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The Blocked Chinese Assets— United States Claims Problem: The Lump-Sum Settlement Solution

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Abstract

Reviews briefly the origins of the blocked assets-claims problem and discusses the authority for the original blocking controls and later claims adjudication. Also examines in detail the operative provisions of the claims-assets agreement as an intergovernmental accord embodying the final settlement of the United States claims and affecting the overall context of Sino-American political and economical relations.

COMMENT

THE BLOCKED CHINESE ASSETS— UNITED STATES CLAIMS PROBLEM: THE LUMP-SUM SETTLEMENT SOLUTION

INTRODUCTION

“‘We want to do business.’ Quite right, business will be done.”¹ This statement by Chairman Mao Tse-tung in 1949 expresses what the People’s Republic of China (PRC) has consistently maintained to be its open policy concerning trade: namely, “that it is ready, willing, and able to trade with other countries on the basis of equality and mutual benefit.”² Until very recently, however, such a free flow of trade between China and the United States had been severely impeded by the unresolved Sino-American assets-claim issue—\$80.5 million in Chinese assets blocked in the United States³ and \$196.9 million in private United States claims against the PRC⁴—which arose out of retaliatory actions by both countries during the Korean War.⁵ This issue has been resolved by conclusion of the United States-People’s Republic of China Claims-Assets Agreement on May 11, 1979.⁶

The first part of this Comment reviews briefly the origins of the blocked assets-claims problem and discusses the authority for the original blocking controls and later claims adjudication. The second part examines in detail the operative provisions of the claims-

1. Mao Tse-tung, *On the People’s Democratic Dictatorship*, in 4 *SELECTED WORKS OF MAO TSE-TUNG* 416 (1961), as quoted in Wang, *Foreign Trade Policy and Apparatus of the People’s Republic of China*, 38 *LAW & CONTEMP. PROB.* 182, at 183 (1973) [hereinafter cited as Wang].

2. Wang, *supra* note 1, at 183.

3. See note 56 *infra* and accompanying text.

4. See note 48 *infra*.

5. See notes 11-15 *infra* and accompanying text.

6. Agreement Concerning the Settlement of Claims, May 11, 1979, United States-People’s Republic of China, — U.S.T. —, T.I.A.S. No. 9306. It appears that the Chinese have never signed an intergovernmental claims agreement before. See generally D. JOHNSON & H. CHIU, *AGREEMENTS OF THE PEOPLE’S REPUBLIC OF CHINA 1949-1967* (1968). They have, however, settled particular claims on an individual basis. See, e.g., 13 *INT’L LEGAL MATERIALS* 870 (1974) as cited in Note, *Blocked Chinese Assets: Present Status and Future Disposition*, 15 *VA. J. INT’L L.* 959, 1002 n.243 (1975) [hereinafter cited as *Present Status*].

assets agreement and evaluates the agreement as an intergovernmental accord embodying the final settlement of United States claims and affecting the overall context of Sino-American political and economic relations.

I. BACKGROUND OF THE BLOCKED CHINESE ASSETS— UNITED STATES CLAIMS ISSUE

A. Historical Review

Civil war broke out in China between the Nationalists and the Communists in the late 1920's.⁷ In 1928, the United States recognized the Nationalist Government of the Republic of China as the sole legal government of China.⁸ After World War II, however, the Communists gained control of the whole of the Chinese mainland,⁹ and the People's Republic of China was proclaimed on October 1, 1949.¹⁰

On December 14, 1950, China intervened in the Korean War¹¹—thereby becoming a direct enemy of the United States. In immediate response, President Truman declared the Korean Emergency,¹² and the Secretary of the Treasury issued control regula-

7. In 1922, the Chinese Nationalists and the Chinese Communists joined forces under the leadership of Nationalist Sun Yat-sen in order to unite the nation, combat the warlords, and deal with oppressive foreign treaties. The two forces were never fully able to reconcile their political and economic goals, however, and after Sun's death on March 12, 1925, the alliance began to disintegrate. In April, 1927 Chiang Kai-shek, then the principal military commander, staged a coup d'etat against part of the Communist leadership and set up his capital in Nanking. The new Nanking government expelled the Chinese Communists from its ranks and began a nationwide campaign of terror to suppress the Communist revolution. Thus, by December, 1927 the latent split between the right and left wings of the revolution had become open civil war. See generally 2 J. FAIRBANK, E. REISCHAUER & A. CRAIG, A HISTORY OF EAST ASIAN CIVILIZATION, 678-88 (1965).

8. Note, *The United States and the People's Republic of China: The Blocked Assets-Claims Problem*, 8 CORNELL INT'L L. J. 253, 254 (1975) [hereinafter cited as *Blocked Assets*].

9. Far Eastern Economic Review, *Asia 1979 Yearbook*, at 169, col. 2.

10. *Id.*

11. Office of Foreign Assets Control, U.S. Treasury Dep't, 1970 Census of Blocked Chinese Assets in the United States 1 (unpublished, available from Office of Foreign Assets Control) [hereinafter cited as OFAC Census].

12. Pres. Proc. No. 2914, 3 C.F.R. 99 (1949-1953 Compilation), reprinted in 50 U.S.C. app. notes prec. § 1 (1976). Citing the "recent events in Korea and elsewhere," President Truman declared that "world conquest by communist imperialism is the goal of the forces of aggression that have been loosed upon the world," and proclaimed "the existence of a national emergency, which requires that the military,

tions to block all assets and accounts in the United States in which the PRC or its nationals had any direct or indirect interest.¹³ At the same time, the Treasury proclaimed a complete embargo on commercial and financial transactions with the PRC.¹⁴ On December 28, 1950, the PRC ordered expropriation of all property within its jurisdiction belonging to United States nationals.¹⁵ The United States responded by reaffirming its recognition of the Nationalist Government and embarking on a policy of non-recognition of the PRC.¹⁶

For two decades after the Communist takeover, United States non-recognition of the PRC and the unresolved blocked assets-claims issue kept Sino-American trade and communication to a minimum. Since the early 1970's, however, the United States has made repeated attempts to lift the Bamboo Curtain.¹⁷ In conjunction with these efforts at détente, has been the United States firm position on the blocked assets-claims issue: namely, that no provision for release of the blocked Chinese assets would be made with-

naval, air, and civilian defenses of this country be strengthened as speedily as possible to the end that we may be able to repeal any and all threats against our national security." *Id.*

13. 31 C.F.R. pt. 500 (1978). It should be noted, however, that the regulations which blocked the assets did not affect ownership. The blocking was in no way a confiscation. The regulations prevented removal of the assets but permitted certain other specified forms of transfer: for example, at all times the owner could invest his assets in listed securities or transfer his funds from demand accounts to interest bearing accounts. Telephone conversation with Dennis O'Connell, Acting Chief Counsel—Office of Foreign Assets Control, U.S. Treasury Dep't (April 10, 1979).

