

Ronald Reagan Presidential Library  
Digital Library Collections

---

This is a PDF of a folder from our textual collections.

---

**WHORM Subject File Code:** CO071  
(Countries: Iran)  
**Case File Number(s):** 220000-239999  
**Box Number:** 90

---

To see more digitized collections visit:

<https://www.reaganlibrary.gov/archives/digitized-textual-material>

To see all Ronald Reagan Presidential Library inventories visit:

<https://www.reaganlibrary.gov/archives/white-house-inventories>

Contact a reference archivist at: **reagan.library@nara.gov**

Citation Guidelines: <https://reaganlibrary.gov/archives/research-support/citation-guide>

National Archives Catalogue: <https://catalog.archives.gov/>

*Last Updated: 11/09/2023*

EF

228350  
C0071  
B1003  
JL003-03  
JL009  
FG012 TAB

TABLE OF CONTENTS

The March 10 Meeting..... 1

Schedule and Agenda  
Anticipated U.S. Attendance  
U.S. Section Members

Review of the Iranian Economy..... 2

Memorandum on the Algiers Declarations..... 3

U.S. State Department Statement on the Hostage  
Agreements Implementation

Summary of U.S. Treasury Department Regulations..... 4

U.S. Treasury Department Regulation issued  
February 24, 1981

Current Status of U.S. Litigation..... 5

Agenda for March 11 Conference on U.S.-Iran Commercial  
Relations and Claims..... 6

LD

**Iran-U.S. Business Council**  
**U.S. Section Meeting**

**FRANK HODSOLL**

**March 10, 1981**                      **Washington, D.C.**









IRAN-U.S. BUSINESS COUNCIL

U.S. SECTION MEETING  
March 10, 1981  
Washington, D.C.

Attendance

Walter S. Surrey, CHAIRMAN  
Senior Partner  
Surrey and Morse

Bobbe Brown  
Associate Counsel  
Louis Dreyfus Corporation

Terry B. Bruesewitz  
Senior Attorney  
Deere and Company

Samuel DePalma  
Director, International Relations  
ITT Corporation

Randall G. Drain  
International Legal Counsel  
American International Group, Inc.

Lane Fortinberry  
Linen Fortinberry & Associates, Inc.

Jerry Gerwitz  
Chief Counsel and Secretary  
Otis Elevator Company

Richard M. Helms  
President  
Safeer Company

Richard Humbert  
Senior Vice President  
Fluor Corporation

William W. Lehfeldt  
Manager, Washington International  
Relations  
General Electric Company

James J. Lenehan  
Vice President  
Rockwell International Corporation

William N. Malkemus  
Senior Contracts Adviser  
Rockwell International Corporation

Edward D. McGahren  
Staff Vice President and  
Assistant General Counsel  
Sperry Corporation

Sabin Phelps  
Counsel, Law Department  
Foremost-McKesson, Inc.

John C. Richards  
Assistant Vice President,  
Government Affairs  
M. W. Kellogg Company

Michael Silverman  
Partner  
Surrey and Morse

Fred Sinker  
Vice President  
Continental Illinois National Bank  
and Trust Company of Chicago

David H. Stowe, Jr.  
Vice President  
Deere and Company

Douglas N. Upshaw  
Director - Washington, D.C.  
International Harvester Company

Joseph Volpe, Jr.  
Senior Vice President  
The Parsons Corporation



U.S. Chamber of Commerce Staff:

John G. Sarpa  
Director, Middle East Affairs  
and  
Executive Secretary,  
Iran-U.S. Business Council

Kathryn Young  
Associate Director, Middle East Affairs

Carolyn Jamail  
International Affairs Assistant  
Middle East Affairs

Judy Merkel  
Middle East Affairs

Victoria Neilson  
International Affairs Assistant  
International Division





# IRAN-U.S. BUSINESS COUNCIL

U.S. Section  
International Division, Chamber of Commerce of the United States  
1615 H Street, N.W.      Telex: RCA 248302 Int'l  
Washington, D.C. 20062      TWX 710 822 9382 Domestic  
Telephone: 202-659-6116      Cable: COCUSA

February 1981

## U.S. Section Members

\* Walter S. Surrey, CHAIRMAN  
Senior Partner  
Surrey & Morse  
1156 15th Street, N.W.  
Washington, D.C. 20005  
202-331-4040

\* David Rockefeller  
Chairman of the Board  
The Chase Manhattan Bank  
One Chase Manhattan Plaza  
New York, New York 10081  
212-552-3255

K. Brooks Abernathy  
Chairman and President  
Brunswick Corporation  
One Brunswick Plaza  
Skokie, Illinois 60076  
312-470-4700

\* Robert Anderson  
Chairman and Chief Executive Officer  
Rockwell International Corporation  
600 Grant Street  
Pittsburgh, Pennsylvania 15219  
412-565-2060

Roger E. Anderson  
Chairman of the Board  
Continental Illinois National Bank  
and Trust Company of Chicago  
231 South La Salle Street  
Chicago, Illinois 60693  
312-828-2345

Karl D. Bays  
Chairman and Chief Executive Officer  
American Hospital Supply Corporation  
1 American Plaza  
Evanston, Illinois 60201  
312-866-4000

Henry Benach  
Chairman of the Board and Chief  
Executive Officer  
Starrett Housing Corporation  
909 Third Avenue  
New York, New York 10022  
212-751-3100

John C. Bierwirth  
Chairman and Chief Executive Officer  
Grumman Corporation  
Bethpage, New York 11714  
516-575-2659

