

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

IN THE MATTER OF THE CLAIM OF

CALTEX (ASIA) LIMITED

Claim No. V-0325

Decision No. V-0435

Counsel for Claimant:

L.J. Moore, Esquire

PROPOSED DECISION

This claim in the amount of \$9,454,870.00 against the Government of the Socialist Republic of Vietnam under Title VII of the International Claims Settlement Act of 1949, as amended by Public Law 96-606 (94 Stat. 3534), is based upon the loss of the net assets associated with claimant's petroleum marketing branch operation in the former Republic of Vietnam.

The record indicates that the claimant corporation was organized under the laws of the State of Delaware and is a wholly owned subsidiary of Caltex Petroleum Corporation ("CPC"), also organized under Delaware law. The record further indicates that the voting stock of CPC is owned to the extent of 50% each by Standard Oil Company of California and Texaco Inc. which, in turn, were organized under the laws of the State of Delaware and the stock of which has at all times pertinent herein been owned to the extent of at least 50% by natural persons who are citizens of the United States.

Under section 703 of Title VII of the International Claims Settlement Act of 1949, as amended, the Commission is given the following jurisdiction:

"The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims by nationals of the United States against Vietnam arising on or after April 29, 1975, for losses incurred as a result of the nationalization, expropriation, or other taking of (or special measures directed against) property which, at the time of such nationalization, expropriation, or other taking, was owned wholly or partially, directly or indirectly, by nationals of the United States to whom no restoration or adequate compensation for such property has been made."

The claimant herein, CALTEX (ASIA) LIMITED, was one of three foreign companies authorized to import and sell gasoline and other petroleum products in the former Republic of Vietnam ("South Vietnam"), and had been doing so for many years prior to the takeover of the South Vietnam by Communist forces at the end of April 1975. Documentation submitted in support of this claim shows that the corporation owned and maintained a branch headquarters office and other facilities in and near Saigon and also owned service and filling stations and other facilities in some 19 additional cities and towns elsewhere in South Vietnam. Further, the documentation indicates that claimant owned and maintained residences for some of its employees and owned numerous vehicles and other transportation equipment. In addition, evidence has been submitted as to the amounts of product inventory and other merchandise stocks on hand in its storage and other facilities at the time of the Communist takeover, and as to the nature and amounts of the intangible assets it owned at that time. As for the loss of these various classes of assets, the documentation includes copies of cables from former Vietnamese employees of the claimant corporation and a copy of a communique issued by the successor Communist regime in South Vietnam indicating that claimant's business operations and the assets associated therewith were taken over by the new regime at some point during the period of April 29 through May 2, 1975.

On the basis on the documentation and other evidence submitted, the Commission finds that claimant CALTEX (ASIA) LIMITED qualifies as a "national of the United States" for purposes of this claim and that it owned the real property and improvements, business equipment, inventories, merchandise stocks other personal property, and the bank deposits and other intangible assets for which it has claimed herein. Further, the Commission finds that this property, other than that excepted in the discussion following below, was nationalized, expropriated or

otherwise taken by Vietnam, within the meaning of the present Act, as of May 1, 1975. Accordingly, claimant is entitled to an award for the loss of the property as of that date.

It is asserted that the assets owned by claimant in South Vietnam had a total value of \$9,454,870 at the time of the nationalization, and the documentation submitted in support of this assertion is extensive, consisting of balance sheets, itemized listings of the various classes of tangible assets claimed, real property purchase documents, numerous photographs, and several other documents reflecting the level and nature of claimant's business in South Vietnam prior to the Communist takeover. The values asserted for the classes of assets are as follows:

Land, Buildings, and Personal Property	\$6,174,737.00
"Appropriations"	\$416,542.00
Merchandise Stocks and Materials and Supplies	\$1,922,559.00
Cash in Banks and Accounts Receivable	\$802,032.00
Prepaid Expenses	<u>\$170,000.00</u>
	\$9,485,870.00
Less: Other Liabilities	<u>-\$31,000.00</u>
NET TOTAL	\$9,454,870.00

The evidence pertaining to each of these value assertions is discussed below.

Land, Buildings and Personal Property. The value figure attributed to these assets is comprised of the sum of \$190,045, representing the value of the land owned by claimant in Saigon and elsewhere in South Vietnam; the sum of \$3,925,834, representing the "depreciated replacement cost" of buildings on that land and on other land leased to claimant at various locations in the country; and the further sum of \$2,058,858, representing the depreciated replacement cost of all of the diverse types of personal property, including trucks and other vehicles, marine

equipment, generators, pumps and other machinery, and office and household furniture and equipment, owned by claimant in the country and used in connection with its business operations.

