

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

IN THE MATTER OF THE CLAIM OF

META AUERBACHER

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CN-2-001

Decision No. CN-2-014

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 Imperial Chinese Government 5% Hukuang Railways Sinking Fund Gold Loan 1911. Claimant became a national of the United States by naturalization on February 20, 1945.

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, 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 loss 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. In 1955 the Commission was authorized to receive and consider claims of nationals of the United States against the Government of Bulgaria, Hungary, and Rumania for losses resulting from the nationalization or other taking of property prior to August 9, 1955 [Title III of the International Claims Settlement Act of 1949, 69 Stat. 570 (1955), 22 U.S.C. Sec. 1941-1641g (1964)].

These programs preceded a claims settlement agreement with the countries and covered losses that arose prior to August 9, 1955, the date that the programs were authorized by the Congress. Subsequent to the completion of the programs on August 9, 1959, as mandated by the statute, claims agreements were concluded with each of the Governments of Bulgaria, Hungary, and Rumania, covering losses that arose prior to the dates that the agreements with such governments entered into force, July 2, 1962, March 6, 1973, and March 30, 1960, respectively.

The Commission was unable to implement those claims agreements under Title I of the International Claims Settlement Act because the United States had declared the existence of a state of war against those countries during World War II. Thus, before the agreements could be implemented, legislation had to be enacted by the Congress. In each case the legislation enacted specifically limited the compensable

claims to those that arose between August 9, 1955, and the dates on which the agreements were concluded. The Commission was not authorized to consider and grant compensation on any claim that arose prior to August 9, 1955, [82 Stat. 422 (1968), 22 U.S.C. Sec. 1641b(4); 88 Stat. 1386 (1974), 22 U.S.C. Sec. 1641b(5)].

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. (In the Claim of Jose Maria Xavier, Claim No. CN-2-017, Decision No. CN-2-001).

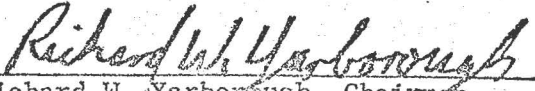
The Commission has consistently held that in the absence of a positive action by the foreign government affecting the right to payment, a bondholder's right is "taken" by the debtor foreign government on the day when it refuses to pay the obligation for the first time; in other words when the foreign 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 bonds of the issue under consideration in the instant claim, Imperial Chinese Government 5% Hukuang Railways Sinking Fund Gold Loan 1911, have been in default at least since the end of the year of 1939. 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. (See the Claim of Carl Marks & Co., Inc., Claim No. CN-0420).

The claimant has not submitted any evidence of any action by the PRC concerning the rights of the bondholders of this issue which could be construed to be a nationalization or other taking of property after 1939.

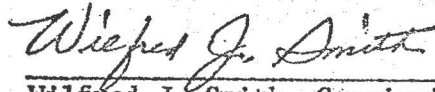
For the above reasons, the Commission concludes that the claimant has failed to establish that the bonds, subject matter of this claim, were debts owed by the PRC or debts secured by property which has been "taken" by the PRC on or after November 6, 1966, and before May 11, 1979.

Therefore, the claim is hereby denied.

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


Richard W. Yarborough, Chairman

SEP 26 1979


Wilfred J. Smith, Commissioner

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on OCT 30 1979


Executive Director

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended.)