

THE WORK OF THE ALIEN PROPERTY CUSTODIAN

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The control, seizure and administration of enemy property is a right inherent in every wartime government. The framers of our Constitution apparently provided for the exercise of this right by Congress in Article 1, Section 8, Clause 11, which states that Congress shall have the power to "declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water." Article 1, Section 8, Clause 18, further grants to Congress the auxiliary power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." Congress is thereby vested with the power not only to make rules concerning captures on land and water, but also authority to provide all appropriate means which are conducive or adapted to the accomplishment of that end, and which, in the sole judgment of Congress will most advantageously effect the purposes sought to be accomplished. Under this Constitutional grant of power, Congress may enact such legislation as is necessary to deal adequately with property located in the United States in which enemies or their adherents have an interest.

The Trading with the Enemy Act passed shortly after the beginning of the first World War is a concrete example of the exercise of this right by Congress. This act delegates certain powers to the President and to the Alien Property Custodian, authorizing the seizure and control of all property located in the United States owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, a person in an enemy country or enemy-occupied territory or a person proclaimed by the President to be an enemy. These powers were exercised by our Government during the last World War so as to prevent any possible use of this property by the enemy either to further their own war aims or to impede the progress of our own effort to win the war. Enemy property was seized and converted to the use and benefit of the United States and the destruction or dereliction of a great amount of abandoned property which would have resulted in injury to individual nationals without benefit to the United States was prevented by our Government acting under its war powers.

Prior to the Japanese attack at Pearl Harbor, the United States Government was exercising a peacetime emergency control over transactions affecting property owned by the nationals of the Axis and invaded countries pursuant to Section 5(b) of the

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Trading with the Enemy Act. This plan of foreign property control, commonly known as "Freezing Control," was designed first to conserve that property against acts of the Axis powers, and secondly, to prevent transactions in foreign property which were prejudicial to the best interests of the United States, then a neutral nation. The program, administered by the Treasury Department, and limited to immobilizing or freezing the property of foreign countries or nationals thereof, was initiated in April, 1940, when Norway and Denmark were invaded. All transactions in foreign exchange, credit, and other property involving the nationals of these two countries were subjected to regulation by license. As other nations came under the domination of Germany, Italy and Japan, control was extended to the property interests of such nations and their nationals, and finally in June of 1941 to Germany, Italy and Japan, and their nationals.

This method of control was patently inadequate to meet all requirements of a wartime government. No agency was authorized to take title to or possession of enemy property, or to exercise the complementary function of mobilizing foreign-owned productive resources in our war effort. Upon our declaration of war against Germany, Italy and Japan, these necessary wartime controls contained in the Trading with the Enemy Act as amended, became operative and shortly thereafter were further extended under the provisions of the First War Powers Act of 1941. It was pursuant to the provisions of this legislation that the present Office of Alien Property Custodian was created and the Custodian empowered to administer foreign-owned property in accordance with wartime requirements.

Sections 301 and 302 of Title III of the First War Powers Act of 1941, which amended the first sentence of subdivision (b) of Section 5 of the Trading with the Enemy Act of 1917, granted to the President operating through such agency as he might choose, the power to investigate, nullify and regulate transactions involving property in which foreign countries or nationals thereof have an interest and to vest any property or interest of any foreign country or national thereof in any agency or person whom the President may designate; such property or interest to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The President on March 11, 1942, by Executive Order No. 9095, created the Office of Alien Property Custodian and delegated to the Custodian all the powers which had been granted to him by Sections 3(a) and 5(b) of the Trading with the Enemy Act, as amended. This Executive Order in general terms authorized the Custodian to deal comprehensively with the problems that surround foreign property and its ownership or control. On July 6, 1942, the President issued Executive Order No. 9193 which amended Executive Order No. 9095. Executive Order No. 9193 enumerates certain specific policies with respect to the treatment of property determined to be the property of persons within countries with which the United States was at war and the manner in which property of persons within countries occupied by the enemy shall be dealt with. The powers of supervision, control and

vesting of these two types of foreign-owned property are divided between the Alien Property Custodian and the Secretary of the Treasury. While defining in detail the specific powers and duties delegated to each agency the order provides that no person may challenge the validity of any act of either the Alien Property Custodian or Secretary of the Treasury on the grounds that the authority for such act was specifically delegated to the Alien Property Custodian or the Secretary of the Treasury or vice versa.