14. The regulations promulgated by the Treasury constituted a complete embargo on commercial and financial transactions with the PRC and all nationals thereof wherever located. Simultaneously, the Commerce Department embargoed all exports from the United States to the PRC under the authority of the Export Control Act. OFAC Census, *supra* note 11, at 1.

15. The phrase used by the PRC to describe the action was "control and inventory." *Government Administrative Council Issues Order for the Control of American Government and Private Property in China* (Dec. 28, 1950) reprinted in J. COHEN & H. CHIU, *PEOPLE'S CHINA AND INTERNATIONAL LAW* 686-87 (1974). [hereinafter cited as J. COHEN & H. CHIU].

16. *Blocked Assets*, *supra* note 8, at 256.

17. By 1969, most restrictions on United States citizens' travel to China had been removed. 34 Fed. Reg. 20191 (1969) (adding 31 C.F.R. § 500.544-545). By 1971, controls on imports and exports had been eased. 36 Fed. Reg. 8584, 11441 (1971) (adding 31 C.F.R. § 500.546-547); 16 DEP'T COM. EXPORT CONTROL BULL. pt. 2 (1970). In February, 1972 President Nixon visited China and signed the Shanghai Communique. 66 DEP'T STATE BULL. 435 (1972). In 1973, the National Council for United States-China Trade was established. *China Trader*, Spring 1979, at 30. In 1975, President Ford visited Peking. *Id.*

out simultaneous arrangement for settlement of private American claims against China.¹⁸ The basic question concerning the blocked assets themselves has been whether they should be incorporated as part of the funding of the settlement, or whether satisfaction of the claims should come solely from a separate lump-sum payment by China which would then allow the assets to be unblocked.¹⁹

B. *Authority for the Blocking Controls*

President Truman's declaration of the Korean Emergency was the basis on which the Treasury Department promulgated the regulations that effectively blocked the Chinese assets.²⁰ The source of executive power under which the assets were blocked is Section 5(b) of the Trading with the Enemy Act (TWEA).²¹ As enacted in 1917, the purpose of the Act was to give the President full power to conduct economic warfare by authorizing him to prohibit certain financial transactions which might be advantageous to an enemy during wartime.²²

In 1933 the TWEA was amended, to authorize the President to designate an agency which would effect regulations implementing his powers under Section 5(b) of the Act, and to allow him to exercise those powers during a proclaimed national emergency as well as during wartime.²³ The Secretary of the Treasury has

18. Lubman, *Trade Between the United States and the People's Republic of China: Practice, Policy, and Law*, 8 LAW & POL'Y INT'L BUS. 1, 56 n.135 (1976) [hereinafter cited as Lubman].

19. *Present Status*, *supra* note 6, at 998-99.

20. See notes 13, 14 *supra*.

21. Act of Oct. 6, 1917, ch. 106, § 5(b), 40 Stat. 415 (1917), *as amended*, 50 U.S.C. app. § 5(b) (1976).

22. *Present Status*, *supra* note 6, at 967; *Blocked Assets*, *supra* note 8, at 255 n.20.

23. Act of Mar. 9, 1933, ch. 1, § 2, 48 Stat. 1, 12 U.S.C. § 95a (1976). Section 5(b) authorized the:

President or his delegate, during time of war or national emergency, to investigate, regulate, or prohibit all commercial and financial transactions by Americans with foreign countries or the nationals of such countries or with respect to any property subject to the jurisdiction of the United States in which such countries or their nationals have any interest of any nature whatsoever.

Sommerfield, *Treasury Regulations Affecting Trade with the Sino-Soviet Bloc and Cuba*, 19 BUS. LAW. 861, 861 (1964) [hereinafter cited as Sommerfield].

On December 28, 1977 Congress amended the TWEA to remove the national emergency powers of the President under Section 5(b). Pub. L. No. 95-223, Title I, § 101(a), 91 Stat. 1625 (1977). In another amendment, known as the International Emergency Economic Powers Act, the President was granted substantially the same

been consistently designated as the agency for the issuance of regulations implementing the President's Section 5(b) powers,²⁴ and it is under this delegated authority that the Secretary in 1950 promulgated the Foreign Assets Control Regulations (Regulations).²⁵ The power of the Secretary of the Treasury to promulgate the Regulations has been further delegated to and is currently administered by the Office of Foreign Assets Control (OFAC).²⁶

The blocking regulations were issued "as an incident of" the declaration of the Korean Emergency,²⁷ and their extension was conditioned upon its continued existence.²⁸ The rationale for the blocking centered initially upon the use the Chinese could make of the assets in the Korean conflict.²⁹ In the pivotal case of *Sardino v. Federal Reserve Bank of New York*,³⁰ however, the Second Circuit of the United States Court of Appeals held that although the Korean Emergency was established within the context of the Korean War, the Regulations actually were intended to encompass and authorize measures against the expansion of world communism in general.³¹ The *Sardino* prohibition against aid to communism in general has remained in effect for the duration of the Cold War and has justified the blocking of the Chinese assets to date.³²

authorities to investigate, regulate, or prohibit transactions by Americans. Such authorities are to be exercised only:

to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.

Id. Title II, § 202(a)(b), 91 Stat. 1626 (1977).

24. *Present Status*, *supra* note 6, at 969.

25. *Id.*

26. Office of Foreign Assets Control, U.S. Treasury Dep't, Foreign Assets Control Regulations and Related Documents I, 22 (Dec. 17, 1950, revised May, 1976) (available from Office of Foreign Assets Control).

27. *Present Status*, *supra* note 6, at 970.

28. *Id.* at 971.

29. 23 DEP'T STATE BULL. 1004 (1950).

30. 361 F.2d 106 (2d Cir.), *cert. denied*, 385 U.S. 898 (1966).

31. *Id.* at 109-10. Judge Friendly stated:

Hard currency is a weapon in the struggle between the free and the communist worlds; it would be a strange reading of the Constitution to regard it as demanding depletion of dollar resources for the benefit of a government seeking to create a base for activities inimical to our national welfare.

Id. at 112.

