

survivors of a prisoner of war and awarded compensation on that claim to the five survivors totalling \$15,070.00. A determination was also issued on another claim, which had been received during 1980 but not acted upon. This claim was denied for lack of sufficient evidence to establish that the serviceman upon whom the claim was based had been in a prisoner of war status. The Commission is aware of two potential prisoner of war claims that could be filed and considered during calendar year 1982.

The limited number of potential claims come from a few members of the Armed Forces who are still listed as missing in action. As these cases are reviewed by the pertinent offices within the Department of Defense and closed out, claims are filed by the appropriate survivors of those servicemen.

EXHIBIT

Statistics as of December 31, 1981
As Certified to the Treasury Department

Prisoner of War and Civilian Internee Claims Programs

Type of Claim	Claims	Denials	Awards	Amounts
Prisoner of War	633	3	630	\$4,770,259
Survivor of Prisoner of War	217	118	99	540,407
Civilian Internee	40	0	40	227,617
Survivor of Civilian Internee	2	0	1*	810
Total	892	121	770*	\$5,539,093

*One claim consolidated with award granted in Civilian Internee Claim

V. PROGRAMS COMPLETED IN 1981

A. FINAL REPORT ON THE SECOND CHINA CLAIMS PROGRAM

Under the provisions of Title V of the International Claims Settlement Act of 1949 [78 Stat. 110 (1964), 22 U.S.C. Sec. 1643-1643k as amended by Public Law 89-780, approved November 6, 1966, 80 Stat. 1365], the Commission was given jurisdiction over claims of nationals of the United States against the Chinese Communist regime (the Government of the People's Republic of China) arising since October 1, 1949, for losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property of nationals of the United States. Pursuant to this authorization, in the First China Claims Program, the Commission considered claims that arose between October 1, 1949, and November 6, 1966, the date on which the program was authorized. That program was completed on July 6, 1972, pursuant to a statutory mandate in the enabling legislation.

On May 11, 1979, a claims settlement agreement was formally signed by the Governments of the United States and the People's Republic of China. The agreement settled all claims of nationals of the United States against the Government of the People's Republic of China for losses of property, which occurred between October 1, 1949 and the date of the agreement, resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against such property by that Government (see Exhibit 2 herein).

Under Section 4(a) of Title I of the International Claims Settlement Act of 1949 [Public Law 81-455, approved March 10, 1950, 64 Stat. 12, 22 U.S.C. 1623], as amended, the Commission is given jurisdiction to receive, examine, adjudicate and render final decisions with respect to claims of nationals of the United States included within the terms of any claims agreement concluded between the Government of the United States and a foreign government

(exclusive of governments against which the United States declared the existence of a state of war during World War II), arising out of the nationalization or other taking of property. In this section the Commission is directed to decide claims in accordance with provisions of the applicable claims agreement and the principles of international law, justice and equity.

Prior to the agreement, claims for losses in China that may have arisen between November 6, 1966 and May 11, 1979 had not been adjudicated. Therefore, under the authority granted in Section 4(a) of Title I of the Act, on June 1, 1979 the Commission commenced the administration of a brief Second China Claims Program limited to any claims of U.S. nationals for losses in China arising between November 6, 1966 and May 11, 1979, the date of the claims settlement agreement.

The official filing period for this program, which began on June 1, 1979 and ended on August 31, 1979, was announced by notice published in the Federal Register on June 1, 1979. Additionally, a press release issued on May 30, 1979 announcing the Second China Claims Program was mailed to 251 news services. The Commission also mailed notices of the program to 256 potential claimants who had expressed an interest in filing claims against the People's Republic of China after the First China Claims Program was completed in 1972. On February 26, 1981, following the issuance of Proposed Decisions on all claims and completion of a majority of the oral hearings on claims in which such were requested in this program, as discussed hereinafter, the Commission published notice in the Federal Register that July 31, 1981 had been set as the completion date for the Second China Claims Program. Copies of that notice were mailed to all claimants who had filed objections to the Proposed Decisions issued by the Commission on their claims. On July 31, 1981, the Commission completed the Second China Claims Program.

The period during which losses must have occurred for favorable action to be taken on claims in the Second China Claims Program was established because the Congress of the United States had previously made provision under Title V of the Act for the filing and adjudication of claims by nationals of the United States for property losses in China that arose between October 1, 1949 and November 6, 1966. Congress had also mandated that the claims program must be completed by July 6, 1972. Accordingly, the Commission concluded that its jurisdiction over such claims expired on July 6, 1972, and that it no longer had the authority to accept and take favorable action on these claims.

This situation was not unique in the programs that the Commission had been authorized to administer in the past. Subsequent to completion of claims programs against the Governments of

Bulgaria, Hungary and Rumania on August 9, 1959, the Government of the United States reached claims agreements with those governments. The Commission was unable to implement the claims agreements under Title I of the Act without legislative authorization because the United States had declared the existence of a state of war against those countries during World War II. In each case the Congress enacted a second claims program by amending Title III of the International Claims Settlement Act of 1949, limiting the compensable claims to those for losses which occurred after the period covered by the first claims programs. Those programs are discussed further in Section VI of this report.

Following the legislative precedents in these second programs which precluded the favorable consideration of claims that arose during the period covered by the first programs, the Commission concluded that it did not have the jurisdiction to consider claims against the People's Republic of China that arose prior to November 6, 1966 and after May 11, 1979, the date of the claims settlement agreement.

During the Second China Claims Program eighty-two claims were received by the Commission. Following the end of the filing period on August 31, 1979, the Commission's legal staff carefully reviewed the claims and assisted the claimants and their counsel of record in developing the claims for consideration by the Commission. By October 20, 1980, Proposed Decisions had been issued by the Commission on all eighty-two claims, all of which were denials. Claimants filed objections to the Proposed Decisions of the Commission on forty-nine claims and oral hearings were requested on twenty-one of these forty-nine claims. The Commission entered its Proposed Decisions as Final Decisions on the thirty-three claims in which no timely objections were filed.

The Commission scheduled oral hearings on twenty-one claims during January, February, and March of 1981. Oral hearings were held on fourteen of these claims. Oral hearings were not held on the other seven claims for the reason that either the oral hearings were cancelled at the request of the claimants or the claimants did not appear at the scheduled time and a postponement was not requested. These seven claims, along with the twenty-eight claims in which oral hearings were not requested, were considered by the Commission in hearings on the record following the submission of additional evidence by the claimants. Following an oral hearing one claimant requested permission to withdraw the claim. The Commission granted the request and entered an Order of Withdrawal on the claim.

After careful consideration of the complete records of each of the remaining forty-eight claims in which objections were filed to the Proposed Decisions, the Commission issued Final Decisions granting awards to three claimants in two claims and affirming the

Proposed Decisions denying the other forty-six claims. Subsequent to the issuance of these Final Decisions, the Commission received eight requests for reconsideration of the Final Decisions issued in seven claims. These requests were treated as petitions to reopen provided for by § 531.5(1) of the Regulations of the Commission. An oral hearing was held on one petition to reopen to receive testimony from a claimant's relative who had recently emigrated from the People's Republic of China and an award granted. (See the *Claim of Su Jan Lee*, Claim No. CN-2-053, Decision No. CN-2-040, Order and Amended Final Decision reported at page 22 *infra*.)

The other seven petitions to reopen were denied by the Commission, as was one request to reconsider one of those denials, because no new evidence was submitted which would have permitted the Commission to grant awards in those claims.