Under the provisions of Executive Order No. 9193, the Custodian is authorized to take such action as he deems necessary in the national interest, including but not limited to the power to direct, manage, supervise, control or vest the following classes of property:

A. Property in which foreign nationals¹ have an interest:

1. Business enterprises and interests therein when the Custodian certifies to the Secretary of the Treasury that it is in the national interest for him to take jurisdiction over such property;
2. Patents, patent applications, copyrights, copyright applications, trademarks, or trademark applications or rights;
3. Ships, vessels, or interests therein.

B. Property in which enemy nationals have an interest:²

1. Business enterprises and interests therein;
2. Any property in the process of judicial administration;
3. Any other property, not including cash, bank deposits, securities, etc.³

The Custodian's first task was to identify foreign property interests located in the United States, and to determine the beneficial ownership of such property.⁴

The prewar census of foreign-owned property taken by the Treasury Department was an important source of information to the Custodian's office. These reports supplemented by further reports received in compliance with the General Orders of the Custodian provided the major body of information necessary to deal with the apparent widespread efforts of the enemy to conceal the true ownership

¹ Foreign nationals include residents of countries designated in Executive Order No. 8389, as amended.

² Enemy nationals include not only residents of countries with which the United States is at war but also the following: (a) citizens of enemy countries who reside in enemy-occupied countries; (b) persons (not residents of enemy countries) who have been acting for an enemy country. Moreover, wherever our national interest dictates that such action be taken, the Custodian may require that certain persons and enterprises be treated as nationals of enemy countries. In view of this broad definition the Custodian has treated as enemies certain persons and enterprises that have appeared on the Proclaimed List of Blocked Nationals; residents of enemy-occupied countries who were suspected of enemy affiliations; interned aliens when they are "determined" to have been acting for enemies.

³ Where the Custodian determines that cash, bank deposits or securities are necessary for the maintenance of other property belonging to the same designated enemy national, he has the authority to vest the cash, etc.

⁴ The powers to investigate, like the powers to control foreign interests in property, were delegated by the President through Executive Order 9095, as amended. In accordance with the provisions of Section 5(b) of the Trading with the Enemy Act, as amended, the Custodian was authorized to require the production of books of account, records, contracts, leases, memoranda, or other papers. Moreover, the Custodian was authorized to require the seizure of all pertinent data whenever it was necessary to do so in the national interest.

of property through elaborate systems of agreements, loans, options and cloaking devices, such as holding companies incorporated in neutral countries.

Applications for licenses to engage in transactions filed with the Foreign Funds Control Division of the Treasury Department, investigations by the Federal Bureau of Investigation and the Treasury Department, and reports, files and data collected by various units of the Department of State, the Department of Justice, the Patent Office, the Office of Strategic Services, Foreign Economic Administration, the War and Navy Departments, Securities and Exchange Commission and other government departments and agencies were further sources of information which have been utilized by the Custodian in securing precise descriptions of properties and the identity and nationality of the true owners.

The primary objective of the Custodian has been to insure the effective utilization in our wartime economic system of all foreign-owned properties which come under his jurisdiction. In determining the priority with which foreign properties should be investigated precedence was given to those properties which were of value to the war effort and in which it was believed that enemy influences were present. Immediate investigations were conducted and appropriate action taken as soon as circumstances warranted.

TYPES OF CONTROL EXERCISED BY THE CUSTODIAN

Vesting

As a general rule, the Custodian has followed a policy of vesting the property or interests of persons in countries with which the United States is at war within the limitations of Executive Order No. 9193. In taking title to such property the Custodian is in a position to exercise complete control of such property or interest for the use and benefit of the United States since, by vesting, all rights of the former enemy owners to such property are vitiated. The Custodian's power to vest, however, is not limited to the property of persons within enemy countries. The Custodian is specifically authorized to vest the property and interests of persons in occupied territory and of persons who are found by the Custodian to be acting as cloaks for enemies when he determines such act is in the national interest. The property interests of persons in enemy countries and enemy-occupied territory in patents, copyrights and trademarks have usually been vested.