William W. Boeschstein  
President and Chief Executive Officer  
Owens-Corning Fiberglas Corporation  
Fiberglas Tower  
Toledo, Ohio 43659  
419-248-8000

Theodore F. Brophy  
Chairman of the Board  
General Telephone and Electronics  
Corporation  
One Stamford Forum  
Stamford, Connecticut 06904  
203-357-2000

John T. Burlingame  
Vice Chairman  
General Electric Company  
3135 Easton Turnpike  
Fairfield, Connecticut 06431  
203-373-2211

Louis W. Cabot  
Chairman of the Board  
Cabot Corporation  
125 High Street  
Boston, Massachusetts 02110  
617-423-6000

\* Member of the Executive Committee

Ralph F. Cox  
President and Chief Executive Officer  
The Anaconda Company  
555 17th Street  
Denver, Colorado 80217  
303-575-4000

Thomas E. Drohan  
President and Chief Executive Officer  
Foremost-McKesson, Inc.  
Crocker Plaza, One Post Street  
San Francisco, California 94104  
415-983-8300

International Telephone and  
Telegraph Corporation  
320 Park Avenue  
New York, New York 10022  
212-752-6000

Pullman Incorporated  
1616 H Street, N.W.  
Washington, D.C. 20006  
202-638-5522

T. J. Feehan  
President and Chief Executive Officer  
Brown & Root, Inc.  
P. O. Box Three  
Houston, Texas 77001  
713-676-4361

\* J. Robert Fluor  
Chairman, President and Chief  
Executive Officer  
Fluor Corporation  
3333 Michelson Drive  
Irvine, California 92730  
714-975-7211

\* Maurice R. Greenberg  
President  
American International Group, Inc.  
70 Pine Street  
New York, New York 10270  
212-770-7711

William A. Hewitt  
Chairman of the Board  
Deere & Company  
John Deere Road  
Moline, Illinois 61265  
309-752-8000

Robert E. Kirby  
Chairman of the Board  
Westinghouse Electric Corporation  
Westinghouse Building  
Gateway Center  
Pittsburgh, Pennsylvania 15222  
412-255-3800

William E. Leonhard  
Chairman, President and Chief  
Executive Officer  
The Parsons Corporation  
100 West Walnut Street  
Pasadena, California 91124  
213-440-2000

David S. Lewis  
Chairman and Chief Executive Officer  
General Dynamics Corporation  
Pierre Laclède Center  
St. Louis, Missouri 63105  
314-862-2440

James A. Linen  
Chairman of the Board  
Linen Fortinberry & Associates, Inc.  
111 Elm Street  
New Canaan, Connecticut 06840  
203-972-0160

J. Paul Lyet  
Chairman of the Board  
Sperry Corporation  
1290 Avenue of the Americas  
New York, New York 10019  
212-956-2121

Robert D. Musgjerd  
President, Construction Equipment Group  
International Harvester Company  
401 North Michigan Avenue  
Chicago, Illinois 60611  
312-836-2000



\* William G. Phillips  
Chairman of the Board and Chief  
Executive Officer  
International Multifoods  
1200 Multifoods Building  
Minneapolis, Minnesota 55402  
612-340-3301

Donald C. Platten  
Chairman of the Board  
Chemical Bank  
20 Pine Street  
New York, New York 10005  
212-770-1234

Nathaniel Samuels  
Chairman of the Board  
Louis Dreyfus Holding Co., Inc.  
Vice-Chairman  
Kuhn Loeb Lehman Brothers  
International  
One State Street Plaza  
New York, New York 10004  
212-943-1515

Arthur J. Santry, Jr.  
President and Chief Executive Officer  
Combustion Engineering, Incorporated  
900 Long Ridge Road  
Stamford, Connecticut 06902  
203-329-8771

David C. Scott  
Chairman, Chief Executive Officer  
and President  
Allis-Chalmers Corporation  
Box 512  
Milwaukee, Wisconsin 53201  
414-475-3822

Rex A. Sebastian  
Senior Vice President, Operations  
Dresser Industries, Incorporated  
Box 718  
Dallas, Texas 75221  
214-745-8715

Robert Stuart  
Chairman of the Board  
National Can Corporation  
8101 West Higgins Road  
Chicago, Illinois 60631  
312-399-3000

Richard L. Thomas  
President  
The First National Bank of Chicago  
One First National Plaza  
Chicago, Illinois 60670  
312-732-6480

W. L. Wearly  
Chairman of the Executive Committee  
Ingersoll-Rand Company  
200 Chestnut Ridge Road  
Woodcliff Lake, New Jersey 07675  
201-573-3434

Ralph A. Weller  
Chairman, Emeritus  
Otis Elevator Company  
153 East 53rd Street, Suite 4403  
New York, New York 10022  
212-557-5560

Walter B. Wriston  
Chairman of the Board  
Citibank  
399 Park Avenue  
New York, New York 10022  
212-559-1000

-----  
John G. Sarpa, EXECUTIVE SECRETARY  
Director  
Middle East Affairs  
International Division  
Chamber of Commerce of the United States  
1615 H Street, N.W.  
Washington, D.C. 20062  
202-659-3058

Kathryn Young, ASSISTANT EXECUTIVE SECRETARY  
Associate Director  
Middle East Affairs  
International Division  
Chamber of Commerce of the United States  
1615 H Street, N.W.  
Washington, D.C. 20062  
202-659-3057





## REVIEW OF THE IRANIAN ECONOMY

A comprehensive review and assessment of economic developments within Iran during the past year is difficult owing to the lack of reliable reporting from that country. Most of the following information has been obtained from Middle East business and economic journals.