32. *See id.* at 109.

Section 500.201 of the Regulations is the primary blocking provision applied to the Chinese assets.³³ The Section operates to invalidate any withdrawal of assets after December 17, 1950 from accounts held by Chinese nationals, even if the transaction is completed outside the United States.³⁴ The Section applies to all persons or property subject to the jurisdiction of the United States.³⁵

While the Regulations remain in force today, their underlying purpose has changed substantially.³⁶ Until 1971, as the mainstay of the trade embargo, the Regulations were intended primarily to prevent Chinese acquisition of foreign exchange through transactions with Americans.³⁷ Since 1971, when the embargo was lifted, the role of the Regulations has been more that of a caretaker: that is, to administer the full range of blocking controls imposed on Chinese assets which became subject to regulation before May 7, 1971, and to effectively preserve the assets for eventual use in a settlement of United States claims against China.³⁸ Chinese funds which became subject to United States jurisdiction after May 7, 1971 have not been blocked³⁹ but have been subject to attachment to satisfy outstanding United States claims.

C. *Authority for Claims Adjudication and Blocked Assets Census*

On November 6, 1966, in anticipation of a developing Sino-American relationship,⁴⁰ Congress amended Title V of the International Claims Settlement Act of 1949 (ICSA),⁴¹ authorizing the Foreign Claims Settlement Commission (FCSC)⁴² to receive and determine the validity and amount of claims of United States nationals resulting from expropriation or other takings of property by

33. *Present Status*, *supra* note 6, at 973.

34. 31 C.F.R. § 500.201(b)(2) (1978).

35. *Id.* § 500.201(b)(1)-(2) (1978).

36. *Present Status*, *supra* note 6, at 960-64.

37. *Id.* at 961.

38. *Id.* at 964.

39. 31 C.F.R. § 500.546(b)(1) (1978).

40. *Blocked Assets*, *supra* note 8, at 265 n.64.

41. Act of Nov. 6, 1966, Pub. L. No. 89-780, § 1, 80 Stat. 1365 (amending 22 U.S.C. § 1643 (1950)).

42. The FCSC was created by the President's Reorganization Plan No. 1 of 1954, 68 Stat. 1279 (codified at 22 U.S.C. § 1622 (1958)), which abolished the War Claims and International Claims Commissions and transferred their functions to the FCSC.

the PRC between October 1, 1949 and the date of the amendment.⁴³ The purpose of the China Claims Program was "to obtain information concerning the total amount of claims against the People's Republic of China."⁴⁴ Title V did not provide for the payment of such claims;⁴⁵ rather, it provided for a pre-settlement adjudication which might assist the United States Government in future claims settlement negotiations.⁴⁶ The FCSC began its review of United States claims in 1968,⁴⁷ and by 1972 had certified to the Secretary of State 378 claims resulting in total losses of approximately \$196.9 million.⁴⁸

43. Any claims that may have arisen between November 6, 1966 and May 11, 1979 remain to be adjudicated. On June 1, 1979, under authority granted in Title I of the International Claims Settlement Act (ICSA), as amended, the FCSC commenced the administration of a brief new China Claims Program, in which the FCSC will consider only those claims of United States nationals for losses in China which arose between November 6, 1966 and May 11, 1979, the date of the claims settlement agreement. The deadline for filing such claims was August 31, 1979. FCSC, Summary of the China Claims Program 2 (June 4, 1979) (available from the FCSC, 1111 20th St. N.W., Washington, D.C. 20579) [hereinafter cited as FCSC Summary].

The FCSC has as yet made no announcement of the number of new claims which have been favorably decided. It is anticipated, however, that some losses will be certified under the new program. The amount of these losses would be added to the \$196,861,841 in previously certified losses, *see* note 48 *infra*, thereby diminishing the pro rata share ultimately distributed to claimants whose claims exceed \$1,000. This reduction would be in addition to the 5% deduction provided as reimbursement of United States Government expenses in administering both China Claims Programs. *See* note 83 *infra*. The amount by which American claimants' recovery will be decreased due to these factors is presently unknown. However, statements throughout this Comment discussing the amount of pro rata recovery, expressed either in per cent of certified losses or number of cents on the dollar, should be read with both factors in mind.

44. 22 U.S.C. § 1643 (1976).

45. The adjudication and certification of a claim by the FCSC under the ICSA does not constitute a judgment upon which execution may be obtained in a United States court. Action by the FCSC is, however, "final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official department, agency, or establishment of the United States or by any court by mandamus or otherwise." 22 U.S.C. § 1623(h) (1976).

46. FCSC Summary, *supra* note 43, at 1.

47. Solomon, *When 41¢ on the dollar is a good deal*, Christian Sci. Monitor, Mar. 28, 1979, at 23, col. 1 [hereinafter cited as Solomon] (Anthony M. Solomon is Undersecretary for Monetary Affairs—U.S. Treasury Dep't).

48. The FCSC adjudicated a total of 576 claims, rendering favorable decisions in 378 claims resulting in certified losses in the total principal amount of \$196,861,841. FCSC Summary, *supra* note 43, at 3. Of this amount, claims of individuals totalled approximately \$14.5 million; claims of religious and other non-profit organizations, \$58.3 million; and claims of corporate and other business entities, \$124.1 million. *Id.* The five largest claims were asserted by Shanghai Power Company for

The device of pre-adjudication has been acclaimed as a means of achieving fairly prompt hearings while evidence and testimony are still fresh.⁴⁹ It is possible, however, that the figure of \$196.9 million may not accurately reflect the true value of the total claims due to problems in the claims valuation process.⁵⁰ Chief among the problems encountered were the fluctuating exchange rates of both currencies and the extensive destruction of financial records.⁵¹ Nevertheless, \$196.9 million is the total claims figure used consistently in all authoritative statements.⁵²

Immediately after the issuance of the Foreign Assets Control Regulations, the United States Treasury undertook a census of blocked Chinese property in the United States.⁵³ The purpose of the census was to determine the nature, extent, and location of assets subject to the Regulations and to assist in the formulation of licensing and other policies relating to the assets.⁵⁴ In June, 1970, the Treasury undertook a second census of the blocked assets to provide more current information for use in eventual claims-assets settlement negotiations.⁵⁵ The total present value of the blocked assets is estimated to be approximately \$80.5 million.⁵⁶

\$53,832,885, Esso Standard for \$27,026,602, the United Board of Christian Higher Education for \$23,245,557, Caltex Limited for \$15,443,770, and IT&T Corporation for \$7,765,315. *Id.* When the FCSC adjudicated the United States claims, it imposed interest at the rate of 6% per annum from the date of loss to the date of claims settlement. To a great extent, however, the payment of interest on these claims is an academic question. Under the FCSC pay-out formula, *see* note 83 *infra*, every claimant must be fully compensated for the total amount of principal of his claim before interest can be paid on any claim. Since the settlement fund of \$80.5 million, *see* note 78 *infra*, is insufficient to fully compensate each claimant even for his lost principal, it is highly unlikely that any claimant will be awarded interest.