Supervision

Under the authority delegated to him by the President, the Alien Property Custodian may exercise his control by supervising, rather than by vesting, certain classes of property including business enterprises belonging to nationals of enemy and of other foreign countries. As a general policy he has chosen to supervise rather than vest business enterprises in which enemy nationals have only a minority interest, but have indirectly obtained control. He has in this way been able to eliminate enemy domination of the enterprise and substitute American management, thereby increasing the efficiency and productive efforts of these enterprises.

It has been found to be in the national interest to take supervisory control of the property of certain internees in order to prevent the dereliction and destruction of their property. So also property of United States citizens residing in enemy countries or occupied territory which is important to the war effort is supervised or in some cases vested in order that it might be put to the fullest possible use, or because if not supervised or vested it would become derelict.

The mechanics of vesting or exercising supervision over property is somewhat the same. In each case an appropriate order is issued by the Custodian. Originally supervisory orders were issued supplementary to vesting orders, but this practice was abandoned in the latter part of 1942. When such action is deemed advisable supervisory clauses are now incorporated in vesting orders. This practice enables the Custodian to acquire control of vested property, particularly business enterprises, more quickly than by virtue of the vesting action alone since the procedure of transferring title and changing management is frequently complicated and time consuming. The issuance of a supervisory order also permits the Custodian to extend control to subsidiaries of business enterprises when he has vested an interest in the parent concern.

The issuance of a supervisory order does not in any way affect title to the property, but confers upon the Custodian only the right to control its use and operation. Hence, when the necessary objectives have been accomplished and supervision is no longer required, control may be released by a revocation of the supervisory order. This simple procedure permits the original owners to resume the operation and management of the business immediately.

BUSINESS ENTERPRISES

The authority to deal with foreign-owned corporations, partnerships and other types of business enterprises is contained in the provisions of Section 2(a) and (b) of Executive Order No. 9193.

The Alien Property Custodian either vests the enemy interests in the enterprise (interest vesting) or vests the assets of the enterprise (asset vesting).

Since the primary concern is the elimination of any actual or potential enemy control of a business, the Custodian, in a great majority of cases, has left untouched the small minority stock interests held by nationals of an enemy country which could not possibly influence the control and operation of a company. (The stock and dividends accruing thereon are subject to the Freezing Control of the Treasury Department.)

In non-corporate business enterprises the nature and extent of enemy interests are important factors in determining what action the Custodian will take. When all partners in a partnership are enemy nationals, it is the usual practice to vest both the assets of the enterprise and the interests of the partners. When only some of the partners are enemy nationals the Custodian takes all right, title and interest of the enemies in the partnership. These "Interest Vestings" are also made with re-

spect to sole proprietorship and non-profit organizations, such as the German-American Bund and American branches of foreign enemy dominated business enterprises.

Approximately seventy percent of the business enterprises vested have been corporations. In order to acquire the ownership and control of this type of property, the Alien Property Custodian has issued over five hundred vesting orders. These vesting orders do not represent the actual number of business enterprises vested. In some instances more than one vesting order is issued to cover separate enemy interests in the same firm. On the other hand one order may cover many subsidiaries and affiliates of the principal enterprise.

About one-third of the Custodian's net equity in all business enterprises vested represented German interests in chemical manufacturing enterprises. The large enemy interests in the banking and insurance fields have been predominantly Japanese and Italian. The remainder of the vested companies engaging in trade or commerce, various types of financial operations, insurance, real estate, transportation, agriculture and patent holdings were for the most part German and Japanese owned or controlled.

The Operation of Business Enterprises

When the Custodian assumes control of an enterprise, he takes immediate steps to assure the continuous operation or orderly liquidation of the business. If he finds that the enemy control has penetrated the management, he restaffs the enterprise with qualified personnel. When the existing management is reliable and there is no evidence of enemy sympathies or affiliations that might restrict operations, the Custodian usually exercises his control as a stockholder through the normal corporate processes such as participation in the election of an appropriate board of directors.

Directors designated by the Custodian have the same duties and responsibilities as the directors of any other corporation. Due to the nature of their appointment, however, they may consult with the Custodian's office regarding the policies of the Custodian with respect to the business. In some cases if the activities of such an enterprise are vital to the war effort, field representatives of the Custodian's office are placed in positions in the enterprise so that they may inspect and examine into its activities and make reports thereof to the Custodian.

