

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

IN THE MATTER OF THE CLAIM OF

SU JAN LEE

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CN-2-053

Decision No. CN-2-040

Counsel for Claimant:

Myles J. Ambrose, Esquire

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 socialistic 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)).

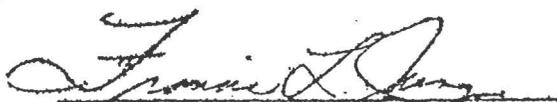
A W A R D

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.

JUL 31 1981

  
Richard W. Yarborough, Chairman

  
Francis L. Jung, Commissioner

  
Ralph W. Emerson, Commissioner

This is a certified true and  
correct copy of the original.

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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.

The claimant does not state any basis for his objection to the Proposed Decision except to indicate that it is extremely difficult to establish the exact date of confiscation of his property and that the evidence submitted or to be submitted will be sufficient to establish a compensable claim. Claimant was advised to submit any additional evidence in support of his claim prior to December 31, 1979. At the request of counsel of record, first retained in December 1979, claimant was granted until February 29, 1980 to submit any additional evidence. Subsequently, a further extension of time was granted until June 15, 1980.

Claimant submitted additional evidence in the form of originals and acknowledged translations of title deeds to four parcels of real property, bank deposit certificates, stock certificates, and bond certificates and coupons attached thereto, upon which this claim is based; six letters from friends of the claimant attesting to his whereabouts since leaving China in 1951 and attesting to the character of the claimant; copies with translations thereof of Hsin Hwa News Agency and United News Agency articles regarding the unfreezing and return of assets of rich businessmen in China; a number of letters and statements from a Dr. Woo Kaiseng a/k/a James Woo Kaiseng; and an affidavit from a businessman in Shanghai named Ding Li-rong. The original certificates indicate ownership of the subject items of claimed property in the claimant, his alleged aliases, Hing Chi or Ping Chi, or his company Chi Hsing, of which he claims to be have been sole owner, except for the bond certificates and one savings certificate which were bearer instruments and one parcel of real property which was in the name of his family.

Letters and sworn statements of a Dr. Woo Kaiseng have been submitted in support of this claim. Dr. Woo asserts that he "has been an attorney at law for many years and is lately appointed by the Chinese Government as Special Appointed Researcher in the Law School of Shanghai Social Science Institute for [A]dvanced [S]tudies," and that at the request of the claimant he has conducted "an investigation on Dr. Su Jan Lee's properties, bank deposits, stocks and debentures in the different provinces of China through various sources." The U.S. Consul General in Shanghai through the Secretary of State in Washington, D.C. has verified his position as "an adviser to the law school of the Shanghai Academy of Social Sciences." Dr. Woo reports on his investigations regarding the subject properties in the statements and letters submitted. His sworn statement dated November 16, 1980 in regards to the ownership of the subject properties is consistent with the

claimant's assertions except for one bank deposit, which claimant has asserted was in the name of one of his aliases. Dr. Woo indicates that the bank deposit was in the name of claimant's wife when she passed away in June 17, 1949. Dr. Woo defers to other authority to determine whether such funds could have been inherited by the claimant under American Law. Dr. Woo further indicates that as to the one parcel of real property which was titled in the name of his family the claimant is the sole owner by virtue of having retained the seals of the other members of his family. Dr. Woo also indicates that claimant was the sole owner and proprietor of the company in which name some of the subject properties were titled.

The fact that Dr. Woo has been an attorney at law in China for many years and now is an adviser to the law school of the Shanghai Academy of Social Sciences establishes him as an expert in Chinese legal matters. Although for the most part his statements and letters report on his factual investigations rather than legal conclusions, his credentials permit the Commission to view his reports with confidence as to their thoroughness and accuracy.

On the basis of the ownership certificates and the statements and letters from Dr. Woo Kaiseng, the Commission finds that the claimant was the owner of the following property:

1. Residence at No. 7 Tung Shih Shan Tiao Huntung, East City, Peking;
2. House at 160 Race Course, Tientsin;
3. House at 11B Cheng Young Kwan Road, Ching Tao;
4. Shares of stock of Yien Yieh Commercial Bank;
5. Shares of stock of Chen Yieh Match Company;
6. Shares of stock of Yu Lu Dye-Stuff Manufacture Company in Wei-hsien, Shan-Dung Province;
7. U.S. Victory Bonds issued on August 1, 1942;
8. Liberty Bonds in silver dollars, issued in September 1937;
9. Victory Bonds, issued July 1, 1944;

10. Rehabilitation Savings Bonds guaranteed by the Postal Savings Bank, issued on December 1, 1944;
11. Rehabilitation Savings Bonds guaranteed by the Bank of China, Central Trust, and Bank of Communications, issued on December 1, 1944; and
12. Bank deposits in the Bank of China, China Industrial Bank, and Central Trust.