Although Iran has been attempting to heal the scars of domestic revolutionary upheaval and to set the country's economic course of development back on track, its efforts were severely hampered this year by two major setbacks -- the imposition of economic sanctions by the United States and the outbreak of armed conflict with Iraq. Iran's slow pace of economic recovery and the effect of each of these setbacks are discussed further in this paper.

Recent Economic Performance

Post-revolutionary Iranian governments have been unable to successfully resolve basic economic problems. Productive capacity in manufacturing industries and agriculture has dropped drastically and inflation remains at an estimated 50 percent. Much of the industrial workforce is idle because of management problems, lack of working capital (which has been soaked up by huge payrolls), raw material shortages and political disturbances. Workers' low productivity and political activism are major stumbling blocks to industrial recovery. Iran's workforce discovered the power it could wield when its strikes and slowdowns caused massive disruptions prior to the revolution. During the last year the government guaranteed both high wages (100-200% wage hikes) and hefty increases in housing, food and travel allowances. To avoid political problems stemming from a drastic rise in unemployment, the government has virtually forbidden firms to lay off workers, even when they are clearly redundant. However, within the last few weeks, the Iranian Plan and Budget Organisation has banned further salary increases and staff recruitment by the public sector.

Assessments are that the Iranian government virtually is paralyzed by the lack of money to finance its development. In June of this year, after a two month delay, Iran announced its budget for 1980/81. While providing little detail (see table) it did point out the government's two major problems -- the size of the government's wage bill and the inadequacy of oil revenues.

No less than 90% of total projected spending in the current budget is estimated for government salaries. Official figures give the number of administrative employees working directly for the government as 850,000, along with 220,000 members of the armed forces and 300,000 in state agencies (including sectors of the economy which have been nationalized since the revolution). Last year's budget total for 850,000 direct employees was 630 billion riyals, the new bill covers just under twice as many employees, but is expected to go up by almost three times.



This past year, Iran was unable to increase oil production to a level sufficient to generate needed revenues in support of its economic program. When the budget was published, western analysts predicted that oil exports were running at about 700,000 b/d (give or take 100,000 b/d), which produces an income of about \$25 million a day. On a yearly basis that would yield just under \$10 billion -- which falls a full \$16 billion short of planned income. The war with Iraq temporarily disrupted production, but by year-end some estimates were that exports again had reached close to the 700,000 b/d level. However, even if Iran were exporting one million bpd of oil at its new price of \$35 a barrel, annual revenue would only reach \$12.8 billion. This is far short of the \$34 billion budget estimate.

Reportedly Iran now is aiming for production of 2m b/d, still a much lower figure than its pre-revolutionary peak of 6m b/d. But the country still faces major difficulties in the oil sector. Bedeviled by maintenance and technical problems, productive capacity is further aggravated by sabotage and labor strikes. An estimated 1,200 foreign managers and technicians left the oil fields early in 1979. Iran also has had difficulty selling its oil, which is the highest priced of all OPEC countries. In April 1980 shipments of oil to Japan were suspended after 12 Japanese companies refused to pay a \$2.50 a barrel increase in the price of Iran's light crude. The Japanese government told the companies not to pay the increase virtually at the same time as it announced it was joining the U.S. and E.E.C. in economic sanctions against Iran. Japan accounted for approximately 50 percent of Iran's export market before this action.

IRAN'S 1980-81 BUDGET  
(billion riyals)  
(\$1 = 70.6 IR)

<u>Expenditure</u>	<u>Current</u>	<u>Development</u>	<u>Total</u>
Public Affairs	225.3	49.6	274.9
National Defense	377.2	0	377.2
Social Affairs	180.8	210.1	390.9
Economic Affairs	296.2	671.6	967.8
Other (chiefly "National Executive Organs")	741.4	85.7	827.1
TOTAL	1,820.9	1,017.2	2,827.9

Revenues

Oil and gas	1,813.7
Taxation	418
Other domestic revenues	142
TOTAL	2,373.7



It is unlikely that Iran will achieve self-sufficiency in food production in the near future. Therefore it will be forced to continue to rely on imports. Even with drastic economies the import bill is over \$800 million a month. The food bill alone is staggering. During the coming year Iran will import an estimated 1.5 million tons of wheat, 1 million tons of meat, 500,000 tons of rice, 900,000 tons of sugar, 400,000 tons of vegetable oil, 400,000 tons of corn, 45,000 tons of butter, 60,000 tons of cheese and huge quantities of chickens, eggs and other foodstuffs. Imports of animal feed will top 1.5 million tons.

Trade

Figures for the fiscal year ending March 20, 1980 show that imports dropped 33 percent from their prerevolutionary high in the year ending March 1978. However, non-oil exports this past year reached a record \$788 million.

IRAN: FOREIGN TRADE, 1973-80  
(year ending March 20)

	<u>Imports</u>		<u>Non-oil Exports</u>	
	'000 tonnes	IR million	'000 tonnes	IR million
1980	12,996	686,028	885	55,666
1979	11,921	725,844	667	29,286
1978	16,964	1,018,276	1,027	45,426
1977	14,270	876,208	976	45,622
1976	12,256	797,978	1,218	42,852
1975	10,384	491,880	1,581	42,040
1974	6,508	225,615	1,882	42,111
1973	5,569	192,663	2,349	33,862

\$1 = IR 70.6

Source: Gray MacKenzie, Gulf News

Increased Government Controls

In a bid to check profiteering by importers the government has tightened its control over trade. An increasing number of items, particularly agricultural products, are now purchased directly by state trading organizations. The purchase of other commodities, such as iron and steel, pulp and paper, textiles and fibers, has been brought under the control of special Islamic purchasing centers, one for each commodity group. Although the actual trading is still handled by private merchants, the Islamic centers have to approve the supplier and the prices he is asking. Prices are examined against comparative offers from other suppliers around



the world. These procedural requirements have led to massive delays for importers.