There are several factors which influence the decision of the Custodian to maintain and operate as going concerns certain business enterprises where vesting has occurred. The necessity and importance of an enterprise to the war effort is always a controlling factor. In some instances the decision of the Custodian may be based on the fact that an enterprise is performing useful services, operates profitably and is not dependent for continued existence on affiliations with enemy nationals. If the Custodian vests only minority interests in a concern, the enterprise will continue to operate as a going concern unless the majority shareholders agree to liquidate.

Partnerships and proprietorships which have been vested by the Custodian are usually operated by the appointment of a manager who assumes complete control of the firm and is under the supervision of the Alien Property Custodian.

The success of the Custodian's policy with respect to the operation of vested enterprises is attested by the valuable contributions which these companies have made to the war effort.

Disposition of Business Enterprises

The Alien Property Custodian does not retain control of business enterprises which he has vested for a period any longer than is absolutely necessary in the best interest of the United States. It is his policy to transfer to private hands as speedily as possibly the properties which he has vested, thereby relieving the government of the burden of administering these properties in competition with American private business.

When it is decided to dispose of a going concern the Custodian arranges for the sale of the stock, or the entire assets of the firm, whichever is appropriate under the particular circumstances in each case. Thus, when the Custodian owns less than one hundred percent of the common stock of the corporation, stock sales will, as a rule, be the usual method of disposition.

On the other hand a sale of the assets in bulk legally constitutes a liquidation of a going concern. Economically, however, such a sale leaves the establishment a going concern just as much as the sale of stock. It is only when the assets are sold piecemeal that the enterprise is terminated as an economic unit.

If the assets of an enterprise have been vested, such as the assets of proprietorships, partnerships, or domestic branches of foreign companies, the Custodian takes possession of the assets and arranges for their sale. The assets may be sold as a unit to a single purchaser, in separate lots to several purchasers, or in some cases part of the assets may be disposed of by a series of sales during limited operation of the business.

When a vested enterprise is operating under a name which conveys to the American public some close association with a product manufactured abroad, the Custodian may leave the productive entity undisturbed by selling the assets in bulk, thereafter eliminating the corporate name from the enterprise by dissolution. The efforts required to sell the stock and the difficulties to be met in disposing of the assets in bulk and, of course, the net return which may be obtained from each method of sale are important considerations in determining the method of disposition.

The Custodian may determine to dispose of a vested enterprise by liquidation. His decision to liquidate is usually the result of his determination that such business has no place in our wartime economy, or that it is so dependent upon foreign sources for materials that it cannot continue to operate because of the impossibility of securing materials during wartime. Insolvent companies and enterprises which are found to be unprofitable, are liquidated. Such business enterprises as banks and insurance

companies, trading companies, shipping agencies, real estate holding companies and distributors of enemy manufactured articles are liquidated.

In the liquidation of a corporation the capital stock of which has been vested, the procedure is the same as that which would normally be employed by private owners. The acting, or newly elected directors and officers, proceed with the liquidation under the direction of the Custodian.

The involved financial activities of some of the vested enterprises have presented many difficult problems in the liquidation process. Many of the enterprises prior to the date of vesting have had extensive dealings with banks which are also being liquidated, and these banks in turn have had transactions with their home offices in foreign countries and with other branches throughout the world.

The liquidation program is now substantially completed. Some property, such as articles manufactured for export, which cannot be used by American firms, and securities owned by vested corporations have not been sold. Preparations for the sale of such securities are under consideration at the present time.

INDUSTRIAL PROPERTY

Section 2(d) of Executive Order No. 9193, delegates to the Alien Property Custodian the authority to deal with foreign patents, trademarks and copyrights.⁵

Trademarks

An examination of the records of the United States Patent Office at the beginning of the war disclosed approximately 7,000 trademarks registered in the names of nationals of enemy or enemy-occupied countries. General Order No. 16 issued by the Custodian which requires persons having information, or reason to believe that foreign nationals have an interest in trademarks to file a report with the Custodian, served as a further means of obtaining information about foreign-owned trademarks. These reports were checked against assignment records of the Patent Office, Treasury Department and patent reports received by the Custodian. This check disclosed that only a small proportion of all the foreign trademarks registered in the United States have actually been used here. A substantial number of the more important trademarks of enemy origin were being used by business enterprises formerly under enemy influence. In some instances a firm owned the trademark outright; in others, the firm used the trademark by oral or written agreement with foreign owners. It was found that American interests in enemy-owned trademarks were often the result of bona fide prewar agreements.

