially, the claimant stated the claim as follows:

| | |
|---|--------------|
| Real Estate | \$ 320,000 |
| Manufacturing Plant | 4,146,904 |
| Marketing Assets | 1,759,408 |
| Current Assets, net | 3,032,768 |
| Sequestration, Taking and Use for the period from April 11, 1941 to May 18, 1945, valued at \$400,000 per annum | 1,633,333 |
| Termination Allowances, Pensions and Death Benefits | 432,826 |
| Total Value | \$11,325,239 |
| Interest | 3,226,678 |

ok.
11-15-54

on
8/25/54
7/21/54

AML

The Commission by an interlocutory decision dated June 30, 1954 (No. 993), held: (1) That a claim for war damage to property is not compensable under, and was not settled by the Agreement of July 19, 1948 between the Governments of the United States and Yugoslavia; (2) That a claim of a nationalized enterprise against the Government of Yugoslavia for war damage to its property is not compensable under that Agreement; and (3) that the taking of property by the Independent State of Croatia, and damage to property while under its control and administration, are not compensable under that Agreement.

Thereafter, claimant, without abandoning its claim for the disallowed items, filed an "Alternative Amended Claim." One alternative is stated as follows:

| | |
|--|----------------|
| Real Estate | \$ 620,000 |
| Refinery Plant | 3,875,000 |
| Marketing Assets | 1,530,000 |
| Inventories of Products, Storehouse, and Iron Barrels and Drums | 972,000 |
| Sequestration and Use from May 18, 1945 to December 5, 1946 | 1,238,400 |
| Termination Allowances, Pensions and Death Benefits | <u>444,892</u> |
| Total Value* | \$ 8,680,292 |

The other alternative, which is allegedly based upon valuation principles established in the Commission's decision on the claim of Joseph Senser (Decision No. 663), is stated as follows:

| | |
|---|----------------|
| Real Estate | \$ 580,664 |
| Refinery Plant | 3,521,904 |
| Marketing Assets | 1,403,933 |
| Inventories of Products, Storehouse and Iron Barrels and Drums | 972,000 |
| Sequestration and Use from May 18, 1945 to December 5, 1946 | 1,238,400 |
| Termination Allowances, Pensions and Death Benefits | <u>444,892</u> |
| Total | \$ 8,161,793* |

* Plus interest at 6% per annum to August 21, 1948.

Claimant also asserts that its "agent" has filed protests with the railroad administration of West Germany against transfer to Yugoslavia of 17 tank cars owned by the Yugoslav Company, said to be held in West Germany by claimant's agent under a Power of Attorney. Claimant alleges that these tank cars are understood to have been located in the Allied Zones of occupation on the date of nationalization, that they are not included among the tank cars which Yugoslavia purported to nationalize in 1946, and that any purported nationalization of the 17 tank cars by Yugoslavia was not confirmed by or compensated by the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act of 1949. The value of the cars has not been included in the claim. In the circumstances, we are not called upon to decide and do not decide whether the cars were nationalized or otherwise taken by the Government of Yugoslavia.

The Commission finds it established by evidence of record that 20 percent or more of claimant's capital stock has been owned by United States nationals since February 21, 1941, at least. Accordingly, the Commission holds that claimant is eligible to receive an award under the nationality provisions of the Yugoslav Claims Agreement of 1948.

OWNERSHIP

At all times material to this claim, the Yugoslav Company had 350,000 shares of stock issued and outstanding, of which 96,000 were bearer shares and 254,000 were nominative shares. Of these, 93,000 bearer shares and all the nominative shares were directly owned by claimant. Claimant has also established that the remaining 3,000 bearer shares were held in trust for its benefit by six persons, each holding 500 shares, who are United States citizens. All shares were deposited with the Yugoslav Consulate General in New York City on December 19, 1946,

pursuant to Article 1, paragraph 2, of the Decree Concerning the Issuance and Reporting of Stocks of June 17, 1946 (Official Gazette No. 50 of June 21, 1946). We find, therefore, that the Yugoslav Company was a wholly-owned subsidiary of the claimant.