The Commission finds that the company of which the claimant was the sole owner, known as Chi Hsin Financial Trust, was the owner of the following:

1. Land in the Chiang Wan District, Shanghai;
2. Shares of Stock in Tung Hui Land Development Company; and,
3. Shares of Stock in Kuo Hwa Bank.

The Commission further finds that claimant's wife was the owner of a savings account in the Yien Yieh Commercial Bank. Dr. Woo indicates that the claimant's wife died on June 17, 1949, and states: "Under the American law whether Dr. Lee can inherit. . . funds or not is not up to me to make any comment." No evidence has been submitted to establish that the claimant is the successor in interest to the ownership of this bank account.

As discussed in the Proposed Decision the crucial element of a compensable claim in this claims program is the establishment of a loss of property on or after November 6, 1966 and on or before May 11, 1979, as a result of the nationalization, confiscation, or other taking by the PRC. The evidence regarding this element consists of statements by the claimant, statements and letters of Dr. Woo Kaiseng, a letter from a Tyrone Wu of Montclair, California, dated May 18, 1980, who visited the PRC in 1979, and 1979 news reports of the Hsin Hwa News Agency and United News Agency. In a sworn statement, dated July 20, 1979 (sworn to August 23, 1979), claimant states that he left the four subject parcels of real property in the hands of various trustees who cared for the properties until they were expropriated as follows: his house in Peking in 1968; his house in Tientsin in 1967; his house in Ching Tao in 1969; and his land in Shanghai in 1969. Claimant generally

asserts that his other claimed property was taken by the cultural revolution beginning in 1967. Claimant has submitted translations of news reports of the Hsin Hwa News Agency and the United News Agency, dated in 1979, which in the context of articles regarding the return of property in China state that between 1966 and 1976 property of former capitalists in China was seized. A letter from Tyrone Wu, dated May 18, 1980, indicates that he visited Peking in 1979, that bank personnel in Peking indicated that the debenture holders were supposed to register their holdings in 1953, that "all of the former rich business-men and bankers and uncle; Dr. Su Jan Lee s [sic] investments in bonds, stocks and deposits were seized and taken away by the Government during the time of the Chinese Cultural Revolution in 1967 to 1977, as Newspaper [sic] reported," and that "it is extremely difficult and almost impossible to obtain [any] information of the past and present that the outsiders are interested to know."

In regards to the taking of claimant's property Dr. Woo, following his thorough investigations, has not reported any specific information regarding the takings of properties of claimants. However, with regard to three of the subject parcels of real property he has reported in his statement dated November 16, 1980 as follows:

From the information I have gathered through his neighbors and friends in China, his trustee tenants in Tientsin, Peking, and Ching Tao were moved out in various times in the years of 1967, 1968 and 1969 during the period of 'Cultural Revolution' beginning from 1966 to the time. . . .Mao past away. It was almost 11 years. It is regarded by the Chinese people as a dark period of catastrophe to the country as well as the nation.

Dr. Woo makes no mention of the alleged taking of the parcel of real property in Shanghai. In regard to the taking of the other assets, Dr. Woo, following his thorough investigations, has only reported general comments. In statements dated October 11, 1980 and October 31, 1980, Dr. Woo has stated as follows:

Dr. Lee's estates and other investments as mentioned above have been treated alike as that of all the other rich businessmen and bankers in the country. After the establishment of the People's Republic of China, the private ownership of real estates and other kinds of investments were preserved. In other words, the private ownership of private individuals was respected and kept by the Socialistic State up to the time of 1966.

Then. . . came a sudden change when the 'Cultueal [sic] Revolution' started, all the assets of private owners were expropriated by the Government. It was the time of great catastrophe from 1966 to 1967 to the people as well as the nation.

Dr. Woo has also indicated in his statement dated November 16, 1980, as follows:

It is rather very fortunate to make a full account on my investigation of Dr. Lee's assets once frozen in the years between 1967 to 1968 at this time when the conditions in my country have changed so favorably for the human rights after new laws were recently passed. Otherwise, I could not disclose it at all.

With regard to the companies in which claimant owned shares of stock, Dr. Woo in a statement dated November 16, 1980, indicates that these companies are still in existence and operating, but he does not indicate how they are owned.