49. H. STEINER & D. VAGTS, *TRANSNATIONAL LEGAL PROBLEMS* 436 (2d ed. 1976) [hereinafter cited as H. STEINER & D. VAGTS].

50. *Blocked Assets*, *supra* note 8, at 271 n.93.

51. *Id.*

52. *Id.*

53. OFAC Census, *supra* note 11, at 1.

54. *Id.*

55. A total of \$76.5 million in blocked assets was reported under the 1970 census. *Id.* at 1-2.

56. Dep't of the Treasury News 3 (May 14, 1979). The change in amount is due to appreciations in property values and authorized changes in the forms of property. OFAC Census, *supra* note 11, at 1-2. Of the \$80.5 million, 70%, or \$53.2 million, consists of deposits held by banks in the United States; 20%, or \$15.6 million consists of securities held by banks and brokerage firms; \$10.6 million of this total is held for individuals in China. *Id.* at 2-3. At the time the assets were blocked, no provision was made for the assessment of any interest such as was imposed on the certi-

D. *The Preliminary Agreement in Principle*

Negotiations that led to the conclusion of the United States-People's Republic of China Claims-Assets Agreement of May 11, 1979 were conducted within the framework of the preliminary "agreement in principle"⁵⁷ negotiated in February, 1973.⁵⁸ The basis of the 1973 agreement was the concept of an assignment under which the PRC would have assigned to the United States its right, title, and interest in the blocked assets in full settlement of private American claims against the PRC for expropriated property.⁵⁹ The blocked assets then would have been unblocked, vested, liquidated, and distributed in accordance with Congressional mandate.⁶⁰

Central to the feasibility of the 1973 approach was the assumption that once the assets were unblocked, the entire \$80.5 million would be available to compensate American claims.⁶¹ United States officials soon realized, however, that this would not be the case.⁶² The amount the United States could expect to recover would depend on the strength of the Chinese title and that title was disputed, at least with respect to some of the assets.⁶³ The OFAC reported, as of 1970, a total of \$11.6 million in adverse claims against the blocked assets,⁶⁴ the major adverse claimant being the Government of the Republic of China (Taiwan).⁶⁵ Although only \$9.6 million in adverse claims were registered by Taiwanese inter-

fied United States claims. On March 2, 1979, however, the Treasury promulgated 31 C.F.R. § 500.205, requiring that all bank deposits and certain other funds blocked under § 500.201 be placed in interest-bearing accounts by April 2, 1979. 44 Fed. Reg. 11764 (1979).

57. 68 DEP'T STATE BULL. 313, 344 (1973).

58. The "agreement in principle" was announced by U.S. Secretary of State William Rogers and PRC Foreign Minister Chi Peng-fei on March 2, 1973. The agreement, however, was never formally concluded. Comment, *Expropriated Property, Frozen Assets, and Sovereign Immunity: Legal Obstacles to United States-China Trade Regulations*, 15 COLUM. J. TRANSNAT'L L. 254, 257 (1976) [hereinafter cited as *Expropriated Property*].

59. Solomon, *supra* note 47, at 23, col. 2.

60. Business America, July 16, 1979, at 7, col. 1-2.

61. N.Y. Times, Mar. 3, 1979, § A, at 5, col. 1.

62. *Id.*

63. Solomon, *supra* note 47, at 23, col. 2.

64. OFAC Census, *supra* note 11, at 6. "Adverse claim" is defined as "any claim asserted or existing against or with respect to, any item of property being reported which was adverse to the interests of the national whose property was being reported." The term includes "offsets, liens, and any legal action or proceedings with respect to any items of property reported." *Id.* at 11-12.

65. *Id.* at 6.

ests in 1973,⁶⁶ it was possible that Taiwanese banks and emigrant corporations would each lay claim to the previously blocked assets of the whole of China, amounting to some \$57.1 million.⁶⁷

The OFAC made no attempt to verify any of these conflicting claims.⁶⁸ Instead, the question of who would be entitled to the assets after unblocking was left ultimately to be decided in the United States courts.⁶⁹ Treasury officials calculated, however, that after all adverse claims were fully litigated, no more than \$30-40 million would be available to compensate American claimants and then only after years of litigation.⁷⁰ This recovery would have provided a pro rata return of approximately 15-20 cents on the dollar which fell below what Government officials considered an acceptable minimum.⁷¹ Accordingly, the United States negotiating team⁷² abandoned the assignment approach and the agreement in principle was never concluded.⁷³

II. THE UNITED STATES-PEOPLE'S REPUBLIC OF CHINA CLAIMS-ASSETS AGREEMENT OF MAY 11, 1979

A. The Operative Provisions

Relations between the United States and China continued to improve from the time of the preliminary agreement in principle and culminated in President Carter's announcement on December 15, 1978 of his intention to establish full diplomatic relations with China.⁷⁴ On January 1, 1979 the United States recognized the People's Republic of China as the "sole legal government of China,"⁷⁵

66. The claims asserted by Taiwan are against funds "held primarily in the name of a bank in New York for its branches under [PRC] control." *Id.*

67. *Present Status*, *supra* note 6, at 1000.

68. OFAC Census, *supra* note 11, at 6.

69. Dep't of the Treasury News 3 (May 14, 1979).

70. See Solomon, *supra* note 47, col. 2; N.Y. Times, Mar. 3, 1979, § A, at 5, col. 1; Wall St. J., Mar. 5, 1979, at 8, col. 2.

71. See note 125 *infra*.

72. During Treasury Secretary Blumenthal's mission to China (Feb. 24, 1979-Mar. 4, 1979), claims negotiations on behalf of the United States were conducted by a joint Treasury-State Department team. Telephone conversation with Steve A. Orlins, Attorney Advisor—U.S. State Dep't (July 20, 1979).

73. *Expropriated Property*, *supra* note 58, at 257-58.

74. 14 WEEKLY COMP. OF PRES. DOC. 2264 (Dec. 18, 1978).