In order to protect the interests of legitimate users of trademarks and of the public generally, the Custodian adopted a policy of selective vesting of trademarks including the good will of the business which they represent. He vests enemy-owned trademarks and trademark rights which are being used pursuant to prewar agreements by American enterprises engaged in the manufacture or sale of Amer-

⁵The subject of Patents is treated in a separate article in this symposium: Sargeant and Creamer, *Enemy Patents, infra* p. 92.

ican made products. The royalty payments due under prewar agreements are collected by the Custodian.

If any residual rights in trademarks are owned by enemy nationals under contracts with a vested business enterprise, such rights are vested to safeguard the business enterprise or the prospective American purchaser of the enterprise against any claim for the use of the trademark which the enemy may assert after the end of the war. In the absence of unusual circumstances trademarks owned by nationals of enemy-occupied countries are not vested.

The Custodian has determined it to be desirable to continue the use of certain enemy-owned trademarks, which represent good will and acceptance by the consumer, because the trademark facilitates the sale and disposition of the product.

Disposition of Trademarks

Trademarks, attaching to vested enterprises which are sold as going concerns, are included in the sale of such enterprises. If the trademarks are associated with products manufactured under vested patents licensed by the Custodian, arrangements are made for the use of the trademarks by the patent licensees. The Custodian does not consent to the use of vested trademarks by American firms when the marks have merely been registered by the foreign owners but never used in this country, or where American manufacturers find it impossible to duplicate a trademarked product which was formerly imported.

Copyrights

Many of the copyrights owned by nationals of enemy or enemy-occupied countries cover works of little or no value to the war program. General Order No. 14 requires persons having interests in foreign works subject to copyright to file a report with the Office of Alien Property Custodian. Report forms for this purpose were prepared and sent to approximately eighteen hundred individuals and companies including music licensing societies, radio broadcasting firms, music publishers, manufacturers of records and electrical transcriptions, book publishers, theatrical producers, motion picture companies and other agents dealing in copyrighted material.

The policy of selective vesting is followed with respect to copyrights. Generally speaking, copyrights are vested either: (1) to permit an American firm to reproduce a work of some national interest or importance which originally was produced by a foreign national; and (2) to collect royalties payable by an American licensee to an enemy national.

The original program of the Custodian did not contemplate extensive vesting of copyrights of nationals of enemy-occupied countries. As a practical matter, however, it was found that without title to a copyright publishers felt too uncertain of their rights and would not undertake the work of republishing. Failure to publish important scientific works deprived the public of valuable knowledge and techniques and the copyright holder of royalties which he would otherwise obtain. For these

reasons there has been a change of policy and copyrights of nationals of enemy-occupied territory are now vested by the Custodian.

If, as a protective measure, the Custodian vests a copyright of a scientific book, he issues a nonexclusive license to the publisher and, since scientific books are expensive to publish and have a relatively restricted market, the Custodian usually agrees not to grant additional licenses on the specified work for a period of six months.

One of the most important books republished under a license issued by the Custodian is *Beilstein's Handbook of Organic Chemistry*. Prior to the war a complete set of the work cost \$2,000. It is now available at one-fifth of the prewar price.

Non-exclusive licenses to reproduce articles, extracts, maps, charts, etc., have been granted royalty-free, upon request, to public research organizations, agencies of the Federal Government and educational institutions. If such licenses are issued to private persons and firms, royalties are payable at the usual trade rate.

As of June 30, 1944, the Custodian had issued 158 vesting orders, vesting approximately 120,500 copyrights. Of this total more than 118,000 were copyrights of musical compositions.

MISCELLANEOUS REAL AND PERSONAL PROPERTY

Section 2(c) of Executive Order No. 9193, authorizes the Custodian to deal with the real and personal property of foreign nationals.

