

## AMERICAN BONDHOLDERS FOUNDATION RESPONSE

The following is the response of the American Bondholders Foundation to the “Pre-1949 Chinese Bonds Fact Sheet (May 2012)” issued by the United States Treasury Department in response to Congressional inquiries made to the Government Accountability Office (GAO) and the United States Treasury Department regarding U.S. Government holdings of defaulted Chinese Government Bonds and American citizens holding defaulted bonds owed by the People’s Republic of China.

**TREASURY POSITION: The U.S. Treasury’s position is that it does not hold any pre-1949 Chinese bonds in its foreign exchange reserves.**

- Treasury publishes the currency composition of its foreign exchange reserve holdings at <http://www.treasury.gov/resource-center/international/ESF/Pages/esf-index.aspx>. The list does not identify any foreign exchange reserve holdings in Chinese currency, nor does it identify any foreign exchange reserves that are held in Chinese bonds.

**ABF RESPONSE:** We would not expect to see Chinese bond exposure in Treasury’s foreign exchange reserves as any and all such holdings would be in default. They were in default when the agreements between the USA and the ROC were made for the bond purchases. Accordingly, the Treasury statement simply states that it does not include defaulted Chinese bonds in the nation’s official foreign exchange reserves. It would be a surprise if it did. This does not, however, answer the critical question of whether the Treasury and or any other U. S. Government Agency or entity does in fact hold pre-1949 Chinese bonds in some *other* registry or account.

Treasury then elaborates by stating that it does not hold any securities denominated in the Chinese currency in its reserves. Again, that would only be news if it did, and is irrelevant to the issue at hand.

Treasury confirms this understanding in other published documents.

*Just as banking regulations do not permit carrying defaulted loans and bonds as current assets, Treasury does likewise.*

*Questions at issue concern off-balance sheet assets, including those recorded at zero value. Gold held as collateral is not a balance sheet item, including where, for example, the New York Fed or others act as custodian.*

*Treasury may wish to consider Department of State Publication 3573, Volume II; Far Eastern Series 30. Pages 1042-1045 which includes then- Secretary of State Dean Acheson’s letter of March 21, 1949 to President Truman delineating financing to the Government of China since 1937. It is not clear if this report is a comprehensive description.*

**TREASURY POSITION: It is Treasury’s position that resolution of private claims on defaulted sovereign bonds is a private matter.**

- The longstanding view of the U.S. Government is that a resolution of private claims on defaulted sovereign bonds is a private matter. With regard to defaulted sovereign bonds issued in the recent past, bondholders have participated in debt restructuring activities, or availed themselves of the contractual remedies specified in the bonds, including filing lawsuits in the jurisdictions specified in the bonds.

**ABF RESPONSE:** The ABF believes it is in our national interest for our government to support “equal treatment” of American citizens.

“Equal treatment” internationally does not involve Treasury or State arguing the claims of private investment contracts. However, it should involve seeking to ensure that private American citizens are not actively discriminated against by a sovereign borrower like China. China settled with British national bondholders, yet China still refuses to negotiate with American bondholders on the *identical* defaulted bonds and yet Treasury insists that this is a “private matter”.

The US opens its capital markets to countries around the world to help finance their growth and various projects via selling their sovereign obligations. Should a nation be permitted such access to US markets when it has defaulted on its sovereign bond obligations to American bondholders but settled with the bondholders of another nation? Our government should intervene at that point to redress a selective default situation, as is the case here. Instead, however, the US Government has intentionally intervened in legal proceedings in favor of protecting the People’s Republic of China against American citizens from collecting money owed to American citizens on defaulted sovereign bonds. As an example of the efforts put forth by the US Government to protect the PRC from paying their debts to the American people and denying the rights to due process for American citizens, one only need to look at the case of *Jackson vs PRC*, whereby Under-Secretary George Schultz filed special legal documents in that court case to protect the PRC instead of allowing the U.S. courts to properly hold the PRC accountable to pay its debts to the American people.

There is a long history of our nation opposing “selective” defaults and arguing for the continuity of obligations of sovereign governments (i.e. the successor government doctrine), whatever the nature of the change in government. Even the PRC recognizes this principle when it suits them, for example insisting on holding the post-Hussein government of Iraq responsible for debts incurred under Hussein. Does the current Treasury Department envision walking back these long-standing precedents?

In the current Eurozone crisis, EU and European Central Bank officials actively coordinate with private sector sovereign bondholders. The U.S. Treasury has been supportive of this approach. Why not with regard to China?