NATIONALIZATION AND OTHER TAKING

By an Executive Order of May 12, 1945 (Official Gazette No. 33 of May 18, 1945), a Yugoslav Government oil enterprise, "Yugopetrol" was established for the import, export and distribution of crude oil and its finished products. While the ownership of private petroleum companies remained unaffected by this Order, it was followed by constantly increasing interference with the operations of the Yugoslav Company. On July 10, 1945, the Yugoslav Company was notified by the Croatian Assistant State Secretary, Ministry of Industry and Mining, that he was appointing one Janko Tompa as a "Delegate" to the Company. The Delegate was to countersign all correspondence of the Company. The notification concluded:

"The nomination of the delegate does not change the private legal relations of the Company and its Management remains in full power on condition that the delegate is authorized to hold back any decision of the Board of the Company from delivery up to the passing of a final decision on the part of this Ministry."

On August 7, 1945, on the basis of a decision of the Yugoslav Ministry of Commerce and Supplies, the Zagreb branch office of Yugopetrol was ordered "urgently" to proceed to take over "all existing stocks of finished goods" from ten named companies, including claimant's subsidiary. By decision of the Ministry of Mining of August 14, 1945, the administration of all refineries was to be taken over by the Naphtha and Gas Combine of Yugoslavia, and on September 22, 1945, claimant's subsidiary was advised by the Combine that it had established a committee

"which will take over the administration on the spot, and in agreement with the representatives of the local people's authorities set up a temporary management." A protocol "on the taking over of the entire business of the operation of the Standard-Vacuum Oil Company of Yugoslavia, Inc., Refinery at Bos. Brod" was executed on September 26, 1945. On April 20, 1946, a protocol was executed by the Naphtha and Gas Combine and Yugopetrol pursuant to a meeting held the day before, of a joint committee composed of representatives of the two agencies. By this protocol, Yugopetrol was to take over operation of the refinery at Bosanski Brod from the Combine. The protocol further provided:

"5) Yugopetrol will take over the inventory of the investments on the basis of the investments inventory ledger, taking into account destruction and damage reported in a regular way to Standard-Vacuum, and the material on the basis of warehouse cards closed (sic) as of April 20th, 1946. Yugopetrol will take over the stocks on the basis of the executed stock taking. The finished products both from stocks and from storehouse material will be partially invoiced to Yugopetrol, and partially left in safe-keeping according to the following specification."

The "specification" referred to lists finished products which either were invoiced to Yugopetrol or which the latter "will take over for safe-keeping." In addition, all "storehouse material" not needed by Yugopetrol could be handed back to the Combine and Yugopetrol "will take over all merchandise found at the refinery which suits the conditions in the market."

A decree of July 19, 1946, (Official Gazette No. 59 of July 23, 1946), designated the "Enterprises of General National Importance." Appended to that decree was a list of such enterprises, and No. 246 on that list is claimant's subsidiary. By the Law Regarding the Nationalization of Private Economic Enterprises of December 5, 1946

(Official Gazette No. 98 of December 6, 1946), enterprises previously declared to be of general national importance were declared nationalized on the effective date of the law, namely, December 5, 1946.

We find, therefore, that the Yugoslav Company was nationalized on December 5, 1946. Claimant alleges that part of the Yugoslav Company's real property and other assets were taken prior to that date, and has submitted evidence confirming the taking of certain assets at various times during 1945 and 1946. However, the matter is relatively unimportant because it will affect only the amount of interest to be awarded. Therefore, December 5, 1946 will be treated as the date on which all property of the Yugoslav Company was taken by the Government of Yugoslavia.

SEQUESTRATION AND USE

The claimant asks \$1,238,400, in the amended claim for the sequestration and use of the Yugoslav Company from May 18, 1945, until December 5, 1946, the date of nationalization. Claimant estimates such loss at \$800,000 a year.