The Commission granted awards to four claimants in three claims, as indicated above, in which they satisfied the burden of submitting evidence that was sufficient to establish that takings of the claimed property occurred between November 6, 1966 and May 11, 1979. The nature of the evidence submitted which established compensability was different in each claim. In the *Claims of Lawrence C. Chang, Vera W. Chang, and Pauline Chang*, Claim Nos. CN-2-019, 022, and 023, Decision No. CN-2-070, claimants, with the aid of the Honorable Don Ritter, House of Representatives, and the Department of State, were able to obtain through the United States Consul General in Shanghai a written report from the Foreign Affairs Office of the Shanghai Municipal Government on the official land records regarding the status of their real property in Shanghai. On the basis of this report and available historical information regarding events in Shanghai, the Commission issued awards to Lawrence C. Chang and Pauline Chang in Claim No. CN-2-019, finding a taking of property by the Government of the People's Republic of China on December 27, 1966 and affirmed the denials of the other two claims (Claim Nos. CN-2-022 and CN-2-023) for lack of evidence to establish compensable takings during the requisite period.

The takings of real property and bank accounts in Shanghai on November 9, 1966 and November 30, 1966, respectively, were established in the above mentioned *Claim of Su Jan Lee* by sworn reports of lawyers in Shanghai who were requested by the claimant to investigate the status of his property. These reports included summaries of meetings with officials of the Bank of China, the Land Bureau, and the Municipal Government in Shanghai, which provided information sufficient to establish losses compensable in the Second China Claims Program. The evidence upon which the Commission made a finding of compensable losses in the *Claim of Ben C. Pond*, Claim No. CN-2-055, Decision No. CN-2-074, reported herein at

page 26), consisted of a number of letters from the claimant's nephew in Kuming City, People's Republic of China. These letters established that claimant's two parcels of real property were taken by the Government of Kuming City for two municipal improvement projects, one during 1969 and one during 1978.

The Commission was constrained to deny claims due to the lack of proof that the property upon which the claims were based was nationalized, confiscated, or otherwise taken by the Government of the People's Republic of China between November 6, 1966, and May 11, 1979. The Commission was sympathetic with the difficulties that claimants encountered in establishing such takings. However, under the Commission's regulations, the burden of proof is upon the claimants to submit sufficient evidence to establish the requisite elements of compensable claims. (See the *Claim of Basilette V.A. Brown*, Claim No. CN-2-056, Decision No. CN-2-069, Final Decision reported *infra* at page 32.) The Commission was, also, constrained to deny numerous claims in which either the evidence submitted on the claims or the findings of the Commission in the first China Claims Program established that the nationalization, confiscation, or other taking of the property upon which the claims were based occurred prior to November 6, 1966. The latter type of denials were in claims based on losses in connection with the ownership of pre-1949 Chinese Government Bond Issues, Bank Notes, or pre-1949 Chinese National currency and shares of corporations with property located in China. (See the *Claim of Welthy Kiang Chen*, Claim No. CN-2-015, Decision No. CN-2-066, Proposed Decision and Final Decision reported *infra* at pages 37 and 40, respectively.)

In the *Claim of Robert J. McLaughlin, Administrator of the Estate of Gerald R. McLaughlin, Deceased*, (Claim No. CN-2-014, Decision No. CN-2-045, reported in 1979 FCSC Ann. Rep. 45), the Commission was confronted with a claim based on the confiscation by the People's Republic of China of a yacht at Tamkan Island off the Pearl River estuary in Kwangtung Province. This claim was denied by the Commission for it was determined that the evidence submitted did not establish that the confiscation was in violation of international law. The Commission found that the confiscation occurred within the territorial sea under the sovereignty of the People's Republic of China, and that no evidence was submitted to establish a right of entry of the yacht in distress or innocent passage, which are exceptions to a sovereign state's control over its internal waters and territorial sea.

The agreement of May 11, 1979 provides that the People's Republic of China will pay \$80.5 million to the United States in installments. The first payment of \$30 million scheduled for October 1, 1979 was received from the Government of the People's

Republic of China on that date. Under the agreement there are provisions for five annual installments of \$10.1 million beginning on October 1, 1980 and ending on October 1, 1984. To date the payments have been received as scheduled. These funds as received are deposited in a China Claims Fund with the Department of the Treasury.

Payments on the certifications of loss issued by the Commission on claims in the First China Claims Program and awards granted by the Commission in the Second China Claims Program are being made by the Department of the Treasury from the China Claims Fund in accordance with the payment provisions of Title I of the International Claims Settlement Act of 1949, as amended. Pursuant to these provisions the principal amounts of all certifications of loss and awards of \$1,000.00 or less are paid in full. On all certifications of loss and awards which exceed \$1,000.00 in principal amount, the first \$1,000.00 of each is paid thereon and a pro rata share of the principal balance of each is paid as funds are received into the China Claims Fund. This is the same basic procedure for payments on compensable claims in all programs administered by the Commission pursuant to the International Claims Settlement Act of 1949, as amended. The statute further provides that there shall be no payments on account of interest unless the principal amount of all certifications of loss and award are paid in full. As there will not be sufficient funds in the China Claims Fund (\$80.5 million) to pay in full the total principal amount of the certification of loss and awards in the two China Claims Programs, amounting to \$197 million, there can be no payments on account of interest.

Final statistics of the Second China Claims Program are included herein as Exhibit 1, along with consolidated statistics for both China claims programs.

EXHIBIT I:

FINAL STATISTICS--SECOND CHINA CLAIMS PROGRAM

<u>Claims</u>			82
Claims filed (All by individuals)			1
Withdrawals			81
Claims on which Final Decisions were issued			
	<u>Claims</u>	<u>Principal Amounts</u>	
Awards	3	\$176,455.00	
Denials	78		
Total	81		
<u>Awards</u>			
Type of Loss	<u>Claims</u>	<u>Principal Amounts</u>	
Land	1	\$ 12,143.00	
Improved Property	2	161,240.00	
Bank Accounts	1	3,072.00	
Total	4	176,455.00	
Same claim			

CONSOLIDATED FINAL STATISTICS--BOTH CHINA CLAIMS PROGRAMS

<u>Claims</u>			661
Claims filed			4
Withdrawals			657
Claims on which Final Decisions were issued			
	<u>Claims</u>	<u>Principal Amounts</u>	
Certifications of Loss and awards	381	\$197,038,296.00	
Denials	276		
Total	657		
<u>Type of Claimant</u>			
	<u>Claims</u>		
Individual	558		
Non-Profit/Religious	44		
Business, including corps. and other business entities	59		
Total	661		
<u>Certifications of Loss and Awards</u>			
<u>Type of Claimant</u>	<u>Claims</u>	<u>Principal Amounts</u>	
Individuals	299	\$ 14,634,178.00	
Non-Profit/Religious	34	58,266,394.00	
Corporations	42	122,743,554.00	
Other Business Entities	6	1,394,170.00	
Total	381	\$197,038,296.00	
<u>Type of Loss</u>		<u>Principal Amounts</u>	
Land		\$ 7,531,523.00	
Building/Equipment		15,924,807.00	
Improved Property		37,088,407.00	
Personal Property		11,290,231.00	
Securities/Investments		1,638,105.00	
Debts/Mortgages		182,696.00	
Corporate Assets		122,743,554.00	
Bank Accounts/Cash		98,934.00	
Merchandise		540,039.00	
Total		\$197,038,296.00	

EXHIBIT 2:
AGREEMENT BETWEEN THE GOVERNMENT
OF
THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF
THE PEOPLE'S REPUBLIC OF CHINA
CONCERNING THE SETTLEMENT OF CLAIMS

In order to develop bilateral economic and trade relations and to complete the process of normalization of relations on the basis of equality and mutual benefit and in accordance with the spirit of the Joint Communiqué on Establishment of Diplomatic Relations between the United States of America and the People's Republic of China, the Government of the United States of America (hereinafter referred to as the "USA") and the Government of the People's Republic of China (hereinafter referred to as the "PRC") have reached this Agreement:

ARTICLE I

The claims settled pursuant to this Agreement are:

- (a) the claims of the USA and its nationals (including natural and juridical persons) against the PRC arising from any nationalization, expropriation, intervention, and other taking of, or special measures directed against, property of nationals of the USA on or after October 1, 1949 and prior to the date of this Agreement; and
- (b) the claims of the PRC, its nationals, and natural and juridical persons subject to its jurisdiction or control against the USA arising from actions related to the blocking of assets by the Government of the USA on or after December 17, 1950 and prior to the date of this Agreement.