At the beginning of December the government introduced another measure to make life more difficult for importers. Instead of the usual 100 percent deposit on confirmed letters of credit, the Central Bank of Iran directed the commercial banks to demand 300 percent of the value. While some may be put up in the form of collateral if the importer has a good credit line, the strains of the new measures are tremendous.

Foreign suppliers also have had problems with the high demands of the Iranian government. Certain government organizations such as the Iran Meat Organization are now asking for performance bonds covering 10 percent of the value of the transaction as opposed to the standard 5 percent. When letters of credit have been issued and performance bonds set up there are still problems facing traders on both sides, particularly in the area of transportation. There have, however, been less problems than foreign suppliers anticipated in actually being paid for their goods. Iranians appear to have accepted the practice of paying in advance.

#### The Impact of Economic Sanctions

In retaliation for the seizing of the U.S. embassy and the lack of progress on gaining release of the hostages, the United States, in April 1980, imposed a further series of economic and trade sanctions against Iran. The E.E.C. and Japan joined the United States in the embargo. Deprived of western technical management and know-how, Iran turned to other sources. A round of agreements was concluded with East European countries, and with Turkey and India. Iran also turned to non-aligned European countries, such as Switzerland, Sweden, Austria, Spain and Greece, the U.S.S.R. and such third world countries as Korea and Bangladesh. Further diluting the effectiveness of the sanctions is the reality that in many cases they were circumvented. Reportedly Gulf middlemen built up elaborate methods of circumventing the sanctions to obtain U.S., German and British equipment.

Ongoing foreign participation in several sectors survived regardless of sanctions, since most contracts were signed before the November 1979 taking of the hostages. A British trade official, in clarifying that the scope of British sanctions against Iran related primarily to new contracts which cannot be considered to be a "modification, amplification or extension contract or which are not in the 'established course of business dealing,'" estimated that Iran would be the second or third most important market for Britain in the Middle East this year.

Talbot (U.K.) has continued to ship kits for the assembly of the Peykan car. An Italian firm completed a gas-fueled power plant, Soviet technicians are working on two other power plants and the Germans are



proceeding with the Neka power plant. A consortium of seven European companies continued work on the 400 km national grid network. With the release of the U.S. hostages in February 1981, economic sanctions against Iran were lifted.

### The Iran-Iraq War

An event more devastating economically than the imposition of sanctions was the outbreak of war between Iran and Iraq on September 22, 1980. Lingering through the end of the year, it caused massive destruction to the oil fields, and greatly increased inflation and unemployment. Faced with a massive reconstruction effort, the Iranian government will be forced to divert already inadequate resources from essential programs aimed at reviving the economy.

Destruction has mostly been confined to the southern Khuzestan province and the western Ilam and Kermanshah provinces. The 630,000 b/d Adadan refinery was crippled early in the war. Despite conflicting reports on the extent of damage, it is clear that several thousand million dollars will have to be spent to restore national refining capacity. Significant damage has been reported to several large industries in the central Khuzestan city of Ahwaz. They include the Navard steel plant, and possibly other steel and aluminium plants.

Among the most formidable challenges facing the government will be the reconstruction of the cities of Abadan and Khuninshahr, and the rebuilding of thousands of houses in Ahwaz and Dezful, and in the provinces of Ilam and Kermanshah. Officials expect this to create a welcome boom for the construction industry, but there are fears about the possible adverse effects on the riyal and the probable increase in the already high inflation rate. The war has created more than 1 million refugees. Along with an estimated 200,000 Afghan refugees in the east, this floating population will be a major problem for the government for months, perhaps years, to come.

The war with Iraq has had further adverse effects on Iran's trade. Insurance rates have increased as much as 300 percent, discouraging many shipping companies from handling any cargoes for Iran. Many key Iranian ports have been closed and those that remain opened are so congested that ships are faced with waiting as long as two months to discharge.

The huge Japanese petrochemical complex, Bardar Khomeini, was heavily damaged. The project -- the largest single industrial scheme in Iran -- was 85 percent complete when war broke out. In Japan an fierce argument erupted between the companies involved and the ministries with an interest in the project or in Iran's oil. Unofficial estimates put the cost of war damage to the Japanese side of the consortium, led by Mitsui, at over \$700 million. Work on the project officially was suspended on November 10.



Even though the hostage crisis has ended and there is a current slowdown in the war with Iraq, Iran's economic difficulties remain severe. Prices of food, gasoline and clothing have skyrocketed and shortages on a wide range of commodities abound. Numerous U.S. companies are thus delaying their decision about going back into Iran until a semblance of economic and political stability is achieved.

Sources: Middle East Economic Digest, 13 June 1980, 22 August 1980,  
19 December 1980;  
Middle East Executive Reports, January 1981;  
Business International, June 6, 1980;  
Middle East Newsletter, 16-29 June 1980;  
The Economist, 10 January 1981;  
Mideast Markets, 8,22 September 1980;  
Journal of Commerce, 26 January 1981.