Generally, international and domestic arbitral tribunals in the determination of international claims allow compensation for indirect damages such as loss of use of property, loss of profits and the like, if such losses are reasonably certain and are ascertainable with a fair degree of accuracy. They do not allow compensation for indirect damages if they are conjectural or speculative or are not reasonably certain or susceptible of accurate determination. See Borchard, Diplomatic Protection of Citizens Abroad, Sections 172, 173 and cases cited therein.

Claimant's evidence on this point, in the amended claim, depends entirely on a statistical projection by Arthur David Stewart (Exhibit 63), and we shall comment briefly on this evidence.

Mr. Stewart first shows a trend of the actual consumption of petroleum products in Yugoslavia between 1933 and 1939. These years, it is noted, are among the most advantageous claimant could select, since there was a steady decline from 1930 to 1934. Since no factual data allegedly could be found relating to the years 1940-1947, inclusive, he has projected the trend line for 1933-1939 to 1948. He next "proves" his projection by showing its close proximity in 1948 to "indicated actual consumption" based on "published sources" which are not identified, and arrives at the figure of \$856,000 per year as indicated post-war net earnings.

However, this statistical projection cannot be substituted for facts, and the evidence shows that the criteria upon which the projection is based did not in fact exist. Thus, Mr. Stewart states:

"The Subsidiary's plant and equipment in pre-war operation would have been substantially adequate to refine and distribute the estimated sales load of 950,000 barrels per year in the early post-war period."

The "plant and equipment in pre-war operation," however, were far removed from the actual state of the plant and equipment in 1945. In greater detail we shall subsequently discuss the war damage suffered by the Yugoslav Company. It is sufficient here to note that in May 1945 the plant was heavily damaged and had been almost entirely out of production the proceeding four years.

We are of the opinion that it has not been proven by the foregoing evidence that any profits would have been realized by claimant's subsidiary. In 1945 and 1946, claimant's subsidiary, in common with most of the Yugoslav economy, was recovering from severe war losses, as has been mentioned. The Commission has in numerous decisions taken notice of the chaotic economic conditions in Yugoslavia during and after the

war and their effect upon industries generally. (See, for example, Decision No. 663, In the Matter of the Claim of Joseph Senser.)

Because of these circumstances, the expectation or calculation of profits would indeed be most tenuous.

For the foregoing reasons, the claim for sequestration and use prior to the date the subsidiary was nationalized is denied. However, claimant may and will receive an award in terms of interest for the loss of the use of the compensation it was entitled to receive on the date of the nationalization of its subsidiary to the date of payment by the Government of Yugoslavia. Both the Yugoslav Claims Agreement of 1948 and the International Claims Settlement Act contemplate the allowance of interest by the Commission for the delay in payment of compensation by the Government of Yugoslavia.

TERMINATION ALLOWANCES, PENSIONS AND
DEATH BENEFITS

With respect to this item of the claim, claimant alleges:

"Further on account of the aforesaid nationalization and other takings by Yugoslavia, claimant has disbursed or otherwise committed \$155,636.80 as of June 15, 1954, on account of termination allowance to the former employees (or their beneficiaries or designees) of the Subsidiary; had disbursed \$90,724.16 as of December 31, 1950 on account of pensions of all former employees who had served the Yugoslav Subsidiary for 20 years or more as of November 30, 1946 and were within 5 years of the normal retirement age of 65, or of any employees who had been retired prior to that date, and on account of death benefits; and had undertaken to remit future pension and death benefits estimated at \$198,531.08 as of December 31, 1950. All such disbursements were made in voluntary recognition of these employees' past services and devotion to duty, to the extent that the Yugoslav Subsidiary was rendered unable, by the aforesaid nationalization and takings by Yugoslavia, to make such payments pursuant to the non-contributory employee benefit plans theretofore established and maintained by the Yugoslav Subsidiary."

In two affidavits of Edward Peter Fischer, dated July 30, 1954, (claimant's Exhibits 80 and 81), the affiant states that:

" . . . although the Subsidiary's plan was voluntary and not strictly contractual, the arrangements were well established customary practices to the point of constituting normal obligations."