ARTICLE II

- (a) The Government of the USA and the Government of the PRC agree to a settlement of all claims specified in Article I. The Government of the PRC agrees to pay to the Government of the USA the sum of \$80.5 million as the full and final settlement of the claims specified in Article I. The Government of the USA agrees to accept this sum in full and final settlement of those claims.
- (b) The Government of the USA agrees to unblock by October 1, 1979 all assets which were blocked because of an interest, direct or indirect, in those assets of the PRC, its nationals, or natural and juridical persons subject to its jurisdiction or control, and which remained blocked on the date of the initialing of this

Agreement, March 2, 1979. The Government of the USA further agrees, in a spirit of mutual cooperation, that prior to unblocking under this paragraph, it will notify the holders of blocked assets which the records of the Government of the USA indicate are held in the name of residents in the PRC that the Government of the PRC requests that assets of nationals of the PRC to be unblocked not be transferred or withdrawn without its consent.

ARTICLE III

The Government of the PRC shall pay to the Government of the USA, \$80.5 million of which \$30 million shall be paid on October 1, 1979 and the remaining \$50.5 million shall be paid in five annual installments of \$10.1 million each on the first day of October with the first installment due on October 1, 1980.

ARTICLE IV

The Government of the USA shall be exclusively responsible for the distribution of all proceeds received by it under this Agreement.

ARTICLE V

After the date of signature of this Agreement, neither government will present to the other, on its behalf or on behalf of another, any claim encompassed by this Agreement. If any such claim is presented directly by a national of one country to the government of the other, that government will refer it to the government of the national who presented the claim.

ARTICLE VI

This Agreement shall enter into force on the date of signature.

The Agreement was signed on May 11, 1979 at Beijing, in duplicate, in the English and Chinese languages, both versions being equally authentic.

FOR THE GOVERNMENT
OF THE UNITED STATES
OF AMERICA

/s/ Juanita M. Kreps

FOR THE GOVERNMENT
OF THE PEOPLE'S REPUBLIC
OF CHINA

/s/ Zhang Jingfu

EXHIBIT 3:

Text of Selected Decisions

Second China Claims Program

IN THE MATTER OF THE CLAIM OF SU JAN LEE

Claim No. CN-2-053, Decision No. CN-2-040

ORDER AND AMENDED FINAL DECISION

This claim against the People's Republic of China (hereinafter "PRC"), under the China Claims Agreement of 1979 and Section 4 of Title I of the International Claims Settlement Act of 1949, is based upon a loss resulting from the nationalization, confiscation, or other taking of property in China.

A Proposed Decision was issued on October 3, 1979 denying this claim for lack of sufficient evidence to establish that the property claimed was nationalized or otherwise taken by the PRC between November 6, 1966 and May 11, 1979. The claimant filed objection thereto but did not request an oral hearing before the Commission. Following a careful review of the entire record of this claim, a Final Decision was issued on April 29, 1981 confirming the denial of this claim.

Under cover of a letter dated June 25, 1981, counsel for claimant has submitted a Petition to Reopen this claim pursuant to Commission Regulation 531.5(1) [45 C.F.R. 531.5(1)]. That regulation provides that such a petition shall not "be entertained unless it appears . . . that reconsideration of the matter on the basis of such evidence would produce a different decision."

The petition asserts that the evidence that has been submitted and that will be submitted in support of this claim will be sufficient to establish a taking during the requisite period of time and that the taking of claimant's property is not voidable at the behest of claimant as found by the Commission in the Final Decision. In support of this petition claimant has submitted a letter dated July 10, 1981, a sworn statement in the form of a letter dated June 28, 1981 from Dr. Woo Kaiseng, and a sworn statement from Mrs. Woo Ming, an assistant to Dr. Woo Kaiseng. Claimant in his letter of July 10, 1981 withdraws the portion of his claim based on losses sustained in connection with the ownership of debentures issued by Chinese banks, which consists of bonds of five different bond issues as set forth in the Final Decision. Therefore, claimant is only asserting a claim for losses sustained in connection with the ownership of four parcels of real estate, four bank accounts, and shares of stock in five companies. Following a review of the evidence

submitted in support of the Petition to Reopen, the Commission finds that reconsideration of this claim on the basis of such evidence would produce a different decision.

Accordingly, it is

ORDERED that the Petition to Reopen the above captioned claim is granted and that the following be entered as the Amended Final Decision of the Commission on this claim.

In the Final Decision dated April 29, 1981 the Commission found that the claimant had not met the burden of proof of establishing that the property claimed was nationalized or otherwise taken by the PRC between November 6, 1966 and May 11, 1979. The Commission further found that even if claimant had established that the taking of the claimed property occurred during the requisite period of time, the taking of such property was now voidable at the behest of claimant. Following a careful review of the entire record of this claim, including the sworn statement of Mrs. Woo Ming dated June 15, 1981 (sworn to July 6, 1981), the Commission finds that claimant has sustained the burden of proof with regard to the parcel of land in the Chiang Wan District, Shanghai, and the bank deposits in the Bank of China, China Industrial Bank, and Central Trust. As to the savings account in the Yien Yieh Commercial Bank, the shares of stock in five different companies as set forth in the Final Decision, and the real estate in Peking, Tientsin, and Ching Tao; the Commission finds that claimant has not met the burden of proof.

The portion of this claim based on losses in connection with the ownership of real estate in Peking, Tientsin, and Ching Tao was denied by the Commission in the Final Decision dated April 29, 1981 because no specific information regarding the takings of these properties was submitted by claimant. No further evidence has been submitted regarding the asserted takings of these properties. The only additional evidence submitted with regard to the taking of real estate, being Mrs. Woo Ming's statement, is found by the Commission to only be applicable to property in Shanghai. Accordingly, the Commission finds that the denial of this portion of this claim must be affirmed.

With regard to the shares of stock, the statement of Mrs. Woo Ming indicates that she was advised by an official of the Bank of China that prior to November 9, 1966 annual dividends were paid to owners of stocks but that they were nationalized after that date. No evidence has been submitted to establish the date of the nationalization of the companies in which the claimant owned shares of stock. As stated in the Final Decision, the statement of Dr. Woo Kaiseng dated November 16, 1980 indicates that the subject companies are still operating but the manner of ownership is not indicated. On the basis of this evidence, the Commission finds that the

claimant has not submitted evidence sufficient to establish that he has sustained a loss in connection with the ownership of the subject shares of stock as a result of nationalization or other taking by the Government of the PRC between November 6, 1966 and May 11, 1979. Accordingly, the Commission concludes that the denial of this portion of this claim must be affirmed.

