

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

**Standard Sempaku Kabushiki Kaisha and Standard Vacuum Oil Company
Case—Decision No. 2**

29 June 1960

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**Decisions¹ of the United States-Japanese
Property Commission**

STANDARD SEMPAKU KABUSHIKI KAISHA AND STANDARD
VACUUM OIL COMPANY CASE—DECISION No. 2 OF 29 JUNE 1960

Claim for compensation for war damages—Settlement *pendente lite*—Effect on
case before Commission.

Demande en indemnisation pour dommages de guerre — Transaction entre les
parties — Effet en ce qui concerne le différend porté devant la Commission.

The United States-Japanese Property Commission, established pursuant to the "Agreement for the Settlement of Disputes Arising under Article 15 (a) of the Treaty of Peace with Japan" and composed of Mr. Lionel M. Summers, Counsellor of Embassy and Consul-General, Member of the Commission appointed by the Government of the United States of America; Mr. Kumao Nishimura, Member of the Permanent Court of Arbitration and former Ambassador of Japan to France, Member of the Commission appointed by the Government of Japan; and Judge Torsten Salén, President of the Supreme Restitution Court for Berlin, Third Member of the Commission chosen by mutual agreement of the Governments of the United States of America and Japan.

Having considered the "Request for Decision" in the above-mentioned cases filed with the Commission by the Agent of the Government of the United States of America and by the Agent of the Government of Japan, on June 14, 1960, reading as follows:

The Agents of the Government of the United States and of the Government of Japan wish to inform the Commission that a compromise has been reached in settlement of the claims of Standard Sempaku Kabushiki Kaisha, a wholly owned subsidiary of Standard Vacuum Oil Company, (U.J.—No. 1) and Standard Vacuum Oil Company (U.J.—No. 2). In accordance with the provisions of Article 19 of the rules of procedure of the Commission, the Agents of both Govern-

¹ Texts provided by the Permanent Representative of the United States to the United Nations.

ments wish to report the terms of the compromise to the Commission for appropriate action.

The claim of Standard Sempaku, K.K., a wholly owned subsidiary of Standard Vacuum Oil Company, is in the amount of 29,312,741 yen. It is a claim for loss or damage to eleven small vessels which were owned by Standard Sempaku K.K. at the outbreak of the war and which during the war were seized by the Japanese Government. The Japanese Government has denied any obligation to make compensation on the ground that the claimant should first have applied for review of prize court proceedings affecting the vessels and also on the ground that no loss or damage has been sustained.

The claim of Standard Vacuum Oil Company (SVOC) is in the amount of \$778,557.44. It is based on the following allegations: That shortly before the outbreak of the war the Japanese Government issued permits authorizing Standard Vacuum Oil Company to purchase foreign exchange in the amount of \$778,557.44 in payment for oil which was imported into Japan by SVOC in reliance upon the permits; that SVOC entered into forward exchange contracts with the Yokohama Specie Bank to purchase \$778,557.44 at an exchange rate of 23 7/16 yen for one dollar; that the Japanese Government took no action upon an application by SVOC prior to December 7, 1941 for permission to withdraw yen funds from an account held in Japan to complete the forward exchange contracts; that the custodian which the Japanese Government placed in charge of the property of SVOC after the outbreak of the war cancelled the forward exchange contracts; and that consequently the debt for the price of the imported oil remained unsettled. The Japanese Government has denied the allegation that the custodian cancelled the forward exchange contracts after the outbreak of the war and has denied that it is under any obligation to compensate for the inability of Standard Vacuum to remit foreign exchange prior to the outbreak of the war.

After the completion of the filing of pleadings in the two cases mentioned above, the Agent of the Government of the United States made an offer to settle the claim of SVOC on the following terms: (1) the Japanese Government would permit SVOC to convert into dollars at the current exchange rate an amount of yen drawn from its resident account equivalent to \$778,557.44 and would permit SVOC to remit such amount of dollars to its head office in the United States in settlement of the debt for the imported oil; and (2) the Japanese Government would recognize that SVOC is entitled to regard the exchange loss it has suffered in making the remittance at the current exchange rate rather than at the pre-war exchange rate specified in its forward exchange contracts as a business deduction for purposes of the Japanese Corporation Tax. The Agent of the Government of the United States later informed the Agent of the Government of Japan that the United States Government would be willing to accept the two actions of the Japanese Government described above in settlement of both the claim of Standard Sempaku K.K. and the claim of Standard Vacuum Oil Company.

The Government of Japan has now fulfilled its part of the compromise agreement. On June 9, 1960, the Foreign Exchange Bureau of the Ministry of Finance approved an application by Standard Vacuum to convert into dollars at the current exchange rate an amount of yen drawn from its resident account equivalent to \$778,557.44 and to remit such amount of dollars to its head office in the United States in so far as the remittance is made in settlement of the above-mentioned unsettled debt. On May 24, 1960, the Tokyo National Taxation Agency notified Standard Vacuum Oil Company that it is entitled to regard the exchange loss it has suffered in making the above remittance at the current rate rather than at the pre-war exchange rate as a business deduction for purposes of the Japanese Corporation Tax.

As a consequence of the above actions, the Agents of the Government of the United States and of the Government of Japan request the Commission to render a decision setting forth the terms of the compromise and declaring the disputes in the two cases settled.

(Signed) TATSUO SEKINE

*Agent of the
Government of Japan*

(Signed) ARNOLD FRALEIGH

*Agent of the Government
of the United States*

Having considered that a valid compromise has been reached in such cases, and that it is the duty of the Commission, under Article 19 of the Rules of Procedure of the Commission, to render a decision applicable to both cases setting forth the terms of the compromise and declaring the dispute settled,

Does hereby decide as follows:

The disputes in the cases of *The United States of America ex rel. Standard Sempaku Kabushiki Kaisha, a wholly owned subsidiary of Standard Vacuum Oil Company, vs. Japan*, and *The United States of America ex rel. Standard Vacuum Oil Company vs. Japan*, shall be considered settled in accordance with the terms of the Request for Decision quoted above.

This Decision is definitive and binding, and its execution is incumbent on the Government of the United States of America and the Government of Japan.

Tokyo, June 29, 1960

TORSTEN SALÉN

Third Member

LIONEL M. SUMMERS

United States Member

KUMAO NISHIMURA

Japanese Member

CONTINENTAL INSURANCE COMPANY CASE—DECISION No. 3
OF 20 JULY 1960

Payment—Loan—International contract—Bonds—Coupons—Payment in two or more currencies at the option of bondholders—Reference to decisions of international and domestic courts—Jurisdiction of Commission—Compliance with Peace Treaty and Compensation Law—Exclusion of decision *ex aequo et bono*.

Paiement — Prêt — Contrat international — Obligations — Coupons — Paiement en deux ou plusieurs monnaies — Option de change — Invocation de décisions rendues par des tribunaux internationaux et nationaux — Compétence de la Commission — Application du Traité de Paix et de la loi relative à la compensation — Exclusion d'une décision *ex aequo et bono*.