Admittedly, these payments were voluntary. Admittedly, many were made after July 19, 1948, the cut-off date fixed in the Agreement with Yugoslavia. They may be continued far into the future. It is our view that the Agreement with Yugoslavia does not cover such payments and that no basis exists for compensating claimants for them. This item of the claim must, therefore, be denied.

VALUATION OF PROPERTY

The claimant has operated in Yugoslavia, directly or through subsidiaries, since 1900. Standard Oil of Yugoslavia was formed in 1923 and merged with other controlled enterprises of the claimant in 1933. Claimant says its investment in Yugoslavia as of 1933 totalled \$3,457,764. Before World War II the Yugoslav subsidiary was engaged in the importation (principally from Roumania by barge or tank car), of crude oil, the refining of the crude oil at its refinery at Basanski-Brod (on the Sava River), into gasoline, kerosene, gas oil, fuel oil, asphalt, lubricating oils, greases, and related products and the distribution of such petroleum products throughout Yugoslavia. The subsidiary supplied about one-half of the Yugoslav demand for petroleum products, importing small quantities of better-grade products from the United States. The crude oil was brought by barge up the Danube River and its tributary, the Sava, during good weather and when the Sava was not too shallow in the summer and fall. During a portion of each year, therefore, crude oil had to be brought in by railroad tank car and claimant formerly had about 300 such cars. The refinery

had a rated capacity of about 1,000,000 barrels annually, but production ran well below the capacity with an average output of about 400,000 barrels during the 1934-1940 period. The 1938 production in 42-gallon barrels was:

| | |
|------------------|---------------|
| Gasoline | 108,000 |
| Kerosene | 117,000 |
| Gas - Diesel Oil | 92,000 |
| Fuel Oil | 70,000 |
| Lubricants | <u>40,000</u> |
| Total | 427,000 |

Because of bad roads and primitive communications, particularly in the more remote regions of Yugoslavia, and the lack there of bulk storage facilities and service stations, it became necessary to deliver petroleum products in barrels, drums, or tins. The subsidiary accordingly established an iron barrel factory with an annual capacity of 20,000 drums and barrels and a tin can factory for making primarily 5-gallon tins. Immediately prior to World War II, the subsidiary had on hand, or out with the trade on a reimburseable basis, approximately 70,000 barrels and drums. Thus, the evidence indicates that at the end of 1940 the subsidiary, in addition to its manufacturing center at Brod, had distribution facilities, stations, repair shops, and inventories scattered throughout Yugoslavia. It owned storage facilities, land, and buildings generally at the principal population centers - at Zagreb, Ljubljana, Maribor, Novi Sad, Split, Kotar, Sarajevo, Zemun, etc. About 240 people were employed in the distribution end of the business while 450 were employed at the Brod plant.

The Germans occupied the Brod refinery and took over most of the facilities of the subsidiary during the invasion in April, 1941. The evidence of record discloses that at this time a substantial portion of the petroleum products on hand were taken by the occupiers (or by the Puppet Croatian Government which seized the property), without payment.

Some facilities appear to have been taken over by the Italian occupiers and some machinery moved out of the refinery.

From the time of the April 1941 invasion until the nationalization by the Government of Yugoslavia on December 5, 1946, not much is known as to the total lootings, destruction and loss of the subsidiaries' properties. The only definite thing known about this period is that a state of chaos and confusion existed. Initially much looting must have occurred as the German war machine needed petroleum and as the war progressed bombings obviously destroyed considerable property. For example, the evidence shows that the refinery at Brod was bombed not less than twenty times. In addition, the evidence indicates that the day before the Germans retreated on April 18, 1945, they mined certain facilities at Brod and blew them up. An affidavit submitted by claimant discloses that mines touched off, destroyed or heavily damaged two large steam boilers, an electro-generator, a steam engine, a Diesel engine, two switchboards, etc., and the office building was set on fire and totally gutted with all records, furniture and equipment burned up.