President Franklin Roosevelt, with the support of Treasury Secretary Henry Morgenthau and the Secretary of State Cordell Hull took a more visionary position. In the Fall of 1933, Roosevelt convened a meeting of concerned bankers, lawyers and academicians and actively encouraged them to form a private sector intermediary to provide an avenue of redress for the grievances of private bondholders that did not have the same capacity to seek settlements from sovereign borrowers as their institutional investor counterparts..

Accordingly, the State department actively supported for decades the non-profit Foreign Bondholders Protective Council [FBPC] established under FDR. With the exception of China, the State Dept. has repeatedly conveyed to defaulted governments that “it was in the interests of both nations that a settlement be reached with private American bond holders”. State frequently cited the FBPC as a “good office” to pursue such settlements. This clear, albeit limited, expression by State of our national interest to protect individual American bondholders resulted in over 40 settlements reached with sovereign debt issuers. Again, why the reticence to engage China on this subject?

In 1970, the Foreign Claims Settlement Commission (FCSC), a quasi-judicial, independent agency within the Justice Department, considered a claim on defaulted pre-1949 Chinese bonds in connection with its now-completed China program under International Claims Settlement Act of 1949. The Act authorized the FCSC to adjudicate claims of U.S. nationals against the PRC for takings of property that first arose after October 1, 1949. In FCSC Decision No. CN-147 date March 18, 1970, the FCSC concluded that because the bonds at issue had been in default since 1939 (ten years prior to the Chinese Communist assumption of power), the claim based on those bonds did not come under purview of the Act, and accordingly the claim was unsuccessful *on that technicality*.

Treasury's Fact Sheet concedes that the Foreign Claims Settlement Commission in 1970 held that defaulted pre-1949 sovereign debt did not come under the jurisdiction of the Commission's legislation, yet concludes that the Commission "denied the claim." A more accurate statement on this matter came from the State Department in 1979:

In a letter from J. Brian Atwood, Assistant Secretary of State for Congressional Relations, dated December 11, 1979, to Hon. Charles A. Vanik, then-Chairman of the U.S. House of Representatives Subcommittee on Trade of the Committee on Ways and Means, Mr. Atwood stated, “Because the PRC has not repudiated the [defaulted] bonds... a valid claim under the principles of international law has not arisen. In our view, the appropriate channel for seeking compensation remains the Foreign Bondholders Protective Council.”

The ABF believes the previous position written above from the Foreign Claims Settlement Commission has significantly changed due to the letter issued by the PRC Ministry of Finance in November 2006.

In a letter dated November 12, 2006 to the U.S. Embassy in China, the PRC’s Ministry of Finance responded to a November 2, 2006 letter from the Economic Section of the U.S. Embassy in which two U.S. citizens apparently requested repayment of their 1913 5% Reorganization Gold Loan bonds. The PRC’s letter provided as follows:

“Embassy of the United States of America in China:

We acknowledge the receipt of the letter dated 2 November 2006 from the Economic Section of your embassy. Upon discussion with our Treasury Department, with reference to the request by the two U.S. citizens for the Chinese Government to repay their gold certificates bought in 1913, our reply is as follows:

In accordance with the Notice of the Ministry of Finance and the Ministry of Foreign Affairs Concerning Dealing with the Public Bonds Issued by the Defunct Chinese Governments ((82) Cai Wai Zi No.021), "the People's Government will make no repayment with regard to all the public bonds issued by both the Beiyang Government and the Kuomintang Reactionary Government." All the gold certificates of 1913 that the said two U.S. citizens hold are those which were issued by the Kuomintang Government. Therefore, the Government of the People's Republic of China has no obligation to repay them.

(Seal)

International Department, Ministry of Finance

People's Republic of China

12 November 2006"

The ABF submitted written notices to the White House, National Security Council, State Department, Treasury Department, Securities and Exchange Commission and all three credit rating agencies, i.e. Standard & Poor's, Moody's and Fitch, providing the aforementioned letter from the Ministry of Finance for the People's Republic of China which clearly shows not only a "Selective Default" by the People's Republic of China but also a "Debt Repudiation" and "Debt Default" by the People's Republic of China. This fell upon deaf ears by all. The PRC should have had their credit rating status moved to Default, Selective Default, and Debt Repudiation Default. We have seen how the PRC demands this treatment to all other countries including the United States, who has yet to default on its sovereign debt obligations, yet has had its sovereign credit rating reduced. The PRC on the other hand has continued to have its credit rating status increased.