--Prepared by the U.S. Section Secretariat



January 20, 1981

MEMORANDUM

DECLARATIONS CONCERNING THE SETTLEMENT OF  
CLAIMS BY THE GOVERNMENT OF THE UNITED STATES  
OF AMERICA AND THE GOVERNMENT OF THE ISLAMIC  
REPUBLIC OF IRAN

---

The State Department has released the text of two official  
Declarations:

1. Declaration of the Government of the Democratic  
and Popular Republic of Algeria (hereinafter the  
"Declaration of General Principles").
2. Declaration of the Government of the Democratic  
and Popular Republic of Algeria Concerning the  
Settlement of Claims by the Government of the  
United States of America and the Government of  
the Islamic Republic of Iran (hereinafter the  
"Claims Settlement Declaration").

Both Declarations were initialed in Algiers on January 19, 1981  
by Deputy Secretary of State Warren M. Christopher.

General Principles

The Declaration of General Principles sets forth the general  
principles upon which an agreement between Iran and the United  
States has been reached for the return of the 52 American hostages  
and the resolution of the four points contained in the November 2,  
1980 resolution of the Iranian Majlis. First, the United States  
agrees, insofar as possible, to restore the financial position  
of Iran to that which existed prior to November 14, 1979. This  
is to be done by unfreezing Iranian assets within U.S. jurisdic-  
tion and ensuring their mobility and free transfer to Iran.  
Second, it is stated to be the "purpose of both parties," i.e.,  
the United States and Iran, to "terminate all litigation as  
between the Government of each party and the nationals of the  
other, and to bring about the settlement and termination of all  
such claims through binding arbitration." In this connection,  
the United States "agrees to terminate all legal proceedings in  
United States courts 1/ . . . to nullify all attachments and

---

1/ On its face, this United States commitment to terminate  
existing litigation does not include a termination of suits

[Footnote continued on next page]



judgments 2/ obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration."

Transfer of Iran's Assets in U.S.  
Branches of U.S. Banks 3/ \_\_\_\_\_

Currently, most, if not all, of Iran's assets in private U.S. bank branches in the United States are subject to writs of attachment or injunctions issued in the more than 300 law suits commenced by American persons and corporations against Iran, its agencies and instrumentalities. All such Iranian deposits and securities, indicated to be in excess of \$2 billion, are to be returned to Iran. This transfer is to be accomplished within 7 months.<sup>4/</sup> During this time, in accordance with the Claims Settlement Declaration, the United States "will promote the settlement of the claims . . . by the parties directly concerned." If, however, the claims are not settled within 6 months, and either government may extend this 6 month period for settling outstanding claims by an additional 3 months, then the claims are to be submitted to binding arbitration. By the terms of the Declaration of General Principles, it seems that if the United States is unable to persuade litigants and the U.S. courts to terminate litigation and to refer these claims to the U.S.-Iran Arbitral Tribunal (the "Tribunal") established under the Claims Settlement Declaration, then the United States is committed,

---

[Footnote continued from previous page]

brought in foreign courts by United States nationals, or claims now being pursued, or which are pursued hereafter, in arbitral forums other than the Arbitral Tribunal to be established for the settlement of claims between Iran and the United States (see below).

2/ Presumably, judgments previously obtained in U.S. courts, such as that obtained by Electronic Data Systems in U.S. District Court in Dallas, Texas, fall within this provision.

3/ This Memorandum does not deal with the transfer to Iran of assets held in foreign branches of U.S. banks, nor with questions relating to the claims of U.S. banks. Neither does it consider issues relating to the claims of Iran against the assets of the late Shah.

4/ The text of the Declaration of General Principles is unclear and may require a 6 month period.



January 20, 1981

either through legislation or executive action, to "terminate all legal proceedings" and "nullify all attachments and judgments."

It is not clear from the Declarations whether claimants with suits pending in U.S. courts may attempt to proceed with litigation and secure a judgment, if possible, during the 6 month period (or, if extended, 9 month period) provided for settlement of claims. The intent of the Declarations seems to be a prompt termination of existing litigation, with the parties working toward amicable settlements during this period; however, the Declaration of General Principles requires only that the United States "prohibit all further litigation based on such claims," it does not state that this must be done immediately.

Any governmental action to terminate lawsuits and nullify attachments and injunctions affecting existing plaintiffs' claims and property rights, will involve substantial policy and legal issues, including constitutional law issues--due process and plaintiffs' rights to access to the courts, among others. These issues almost certainly will have to be argued in the courts and they could be the subject of litigation for some time, perhaps beyond the 6 (or 9) month period.

Because of the sensitivity and importance of these matters, indications are that the new Administration will not move precipitously and will want to study these issues and assess alternative approaches before deciding the best manner to proceed consistent with the Government's commitments. The Declarations themselves do not specify the procedures which the U.S. Government must employ in order to bring about a termination of litigation, so that the Government, for instance, may choose to file amicus curiae briefs in the existing suits, which need not lead necessarily to immediate termination of these suits. In that event, the principal burden would continue to lie with the courts.

#### Security Account

An interest-bearing security account (the "Security Account") is to be established within 30 days of January 19, 1981 (i.e., by February 18, 1981). Initially, this Security Account will be funded by transferring into a special escrow account of a neutral Central Bank (the Bank of England), half of Iran's assets in U.S. banks in the United States, up to \$1 billion. These funds will be transferred in conjunction with the transfer to Iran of all funds from U.S. branch banks within the above-mentioned 7 month period. Thereafter, until all claims are settled, whenever the Security Account falls below \$500 million, Iran "shall promptly make new deposits sufficient to maintain a minimum balance of \$500 million in the account."