75. *Id.*

and negotiations for a settlement of the claims-assets issue commenced shortly thereafter.⁷⁶ The United States-People's Republic of China Claims-Assets Agreement (Agreement) was initialled on March 2, 1979,⁷⁷ and became effective upon signature on May 11, 1979.⁷⁸

Under the terms of the Agreement, the PRC will pay the lump sum of \$80.5 million in "full and final settlement"⁷⁹ of private United States claims against the PRC arising from any "nationalization, expropriation, intervention, and other taking of, or special measures directed against property" of United States nationals between October 1, 1949, and May 11, 1979.⁸⁰ Of the \$80.5 million, the PRC made the first payment of \$30 million on October 1, 1979.⁸¹ It will pay the balance in five annual installments of \$10.1 million each, starting October 1, 1980.⁸²

The Agreement provides for the compensation over six years of 40.9% of the value of certified United States claims, providing a

76. Over 30 years elapsed between the Chinese expropriation of American property and the conclusion of the United States-People's Republic of China agreement. This entire period, however, was one of minimal Sino-American governmental communication. Therefore, little possibility of negotiation of a claims settlement existed. N.Y. Times, May 15, 1979, § D, at 1, col. 1. Within five months of United States diplomatic recognition of the PRC, however, the United States-People's Republic of China Claims-Asset Agreement was signed, *see* notes 74 *supra* and 78 *infra*.

77. The agreement was initialled in Beijing by U.S. Treasury Secretary W. Michael Blumenthal and PRC Finance Minister Zhang Jingfu. U.S. Dep't of Commerce News 1 (May 11, 1979). The day before, the United States officially upgraded its liaison office in Beijing to full embassy status and officially closed its embassy in Taipei, Taiwan. 39 Facts on File 146, col. 3 (Mar. 2, 1979).

78. — U.S.T. —, T.I.A.S. No. 9306, *supra* note 6, art. VI. The agreement was signed in Beijing by U.S. Commerce Secretary Juanita M. Kreps and PRC Finance Minister Zhang Jingfu. It is an executive agreement, requiring no Congressional approval. Dep't of the Treasury News 3 (May 14, 1979).

79. *Id.* art III(a).

80. *Id.* art. I(a). The agreement does not cover claims of the United States Government against the PRC. These claims, namely U.S. Export-Import Bank claims, came to approximately \$50 million—principal and interest—loaned to the Republic of China before 1949. N.Y. Times, July 8, 1979, § A, at 11, col. 2.

81. Telephone conversation with Russell Munk, Assistant General Counsel for International Affairs—U.S. Treasury Dep't (Oct. 30, 1979).

82. — U.S.T. —, T.I.A.S. No. 9306, *supra* note 6, art. II. These monies will be placed in a China Claims Fund out of which payments will be made in accordance with Title I of the International Claims Settlement Act of 1949 on losses certified by the Foreign Claims Settlement Commission. FCSC Summary, *supra* note 43, at 2.

pro rata return of approximately 41 cents on the dollar to American claimants.⁸³

The United States will unblock by January 31, 1980 all assets which were blocked on or after December 17, 1950 because of "an interest, direct or indirect, in those assets of the PRC, its nationals, or natural and juridical persons subject to its jurisdiction and control"⁸⁴

The Agreement is silent on the complex question of actual ownership of the blocked assets, nor has the PRC indicated which of the assets it regards as belonging to it.⁸⁵ In a "spirit of mutual cooperation," however, the United States has agreed that prior to unblocking, it will notify all asset-holders who are PRC nationals that the PRC requests that they refrain from transferring or withdrawing the assets without its consent.⁸⁶

B. *An Evaluation of the Settlement*

The United States-People's Republic of China Claims-Assets Agreement can perhaps best be evaluated against a background of previous lump-sum agreements covering claims arising out of similar expropriations by other communist countries. Between 1917 and 1949 the Soviet Union, Yugoslavia, Poland, Rumania, Bulgaria, and Hungary expropriated large amounts of foreign-owned property.⁸⁷

83. Solomon, *supra* note 47, at 23, col. 2. 22 U.S.C. § 1627(e) (1976) provides that each claimant will receive 100% of the first \$1,000 of his claim and a pro rata share (here approximately 40.9%) of the remainder. In order to recover United States Government administrative expenses, however, § 1626(b) provides that 5% will be deducted from each payment as it is received by the Treasury, before any distribution is made to American claimants. Therefore, each claimant will receive somewhat less than 40.9% of the balance of his claim.

84. — U.S.T. —, T.I.A.S. No. 9306, *supra* note 6, art. II(b). The United States and the PRC have agreed to postpone the unblocking of Chinese assets originally scheduled for October 1, 1979. 44 Fed. Reg. 56434 (1979).

85. Dep't of the Treasury News 3 (May 14, 1979).

86. — U.S.T. —, T.I.A.S. No. 9306, *supra* note 6, art. II(b). The PRC has decreed that, upon unblocking, all assets are to be recovered or withdrawn exclusively through the Bank of China. After recovery or withdrawal, 10% of the private assets will be returned in foreign currency. The balance will be paid in Renminbi, the Chinese currency. Beijing NCNA Int'l Service in English, 0123 GMT Sept. 9, 1979, in FBIS-CHI, Sept. 10, 1979, at B1-2. The Renminbi will be treated as foreign remittances, meaning the Chinese will be able to use it in special stores to purchase items not generally obtainable on the open market. Wall St. J., Sept. 28, 1979, at 24, col. 3.

87. These extensive expropriations included "branches of industry, transportation and communication facilities, commercial enterprises, banks and insurance companies, as well as other properties." Dawson & Weston, "Prompt, Adequate and

The global claims settlement agreements⁸⁸ negotiated by the United States Government to cover claims arising out of expropriation of privately-owned American property in each of these countries are briefly summarized below.

1. *Soviet Union*—In November, 1933 the United States and the Soviet Union agreed to settle certain expropriation claims by the assignment⁸⁹ to the United States of assets due the Soviet Government as the successor of prior governments of Russia. Only 9.7% of American claims were compensated under this agreement and then only after twenty years of litigation.⁹⁰

2. *Yugoslavia*—The United States and Yugoslavia concluded two lump-sum agreements to settle claims arising out of Yugoslavian nationalizations of American-owned property. By an agreement of 1948,⁹¹ Yugoslavia agreed to create a fund of \$17 million to resolve claims for nationalizations to that date. That settlement yielded a compensation rate of 91%,⁹² but at the same time the United States agreed to release \$40 million in blocked gold bullion in return for the \$17 million cash payment.⁹³

Claims based upon later Yugoslavian nationalizations were settled by a 1964 agreement⁹⁴ which called for the payment by Yugoslavia over five years of a total of \$3.5 million, resulting in the compensation of 36.1% of American claims.⁹⁵

Effective: A Universal Standard of Compensation?, 30 FORDHAM L. REV. 727, 742 (1962) [hereinafter cited as Dawson & Weston].

