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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON REGIONAL OFFICE
FIFTH FLOOR
803 WEST BROAD STREET
FALLS CHURCH, VIRGINIA 22046

AUG 13 1975

Rear Admiral W. M. Oller
Commander, Defense Fuel Supply Center
Cameron Station
Alexandria, Virginia 22314

Dear Admiral Oller:

In the course of a review by the General Accounting Office of the activities of the Defense Fuel Supply Center (DFSC), Cameron Station, Virginia, we found a possible overcharge to the Government by Texaco Export, Inc., under a fuel contract with DFSC. We have referred this matter to the Federal Energy Administration (FEA), for possible recoupment action. This matter was discussed with Mr. Martin J. Harty by representatives of our Office of the General Counsel.

The contract (DSA 600-74-D-0519), for various amounts of jet fuel, diesel fuel, Navy distillate, and Navy special fuel was entered into in December 1973, pursuant to a mandatory allocation placed upon Texaco, Inc., under the Defense Production Act of 1950. This mandatory allocation was accepted by Texaco Export, Inc., a wholly-owned subsidiary of Texaco, Inc. The contract provided that delivery of the fuel to the Government was to be FOB Texaco's Refinery, Pointe-A-Pointe, Trinidad, but allowed the contractor the option of delivering the fuel to the Government FOB Port Arthur, Texas, at the same price. While most of the fuel was delivered FOB Trinidad, we noted that the contractor exercised the option of delivering a portion of the Navy distillate fuel (235,137 barrels or approximately 9,875,745 gallons), to Port Arthur, Texas, in late December 1973, for shipment to U.S. military installations overseas at the contract price of $.37 per gallon. We were advised by an FEA official that this price was significantly higher than Texaco Inc., (the parent company), could have charged for the fuel for use domestically at that time under the Cost of Living Council (COLC) guidelines.

DFSC officials were apparently under the impression that the fuel price was exempt from COLC control because it was to be used for export. At the time in question, Phase IV of the Economic Stabilization Program was in effect, and prices were being controlled by the COLC Phase IV Price Regulations, Part 150 of Title 6, C.F.R. Exports were exempt from Phase IV as provided in 150.54 which reads in part:

"(1) The prices charged for export sales including the sales or products to a domestic purchaser who certifies that the product is for export are exempt."

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Although the fuel may have been exported for use overseas we believe that DFSC incorrectly viewed the fuel as exempt from COLC control. Our basis for this conclusion is two Price Rulings issued by COLC: Phase III Ruling 1973-3, 38 F.R. 17523, and Phase IV Price Ruling 1974-3 39 F.R. 10152. These rulings describe the situation of a meat processor bidding on two contracts, one to purchase meat for sale in military commissaries and base exchanges outside the United States and the other to purchase meat as part of the military assistance program to a foreign government. COLC ruled that an agency of the United States Government could not classify such products for export since the purpose of the exemption was to allow the sales of exports which would produce highest revenues from foreign sources. The rulings pointed out that purchases of this nature would not produce any revenue from foreign sources and thus, were not exempt from COLC guidelines. We understand that the 9,875,745 gallons of fuel in question was likewise to be exported for use by the Department of Defense overseas but was not to be exported for sales overseas. Therefore, since the fuel would not produce revenue from foreign sources we believe that the 9,875,745 gallons may not be exempt from COLC guidelines.

We informally discussed with DFSC representatives the possible application of these regulations and the rulings to the transaction in question, and DFSC responded by justifying the exemption on the basis of the "clarity" of the COLC regulations and on the basis that COLC rulings appear to have been directed to the domestic meat industry. We found no indication that the rulings were intended to be limited in application only to the domestic meat industry, but rather the principles discussed in the ruling appear to have been intended to apply broadly to any situation where products destined for consumption at a foreign location would not produce revenue from a foreign source. In this regard Phase IV Price Ruling 74-3 states as follows:

> "A purpose of the export exemption is to allow sales of exports, which will produce revenues from foreign sources, to be made at the highest price. Transactions which do not produce such revenues are, therefore, not considered exports for the purpose of exemption from the regulations under the Economic Stabilization Program."

DFSC also contends that it did not violate the rulings because no export certificate, in fact, was issued. However, the question is not whether a certificate was issued, but whether the transaction in question was exempt from the price guidelines because it qualified as an export.

Finally, DFSC referred to a letter ruling issued in April 1972, by the Internal Revenue Service (IRS), holding that sales of lubricating oil by the foreign affiliate of the Standard Oil Company of New Jersey to overseas U.S. military bases were not covered by the Economic Stabilization regulations as both the transactions and deliveries occurred outside the United States.

This ruling appears to be precisely applicable to the other shipments under this contract made by Texaco Export, Inc., from Trinidad to foreign ports. We have not questioned those shipments, but rather, the deliveries to Port Arthur, Texas; therefore, we fail to see the application of the IRS ruling to the Port Arthur, Texas, shipment.

Accordingly, it appears that the contract price for the shipment delivered to the Government at Port Arthur, Texas, may have exceeded COLC price guidelines and resulted in an overcharge to the Government. We have therefore, referred this matter to FEA for further action.

Sincerely yours,

H. L. Krieger

H. L. Krieger
Regional Manager