Having reviewed the detailed documentation and other evidence submitted, the Commission finds that the value asserted for claimant's land holdings as of the time of nationalization is appropriate and reasonable. However, with regard to "Buildings" and "Personal Property" the Commission notes that the cost index coefficients and some of the useful-life figures applied in deriving depreciated replacement values for of those assets appear to be inapposite, and this may have resulted in an overstatement of the assets' values as of the time of loss.

On the other hand, the Commission also notes that the itemized property listings submitted carry a substantial number of items for which no value is claimed, due to their having been fully depreciated for accounting purposes. It is a fact of common experience, which the Commission has recognized in other claims, that in reality such property continues to be of residual value to its owner notwithstanding its having been fully depreciated on the owner's books. Evidence submitted to the Commission in other claims suggests that this residual value may reasonably amount to approximately 20% of the asset's depreciated replacement cost.

Therefore, having considered the record the Commission determines that the value of the land, buildings and personal property owned by claimant in South Vietnam reasonably amounted to the claimed total of \$6,174,737 as of the date of nationalization. Accordingly, claimant is entitled to a principal award in this amount for the loss of the property in those categories, dating from May 1, 1975.

"Appropriations". It is asserted that this asset had a value of \$416,542, and it is grouped with other fixed assets in South Vietnam owned by claimant at the time of the Communist

takeover. However, the record contains no information or evidence describing or identifying this asset, other than a statement by claimant's counsel indicating that it represented an allocation of funds or other resources to an uncompleted facility or other project. There is nothing to suggest that the asset was or could have been subjected to nationalization or other taking by the Communist regime.

Accordingly, the Commission concludes that the value claimed for this asset must be excluded from consideration in determining the total value of claimant's property losses.

Merchandise Stocks and Materials and Supplies. The total attributed to these assets is comprised almost entirely of the combined value of the petroleum products and other merchandise held by claimant at its various storage, distribution and retail facilities in South Vietnam at the time of the Communist takeover. Both this value, and the value claimed for "Materials and Supplies" (\$19,000), appear adequately substantiated by the evidence in the record. Accordingly, claimant is entitled to a further principal award in the asserted amount of \$1,922,559 for the loss of these assets, again dating from May 1, 1975.

Cash in Banks and Accounts Receivable. The total asserted for these assets is comprised of the sum of \$638,296, representing bank deposits, together with the further sum of \$163,736, representing debts owed by claimant's customers in South Vietnam at the time of the Communist takeover. Examination of the supporting evidence in the record discloses that both of these figures are net values, consisting of the amounts remaining after deduction of the "Total accounts payable and accrued liabilities" owed by the corporation. The Commission concludes that these value figures are also adequately substantiated, and therefore finds that claimant is entitled to a further principal award of \$802,032 for the loss of the assets in question, also dating from May 1, 1975.

Prepaid Expenses. This intangible asset is asserted to have had a value of \$170,000. Here again, however, there is nothing in the record specifically identifying the asset or tending to show that it was or could have been subjected to nationalization by the successor Communist regime in South Vietnam. Therefore, just as was held by the Commission in its decision in claimant's claim against the People's Republic of China (Claim No. CN-0249, Decision No. CN-502 (1970)), the value asserted for this asset must be excluded from consideration in determining the value of claimant's total property losses.

Summary. Adding together the figures set forth separately above the Commission therefore finds that claimant CALTEX (ASIA) LIMITED is entitled to a total principal award of \$8,868,328 for the property losses claimed herein. This award shall date from May 1, 1975.

It has been asserted as part of this claim that interest should be included in the award granted for claimant's property losses "at a rate of no less than ten percent (10%) per annum". The Commission has held, however, that such awards shall include interest at the rate of 6% simple interest per annum from the date of loss to the date of settlement. See Claim of BETTY JANET MITCHELL, Claim No. V-0358, Decision No. V-0259 (1984).

A W A R D

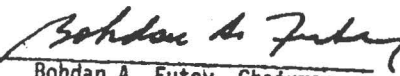
Claimant CALTEX (ASIA) LIMITED is therefore entitled to an award in the principal amount of Eight Million Eight Hundred Sixty-Eight Thousand Three Hundred Twenty-Eight Dollars (\$8,868,328.00), plus interest at the rate of 6% simple interest per annum from May 1, 1975, to the date of settlement.

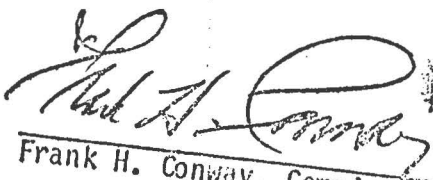
Dated at Washington, D.C.
and entered as the Proposed
Decision of the Commission.

JUN 26 1985

Commissioner Brown did not participate in the decision of this claim.

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


Bohdan A. Futey, Chairman


Frank H. Conway, 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.)