In the Final Decision dated April 29, 1981 the Commission found that claimant's wife, who apparently died on June 17, 1949, was the owner of a savings account in the Yien Yieh Commercial Bank, of which claimant asserted ownership. As no evidence was submitted to establish that the claimant is the successor in interest to the ownership of this bank account, this portion of the claim was denied. No further evidence has been submitted in support of claimant's assertion that he is the owner of this bank account. Accordingly, the Commission finds that the denial of this portion of this claim must also be affirmed.

The Commission in the Final Decision of April 29, 1981 found that claimant was the owner of bank deposits in the Bank of China, China Industrial Bank, and Central Trust. With regard to these bank deposits, the statement of Mrs. Woo Ming indicates that an official of the Bank of China advised her that private ownership of bank deposits was preserved "up to the last part of November, 1966 when . . . all deposits of private individuals together with other kind[s] of private properties were nationalized." Mrs. Woo Ming further indicates that in regard to their request on behalf of claimant for the return of his bank deposits, the bank official indicated that: "Since we have not received any orders from our higher level . . . we have to refuse his claim." On the basis of this evidence, the Commission finds that claimant sustained a loss in connection with the ownership of bank deposits in the Bank of China, China Industrial Bank, and Central Trust as a result of nationalization or other takings by the Government of the PRC on November 30, 1966 and that such loss is compensable in this second China Claims Program.

Claimant asserts the value of his losses based on the deposits in silver dollars. In his statement of November 16, 1980, Dr. Woo Kaiseng confirms the amounts of the deposits by claimant and indicates the dates of those deposits as follows: (1) deposit of 3,000 silver dollars on October 19, 1938 in the Bank of China; (2) deposit of 30 silver dollars on August 11, 1931 in the China Industrial Bank; and (3) deposit of 41.66 silver dollars on December 14, 1939 in the Central Trust. Claimant asserts that his claim should be valued at a current exchange rate of 7.45 US dollars to one silver dollar. The Commission finds that this current exchange rate is not applicable to valuing a loss which occurred in 1966. The Commission finds that the method of evaluation utilized by the

Commission in the first China Claims Program is appropriate for determining a fair and reasonable value of the loss sustained by claimant. Therefore, the Commission applies the exchange rate of 3.5 Chinese silver dollars to one US dollar and increases the resulting value by 3.5 times in order to adjust for the rise in values due to inflation between the 1930's, when the deposits were made, and November 30, 1966, when the deposits were taken. As a result of the application of these valuation factors, the Commission finds that the claimant sustained the following losses in connection with bank deposits: (1) \$3,000.00 for the account in the Bank of China; (2) \$30.00 for the account in China Industrial Bank; and (3) \$41.66 for the account in the Central Trust.

With regard to the lot of real property in the Chiang Wan District in Shanghai which the Commission found in the Final Decision of April 29, 1981 to be owned by claimant, Mrs. Woo Ming asserts that officials of the Land Bureau and Municipal Government in Shanghai advised her that: "Before the 9th of November, 1966 all the private owners were paid 20% out of the total rental a year. For Dr. Lee's case, he had been paid for almost 17 years." She states that since the suspension of rental payments, all real estate has been nationalized and that private ownership is no longer permitted under the socialist state in China. She further states: "From what we have found out for Dr. Lee, we are positive that he is unable to recover anything from China at this time." On the basis of this evidence, the Commission finds that claimant sustained a loss in connection with his ownership of a parcel of real property in the Chiang Wan District in Shanghai on November 9, 1966 as a result of the nationalization or other taking by the Government of the PRC and that his loss is compensable in this second China Claims Program.

In claimant's description of the property claimed, which he attached to his original claim form, he indicates that the parcel of property in Shanghai was a 7.478 acre cultivated lot which he purchased on October 1, 1941 for 34,000 silver dollars. Claimant's statement and translation of a receipt for the old title deed covering this parcel of real property indicates that he is claiming for one-half of this lot, as he gave the other half to Mr. Chu, his company's manager, and that the cost of the half which he is claiming was 17,000 silver dollars. In valuing his claim claimant asserts a current exchange rate of 7.45 US dollars to one silver dollar. As stated above, the Commission finds that this exchange rate is not applicable to valuing a loss in 1966. The Commission finds that the foreign exchange rate of 3.5 Chinese silver dollars to one US dollar, as utilized by the Commission in the first China Claims Program, is applicable to the subject purchase in 1941. The Commission further finds that in order to establish a fair and reasonable value of the

subject property on the date of the loss the Commission should increase the 1941 value by 2.5 times to adjust for the rise in values as a result of inflation up until the date of the loss. Utilizing the stated valuation factors, the Commission finds that the fair and reasonable value of the loss sustained by claimant as a result of the nationalization or other taking of the subject property by the PRC on November 9, 1966 was in the amount of \$12,142.86.

The Commission finds that claimant SU JAN LEE was a national of the United States on the dates of taking, having been naturalized on July 16, 1962. The Commission concludes that, in granting awards on claims under section 4 of Title I of the International Claims Settlement Act of 1949, as amended, for the nationalization or other taking of property, interest shall be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of JOHN HEDIO PROACH, Claim No. PO-3197; FCSC Dec. and Ann. 549 (1968)).

AWARD

Claimant, SU JAN LEE, is therefore entitled to an award in the total principal amount of Fifteen Thousand Two Hundred Fourteen Dollars and Fifty-two Cents (\$15,214.52) plus interest at the rate of 6% simple interest per annum from November 30, 1966 to May 11, 1979, the date of the China Claims Agreement, on the amount of \$3,071.66, in the sum of \$2,294.53 and from November 9, 1966 to May 11, 1979, the date of the China Claims Agreement, on the amount of \$12,142.86, in the sum of \$9,107.14.

Dated at Washington, D.C.
and entered as the Order and
Amended Final Decision of
the Commission,
July 31, 1981.

IN THE MATTER OF THE CLAIM OF BEN L. POND

Claim No. CN-2-055, Decision No. CN-2-074

FINAL DECISION

This claim against the People's Republic of China (hereinafter "PRC"), under the China Claims Agreement of 1979 and Section 4 of Title I of the International Claims Settlement Act of 1949, is based on a loss resulting from the nationalization, confiscation, or other taking of property in China.

A Proposed Decision was issued on October 8, 1980 denying this claim for lack of sufficient evidence to establish that the property claimed was nationalized or otherwise taken by the PRC between November 6, 1966 and May 11, 1979. The claimant filed objection thereto and requested an Oral Hearing before the Commission. An Oral Hearing on this claim was held on January 22, 1981, at which claimant and counsel of record appeared.

Claimant objected to the Proposed Decision on the ground that the evidence submitted is sufficient to establish a taking of the property within the requisite period of time. Claimant has submitted additional evidence in support of his claim consisting of an additional letter from his nephew, Cheng Chao, dated December 5, 1977; a letter dated November 4, 1980 from nephew Cheng Chiu alias Te Hsiung; and originals with certified translations of two certificates of ownership purportedly to the Tai Huo Lu Compound, upon which a portion of this claim is based.

In the letter, dated December 5, 1977, nephew Cheng Chao indicates that he has been advised that, "that your shop in San-pai-fang would be demolished very soon." He further indicates that he has submitted the claimant's application for building a shop in the San-pai-fang district, that it does not appear as though such application would be approved at this time, and that the claimant is advised to accept the compensation offered, after requesting a slight increase, for his San-pai-fang building. This letter is consistent with the letter of June 26, 1978, from Nephew Ch'eng Chao, in which he indicates that the area including the claimant's building had become municipally owned and that he had been directed by a government official to bring "documentary proof, to the Building and Property Control Bureau to collect JMP \$2032.80 for the demolition of the San P'ai Fang building, at a calculated rate of JMP \$5.50 per square meter of condemned building property area, for an area of 369.6 square meters. Nephew Ch'eng Chao further indicates that he was advised by the government official, and he purportedly quotes that official, as follows:

"First, accept the payment in order to resolve matters concerning the wrecking. . . . Second, request a piece of land for your own building construction. Construction costs are about JMP \$150 per square [sic] meter, extremely expensive. If you do not wish to come collect compensation money, I can deposit it in a state bank as a special account."