The \$1 billion Security Account is to be used for the "sole purpose of securing the payment of, and paying, claims against Iran," although the exact procedures for settling awards made against Iran by the Tribunal have not yet been established. Likewise, it is not clear that claims which are privately reconciled through negotiation (or as a result of court action, if permitted) prior to initiation of arbitration before the Tribunal, may be settled out of the Security Account or other Iranian assets.

There appears to be no security for this Iranian commitment to replenish the Security Account. Almost certainly, at the time when awards are rendered by the Tribunal against Iran, so as to reduce the Security Account from its initial funding level of \$1 billion, all of Iran's assets currently in the United States will have been removed. It is estimated that non-bank claimants have brought suit in U.S. courts against Iran for approximately \$3 billion. Also, although precise figures are not available, and the Treasury Department has not yet disclosed the total value of potential claims against Iran by claimants who have not brought suit, but who have filed notifications of their claims under the Treasury Department's Claims Census Program completed in May, 1980, these claimants have perhaps several billion dollars in additional claims. The total amount of all claims, however, may be somewhat inflated as is often the case when claimants formulate initial positions. Nevertheless, given the probable magnitude of claims against Iran, there is a distinct possibility that Iran will be called upon to replenish the Security Account in accordance with its commitments under the Declarations.

#### Parties Entitled to Bring Claims

Only "nationals" of Iran and the United States may bring claims (against the other's government) before the Tribunal. A "national" is defined to include natural persons who are citizens of Iran or of the United States, as well as corporations or other legal entities organized under the laws of Iran or of the United States and in which, collectively, "natural persons who are citizens of such country hold, directly or indirectly, an interest in such corporation or entity equivalent to fifty percent or more of its capital stock."

"Claims of nationals" means claims "owned continuously" from the date on which the claim arose until January 19, 1981, including claims that are owned indirectly by "nationals" through ownership of capital stock or other proprietary interests in juridical persons -- including Iranian corporations -- but provided that the "ownership interests of such nationals, collectively, were sufficient at the time the claim arose to control the corporation or other entity." "Control" is a business as well as a legal term. Whether it is present in a particular case, such as contractual joint ventures which were common in Iran, will turn on the facts involved. For instance, a detailed investigation would be neces-



sary to determine whether an American minority investor in an Iranian corporation, acting under a management agreement, can be said to have sufficient control enabling him to claim a loss of such minority interest. In this regard, it is interesting to contrast this "control" formulation with the requirements of past U.S. claims settlement commissions established by Congress. Typically, claims were allowed for corporations in which as little as a 25 percent ownership interest was held by U.S. persons.

#### Types of Claims Allowed

The Tribunal may decide claims of nationals of the United States against Iran and claims of Iranians against the United States, and any counterclaims arising out of the "same" (not unrelated) contract, transaction or occurrence if such claims and counterclaims were outstanding on January 19, 1981 (i.e., excluding future claims or counterclaims) and "whether or not [such claims have been] filed with any court." Therefore, claimants who filed notifications of their claims with the Treasury Department pursuant to the Treasury Claims Census Program, are entitled to initiate claims proceedings before the Tribunal.

Claims will be permitted if they arise out of debts, contracts, including transactions which are the subject of letters of credit or bank guarantees, expropriations or other measures affecting property rights. Claims will not be permitted if they relate to the following:

1. The seizure of the 52 United States nationals on November 4, 1979;
2. The detention of the 52 hostages;
3. "Injury to United States property or property of the United States nationals within the United States Embassy compound in Tehran after November 3, 1979;"
4. "Injury to United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran;" and
5. "Claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts in response to the Majlis position." 5/

---

5/ Persons other than United States nationals -- foreign nationals -- are also prohibited from bringing suit in U.S. courts for injuries as a result of "popular movements," although the United States' commitment to bar claims in U.S. courts by foreign persons does not extend, apparently, to contract claims subject to the jurisdiction of Iranian courts.



The exclusion of these last two categories of claims raises potentially troubling issues. Many U.S. individuals and corporations have made claims for damages incurred during the period prior to and after the seizure of the American hostages resulting from acts by persons or groups who, Iran could argue, do not officially represent the "Government of Iran." Many companies have claimed for significant damages arising from the conversion and destruction of their assets, and the takeover of their offices, plants and facilities, by revolutionary and ad hoc workers' committees, as well as by persons claiming to act in the name of one or another revolutionary or governmental authority.

Even more questions are raised by the fifth exclusionary provision. While on its face the language would seem only to apply to claims where there is a "binding contract" which "specifically provid[es] that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts," Iran could argue that the intent of this exclusion was to be consistent with Iran's demands; as stated in the Claims Statement Declaration, this exclusionary provision is "in response to the Majlis position." 6/ Two fairly common situations in which American claimants were involved, will have to be assessed in light of this exclusionary language. They are:

1. Investments in Iranian entities by American "nationals" where there was no (written) contract, although there may have been Articles of Incorporation, which usually would not provide specifically (explicitly) for submission to the jurisdiction of Iranian courts, although this may have been implied.
2. Contracts with Iranian governmental agencies where dispute resolution, in the first instance, was pursuant to an arbitral forum in Iran and, failing an agreement as a result of such arbitration, resort was to be had to Iranian courts. It is unclear

---

6/ The State Department has so far been unable to confirm the official text of the law passed by the Majlis agreeing to the submission to binding international arbitration of Iran-U.S. claims. According to some news reports, the law excluded contracts which were subject to Iranian law. Generally, from our experience, most contracts with Iranian governmental agencies and instrumentalities were made subject to Iranian law. However, few contracts specified that disputes would be settled under the sole jurisdiction of Iranian courts, whether or not they were subject to Iranian law.



whether this type of agreement would fall within the sole jurisdiction requirement of the exclusionary language.