The evidence further indicates that production practically ceased during the occupation, dropping to not more than 5% of normal production. Some evidence indicates that the refinery was idle except for one brief period in the Spring of 1944 when 5,000 tons of crude oil were worked up. Other evidence indicates that the occupiers issued an order prohibiting any sale of petroleum products. No reliable evidence is available to the Commission to establish the damage suffered from lack of proper maintenance of the subsidiary's machinery, equipment and facilities.

Against this somewhat confused picture, the claimant has evaluated its losses in great detail, supported by numerous affidavits of experts and provides voluminous documentation in respect of each category of

property nationalized by the Government of Yugoslavia. The Government of Yugoslavia has filed a voluminous report, by its experts, operating under the supervision of two courts, and its evaluates in detail the various categories of property which it admits were nationalized by it. The Commission's financial experts and industrial engineers inspected the properties in 1954 and have attempted to reconstruct the facts as they existed at the time the properties were taken.

A. EVIDENCE FROM THE CLAIMANT

Among evidence filed by claimant are copies of balance sheets and profit and loss statements for the years 1936 through 1940. An analysis of these data indicates the following approximate earnings and net book worth by years:

| <u>YEAR</u> | <u>EARNINGS</u> | <u>NET BOOK WORTH</u> |
|---------------------------|---------------------|-----------------------|
| 1936 | 20,497,000 dinars | 201,160,000 dinars |
| 1937 | 14,087,000 " | 191,173,000 " |
| 1938 | 8,953,000 " | 185,943,000 " |
| 1939 | 24,575,000 " | 201,295,000 " |
| 1940 | <u>21,668,000 "</u> | <u>198,973,000 "</u> |
| Approximate Average... | 18,000,000 " | 196,000,000 " |

(A conversion of these dinars into dollars on the basis used by the Commission in determining values as of 1938, i.e. 44 dinars for \$1, indicates average earnings of about \$400,000 and average net book worth of approximately \$4,450,000.)

The 1940 balance sheet submitted was audited by independent chartered accountants and although they did not make a detailed audit, they did take a physical inventory at the refinery. This balance sheet appears to be especially significant as it reflects an independent view of the status of the subsidiaries' affairs less than four months before the invasion and subsequent confusion. In summary condensed form, the balance sheet shows, with fixed assets reduced by the depreciation reserves applicable:

DECEMBER 31, 1940

Assets

| | |
|-------------------------|---------------|
| Cash | \$ 1,167,101. |
| Receivables | 530,075. |
| Inventory | 3,088,485. |
| Land | 87,422. |
| Manufacturing Plant | 431,801. |
| Distribution Facilities | 49,881. |
| Equipment with Trade | 24,744. |
| Service Station Plan | 3,215. |
| Vehicles | 11,921. |
| Tank Cars | 121,211. |
| Office Buildings | 14,980. |
| Furniture and Fixtures | 3,416. |
| Miscellaneous Assets | 42,414. |
| | <hr/> |
| TOTAL ASSETS | \$ 5,576,666. |

Liabilities

| | |
|-----------------------------|---------------|
| Capital Stock | \$ 3,126,225. |
| Payables | 656,026. |
| Tax and Accrued | 973,553. |
| Intercompany | 157,049. |
| Dividends Payable | 169,611. |
| Miscellaneous | 43,775. |
| Earned Surplus | 450,427. |
| | <hr/> |
| TOTAL LIABILITTES | \$ 5,576,666. |

The largest single item of the claim deals with the refinery plant at Bosanski-Brod. Therefore, we will comment in some detail on the nature of the evidence claimant has adduced in support of its valuation of the plant.

This valuation is primarily founded on the affidavit of Ralph W. Clark, Chief Estimating Engineer of claimant's Refinery Engineering Division on the basis mainly of a detailed description of the refinery made available to him by Frederick William Langnev, former Technical Advisor for refinery utilities to the Manufacturing Department of claimant. Mr. Langnev's pre-war duties covered refineries of the claimant in France, Hungary, Italy, Yugoslavia and Roumania.