88. A "global", "lump-sum", or "en bloc" settlement involves: an agreement, arrived at by diplomatic negotiation between governments, to settle outstanding international claims by the payment of a given sum without resorting to international adjudication. Such a settlement permits the state receiving the lump sum to distribute the fund thus acquired among claimants who may be entitled thereto pursuant to domestic procedure [T]he sum agreed upon may be paid over a given number of years.

Re, *Domestic Adjudication and Lump-Sum Settlement as an Enforcement Technique*, 58 AM. SOC'Y INT'L L. PROCEEDINGS 39, 40 (1964) quoted in R. LILLICH & B. WESTON, INTERNATIONAL CLAIMS: THEIR SETTLEMENT BY LUMP SUM AGREEMENTS, pt. 2, at Author's Introduction (1975) [hereinafter cited as R. LILLICH & B. WESTON].

89. Litvinov Assignment, Nov. 16, 1933, 2 FOREIGN REL. U.S. 813 (1933).

90. 1977 FCSC Ann. Rep. 62.

91. Agreement Regarding Pecuniary Claims, July 19, 1948, United States-Yugoslavia, 62 Stat. 2658, T.I.A.S. No. 1803, 89 U.N.T.S. 43.

92. 1977 FCSC Ann. Rep. 63.

93. Solomon, *supra* note 47, at 23, col. 3.

94. Agreement on Claims of United States Nationals, Nov. 5, 1964, United States-Yugoslavia, 16 U.S.T. 1, T.I.A.S. No. 5750, 550 U.N.T.S. 31.

95. 1977 FCSC Ann. Rep. 63.

3. *Bulgaria*—A 1963 agreement⁹⁶ provided for a settlement of \$35 million, of which \$400,000 was to be paid by Bulgaria over a two-year period, and the remainder was taken from Bulgarian assets in this country that had been vested. The United States-Bulgarian settlement provided a return of 69.7% on American claims.⁹⁷

4. *Rumania*—By an agreement of 1960⁹⁸ Rumania undertook to pay \$25 million over six years in addition to a \$22 million fund established by the United States in 1954 out of blocked Rumanian assets which the United States Government had vested and liquidated. The United States-Rumanian settlement recovered 37.8% of the value of United States claims.⁹⁹

5. *Hungary*—A 1973 agreement¹⁰⁰ provided for a settlement to be funded by \$3,320,000 from vested Hungarian assets plus \$18,900,000 to be paid by Hungary over a twenty-year period, producing a return of 40% on American claims.¹⁰¹ The Hungarian agreement is similar to the United States-People's Republic of China agreement not only in the rate of compensation but also in the fact that twenty-eight years elapsed from the time of claims accrual to eventual settlement.¹⁰²

6. *Poland*—A 1960 agreement¹⁰³ provided that Poland would pay the United States \$40 million over twenty years, and the United States Government would release its blocking controls over all Polish property in the United States. Approximately 33% of certified United States losses were compensated under this agreement.¹⁰⁴

The United States-People's Republic of China Claims-Assets Agreement embodies the final settlement of United States claims arising out of PRC expropriation of private American property and

96. Agreement on Claims of United States Nationals, July 2, 1963, United States-Bulgaria, 14 U.S.T. 969, T.I.A.S. No. 5387, 479 U.N.T.S. 245.

97. 1977 FCSC Ann. Rep. 61.

98. Agreement on Claims of United States Nationals, Mar. 30, 1960, United States-Rumania, 11 U.S.T. 317, T.I.A.S. No. 4451, 371 U.N.T.S. 163.

99. 1977 FCSC Ann. Rep. 62.

100. Agreement Regarding Settlement of Claims, Mar. 6, 1973, United States-Hungary, 24 U.S.T. 522, T.I.A.S. No. 7569.

101. 1977 FCSC Ann. Rep. 62.

102. R. LILLICH & B. WESTON, *supra* note 88, pt. 1, at 214.

103. Agreement on Claims of United States Nationals, July 16, 1960, United States-Poland, 11 U.S.T. 1953, T.I.A.S. No. 4545, 384 U.N.T.S. 169.

104. 1977 FCSC Ann. Rep. 61.

should be evaluated as such. Any appraisal of the settlement is complicated, however, by a lack of fundamental agreement as to the principles to be applied in the highly controversial area of the law of international claims.¹⁰⁵ There is far from universal consensus with respect to a minimum international standard governing the time, amount, and manner of compensation in cases of expropriation of alien-owned property.¹⁰⁶ To clearly delineate the areas of agreement and disagreement, an important historical distinction should be drawn at the outset. Prior to World War I, most state deprivations of foreign-owned wealth consisted of isolated takings of individual and personal property,¹⁰⁷ and the resulting claims were settled by mixed tribunals on a case by case basis.¹⁰⁸ The standard of compensation formulated during this period of limited deprivations reflected the economic and political development of Western Europe and the United States.¹⁰⁹ That standard, known as the orthodox compensation rule,¹¹⁰ called for the payment of "prompt, adequate, and effective" compensation.¹¹¹ Historically, the United States has adhered to the orthodox view¹¹² and contin-

105. Domke, *Foreword* to R. LILICH, *INTERNATIONAL CLAIMS: THEIR ADJUDICATION BY NATIONAL COMMISSIONS* at viii (1962) [hereinafter cited as Domke].

106. H. STEINER & D. VAGTS, *supra* note 49, at 381.

107. Dawson & Weston, *supra* note 87, at 729. Examples of such takings include: a. the appropriation of a parcel of land from a British subject for the royal gardens of the King of Greece. *Finlay Case*, 39 *BRIT. FOREIGN STATE PAPERS* 410 (1849), *cited in* Dawson & Weston, *supra* note 87, at 729 n.11; b. the seizure of insubstantial foreign railway properties in Portuguese East Africa. *Case of the Delogoa Bay Ry.* (1891), 2 *MOORE, ARBITRATIONS* 1865 (1898), *cited in* Dawson & Weston, *supra* note 87, at 729 n.12; c. the taking of the property of several "dissolved" foreign "religious communities." *Expropriated Religious Properties Case* (1910), 1 *U.N. REP. INT'L ARB. AWARDS* 7 (1920), *cited in* Dawson & Weston, *supra* note 87, at 729 n.12.