Nephew Ch'eng Chao concluded his letter by requesting guidance from the claimant regarding the acceptance of the offer of compensation. In a letter, dated November 4, 1980, nephew Cheng Chiu alias Te Hsiung indicates as follows:

2. The building on Ching-I Road (i.e. the San Pei Fang Store Building) was entrusted to my management. It was rented to Hung-tai-li

Watches for the last 34 years. I collected the rent. When the government sought to widen Ching-I Road, the buildings on both sides of the road had to be razed and replaced by six-story buildings. The tenant moved out on May 16, 1978. By the end of June the building was completely razed.

I spent a great deal of time during the past few years looking for the deeds to the properties. Although I searched in trunks and boxes I found only two deeds to the Tai Huo Lu Compound. We lost many books and documents because of frequent moving. The deed to the San Pei Fang Store Building is still missing; perhaps it got lost during moving and confusion. I am sending you the two deeds to Tai Huo Lu Compound. When I find the deed for San Pei Fang I shall send it to you.

Private citizens are now permitted to buy the newly constructed brick buildings at a price ranging from P \$150 to 300 per square meter according to location and construction material.

As discussed in the Proposed Decision claimant submitted six statements from persons who asserted that, of their own personal knowledge, up to 1946 claimant was the owner of a commercial building in the San Pei Fang district of Kunming. In an affidavit dated January 15, 1980 Lucille Change Lee asserts that:

...my parents rented from Mr. Pond half of the store-front of the commercial building at San Pei Fang for a gift shop. We also rented from Mr. Pond the second story of the commercial building as our living quarters. The other half of the store-front was used to operate a hardware store owned by Mr. Pond. The third story of the building was used as living quarters by Mr. Pond's nephew, who managed the hardware store.

In an unsworn statement, dated February 22, 1980, Wang Qi Xing states that: "I know Ben L. Pond was the sole owner of the two properties at the time he left China in 1946 and Ben L. Pond's nephew, Cheng Chao, was asked to look after the two properties."

On the basis of these statements, affidavits, and letters the Commission finds that the claimant owned a three story commercial building, consisting of 369.6 square meters of floor space, known as the San Pei Fang Building located on Cheng-I Road in Kunming and that this building was taken in by the PRC on May 17, 1978 for the public purpose of widening Cheng-I Road. The Commission further finds that claimant was offered and is deemed to have received compensation from the PRC for this taking in the amount of JMP \$2,032.80.

Claimant contends that the offered compensation does not constitute just compensation as required under international law. Therefore, claimant contends that, although the taking was for a public purpose, it is compensable in this program due to the lack of just compensation. Claimant asserts that the loss sustained was in the total amount of \$37,425.00, based upon "the local government's quotation of the cost of construction being 150 yuan per

square meter of floor space at the time the building was expropriated... On the basis of 1 yuan = .54 US \$, the San Pei Fang building consisting of 369.64 square meters at US \$81 per square meter was worth \$29,940.00 and the land, valued at 25% of the building, was worth \$7,485.00, for a total value of \$37,425.00."

The Commission is not persuaded by the claimant's contention that the value as of the date of loss should be based upon the asserted new construction cost. The Commission notes that newly constructed buildings were allegedly being sold for the claimed \$150 Yuan per square meter of floor space. The Commission concludes that taking into account depreciation for existing buildings the fair and reasonable value of the property would not exceed 50% of the alleged new construction cost. Therefore using a factor of \$40.50 US per square meters of floor space the Commission finds the value of the building to be \$14,970.42. The Commission deems reasonable the suggested use of 25% of the building value to determine the land value and finds the value of the land to be \$3,742.60 for a total property value of \$18,713.02. In order to determine the quantum of the loss sustained by the claimant the amount of compensation deemed to have been paid by the PRC to the claimant as a result of this taking must be deducted from this valuation. At the conversion rate used by the claimant the compensation of 2032.80 JMP (yuan) is equal to \$1,097.71 which when deducted from the determined value of the property results in a loss sustained by the claimant in the amount of \$17,615.31.

The Commission notes that during the first China Claims Program there were no awards for loss of property in the City of Kunming; however, a review of the evaluations of commercial properties in Canton taken in 1955 with appropriate adjustments for the difference in size of properties and the difference of the size of the cities involved the Commission concludes that the above determined value for the property owned by the claimant is comparable to the values determined in the first China Claims Program. It should be further noted that the Commission in this second program is not governed by the findings of the Commission during the first China Claims Program; however, in the first program the Commission had considerably more valuation information from which to make such determinations, so that comparisons with such evaluations are helpful in accessing the appropriateness of the evaluation in this claim.

With regard to the Tai Huo Lu Compound, the claimant has submitted the originals and certified translations of two certificates of ownership purportedly describing this property. These certificates of ownership, dated in the 33rd and 34th years of the Republic of China, describe two contiguous parcels of property, numbered 1937 A and 1937 B, on the East Road surrounding the city of

Kunming consisting of 1.643 mou and 1.189 mou, respectively for a total of 2.832 mou or approximately a 1/2 acre of land. There is no evidence of record nor information on these certificates to relate them to the Tai Huo Lu Compound except that the location on the East road surrounding the city is the location of the claimed compound and the property claimed, approximately 1/3 of an acre, is similar to that described in the certificates of ownership.

Additionally, claimant has submitted a letter, dated November 4, 1980, from nephew Cheng Chiu alias Te Hsiung, with a certified translation thereof, which indicates as follows:

The razing of the Tai Huo Lu Compound happened many years ago. I drifted from place to place during the years 1970 to 1976; therefore I did not keep any records of past events. When I reported a date of razing (the Tai Huo Lu Compound) I made a momentary recollection. The sequence of the dates could have contain [sic] mistakes. Now I have conferred with members of my family and reached the following conclusions:

(1) The Tai Huo Lu Compound (located on the City Circumferential East Road, which section was later renamed Tai Huo Street) was razed to yield ground for the extension of Red Sun Square. The government notified us on January 18, 1969 to move out of our residence within one day (January 19). We complied and moved out within the limited time. Razing of all buildings in that area started towards the end of the month and was completed in about a month and a half.

* * * * *

I spent a great deal of time during the past few years looking for the deeds to the properties. Although I searched in trunks and boxes I found only two deeds to the Tai Huo Lu Compound. . . I am sending you the two deeds to Tai Huo Lu Compound. . .

The information in this letter is consistent with the information regarding the subject property contained in a letter dated July 10, 1973 from the same nephew, a certified translation of which was previously submitted, which indicates as follows:

During the latter part of January, 1969, because of the expansion of the Great Hall, all the buildings in the Labor Cultural Palace area (including the T'ai Ho Lu compound) were razed. At that time, my family was residing at No. 79, T'ai Ho Street, and as the government gave us notice to move out within one day, we were temporarily transferred to No. 6, P'ing Cheng Street (originally a kindergarten for children of the personnel of government organizations.