In regard to the subject debentures, which were issued by the Kuomintang prior to their fall from power in mainland China on October 1, 1949, the Commission in the first China Claims Program found that such debentures were first in default prior to October 1, 1949. Specifically, the servicing of Victory Bonds issued in 1942 was suspended in September 1948, and Liberty Bonds of 1937 were invalidated April 1, 1949 (the Claim of Carl Marks & Co., Inc., Claim No. CN-0420, Decision No. CN-472). The Commission has held in the past 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 the obligation. Claimant has not submitted any evidence which indicates that that government has affirmatively repudiated them at any time, and specifically between November 6, 1966 and May 11, 1979. The alleged freezing of assets of claimant does not effect nor imply a repudiation of such debentures.

On the basis of the evidence in this claim including statements of claimant, statements of Dr. Woo Kaiseng, and a letter of Tyrone Wu the Commission finds that it is unclear whether the subject real property, bank deposits, and shares of stock in various companies were nationalized, confiscated, or otherwise taken by the PRC and, if so, when. The Commission finds that the subject debentures were first in default prior to October 1, 1949 and that no evidence has been submitted to establish that a taking of the subject debentures occurred during the requisite period of time. Therefore, the Commission finds that the claimant has 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 finds, after a careful review of the evidence of record, that even if claimant had established that the taking of the claimed property occurred during the requisite period time, the taking of such property would now be voidable at the behest of claimant. The Commission finds that any of the subject property of claimant which may have been taken at any time by the PRC is deemed to have been returned to the claimant in the absence of any evidence to show that the claimant has been denied the return of his property. Therefore, even if the claimant had established that his property was taken, no loss was sustained, so no award could be granted. This finding is based on the statements of Dr. Woo Kaiseng dated October 11, 1980 and October 31, 1980 in which it is stated as follows:

When the vicious leaders of the Government, were . . . [imprisoned]. . . ., the new administration . . . .restored the former social order and preserved the private ownership like they did in the first period. At present the nation is governed by newly passed laws. . . .protecting human rights and private properties. Beginning from the last part of 1979 all private real [estate has] been given back to the original owners and investments in stock, debentures and bank deposits reimbursed to the former investors and depositors.

All the above statements have been confirmed in various times by the reports from Hsin Hwa News Agency and other new agencies throughout the different countries in the South East Asia.

While Dr. Lee is holding all the original documents of his assets, he is fully entitled to get back all his assets once frozen in China.

In a letter dated November 24, 1980 to an associate of counsel of record Dr. Woo seems to retreat from this statement by indicating that property is only being returned to nationals of China and that Amercian citizens must claim through the Amercian Government. The Commission notes that other claimants before the Commission in this second China Claims Program have submitted evidence to establish that they, as U.S. citizens, have had property in China returned to them. Furthermore, the statements of Dr. Woo dated October 31, 1980 and October 11, 1980 are unequivocal on this point regarding the assets of Dr. Lee; whereas, the letter dated November 24 is a general statement on this matter.

On the basis of the findings on this claim the Commission concludes that this claim must be and is hereby denied as its final determination on this claim.

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

APR 29 1981

*Richard W. Yarborough*  
Richard W. Yarborough, Chairman

*Francis L. Jung*  
Francis L. Jung, General Counsel

This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on APR 29 1981

*Francis T. Masterson*  
Executive Director

*Robert H. Emerson*  
Robert H. Emerson, Commissioner

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

IN THE MATTER OF THE CLAIM OF

SU JAN LEE

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CN-2-053

Decision No. CN-2-040

PROPOSED DECISION

This claim in the amount of \$8,220,596 against the People's Republic of China is based on the asserted ownership and loss of certain items of real property, bank deposits, debentures and shares of stock in certain corporations. Claimant, who has been a national of the United States since his naturalization on July 16, 1962, states that the losses occurred in 1967, 1969 and 1978.

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. In 1955 the Commission was authorized to receive and consider claims of nationals

of the United States against the Governments 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. 1641-1641q (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, 1963; 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 claims 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.

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.

However, no such evidence has been submitted in support of this claim.

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).)

Based upon the foregoing, the Commission finds that the evidence of record in this claim is not sufficient to establish that the property or interest therein claimed was nationalized or otherwise taken by the PRC between November 6, 1966, and May 11, 1979.

Accordingly, the Commission concludes that this claim must be and it hereby is denied.

The Commission deems it unnecessary to make findings with respect to other elements of this claim.

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

  
Richard W. Yarborough, Chairman

OCT 3 1979

  
Wilfred J. Smith, Commissioner

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.)