#### Composition of the Arbitral Tribunal

The Arbitral Tribunal is to consist of 9 members, or such larger multiples of 3 as Iran and the United States may agree. The United States and Iran are each to appoint 3 members of the Tribunal, within 90 days, and within 30 days thereafter the 6 members so chosen shall choose the remaining 3 members who shall include the President of the Tribunal. If, however, these 6 members are unable to agree on the final 3 members and the President of the Tribunal, the final 3 members shall be chosen in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Rules. Article 7 of those Rules provides that if there is no designated "appointing authority," and there is none under the Claims Settlement Declaration, then the Secretary General of the Permanent Court of Arbitration at The Hague will designate the "appointing authority" who will nominate the remaining members of the Tribunal.

Each claim is to be heard by a panel of 3, composed of an Iranian, an American and a "neutral" member. Given the large number of claims that are likely to be referred to the Tribunal, it will probably be necessary for the Tribunal to consist of significantly greater than 9 members, in order to prosecute and settle all the claims in any reasonable period of time.

The Tribunal is to "conduct its business" in accordance with the UNCITRAL Rules, except to the extent the Tribunal may agree to modify these Rules in order to carry out its mandate. Claimants should take comfort from this agreement, since, in general, these Rules establish a logical and reasonably comprehensive system for proceedings, and one American counsel are familiar with. Of course, the Rules do not address all of the many important procedural issues (i.e., "Terms of Reference", in ICC parlance) that will need to be agreed upon in connection with the arbitrations, such as the language (English and/or Farsi and/or French) to be applied.

#### Filing Requirements

Individual claims of a U.S. national for less than \$250,000 are to be filed by the U.S. Government, although it is not clear how this is to be defined in practice. For instance, it is not clear if a claimant can aggregate claims against the same defendant when they arise out of independent but related transactions. Claims exceeding \$250,000 are to be filed and shall be presented to the Tribunal by the claimants themselves. No claim may be filed with the Tribunal more than 1 year after entry into force of the Claims Settlement Declaration, or 6 months after the date the President of the Tribunal has been appointed, whichever is later.



### Enforceability of Awards

All decisions and awards of the Tribunal will be final and binding. Also, any award which the Tribunal may render against either Government shall be enforceable in the courts of any nation "in accordance with its laws." This latter provision is curious, if we are to understand that judgments and awards of the Tribunal are to be satisfied from the Security Account, thus presumably obviating the need for any further enforcement action in a foreign country's courts. If for some reason the Security Account does not provide sufficient cover to satisfy all awards, then it may be necessary to enforce an award against Iran in a foreign court. In this case, the comfort afforded claimants -- or for that matter the U.S. Government were it to sue to enforce an award against Iran -- by the above-mentioned provision relating to enforceability, is questionable. Such enforcement would likely be extremely difficult and time consuming, raising many complex issues of law such as sovereign immunity. A particularly difficult issue would be whether Iran has waived its sovereign immunity from execution by reason of its entry into these Declarations. These and other issues of law would have to be determined pursuant to the laws of the foreign jurisdiction in which enforcement is sought, so that the result might differ in various jurisdictions.

### Law to be Applied

The Arbitral Tribunal is charged with deciding all cases "on the basis of respect for law, applying such choice of law rules and principles of commercial and international law as the Tribunal determines to be applicable, taking into account relevant usages of the trade, contract provisions and changed circumstances." Neither Iranian nor U.S. law is to apply exclusively. Rather, the Tribunal is to be given broad powers to determine what is equitable and fair under the circumstances. This broad mandate is further enhanced by the fact that the Tribunal itself is given the power to decide any question concerning the interpretation or application of the two Declarations between Iran and the United States.

### Exclusivity

Once a claim is submitted to the Tribunal, it shall be "considered excluded from the jurisdiction of the courts of Iran, or of the United States, or of any other court." Generally, this provision appears consistent with the U.S. Arbitration Act and U.S. jurisprudence, which encourage resort to arbitration prior to litigation, and in instances where the arbitration is final and binding, in lieu of litigation. On the other hand, it should be noted that the Declarations do not purport to prohibit U.S. nationals from bringing suit or commencing arbitration in foreign jurisdictions, nor do they call for a termination of such actions as are currently in process.



January 20, 1981

Conclusion

This Memorandum summarizes, in a general and preliminary fashion, the substance of the two Declarations affecting the settlement of private commercial claims of American and Iranian nationals. As the above overview indicates, there are many potential problems and unresolved issues with respect to the interpretation of these Declarations. Additionally, at this time, detailed procedures for their implementation remain unknown.

In light of these new developments, claimants will want to review carefully with counsel the particulars of any claims against Iran. Given the speed of developments it is vital that quick action be taken to clarify the rights and obligations of claimants.

As events unfold over the next days, we plan to meet with appropriate officials in order to analyse in greater detail the specific requirements and likely manner of application of these agreements. As such specifics may become known, we will attempt to keep you informed by circulating additional memoranda.





STATEMENT BY U.S. DEPARTMENT OF STATE  
ON HOSTAGE AGREEMENTS IMPLEMENTATION

Our position up until now has been that the U.S. will, of course, honor its obligations under international law. Because of the complexity of the Agreements and the extraordinary conditions under which they were negotiated, we have undertaken a review to determine precisely what our obligations are under them.