In the claim as originally filed, Mr. Stewart utilized a chart (claimant's Exhibit 13), setting forth various indices used in estimating construction costs taken from the Engineering News Record, 35th Annual Survey of Costs and Trends, dated March 23, 1950. Based upon an index of 100 for 1913, he states that the ENR indices stood at 312 in May 1945, "the date of assumption and continuation of control and sequestration by the present Yugoslav Government" and 380 in December, 1946, "the date of enactment of the Yugoslav nationalization law." Based on the index, therefore, claimant arrives at an increase of 22% from prices in May 1945 to December 1946.

Mr. Clark in his affidavit (claimant's Exhibit 58), estimates replacement values as of May 1945 on the basis of replacement new less 25 per cent depreciation "in the light of the prevailing policy and practice," as described in Mr. Langnev's affidavit (claimant's Exhibit 56).

In the first alternative amended claim, claimant has used the same method of valuation except that it has deducted \$625,000 from \$4,500,000, the minimum net replacement cost of the refinery assets as of December 5, 1946, to arrive at \$3,875,000 for the refinery plant.

In the second alternative amended claim, which claimant states is based upon evaluation principles established in the Claim of Joseph Senser, supra, claimant takes the figure of \$4,146,904, Clark's appraisal as of May 18, 1945, less \$625,000 for war damage, to arrive at \$3,521,904. It is not clear to us, however, how this method has anything to do with the Senser decision which was based on 1938 values.

While we are cognizant of claimant's difficulties in securing evidence of probative value and appreciate the industry and acumen manifested in its approach to the problem, we nevertheless wish to make

certain observations on the nature of the evidence of value claimant has filed.

It is to be noted especially that Mr. Clark has never visited the refinery and that Mr. Langnev, on whom he mainly relies for its description, last visited the plant on October 14, 1940, "when all operating units were on normal production and the physical condition of all plant equipment was good." Furthermore, the Engineering News Record Index is made up of only four items--structural steel, cement, lumber and labor, and, as claimant concedes, does not pertain particularly to the petroleum industry. It is also noted that there are two ENR Indices -- a construction index utilizing common labor and a building cost index utilizing skilled labor. Claimant has not shown which it used, nor has it related the index to construction costs in Yugoslavia. As to depreciation, 25 per cent was arbitrarily applied with no factual basis, and again we point out that Mr. Clark had never seen the plant and Mr. Langnev has not seen it since 1940. These same considerations apply to other items of the claim which are likewise based on hearsay as to the quantum and condition of the property taken and the utilization of post-war prices in the United States.

B. EVIDENCE FROM THE GOVERNMENT OF YUGOSLAVIA

The report of the Yugoslav Government describes the property taken by nationalization on December 5, 1946 and indicates that certain properties, materials, inventories, etc., claimed by claimant to have been nationalized were not so nationalized as they had been destroyed or carried away during the war. The Yugoslav report relates that the subsidiary suffered ". . . very serious damages due to the bombing, both by the German and Allied air forces."

The Yugoslav Government refused to include valuations for properties acquired " . . . during the war as the result of Company's operations when the same was in the hands of the enemy, operating for his war machine." This reference is to parcels of land purchased by the subsidiary in 1942 in the vicinity of Zagreb and in Brod.

The Yugoslav appraisal Committees arrived at values for the properties located and taken much at variance with claimant's values. The Yugoslav evaluations of the physical and other property taken are as follows (based on our calculations of 44 dinars for \$1):

| | |
|----------------------|---------------|
| Refinery at Brod | \$ 710,900 |
| Zagreb Properties | 58,727 |
| Ljubljana Properties | 4,337 |
| Maribor Properties | 19,633 |
| Novi Sad Properties | 26,688 |
| Zemun Properties | 58,409 |
| Sarajevo Properties | 4,800 |
| Kotar Properties | 2,729 |
| Split Properties | 12,411 |
| 87 Tank Cars | <u>94,997</u> |

| | |
|-----------------------------|--------------|
| Physical Property | \$ 1,003,632 |
|-----------------------------|--------------|

