

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

IN THE MATTER OF THE CLAIM OF

CHURCHILL CHIA-CHU SZE

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CN-2-065

Decision No. CN-2-026

PROPOSED DECISION

This claim, in the amount of \$146,407. against the People's Republic of China is based on losses resulting from claimant's asserted ownership of stock in corporations that have been nationalized. Claimant became a national of the United States on February 17, 1955. Claimant states that the claim arose after November 6, 1966.

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

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.

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:

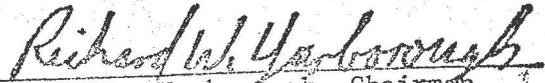
Claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1977).)

It is noted that claimant filed a claim, No. CN-043 in the first program under Title V of the International Claims Settlement Act of 1949 for the same loss. That claim was denied by Final Decision No. CN-461, entered on October 7, 1970, for failure of claimant to submit evidence to establish the value of the shares. It also appeared that the loss, if any, arose in 1963.

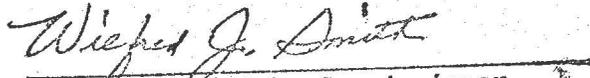
Based upon the foregoing, the Commission finds that the evidence of record in this claim is not sufficient to establish that the property or interest therein claimed was nationalized or otherwise taken by the PRC between November 6, 1966, and May 11, 1979.

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

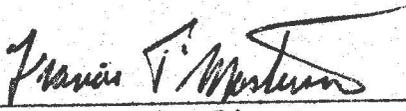
Dated at Washington, D.C.  
and entered as the Proposed  
Decision of the Commission

  
Richard W. Yarborough, Chairman

OCT 3 1979

  
Wilfred J. Smith, Commissioner

This is a true and correct copy of the decision  
of the Commission which was entered as the final  
decision on NOV 7 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.)