Also previously submitted was a letter from the same nephew, dated September 5, 1975, which creates some confusion about the date that the subject property was confiscated when he says: "it has already been eight years since T'ai Ho Lu compound buildings were razed. . ." That statement would indicate a seizure in 1967, instead of 1969 as indicated by the other letters. It is conceivable that

claimant's nephew just misstated the number of years in this latter letter. In the latter letter he also states that compensation had been paid by the PRC for all other properties, except the subject property, that were "needed to enlarge the city Great Hall square area."

As discussed in the Proposed Decision claimant submitted six statements from persons who asserted that, of their own personal knowledge, up to 1946 claimant was the owner of the Tai Huo Lu compound in Kunming. In a affidavit dated February 13, 1980 Lung Chang King states: "My knowledge of Mr. Pond's ownership of these properties is based upon the facts that I had visited personally many times, during my residence at Kunming from 1935 to 1949, the properties, namely, the Tai Huo Lu Compound on Tai Huo Street. . ."

On the basis of the statements, affidavits, letters, and ownership certificates which have been submitted, the Commission finds that the claimant was the owner of a parcel of property in Kunming located on the city circumferential East Road, known as the Tai Huo Lu Compound, and that this parcel of property was taken by the PRC on January 19, 1969 for the public purpose of expanding a public square area. The Commission further finds that no compensation has been paid claimant for the loss of his property.

In regard to valuation of the loss sustained claimant has submitted a calculation using a valuation of 1/2 of the new construction cost for 1978 as discussed above regarding the San Pei Fang property. Using the area of 1400 square meters of floor space in the compound, as indicated in the letter dated September 5, 1975, claimant calculates the value of the building as \$56,000.00 based on a construction cost of \$40.00 US per square meter of floor space. The claimant calculates the land value as being equal to 25% of the building value or \$14,000.00 for a total of \$70,000.00 for the value of the subject property. As indicated above with regard to the San Pei Fang property the appropriate valuation is the value on the date of the loss, not replacement cost. The Commission concludes that taking into account depreciation for existing buildings the fair and reasonable value of existing residential property in 1978 in Kunming would not have exceeded one third of the new construction cost of commercial buildings. On that basis and accepting the asserted reduction of the 1978 value by 1/2 for calculation of value in 1969, the Commission concludes that a \$13.50 US per square meter of floor space is appropriate for valuing the subject property. Using this factor and the claimant's method for calculation, the Commission concludes that the claimant sustained a loss in the amount of \$23,625.00. The Commission notes that this value is comparable to the valuations of similar properties in the first China Claims Program with appropriate adjustments for a later date of taking.

The Commission finds that claimant was a national of the United States on the dates of taking having been naturalized on October 14, 1952. The Commission has concluded that, in granting awards on claims under section 4 of Title I of the International Claims Settlement Act of 1949, as amended, for the nationalization or other taking of property, interest shall be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of JOHN HEDIO PROACH, Claim No. PO-3197; FCSC Dec. and Ann. 549 (1968)).

AWARD

An award is hereby made to claimant, BEN L. POND, in the total principal amount of Forty-One Thousand Two Hundred Forty Dollars and Thirty-One Cents (\$41,240.31), with interest thereon at 6% per annum on \$23,625.00 thereof from January 19, 1969 to May 11, 1979, the date of the China Claims Agreement, in the sum of Fourteen Thousand Six Hundred Fourteen Dollars and Forty-Two Cents (\$14,614.42), and on \$17,615.31 thereof from May 17, 1978 to May 11, 1979, the date of the China Claims agreement, in the sum of One Thousand Thirty-Five Dollars and Seventy-Eight Cents (\$1,035.78).

Dated at Washington, D.C.
and entered as the Final
Decision of the Commission,
April 22, 1981.

IN THE MATTER OF THE CLAIM OF BASELETTE V. A. BROWN

Claim No. CN-2-056, Decision No. CN-2-069

FINAL DECISION

This claim against the People's Republic of China (hereinafter "PRC"), under the China Claims Agreement of 1979 and Section 4 of Title I of the International Claims Settlement Act of 1949, is based on a loss resulting from the nationalization, confiscation, or other taking of property in China.

A Proposed Decision was issued on October 17, 1979 denying this claim for lack of sufficient evidence to establish that the property claimed was nationalized or otherwise taken by the PRC between November 6, 1966 and May 11, 1979. Claimant filed objection thereto but did not request an Oral Hearing before the Commission.

The claimant objects on the ground that the evidence submitted by her was sufficient to establish a taking during the requisite period of time. Claimant contends that, "The Commission has not in the past and cannot require claimants to furnish precise proof of the date of loss since that information is unavailable [sic] to both claimant and the Commission." As to one item, Lacks News Photos, Limited, claimant, further, objects on the ground that the Commission emphasized the contents of two letters from Mr. S. Y. Day, dated May 9, 1951 and July 18, 1954, which indicate, respectively, that the business was under local supervision and restrictions and recommend that the owners consider liquidation, rather than giving appropriate weight to other evidence of record. In support of these contentions, the claimant has submitted numerous affidavits, letters, certified copies of telexes, and other documents. The additional evidence submitted pertains to the business known as Lacks News Photos, Limited, but does not shed any additional light upon the disposition of the other two businesses known as Shanghai Camera Exchange and Radio Station XMHC.

Claimant has submitted certified copies of the two telex messages, dated July 19, 1979 and July 24, 1979, which were discussed in the Proposed Decision. Claimant also submitted a certified copy of a telex message dated December 12, 1979 from the Shanghai Office of The Hongkong and Shanghai Banking Corporation to its San Francisco office which states as follows:

Mrs. Brown wrote to us 3 Dec. enquiring as to the status of Lacks News Photos Ltd. registered in Shanghai in 1948 in which she has a share holding.

Please advise Mrs. Brown that this firm traded until 1956 at which time it became a semi state owned enterprise renamed Koo Nee Photo Company. The firm is still operating at 150 Nanking Road East, Shanghai and still employs some original members of staff.

For further information Mrs. Brown should apply to them direct.

Claimant has also submitted a certified copy of a Department of Industry & Commerce License No. 93 for Lacks News Photos, Limited, and a certified translation thereof. Claimant, further, has submitted certified copies of numerous letters which she has written to the Koo Nee Photo Company and various agencies of the PRC, an article in the New York Times, dated January 18, 1956, dateline Hong Kong, Jan. 17 indicating that, "A Chinese Communist dispatch from Peiping today said that 'all private industry and commerce' in Shanghai would be transformed into joint state-private enterprises by Jan. 20" and a news item in the San Francisco Examiner, dated January 14, 1980, dateline Peking, which states: "In 1956, capitalists large and small banged on gongs, beat

drums and set off firecrackers to observe the joining of their business with the state. The government made payments to the original owners for 10 years, after which the businesses were wholly state-owned." On the basis of this evidence claimant contends that the disposition of Lacks News Photos, Limited fits within the scenario of the telex message dated July 24, 1979, so that a taking thereof is established in 1967, and that the other two businesses should be deemed to have followed that same takings scenario.

It is asserted in a letter dated February 13, 1980 that direct evidence of the date of loss sustained by the claimant is unavailable as the "internal affairs of the People's Republic of China are closed to outsiders;" that claimant has written letters to numerous agencies of the PRC, has not received replies, and does not expect to receive replies to these letters, nor has she been able to receive any information from other shareholders of the three businesses; that in the first China Claims Program, as well as other programs, the Commission has considered "probative secondary evidence where direct evidence was unavailable;" and that in this claim such evidence has been submitted which supports their contention that the three businesses were "finally nationalized at the time of the Cultural Revolution in 1967."