Information concerning enemy owners of real and personal property is obtained by the Custodian from several sources: Treasury Department reports, APC-3 reports covering property in litigation, information from attorneys or agents who had handled the real property interests of foreigners, information obtained from an examination of the books of foreign-owned business enterprises and reports of internees and persons repatriated to enemy countries. The cost of vesting small parcels of real estate, in many instances disproportionate to the value of the property, and the great difficulty encountered in obtaining competitive bids for the sale of small and undivided interests in real estate are considered by the Custodian before vesting real estate.

As a general policy, the Custodian vests all mortgages of real property belonging to enemy nationals unless the balance due on the mortgage is too small to justify the expense of administering this particular property. Real property belonging to nationals of enemy-occupied countries is not vested.

Disposition

In order to avoid the administrative burden of managing these properties the Custodian obtains appraisals and sells, as quickly as possible, the real estate which he vests. Real estate is usually sold at public sale to the highest bidder. The Custodian, however, has the discretion to accept the highest bid, or reject all bids and either advertise again for new bids or sell at private sale.

ENEMY PROPERTY IN LITIGATION

Section 5 of Executive Order No. 9193 authorizes the Custodian to make rules and regulations governing the service of process or notice on persons in enemy countries and enemy-occupied territory in connection with any court or administrative action or proceeding within the United States, and to provide adequate representation in such actions and proceedings for those foreign nationals who are unable to be present and assert or defend their rights under the Constitution and laws of the United States and the respective states, territories and possessions.

In order to effectuate these duties, the Custodian has issued General Orders Nos. 5, 6 and 20. General Order No. 5 requires all persons acting under judicial supervision to file a report of any such case with the Custodian. A special form identified as APC-3 was adopted for use in making reports of property of this nature. The information submitted on this form makes it possible for the Custodian to determine whether to accept service of process or notice on behalf of a foreign national, designate an attorney to appear and represent the national, and finally whether to vest or to consent to distribution of the property or interest into a blocked account under the rules, orders and regulations of the Secretary of the Treasury, pursuant to Executive Order No. 8389.

General Order No. 6 permits service of process or notice upon persons in enemy countries, or enemy-occupied territory to be made by sending by registered mail to the Alien Property Custodian, Washington, D. C., a copy of the notice or process. The validity of this type of service is made dependent upon the Alien Property Custodian's written acceptance within sixty days from receipt thereof. This substituted service places the property of the foreign national before the court, so that in actions *in rem* or *quasi in rem* the court may hear and determine the rights and interests of the parties and enter judgments and decrees in accordance with due process.

When the Custodian has accepted service of process or notice on behalf of an absentee national, he assumes the added responsibility of providing that essential element of due process, namely, that the interested party have an opportunity to be heard before judgment is pronounced against him. An attorney selected by the Custodian is designated to file in the pending action or proceeding his formal appearance on behalf of the foreign national and to represent the absentee and protect his interest in the same manner that a private attorney would protect the interest of his client. The attorney designated is subject at all times to the control and supervision of the Alien Property Custodian. The action taken by the Custodian at the termination of the proceedings is dependent on whether the nationals of an enemy country or enemy-occupied territory are determined by the court to have an interest in property.

The distribution of such property or interest is subject to General Order No. 20, which requires the consent of the Alien Property Custodian to the payment or

transfer of property to, or for the benefit of a person in an enemy country or enemy-occupied territory.

It is the usual policy of the Custodian to vest all interests under judicial supervision which are determined to be payable or deliverable to or claimed by, any person within a country with which the United States is at war, or a national of such countries who is within enemy-occupied territory. If, however, a person in enemy-occupied territory (other than the national of an enemy country) obtains or is determined by a court to have an interest in property, such property or interest is subject to the provisions of Executive Order No. 8389, as amended, and licenses issued pursuant thereto and is required to be deposited in a blocked account in a domestic bank or with a public office or agency designated by a court having jurisdiction of the property in the following manner:

1. In the name of the national.
2. In trust for the national.
3. In any other designation clearly showing the interest of the national.

Thus, with respect to property under judicial supervision, the Custodian acquires title to and obtains immediate possession of the property and interest of those persons within countries with which we are at war (or nationals of such countries who are within occupied territory) and provides for the protection and preservation of property and interests of those persons within enemy-occupied territory who have been brought under the domination of the enemy by reason of the occupation of their countries by the enemy.