Values according to financial records:

| | |
|--|----------------|
| Excess of Non-Fixed Assets over Liabilities | <u>346,520</u> |
|--|----------------|

| | |
|------------------------------|--------------|
| Total Assets Taken | \$ 1,350,152 |
|------------------------------|--------------|

However, the contention is made that the Yugoslav subsidiary purchased 2,948,590 kilos of grease oil from the parent for \$309,681.21 and that this petroleum was never delivered. Conversely, the subsidiary owed the parent \$161,182.50 on "current account." Each of these items is included in the calculation used to arrive at the net value of non-fixed assets over liabilities of \$346,520. The Yugoslav Government states that if the difference between the intercompany items of

\$148,498.71 should be paid to the claimant, claimant would be receiving this amount twice - (a) once when it received payment for petroleum not delivered and (b) once more when it is included in the compensation award.

The Yugoslav Government contends that only 87 tank cars of the 200 claimed were found and nationalized. While claimant alleges that 50,000 drums and barrels were intact at the time of nationalization, no specific mention is made by the Yugoslav evaluators as to the total number of drums or barrels taken, and it is not clear whether they were evaluated or where such evaluation, if any, appears.

C. EVIDENCE AND DATA OBTAINED BY THE COMMISSION

The Commission's investigators and experts have examined the properties in Yugoslavia and the available financial data of the subsidiary. In substance, their evidence shows that the processes used in the refinery plant were largely obsolete; that there had been considerable looting and that the distribution facilities were in large part destroyed, damaged or lost during the war; that the plant was largely inoperative during the war; and that the property at the time of taking, based on 1938 values, was worth substantially more than the value placed upon it by the Government of Yugoslavia, and substantially less than the amount claimed by claimant.

The evaluations made by our experts on different recognized bases took into consideration the existing condition of the property

at the time of confiscation and such conditions controlled their appraisals. They appraised only the properties which were known to exist at the time of taking.

From a financial basis our experts, after necessary adjustments, found that the enterprise was worth approximately \$2,400,000 at the time of confiscation. In summary, they found the following values:

| | |
|--|---------------------|
| Net Book worth | \$ 3,598,864 |
| Increase in Land Values over figures at which carried | 490,000 |
| | <u>\$ 4,088,864</u> |
| Less War Damage and Losses | 1,680,000 |
| | <u>\$ 2,408,864</u> |

From a physical basis primarily, our experts after necessary adjustments for war damage and losses, found that the enterprise as taken by the Government of Yugoslavia was worth approximately \$2,350,000 at the time of confiscation. In brief summary, they found the following values:

Bosanski Brod:

| | |
|-------------------------|------------|
| Land | \$ 109,409 |
| Buildings | 258,720 |
| Machinery and Equipment | 801,500 |

Land, Buildings & Equipment at:

| | |
|----------------|---------------------|
| Zagreb | 197,654 |
| Ljubliana | 24,808 |
| Maribor | 41,940 |
| Novi Sad | 69,183 |
| Zemun | 58,409 |
| Sarajevo | 13,694 |
| Kotar | 5,141 |
| Split | 22,069 |
| Tank Cars (87) | 125,198 |
| Barrels | 221,591 |
| | <u>\$ 1,949,316</u> |

* Inventory, Cash & Miscellaneous

| |
|---------------------|
| 399,641 |
| <u>\$ 2,348,957</u> |

* The Commission's evaluators in 1954 were, of course, unable physically to inspect the inventories and cash as they existed in 1946. From information obtained from one of the two "liquidators" of the subsidiary's assets and from information respecting such items found in the appraisal report of the Government of Yugoslavia, and from other evidence, the amount of \$399,641 has been arrived at as the fair and reasonable value of the inventory, cash and miscellaneous items nationalized.