108. Domke, *supra* note 105, at viii.

109. Dawson & Weston, *supra* note 87, at 729.

110. *Id.* at 734.

111. The Restatement (Second) of U.S. Foreign Relations Law requires that "just compensation" must be "adequate in amount," "paid with reasonable promptness," and "paid in a form that is effectively realizable by the alien . . ." *RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW OF THE UNITED STATES* § 192 (1962). The Restatement (Second) specifies that "[u]nder ordinary conditions, . . . the amount must be equivalent to the full value of the property taken, together with interest to the date of payment." *Id.* at § 193(1) (emphasis added). Promptness requires "payment as soon as is reasonable under the circumstances . . ." *Id.* at § 194. Effectiveness calls for payment "in the form of cash or property readily convertible into cash." *Id.* at § 195(1).

112. H. STEINER & D. VAGTS, *supra* note 49, at 431. The most celebrated expression of American preference for the orthodox or traditional compensation rule

ues to do so in its official statements to the present date.¹¹³

The orthodox standard enjoyed a high degree of acceptance among the Western developed nations up to the time of the first World War.¹¹⁴ The outbreak of World War I, however, marked the beginning of an era of increasing cases of "nationalization"—extensive expropriations of alien-owned property, frequently executed as part of a broad program of social and economic reform.¹¹⁵ Claims arising from expropriations of this general and impersonal character have been settled mostly by lump-sum agreements which involve the adjustment of a dispute between two states, and which provide for "negotiated" compensation as indemnification for all the property expropriated, regardless of the value of individual claims.¹¹⁶ No international tribunal has passed upon the question of compensation in expropriations of the "nationalization" type.¹¹⁷

Due probably to the complexity of the situations involved, however, three distinct theories of compensation have developed.¹¹⁸

First, the traditional or "orthodox" theory, discussed previously, requires "prompt, adequate, and effective" compensation in both types of expropriation of alien-owned property,¹¹⁹ and places

can be traced back to a 1930 statement by Secretary of State Cordell Hull. Secretary Hull contended that: "under every rule of law and equity no government is entitled to expropriate property, for whatever purpose, without provision for prompt, adequate, and effective payment thereof." Note of Secretary of State Hull of Aug. 22, 1938, Press Releases, U.S. Dep't of State, Vol. 19, No. 465, at 138, 5 FOREIGN REL. U.S. 647, 677 (1938).

113. In a more recent example of United States Government commitment to this principle, Secretary of State Kissinger stated: "we should continue to seek full national treatment of U.S. investment abroad, and we must insist on prompt, adequate, and effective compensation in the few cases of nationalization." Speech by Secretary of State Kissinger, American Bar Association Annual Convention, in Montreal, Canada (August 11, 1975), cited in *Expropriated Property*, *supra* note 58, at 258 n.22.

114. H. STEINER & D. VAGTS, *supra* note 49, at 408.

115. Amador, (*Fourth*) *Report on State Responsibility*, [1959] 2 Y.B. INT'L L. COMM'N 1, 21, U.N. Doc. A/CN.4/119 (1959) [hereinafter cited as Amador].

116. *Id.* at 21.

117. Dawson & Weston, *supra* note 87, at 750.

118. Amador, *supra* note 115, at 23.

119. Li Hao-p'ei, *Nationalization and International Law*, reprinted in J. COHEN & H. CHIU, *supra* note 15, at 718 [hereinafter cited as Li Hao-p'ei]. Under the orthodox compensation theory the distinction between the two types of expropriation has no juridical effect so far as the amount, time, and manner of compensation are concerned, since the fundamental principles involved are considered to be the same. Amador, *supra* note 115, at 23.

particular emphasis on "adequate" compensation being the "full value of the property at the time of taking plus interest to the date of payment."¹²⁰

A second theory, exactly opposite to the first, asserts that in cases of nationalization involving a change in a country's socio-economic structure, the question of compensation is a matter entirely within the discretion of the nationalizing state.¹²¹ That state has only the obligation not to discriminate against foreigners; if it does not compensate nationals who are owners, it has no obligation to compensate owners of foreign nationality.¹²²

The third approach, one which is endorsed by the majority of commentators,¹²³ maintains that the nationalizing state is obligated to make partial compensation to owners of foreign nationality, the amount depending upon a number of circumstances.¹²⁴

None of the claims settlement agreements concluded since the end of World War I have compensated claimants for the full value of property taken.¹²⁵ More specifically, despite the stated American preference for the orthodox or full compensation standard, no United States negotiated claims agreement has achieved complete compensation.¹²⁶ Indeed, recent opinion and practice suggest that global agreements in general, far from envisaging full compensation, consistently provide for partial indemnification, the amount of which varies considerably depending upon the case and circumstances.¹²⁷ It would appear then, that the third or partial compensation theory accurately reflects customary international practice in extensive expropriation cases and is most consonant with the system of lump-sum agreements.

Applying this flexible, partial compensation approach within the context of previous claims settlement agreements negotiated by the United States, the United States-People's Republic of China Claims-Assets Agreement compares quite favorably. Because the settlement is in the form of direct cash payments as opposed to the assignment approach contemplated by the 1973 agreement in principle, all of the \$80.5 million will be available to compensate

120. RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 193(1) (emphasis added); see note 111 *supra*.

121. Amador, *supra* note 115, at 23.

122. Li Hao-p'ei, *supra* note 119, at 721.

123. Amador, *supra* note 115, at 23.

124. Li Hao-p'ei, *supra* note 119, at 720-21.

125. Dawson & Weston, *supra* note 87, at 740.

126. See *id.*

127. Amador, *supra* note 115, at 22.

Americans for their claims. The resulting compensation rate of 41 cents on the dollar is in keeping with the average obtained under preceding agreements,¹²⁸ and exceeds what United States officials determined was required as a minimum.¹²⁹ The fact that all payments are to be completed within five years is advantageous to American claimants when compared with previous settlements which at times have involved payments spread over twenty years.¹³⁰ It is also significant that neither the United States Government nor the American claimants will face the burden of years of complex litigation or the resulting risk of diminished compensation.¹³¹ American claimants are assured a recovery of almost 41 cents on the dollar regardless of how much the PRC is able to recover from the blocked assets.