As indicated in the Proposed Decision with regard to Shanghai Camera Exchange, the evidence establishes that this business was liquidated on July 20, 1950 which, according to the affidavit of Nicholas B. Argendeli (brother of the claimant), dated August 20, 1979, resulted in PRC Victory Bonds and negligible cash or stock. It is contended by counsel of record in a letter, dated December 20, 1979, that the capital account of the claimant, resulting from this liquidation, existed as late as July 18, 1954, for in a letter from Mr. S. Y. Day (a principal in Shanghai Camera Exchange) of that date regarding Lacks News Photos, Ltd. no mention was made of her capital account. It is noted by the Commission that exhibit C-1 which was attached to the original claim form filed by the claimant contains excerpts from "Liquidation Report submitted by K. Y. Chu," dated August 5, 1950, which asserts that the claimant's capital account would have consisted of a 1/3 share of the assets upon liquidation (affidavit of Mr. Argendeli indicates a 30% share) amounting to cash in the amount of \$700.78 and PRC bonds valued at \$9,477.06. No evidence has been submitted by claimant to establish the disposition of this capital account nor that Mr. S. Y. Day was in any way involved with or responsible for said capital account following the liquidation. Therefore, it does not seem reasonable to infer anything with regard to said capital account from a failure of Mr. Day to mention that account in his letter dated July 18, 1954 written about and on behalf of Lacks News Photos, Ltd. No further

evidence was submitted with regard to Shanghai Camera Exchange nor the capital account resulting therefrom after August 5, 1950.

With regard to Radio Station XMHC the only additional piece of evidence is a letter dated January 22, 1980 from a Hugh K. Lowe, Vancouver, Canada who states: "I left Shanghai on the last boat, the SS General Gordon in 1949. I'd left everything to Mr. T. H. Chee, who was then the manager of XMHC." As indicated in the Proposed Decision, the most recent piece of evidence was a letter from one of the principals of the station, T. H. Chi, dated October 13, 1948, which indicated that the Radio XMHC was struggling but continuing to operate. The new piece of evidence in regard to this company along with the previously submitted evidence does not indicate the status of the Radio Station subsequent to 1949.

As previously indicated the evidence of record indicates that Lacks News Photos, Limited became a "semi state owned enterprise" in 1956 and was "renamed Koo Nee Photo Company" and that this "firm is still operating." It is contended in a letter dated February 13, 1980 from counsel of record that, therefore, this company became a joint state-private enterprise in 1956 with the payment of dividends guaranteed by the PRC from 1956 through 1966 and that the company in 1967 became state owned, in conformity with the telex message dated July 24, 1979 regarding limited companies. It is noted that the telex message dated December 12, 1979 does not indicate such an occurrence, that a letter dated January 10, 1980 from the claimant to the Hongkong and Shanghai Banking Corporation in Shanghai requesting confirmation of this occurrence has apparently not been answered, and that a letter dated January 23, 1980 from the San Francisco office of the Hongkong and Shanghai Banking Corporation indicates that, "I am afraid I cannot throw any light upon the exact status of the new Koo Nee Photo Company, but presume that the form of ownership is one shared between the employees of the enterprise and the Chinese government." Such evidence does not support the contention of the claimant that there was a change in ownership status in 1967. Certain commentators are, also, cited by the claimant in support of the contention that private businesses which had been converted into joint public-private enterprises in 1956 were completely nationalized by the end of 1966. One such commentator cited is A. Eckstein who wrote a book entitled *China's Economic Revolution*. The works of Mr. Eckstein and other commentators reviewed by the staff of the Commission in background research for this claims program indicate that by 1956 virtually all industrial firms in the PRC had been nationalized becoming either public enterprises or joint public-private enterprises, but that in regards to the management of such enterprises there was very little

distinction between the two forms. As Mr. Eckstein says on page 84 of his book:

However, from a policy, operational, and management point of view there was no difference between these two forms. The only distinguishing feature of the second [joint public-private] was that the former private owners or shareholders theoretically retained part ownership in the joint enterprises. This did not entitle them to any participation in the management, but they received a fixed return on their invested capital. However this practice did not survive the Cultural Revolution, so that the public-enterprise form of organization now applies to all modern industry in China.

Another commentator, George N. Ecklund, in an article in *Pacific Affairs* (Fall, 1963) at page 248 states:

The statute governing the organization of the new enterprise [joint public-private enterprise] made it clear that the government would be the dominant partner in the firm. The private businessmen could not assume direct control of the joint organization, but took part in management as ordinary salaried personnel. The government wanted their technical and managerial skills, but only as hired hands. The private owners who contributed all of their assets to these new companies were compensated initially by payments in the form of a percentage of annual profits. This was changed in 1956 to a fixed interest payment of 5 percent on the private capital involved, all payments being scheduled to cease in 1962.

On page 250 Mr. Ecklund continues, "After this mass conversion to socialist enterprise early in 1956, private businessmen in China had nothing left but memories and an annual interest payment from the state (paid partly in government bonds)."

Following a thorough review of the evidence of record in this claim, the contentions of the claimant, and other sources of information available to the Commission (which have been cited in this decision) the Commission finds that the claimant has not sustained the burden of establishing that a loss occurred on or after November 6, 1966 and before May 11, 1979. With regard to Radio Station XMHC and the Shanghai Camera Exchange and capital account resulting from the liquidation thereof, there is no evidence to establish takings during the requisite period of time, nor is the Commission persuaded by the contentions of the claimant that these companies continued to operate after the dates of the last available evidence regarding them nor that the capital account was in existence on or after November 6, 1966. The evidence regarding Lacks News Photos, Ltd. indicates that if effective control was not being exercised by local authorities in 1951, as discussed in the Proposed Decision, then upon this company becoming a joint public-private enterprise (or as the telex message states a semi state owned enterprise) in 1956 the PRC exercised control over the company effecting a taking thereof.

Accordingly, the Commission concludes that the Proposed Decision dated October 17, 1979 denying this claim must be and is hereby affirmed as its final determination on this claim.

Dated at Washington, D.C.
and entered as the Final
Decision of the Commission,
April 1, 1981.

IN THE MATTER OF THE CLAIM OF WELTHY KIANG CHEN

Claim No. CN-2-015, Decision No. CN-2-066

PROPOSED DECISION

This claim against the Government of the People's Republic of China, under the China Claims Agreement of 1979 and Section 4 of Title I of the International Claims Settlement Act of 1949, is based upon the loss sustained in connection with the ownership of bonds of the issue known as National Government of the Republic of China Allied Victory U.S. Dollar Loan of 1942, the ownership of notes of the issue known as The 36th Year (1947) Short-Term Treasury Notes of the Republic of China, and the ownership of U.S. Dollar Savings Bonds issued by the Central Trust on April 1, 1943. Claimant has been a national of the United States since his naturalization on September 3, 1954.

Under Section 4 of Title I of the International Claims Settlement Act of 1949, as amended, the Commission is given jurisdiction to receive, examine, adjudicate, and render final decisions with respect to claims of nationals of the United States included within the terms of any claims agreement concluded on and after March 10, 1954, between the Government of the United States and a foreign government (exclusive of governments against which the United States declared the existence of a state of war during World War II), arising out of the nationalization or other taking of property [22 U.S.C.A. Sec. 1623(a)]. In this section the Commission is directed to decide claims in accordance with provisions of the applicable claims agreement and the principles of international law.

On May 11, 1979, an agreement was concluded between the Governments of the United States of America and the People's Republic of China (hereinafter referred to as the PRC) settling claims of nationals of the United States against the PRC arising from the nationalization, expropriation, intervention, or other

taking of, or special measures directed against, property of nationals of the United States on or after October 1, 1949, and prior to the date on which the agreement was concluded.