The general effect of these activities has been to remove from the potential use and control by the enemy, millions of dollars worth of property and has made possible the distribution of hundreds of millions of dollars worth of real and personal property to American citizens who would otherwise be deprived of the use and benefit thereof, until after cessation of hostilities. The marketability of real estate in this country, in which foreign nationals have an interest, has been amply protected, and foreclosure or partition proceedings have been consummated.

SALES PROCEDURE

Unless it is otherwise determined to be in the national interest, vested property is sold at public sale after public advertisement.

General Order No. 26, issued by the Custodian June 9, 1943, governs the procedure for selling vested property. Under the provisions of this order, property valued at more than ten thousand dollars must be sold at public sale, unless it comes within certain exceptions which permit special sales. Property valued at less than ten thousand dollars may be sold at private sale and at a time and place of the most favorable demand, and upon such terms as may be necessary to secure the best market. As a matter of practice, however, all property regardless of value is sold at public sale, unless a "Special Sale" is determined to be in the best interest of the United States.

"Special Sales" include sales to another agency of the Federal Government, or at the request of another agency of the Federal Government to a private concern; sales of perishable property; sales of securities and commodities upon public exchanges; and sales of real estate. These "Special Sales" are made under the same flexible rules which govern the sale of property valued at less than ten thousand dollars.

When the sale is public, the property is advertised for sale and bids solicited. Sealed bids received by the Custodian are opened in public and awards are made to the highest qualified bidder. If the highest bid is not acceptable, the Custodian may reject all bids and make new arrangements for obtaining a more adequate bid.

In order to make certain that former enemy control and restrictive practices may not be renewed, the Custodian before selling makes sure that the contemplated sale of the property will constitute a definite and permanent transfer to owners who have no direct or indirect affiliations with the enemy and that the property will not be used by the new owners to stifle competition. If there is any evidence that the highest bidder intends to dominate the market for a specific commodity through the purchase of a vested enterprise, or to protect some outstanding investment by eliminating potential competition, the Custodian may ignore his bid and choose a more acceptable lower bidder who meets with his approval, or he may reject all bids and solicit new bidders.

Section 12 of the Trading with the Enemy Act provides in part:

" . . . Any person purchasing property from the alien property custodian for an undisclosed principal, or for re-sale to a person not a citizen of the United States, or for the benefit of a person not a citizen of the United States, shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not more than \$10,000, or imprisonment for not more than ten years, or both, and the property shall be forfeited to the United States. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificates upon its, his, or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares of beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him."

CLAIMS AGAINST THE CUSTODIAN

The post-war policy with respect to the disposition of vested property, or the proceeds from the sale of such property will be determined by the Congress of the United States at the conclusion of the war. At this time it is impossible to forecast if, when, and how Congress will provide for the return of vested property. Likewise the adjustment of war claims, including claims for damage to property of American citizens by enemy action, is a matter which must await the termination of hostilities.

There are, however, two major types of claims with which the Alien Property Custodian is immediately concerned.

1. Claims for the return of property alleged to have been erroneously vested.
2. Claims asserted against vested property for the settlement of debts incurred by the former owner.

The first classification has reference to property which is alleged to have been seized by the Custodian as a result of erroneous determinations either with respect to ownership of the property, or the enemy status of the owners. The second classification pertains to debt claims or creditor's claims and include claims for wages, repairs or alterations to property, rents, security liens and, in general, claims of any nature against the property which arose out of obligations undertaken by the former owners prior to the date of vesting.

If the Custodian has vested only the stock of a corporation and the corporation continues to exist as a legal entity, the Custodian is not the proper party to be sued for debts of the corporation. Such claims are filed against the corporation and the successful claimants are paid by the corporation in the ordinary course of business. When, however, the assets of a corporation are vested, claims thereafter may be filed with the Custodian. These claims will be considered and the Custodian will take such action as the applicable statutes, rules and regulations permit.

In order to provide for American citizens and non-enemy nationals a right of relief from, or against the Custodian, because of vesting, supervisory or other order of the Alien Property Custodian there has been established within the agency a committee known as the Vested Property Claims Committee. The Custodian has delegated to this committee the authority to hear, consider and decide certain limited types of claims. This committee composed of three members is entirely divorced from all other activities of the office. Notice of claim with a request for a hearing may be filed on appropriate forms provided by the Custodian within one year after the alleged wrongful action, or within such further time as may be allowed by the Alien Property Custodian.