Based solely on a times earning basis, our experts found the enterprise, after deducting war damage and losses, to be worth less than \$2,000,000 at the time of confiscation.

WAR DAMAGE AND LOOTING

Claimant has submitted evidence respecting individual instances of damage and looting and states that the losses therefrom were heavy, but not nearly so heavy as a November 1945 subsidiary report to the Yugoslav Government indicates. The subsidiary's report (which claimant indicates was exaggerated to create a larger claim against enemy countries), had assessed the total physical damage at 299,477,790 dinars, or \$6,800,000. Claimant alleges that not more than 100 tank cars and not more than 20% of the barrels and drums were destroyed or lost during the war.

The evidence shows that when the Germans first took over the Brod plant they took 92,000,000 dinars of petroleum products paying only 70,000,000 dinars therefor. A substantial number of tank cars and barrels were taken without payment by the occupiers and apparently goods and containers at various locations were taken by the occupying army at will when needed, or in other ways became lost. Evidence supplied by claimant estimates the over-all war damage as being between \$500,000 and \$750,000 to the refinery and related assets, about \$315,000 for tank cars, and \$40,000 - \$50,000 to other marketing assets.

The Yugoslav Government has furnished with its evaluation report a lengthy list of property destroyed or damaged and evaluates the damage from German and Allied bombings to physical property at 24,980,000 dinars (\$567,500) exclusive of financial items.

Our investigators found that in addition to more than 20 bombings at the refinery, certain buildings, machinery, equipment and facilities were destroyed, damaged and missing at the time of nationalization.

Our experts evaluated the total war damage as follows:

| | |
|---|--------------------|
| Looting, or Damages to, or Destruction of Manufacturing and Marketing Assets | \$ 750,000 |
| Looting, or Damages to, or Destruction of Furniture, Tanks, Pumps, Equipment, etc. | 65,000 |
| Looting, or Damages to, or Destruction of Tank Cars | 315,000 |
| Looting, or Damages to, or Destruction of Inventory | 500,000 |
| Looting, or Damages to, or Destruction of Barrels and Drums | 50,000 |
| | <u>\$1,680,000</u> |

DECISION ON VALUE

Based upon all the evidence and data before it, the Commission concludes that the value of the property actually taken by the Government of Yugoslavia by nationalization on December 5, 1946, based on 1938 values, was \$2,350,000.

The contention of the Government of Yugoslavia that land acquired by the subsidiary in 1942 should not be included in its assets is not persuasive. The properties were purchased out of the subsidiary's income and in our opinion belonged to the subsidiary at the time of nationalization.

The Government of Yugoslavia contends that from any award made, the sum of \$148,499 should be deducted and transmitted to the Government of Yugoslavia. The basis for this contention is that the subsidiary's books carry an inventory "in-transit" item of 16,011,373 dinars as an asset representing 2,948,590 kilograms of grease oil purchased from the parent (claimant), and paid for but never delivered. In arriving at balance sheet values of 15,246,891 dinars the Yugoslav appraisers included this item as an asset, offsetting it in part by a payable of 8,099,421 dinar item owed by the subsidiary to the claimant. The difference, 7,911,952 dinars or \$148,499, has been allowed by the Yugoslav Government in its evaluation.

The claimant did not include in its claim the so-called "in-transit" item as an asset of the subsidiary. In both the original claim and the

alternative claim it pointed out that inasmuch as the inventory was not subject to taking, i.e., not located in Yugoslavia, no taking thereof was possible.

Similarly, the Commission's evaluators have not included the "in-transit" inventory item in their evaluations.

The claim of the Government of Yugoslavia that it is entitled to step into the shoes of the claimant for a portion of the claimant's award, i.e., \$148,499, must, therefore, be rejected.

AWARD

On the above evidence and grounds, this claim is allowed to the extent indicated, and an award is hereby made to Socony-Vacuum Oil Company, claimant, in the amount of \$2,350,000, with interest thereon at 6% per annum from December 5, 1946, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$241,439.

Dated at Washington, D. C.

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