

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

IN THE MATTER OF THE CLAIM OF

ESSO EASTERN INC.

Claim No. V-0235

Decision No. V-0438

Counsel for Claimant:

Howard M. LaMont, Esquire

PROPOSED DECISION

This claim in the amount of \$30,229,820.36 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 facilities, equipment, inventory and other assets associated with the claimant's wholesale and retail marketing of petroleum products in Saigon and elsewhere in the former Republic of Vietnam.

The record indicates that claimant is a corporation organized under the laws of the State of Delaware and is a wholly owned subsidiary of Exxon Corporation, which was organized under the laws of the State of New Jersey. The record further indicates that at all times pertinent herein, at least 50% of the outstanding shares of Exxon Corporation have been owned 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, ESSO EASTERN INC., was one of three foreign companies authorized to distribute 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 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 Saigon and also owned service stations and other facilities in at least 10 additional cities and towns elsewhere in South Vietnam. Further, the documentation indicates that the claimant corporation owned and maintained residences for a number of its employees and owned numerous vehicles and other transportation equipment. Also included in the documentation are records as to the amount of fuels and other petroleum and chemical product inventories which the claimant had on hand prior to the Communist takeover and the amounts of its accounts receivable and other intangibles. As for the loss of these assets, the record contains an affidavit by Mr. Minh V. Nghiem, the former treasurer of claimant's branch in South Vietnam, stating that officials of the successor Communist regime occupied the branch's headquarters office in Saigon and assumed control over its operations on May 1, 1975.

Based on the evidence and information submitted, the Commission finds that claimant ESSO EASTERN INC. qualifies as a "national of the United States" for purposes of this claim; that it owned improved and unimproved real property, business equipment, inventories and other personal property, and intangible assets in Saigon and elsewhere in South Vietnam; and that this property 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 of the claimant corporation in South Vietnam had a total value of \$30,229,820.36 at the time of nationalization. As support for this assertion, claimant's counsel has submitted some 600 pages of documentation relating to its operations in the country, including copies of land title documents; computerized listings of the locations of its real property holdings, improvements, storage tanks, pumps, barges, trucks and other vehicles, office equipment, employees' residence furniture and other personal property; and compilations of its product inventories, accounts receivable and other intangible assets as of the end of April 1975. In summary form, these have been categorized as follows:

Land, Buildings and Equipment	\$18,267,261.17
Inventories, Materials & Supplies	8,745,192.12
Accounts Receivable and other Intangible Assets	<u>3,217,367.07</u>
TOTAL	\$30,239,820.36

These categories, and the values asserted for them, are discussed separately below.

Land, Buildings and Equipment. The value asserted as to this category is comprised of the sum of \$856,296.57, which is said to represent the value, based on costs of purchase, of the various pieces of land in Saigon and elsewhere in South Vietnam owned by claimant, together with the further sum of \$17,410,964.60, which is said to represent the value of the claimant's headquarters office building in Saigon, its service stations and other structures on its land holdings, and all of the various types of equipment associated with its business operations throughout South Vietnam, based on acquisition costs as increased by an inflation coefficient and then decreased to adjust for depreciation due to age, wear-and-tear and obsolescence.

The Commission notes from its review of the documentation submitted with respect to claimant's land holdings that some discrepancies appears to exist as to the rates applied to convert purchase prices in piasters to historical costs expressed in United States dollars. On the other hand, the record indicates that virtually all of the land was acquired before 1970, and most before 1960, and although the Commission is not aware of any generally applicable appreciation index, it is reasonable to assume that land values in South Vietnam appreciated during the 1960's and early 1970's, just as they did in the United States and elsewhere in the world. Therefore, the Commission finds that the land owned by claimant in South Vietnam would have had at least the asserted value of \$856,296.57 as of the time of nationalization.

Likewise, the Commission has examined the listings of the buildings and other fixed improvements owned by claimant, and those of its petroleum storage, transportation and dispensing equipment, its office equipment, employee residence furniture, and other such property, and finds that this documentation adequately substantiates the total value of \$17,410,964.60 asserted for that property as of the time of loss.

Accordingly, claimant is entitled to a principal award of \$18,267,261.17 for the loss of the land, buildings and other property subject herein.