The Agreement is also noteworthy for its impact on overall Sino-American relations. Resolution of the blocked assets-claims issue has been considered a major step in the United States-People's Republic of China normalization process¹³² as well as a necessary antecedent to further steps that would promote the policies of both countries.¹³³ Indeed, the claims agreement was followed quickly by seven other Sino-American accords on scientific, technological, and business affairs.¹³⁴ The most important of these is the United States-People's Republic of China Agreement on Trade which is currently awaiting Congressional approval.¹³⁵ When approved, the

128. Business America, July 16, 1979, at 7, col. 1.

129. The United States negotiating delegation considered 40 cents on the dollar to be the absolute minimum that would be accepted in settlement. *Id.* at 8, col. 3; N.Y. Times, Mar. 3, 1979, § A at 5, col. 1.

130. Transcript of the Remarks of Hon. W. Michael Blumenthal, Secretary of the Treasury before the Washington Press Club, reported in Dep't of Treasury News 1 (Mar. 15, 1979) [hereinafter cited as Press Club Remarks].

131. *Id.*

132. Press Club Remarks, *supra* note 130, at 1; U.S. Dep't of Commerce News 1 (May 11, 1979).

133. See notes 134, 137, 140, *infra*.

134. The six accords consisted of four agreements in the fields of meteorology, oceanography, standards and measurements, and management of science and technology, N.Y. Times, May 14, 1979, § D, at 7, col. 1; a trade exhibition pact, U.S. Dep't of Commerce News 1 (May 10, 1979); and an agreement to open formal negotiations for an aviation accord to establish direct air links between the United States and China, U.S. Dep't of Commerce News 1 (May 9, 1979).

135. Wall St. J., May 14, 1979, at 11, col. 2. The United States-People's Republic of China Agreement on Trade was initialled ad referendum on May 14, 1979, U.S. Dep't of Commerce News 1 (May 14, 1979), and formally signed on July 7, 1979. N.Y. Times, July 8, 1979, § A, at 1, col. 1. It was submitted by President Carter to Congress for consideration and approval on October 23, 1979. N.Y. Times, Oct. 24,

trade agreement will provide a positive framework for expansion of trade in goods and services between the United States and China.¹³⁶ A claims-assets settlement was a clear prerequisite¹³⁷ to conclusion of a trade pact for, without it, Chinese aircraft, ships, or other property entering the United States would be subject to attachment to satisfy outstanding private American claims.¹³⁸

Also, of considerable importance to the Chinese is the award of Most-Favored-Nation (MFN) tariff status.¹³⁹ United States officials have stated that even the discussion of granting MFN treatment to China must be preceded by a claims settlement.¹⁴⁰ Absence of the non-discriminatory tariff treatment has been the most significant restriction on United States imports from China,¹⁴¹ resulting in customs duties on Chinese goods that are generally the highest applicable under United States law.¹⁴² Now that the claims-assets issue has been resolved, the trade agreement, when approved, will provide both the United States and China, on a reciprocal basis, non-discriminatory tariff treatment.¹⁴³

A claims settlement agreement is also considered a prerequisite to extension of United States Export-Import Bank credits to help China finance United States imports.¹⁴⁴ PRC eligibility for Eximbank credits is considered a separate issue from the granting

1979, § A, at 1, col. 4. Congress has sixty days in which to vote on the agreement. Pub. L. No. 93-618, Title I, ch. 5, § 151(e)(1), 88 Stat. 1978, 2002-03 (1975).

136. The agreement provides Most-Favored-Nation (MFN) status for China, reciprocal tariff treatment for the United States, physical facilities to help businessmen do business in China, protection for United States patents, trademarks, and copyrights, and procedures for settling trade disputes. U.S. Dep't of Commerce News 1 (May 14, 1979). The agreement will last for three years but is renewable for additional three year periods. Wall St. J., May 14, 1979, at 11, col. 2.

137. N.Y. Times, May 13, 1979, § A, at 1, col. 1; Wall St. J., May 12, 1979 at 8, col. 2.

138. N.Y. Times, Mar. 3, 1979, § A, at 5, col. 1; *Expropriated Property*, *supra* note 58, at 254.

139. Press Club Remarks, *supra* note 130, at 2.

140. *Hearings on H.R. 10170 Before the Senate Comm. on Finance*, 93d Cong., 2d Sess., pt. 2, 519 (1974) (written statement by Secretary of State Kissinger).

141. Denny & Stein, *Recent Developments in Trade Between the U.S. and the PRC: A Legal and Economic Perspective*, 38 LAW & CONTEMP. PROB. 260, 263 (1973).

142. Lubman, *supra* note 18, at 53.

143. U.S. Dep't of Commerce News 1 (May 14, 1979). The extension of MFN trading status to China is expected to cut import tariffs on Chinese goods by amounts varying from 10 to 60 percent. N.Y. Times, Aug. 26, 1979, § A, at 3, col. 3.

144. N.Y. Times, April 20, 1979, § A, at 9, col. 1; Wall St. J., Mar 5, 1979, at 8, col. 2.

of MFN treatment.¹⁴⁵ However, once the bilateral trade pact is approved and MFN status is in effect, the United States is prepared to grant China such official financing.¹⁴⁶

Thus, the claims-assets agreement is a precondition to a number of steps in the Sino-American normalization process and paves the way for the development of a mutually beneficial economic relationship in the years ahead.

CONCLUSION

The United States-People's Republic of China Claims-Assets Agreement represents a resolution of two conflicting United States interests, that of American claimants to secure the best rate of compensation on their long-standing claims, and that of the United States Government and the American people to, as quickly and expeditiously as possible, remove a significant obstacle to the complete normalization of Sino-American relations. As a final settlement of American claims, the United States-People's Republic of China agreement compares favorably with previous agreements settling similar claims. Perhaps more importantly, it facilitates, after a lapse of more than a quarter of a century, renewed communication and exchange with a nation comprising a fourth of the population of the world.

Charlene M. Levie

145. Wall St. J., Mar. 2, 1979, at 8, col. 3.

146. *Id.* Vice President Mondale has stated:

The United States is prepared to establish Export-Import Bank Credit arrangements for the People's Republic of China on a case by case basis, up to a total of \$2 billion over a five-year period. If the pace of development warrants it, we are prepared to consider additional credit arrangements.

N.Y. Times, Aug. 28, 1979, § A, at 3, col. 2.