Under the provisions of Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. Sec. 1643-1643k (1964), as amended by Public Law 89-780, approved November 6, 1966, 80 Stat. 1365 (1966)], the Commission was given jurisdiction over claims of nationals of the United States against the Chinese Communist regime (the PRC) arising since October 1, 1949, for losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property of nationals of the United States. In that program, the Commission considered claims that arose between October 1, 1949 and November 6, 1966, the date on which the program was authorized. That program was completed on July 6, 1972 pursuant to a statutory mandate in the enabling legislation.

The question presented by this claim is whether the Commission has the jurisdiction to consider claims that arose prior to November 6, 1966. On June 1, 1979, the Commission published notice in the Federal Register announcing that a new China Claims Program would be initiated under which it would consider claims by nationals of the United States against the PRC for losses that arose between November 6, 1966 and May 11, 1979. August 31, 1979 was established as the deadline for filing such claims.

The period during which losses must have occurred for favorable action to be taken on claims in the second China Claims Program was established because the Congress of the United States had previously made provisions under Title V of the Act, supra, for the filing and adjudication of claims by nationals of the United States for property losses in China that arose between October 1, 1949 and November 6, 1966, and mandated a date by which such a claims program must be completed. Accordingly, the Commission concluded that its jurisdiction over such claims expired on July 6, 1972 and that it no longer has the authority to accept and take favorable action on those claims. Congress having provided its remedy for the 1949-1966 claims, the Commission is not at liberty to provide another.

This situation is not unique in the programs that the Commission had been authorized to administer in the past. Subsequent to completion of claims programs against the Governments of Bulgaria, Hungary, and Rumania, on August 9, 1959, the Government of the United States reached claims agreements with those governments. The Commission was unable to implement the claims agreements under Title I of the Act without legislative authorization because the United States had declared the existence of a state of war

against those countries during World War II. In each case the Congress enacted second claims programs by amending Title III of the International Claims Settlement Act of 1949, and limited the compensable claims to those for losses which occurred after the dates covered by the first claims programs. [82 Stat. 42 (1968); 88 Stat. 1386 (1944); 22 U.S.C. Sec. 1641].

Following the legislative precedent in these second programs which precluded the favorable consideration of claims that arose during the period covered by the first programs, the Commission concludes that it does not have the jurisdiction to consider claims against the PRC that arose prior to November 6, 1966, and after May 11, 1979, the date of the agreement with the PRC. (See Claim of *Jose Maria Xavier*, Claim No. CN-2-017, Decision No. CN-2-001.)

The Commission has consistently held that in the absence of a positive action by the foreign government affecting the right to payment, a bondholder's right is "taken" by the debtor foreign government on the day when it refuses to pay the obligation for the first time, in other words, when the foreign government first defaults upon its obligations. (See the Claim of *Carl Marks & Co., Inc.*, Claim No. CN-0420.) The Commission previously made the finding that servicing of bonds of the issue known as National Government of the Republic of China Allied Victory U.S. Dollar Loan of 1942 was suspended in September 1948 and had not resumed. It was also held that the subject bonds were not secured by property or revenue but constituted general obligation bonds that were not chargeable to the PRC.

On the Statement of Claim, FCSC Form 780-2, claimant was advised that documentation must be submitted at the time of filing to establish the date and manner of the taking of the subject property. The claimant asserts that the claim for loss arose on January 1, 1979 when the Government of the United States recognized the PRC. The claimant alleges that the PRC on that date became the only legitimate government of China and became responsible for the liabilities of its predecessor, the Nationalist Government, which is no longer a legitimate government. The claimant has not submitted any evidence of any action by the PRC concerning the rights of the bondholders of subject issue nor concerning the rights of the holders of Short-Term Treasury Notes or U.S. Dollar Savings Bonds at issue in this claim. The Commission is not persuaded by the argument of the claimant that the PRC on January 1, 1979 became responsible for the liabilities of the Nationalist Government with regard to the subject issues.

The Regulations of the Commission provide:

Claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1977).)

For the above reasons, the Commission concludes that the claimant has failed to establish that the bonds and notes, subject matter of this claim, were debts owed by the PRC or debts secured by property which has been "taken" by the PRC on or after November 6, 1966, and before May 11, 1979.

Therefore, the claim is hereby denied.

The Commission deems it unnecessary to consider other elements of this claim.

Dated at Washington, D.C.
and entered as the Proposed
Decision of the Commission,
October 17, 1979.

FINAL DECISION

This claim against the People's Republic of China (hereinafter "PRC"), under the China Claims Agreement of 1979 and Section 4 of Title I of the International Claims Settlement Act of 1949, is based on a loss resulting from the nationalization, confiscation, or other taking of property in China.

A Proposed Decision was issued on October 17, 1979 denying this claim for lack of sufficient evidence to establish that the property claimed was nationalized or otherwise taken by the PRC between November 6, 1966 and May 11, 1979. The claimant filed objection thereto and requested an Oral Hearing before the Commission. An Oral Hearing was held on January 22, 1981, at which Samuel S. T. Chen, husband of claimant, appeared on behalf of claimant.

Claimant contends that the Government of the PRC, as the successor government to the Kuomintang, Central Government in China, succeeded to all rights and became responsible for all obligations of its predecessor government upon its ascension to power on October 1, 1949. Claimant further contends that on October 24, 1949 when the Government of the PRC took certain actions "by setting up a Take-Over Committee to take over the Kuomintang Central Government. . . and denying all obligations of its predecessor" and by freezing all U.S. assets in China on December 29, 1950, her right to payment on the bonds and notes upon which her claim is based, issued prior to October 1, 1949, was abrogated. However, she contends that as a citizen of the United States her loss did not occur ("become definite") until January 1, 1979 when the Government of the United States recognized the Government of the PRC, which date is within the period covered by this program. In support of her contentions claimant submitted a copy of a portion

of *A Chronology of the People's Republic of China from October 1, 1949* by Peter Chen on which she highlighted the entries for October 25 (Government Administrative Council sets up Take-Over Committee) and December 29 (PRC freezes and places all U.S. assets in China under government control). Claimant has not cited any legal authority nor is the Commission aware of any legal authority to support her contention that she has established a compensable loss.

In support of her contention claimant argues that on January 1, 1979 the Government of the PRC became obligor to U.S. citizens on all financial and other obligations incurred by or issued by its predecessor government to U.S. citizens and that any previous actions that that government may have taken with regard to such obligations subsequent to its ascension to power would be deemed to have occurred on that date. However, even if this argument is accepted, it does not assist claimant in this claim for no evidence has been submitted which indicates that the subject bonds and notes were first in default after October 1, 1949 nor that the Government of the PRC has affirmatively repudiated them. The setting up of a takeover committee does not do so; the copy of the chronology submitted by claimant does not say that obligations of its predecessor were denied as claimant contends; nor does the freezing of U.S. assets in China affect or imply a repudiation of such bonds and notes.

As set forth in the Proposed Decision, the Commission does not have the authority under the second China Claims Program to find a claim compensable unless the evidence submitted is sufficient to establish that a loss occurred between November 6, 1966 and May 11, 1979. After a careful review of the evidence of record in this claim, the Commission finds that the evidence submitted does not establish a taking during the requisite period of time.

Accordingly, the Commission concludes that the Proposed Decision dated October 17, 1979 denying this claim must be and is hereby affirmed as its final determination on this claim.

Dated at Washington, D.C.
and entered as the Final
Decision of the Commission,
April 1, 1981.