For the PRC to selectively choose what debts they will or will not pay and use the excuse that debts and bonds issued by former regimes or governments are not recognized by the PRC to be paid (albeit they recognized the same bonds and former regimes or governments when the PRC paid Great Britain in 1987), would be the same as the United States Government saying to the PRC that any and all U.S. Treasury bonds you purchased during the former Carter, Reagan, Clinton or Bush Administrations were from a former regime, even different political parties, so we the United States are not going to pay you PRC for those Treasury bonds you purchased back then because we are now under a new government regime.

**TREASURY POSITION: Treasury's position is that it has no information regarding how many American citizens currently hold pre-Revolutionary Chinese government bonds.**

**ABF RESPONSE:** The ABF finds it astounding that such an assertion could be made by Treasury in light of the multiple meetings ABF has held with senior Treasury officials over the past decade as well as many instances of written ABF correspondence to Treasury, NSC, State, the SEC and other government

agencies. Moreover, there have been several Congressional hearings and Resolutions on this subject as well as periodic media coverage. Treasury can deny knowing the exact number of US holders of Chinese bonds but it cannot deny knowing that there are thousands of such holders with claims amounting to hundreds of billions of dollars. There is something both troubling and suspicious about the extensive effort seemingly underway by our Treasury Department to obfuscate and stonewall this clear instance of Chinese selective default on its sovereign obligations to private American citizens and possibly all tax-paying Americans

**QUESTIONS REMAINING TO BE ANSWERED BY THE UNITED STATES GOVERNMENT:**

Is it standard and customary for the United States Government to authorize a foreign government to issue “new bonds” in U.S. dollar currency by a foreign government who had just announced to the world that it could no longer pay its sovereign debt obligations 90 days previously, as is the case for the bonds issued in 1938, 1939 and 1940 by the Republic of China and sold in the United States, without either first curing the bonds or paying for the previous bonds issued that were in default? Or can foreign governments just simply on their own issue bonds in U.S. dollar denominated currency at their choosing without the expressed authority of the United States Government?

Is it standard and customary for the United States Government to use taxpayers’ dollars to purchase bonds from a country that is already in default or allow that defaulted country to sell bonds in the United States knowing that said country is already in default, thereby enabling that country to take money from American citizens fraudulently?

Is it standard and customary for the United States Government to lend money to a foreign country using taxpayer’s dollars knowing that country is in default already and can’t pay its debt and then the U. S. Government not put forth efforts to collect those taxpayer’s dollars back without officially announcing that it has forgiven those debts of the foreign government they lent money to?

Is it standard and customary for the United States Government to make their own deals with foreign governments who have defaulted on its bond issues and leave the Americans citizens with no avenue to collect on foreign bonds individually purchased at the recommendation of the U.S. Government?

Is it standard and customary for the U.S. Government to continue to raise the U.S. debt ceiling at the expense of the American public and not put forth any efforts to collect upon hundreds of billions, if not trillions, of dollars owed to American citizens and the U.S. Government from loans given to foreign governments or bond purchases from those governments? Or does the U.S. Government just simply continue to ignore these loans and bond purchases and write these debts off as a loss to the American people?

Is it standard and customary for the U.S. Government to selectively choose which countries have to pay their debts to Americans and which do not?

Some may say this debt belongs to the Republic of China and not the People’s Republic of China, however, under International Law of Successor Government Doctrine, the PRC is the internationally

recognized official government of China and it owns and controls all of the assets and infrastructure that the many loans and bond issues created and provided for. Further, the PRC's demand of the One China Policy recognized in the United States and internationally claims the PRC is the official government of China and not Taiwan or the Republic of China. Further, the PRC paid Great Britain for the very same bonds held by United States citizens thereby accepting full responsibility for these bonds as the official government of China. Does the United States Government claim this debt belongs to the Republic of China or the People's Republic of China?

Some may say these loans and bond issues were from long ago and everyone should simply ignore it and write it off as a loss. Does sovereign debt ever expire? Can a thriving country just simply refuse to honor its sovereign debt long enough that it is forgiven or becomes too old to be collected? Can the U.S. Government say to its creditors 25-30-40 or even 50 years from now that those long term Treasury Bonds you purchased from the U.S. are old now so we aren't going to honor them any longer? If this were the case, why would anyone want to purchase U.S. Government or any other governments' sovereign treasury bond issues? Or why would any country lend money to other countries? Is this not setting a very dangerous precedent for other countries to use to keep from honoring their debts? Does this not undermine the continuity of the International Law of Successor Government Doctrine and destroy the system of global finance?