The regulations governing the hearings before this committee are similar to those of such agencies as the Federal Trade Commission, Securities and Exchange Commission and the National Labor Relations Board. Notice of hearings is published in the Federal Register and the proceedings are open to the public. The committee has the power to subpoena witnesses, to compel the production of documents for use as evidence, to administer oaths to witnesses and to apply the fundamental rules of practice, procedure and evidence. The claimants have a right to be represented by counsel. The General Counsel of the Office of Alien Property Custodian appears on behalf of the agency. The committee keeps a record of every hearing before it, including a transcript of any examination of witnesses and this record is open to public inspection.

The determination of the committee is final unless the Custodian, or Deputy

Custodian, in his discretion, undertakes a personal review of the case. Requests for a review by the Custodian, or Deputy Custodian may be filed by any party in interest within twenty days after notice of the determination of the committee. If the Custodian, or Deputy Custodian decides to review a case, all parties will be afforded an opportunity to submit briefs and with the permission of the Custodian, or Deputy Custodian may orally argue the case.

The Custodian, or Deputy Custodian may, as a result of his personal review, adopt, modify, reverse, remand or otherwise dispose of the committee's determination. All interested parties will be notified of his action. When a claim is allowed, the property involved is returned to the rightful owner through the issuance by the Custodian of a divesting order.

The General Counsel of the Office of Alien Property Custodian may in his discretion initiate a summary proceeding for allowance of any claim which he deems so clearly entitled to allowance that the public interest does not require contest thereof, of hearing thereon, by submitting to the Vested Property Claims Committee a recommendation for allowance, stating the facts considered in making the recommendation. The recommendation is made public and an opportunity is given any person asserting any objection to the allowance, to file within a specified time an application for a hearing. The committee may concur in the recommendation and issue a summary determination allowing the claim, or disagree with the recommendation of the General Counsel, in which case the claim will be set down for a regular hearing before the committee. In the latter case neither the recommendation or the dismissal of the summary proceedings shall be considered in the hearing.

PROPOSED LEGISLATION

Since its inception, the Office of Alien Property Custodian has been handicapped to some extent by reason of the absence of clearly articulated legislative intent and authority, particularly with respect to the methods to be followed in handling claims filed against the Custodian, the payment of creditors and the indemnity of directors and agents of the Custodian. The Alien Property Custodian has proposed to the Congress of the United States legislation which seeks to clarify the broad powers which have been delegated to him by Congress and the President.

H. R. 5031 (S. 1940) introduced in the House of Representatives in June, 1944, seeks to amend Title III of the First War Powers Act, 1941⁶ by adding several new sections to the Trading with the Enemy Act, as amended, which deal with operating matters essential to a proper exercise of the Custodian's present day to day functions and which are considered immediately necessary by the Custodian in order to properly and promptly administer vested property.

Specifically, the Congress is asked to designate with particularity:

1. A method for the receipt and disposition of claims of American citizens and other persons who are not enemy citizens, who may claim the return of their property.

⁶ 55 STAT. 838 (1941), 50 U. S. C. APP. (SUPP. III, 1941-1943) §616.

2. A method for the fair and equitable payment of claims of American citizens and other proper persons who are creditors of persons whose property has been vested.
3. A method by which the Custodian may pay taxes—Federal, State and local—with respect to vested property.
4. A method for the payment of the expenses of the Office of Custodian out of funds in his control without imposing any burden on the general American public.

The work of the Custodian is an important factor in the successful prosecution of the war and will contribute to the efforts of this nation in effecting a satisfactory adjustment of post-war problems.

By seizing the property of our enemies, the Custodian has not only deprived the Axis powers of any possible benefit or advantage which the ownership and control of property in the United States might give them, but also by using the property of our enemies to its fullest possible extent in our own war effort he has contributed to their defeat.

By protecting and preserving the property of our allies and friends, the victims of our enemies, the Custodian has endeavored to achieve a measure of confidence and regard towards this country on the part of these subjugated peoples which will be politically desirable and effective in the period of readjustment between the cessation of hostilities and the restoration of peace.