Inventories, Materials and Supplies. The value asserted as to this property is comprised of the sum of \$8,225,044.14 attributed to fuels and other petroleum and chemical product inventories on hand in the claimant's storage, distribution and sales facilities as of the time of the Communist takeover, together with the further sum of \$520,147.98 attributed to materials and supplies, such as spare parts, construction materials, and electrical supplies, held on hand for business use but not for resale. Both figures are said to be derived from the claimant's general ledger figures for the end of March 1975, the

last complete month of its operations in South Vietnam. In the case of the materials and supplies, the ledger figure has then been reduced by a net amount of some \$247,850 to adjust for sales of certain materials during April 1975.

The value attributed to the petroleum and chemical product inventories is said to reflect "Cost, Insurance and Freight" (CIF) of the products as received at claimant's ocean transport terminals in South Vietnam; additional costs attributed to inland transport and storage have not been included. It is further stated, however, that all of the chemical products in inventory, and about 80% of the petroleum products, were paid for with foreign exchange obtained from the South Vietnamese government, with the result that the costs of those products in-country were augmented by 1.5% to account for the commission paid to the government for the foreign exchange. In addition, it is stated that "Special Consumption" and "Perequation" taxes were applicable to and paid on five of the fuels in the petroleum inventory. And although not petroleum or chemical products, the inventories are also said to have included "other saleable merchandise" consisting of such things as kerosene and LP gas stoves, gas regulators, and certain automotive accessories valued at \$318,871 as of March 31, 1975, which the claimant made available to customers at its petroleum product marketing facilities.

As for the "materials and supplies" items, the record indicates that these were comprised of oil drums, spare parts, construction materials, and electrical supplies, and other such items, required for maintenance of claimant's facilities and equipment in South Vietnam and for use otherwise in conducting its business operations.

Having reviewed the evidence and information submitted, the Commission concludes that the total of \$8,745,192.12 asserted as the value of the property in this category is adequately substantiated.

Intangible Assets. The value asserted for these assets is comprised primarily of the sum of \$1,085,325.64 representing "Trade Accounts Receivable" along with \$2,080,427.65 representing "Other Current Receivables." In addition, it includes a total of \$51,613.78 representing "Long Term Notes Receivable," "Prepaid Items," and "Deposits."

The accounting submitted in support of the claim for trade accounts receivable indicates that the major portion of these was owed by the former South Vietnamese Government or an agency or entity thereof. As for the rest of the accounts receivable, the record indicates that they were owed by embassies or agencies of other governments or by other non-Vietnamese entities, and thus could be said not to qualify as "property" under section 702 of the claims statute. However, the previously mentioned affidavit of Mr. Minh V. Nghiem includes a statement that following the takeover of the claimant's branch headquarters office in Saigon by authorities of the Communist regime, he was ordered to "attempt to collect all receivables" then outstanding in claimant's favor, indicating that regardless of how they might be characterized, the receivables in question were nonetheless subjected to nationalization or other taking along with the rest of claimant's assets in the country. Accordingly, the Commission concludes that the figure of \$1,085,325.64 asserted for the value of claimant's trade accounts receivable as of the time of loss is justified by the record.

With regard, however, to the values asserted for other current receivables, long term notes receivable, prepaid items and deposits, the Commission notes that included among these are entries of \$15,795.30 and \$14,572.44, respectively representing "Deposit for Import Licenses" held by the United States Agency for International Development and amounts owed by "Esso Exploration & Production." These do not appear to be properly includable as nationalized assets, as the first appears to have constituted a debt owed by the United States and the second

appears merely to have been a debt of another U.S. subsidiary of claimant's parent corporation. Accordingly, the Commission concludes that the total value asserted for intangible assets should be reduced by \$30,367.74 to reflect the exclusion of those claimed losses, resulting in a revised total for those assets of \$2,101,674.37.

Accordingly, the Commission finds that the total value of claimant's intangible assets in South Vietnam, as substantiated by the record, amounted to \$3,186,999.33 at the time of nationalization.

Summary. Adding together the value figures set out above, the Commission therefore determines that claimant ESSO EASTERN INC. is entitled herein to a principal award in the total amount of \$30,199,453.30 for the losses resulting from the nationalization of its real property and other assets in South Vietnam. This award shall date from May 1, 1975.

The Commission has concluded that awards granted under Public Law 96-606 for the nationalization or other taking of property, or interests therein, shall include interest at the rate of 6% simple interest per annum from the date of loss to the date of settlement.

AWARD

Claimant ESSO EASTERN INC. is therefore entitled to an award in the principal amount of Thirty Million One Hundred Ninety-Nine Thousand Four Hundred Fifty-Three Dollars and Thirty Cents (\$30,199,453.30), 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


Bohdan A. Futey, Chairman

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

Commissioners Brown and Conway did not participate in the
decision of this claim.

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.)