That review has been completed. Having considered all the circumstances carefully, we have decided to approve implementation of the Agreements in strict accordance with the terms of the Agreements.

Review considered impact of implementing or not on:

- Rights of U.S. claimants
- U.S. terrorist policy
- U.S. international interests, including U.S. obligations to third parties, particularly Algeria, who had themselves made commitments during the course of these negotiations
- Long-term U.S. interests in the Persian Gulf, including Iran.

Did not consider several questions, of great potential interest to historians and of possible value for drawing lessons with respect to future policy, but of no practical bearing on the immediate question of whether or not to implement the Agreements.

The review just completed did not consider:

- How could the whole crisis have been handled better?
- Could a better set of agreements have been negotiated?
- We did not consider whether these agreements should have been signed?

We are confronted with an accomplished fact. We have an Agreement signed by a President of the U.S. and the question is whether -- given the existence of this agreement and the consequences (legal, financial and political) of implementing it or not, what should this country do?



The conclusion of the Agreements was a legal exercise of Presidential authority. This authority will be subject to challenge in our courts and the executive branch will, of course, abide by the determination of our judicial system. We did not find it necessary to reach a conclusion as to the legally binding character of these Agreements under international law. We are proceeding because we believe it is in the overall interests of the United States to carry out the Agreement.

The decision represents a practical judgment that implementation provides the surest resolution of the issue consistent with the best interests of the United States in the Gulf region and throughout the world. Iran has not profitted from these Agreements. It was ultimately forced to settle on terms that simply restored the status quo ante because the advent of the new administration finally confronted it with a serious deadline. The funds already returned to Iran, and those which may be returned following the implementation of these Agreements and the settlement of commercial and financial claims, are funds which belonged to Iran before the seizure of the American hostages.

It should be well understood that the decision to faithfully implement the Agreements does not represent a precedent for future actions by the United States government in similar situations. The present administration would not have negotiated with Iran for the release of the hostages. Future acts of state-sponsored terrorism against the U.S. will meet swift and sure punishment.

February 18, 1981







TREASURY REGULATIONS ON  
IRANIAN ASSETS AGREEMENT

---

On February 24, 1981, the Department of the Treasury issued amendments to the Iranian Assets Control Regulations, 31 C.F.R. Part 535, implementing Executive Orders Nos. 12276 through 12285 signed by President Carter on January 19, 1981 and Executive Order No. 12294 signed by President Reagan on February 24, 1981. Executive Order No. 12294 suspends litigation by U.S. nationals against Iran and ratifies the Executive Orders signed by President Carter.

The purpose of the new amendments is to implement the Carter Executive Orders, which, among other things, provide for the establishment of an escrow account as part of the settlement of U.S.-Iran claims, and for transfer of funds held by U.S. banks, and other non-banking assets, into the escrow account. The new amendments suspend litigation of existing court actions pending resolution by a U.S.-Iran Arbitral Tribunal (the "Tribunal"), nullify any existing or future attachment of Iranian property now subject to transfer to Iran, and bar all claims for injury due to popular revolutionary movements and the takeover of the U.S.-Embassy in Tehran. Finally, the regulations lift restrictions against trading with Iran.



In essence, therefore, the amendments embody the basic agreements between Iran and the United States contained in the Algiers Declarations signed on January 19, 1981 ("Declarations"). This memorandum briefly examines those regulations which directly affect private U.S. claims against the Government of Iran, and also touches upon the substance of the rest of the regulations promulgated.

A. SPECIFIC PROVISIONS

1. Escrow agreement

New section 535.210(a) establishes the escrow arrangements which will serve to fulfill the obligations of the U.S. to transfer funds to Iran under the Declarations.

2. Transfer of assets

New sections 535.211, 212, and 213 direct the Federal Reserve Bank of New York, all overseas branches of U.S. banks, and all domestic banks, respectively, to transfer all funds, securities, and deposits held by them for Iran to the Bank of England. Section 535.214 directs persons subject to the jurisdiction of the U.S., who are not banks, to transfer all funds and securities of Iran to the Federal Reserve Bank of New York. New section 535.215 requires all persons subject to U.S. jurisdiction to transfer all properties of Iran, other than funds and securities, as may subsequently be directed by the authorized agent of Iran.



3. Prohibition of certain claims

Section 535.216 precludes U.S. persons from prosecuting claims arising out of the seizure of the hostages, injury to U.S. property resulting from the Embassy takeover, and injury due to "popular revolutionary movements" which were not acts of the Government of Iran. This section also terminates any existing court actions brought on these bases, and nullifies any outstanding judicial orders. Later on, section 535.334 defines "act of the Government of Iran" as any act "ordered, authorized, allowed, approved, or ratified by the Government of Iran, its agencies, instrumentalities or controlled entities." This rather broad definition, if ultimately adopted by the Tribunal (which is free to accept or modify the United States' position on this issue or to hear and adopt other interpretations that may be advocated by Iran), would eliminate a great deal of confusion concerning Iran's responsibility for the acts of various revolutionary groups.

4. Prohibition and nullification of attachments

New section 535.218(a) revokes all licenses and authorizations to acquire or exercise any right over Iranian property described in sections 535.211 - 535.215. This is property in which Iran has an interest and which is now in the possession of persons subject to U.S. jurisdiction, including individuals, corporations, banks in the U.S., and foreign branches or offices of U.S. banks. Subsection (b) nullifies any existing rights to the enumerated property acquired by attachment, injunction, or the



like, obtained in litigation commenced after November 14, 1979. Subsection (c) precludes persons subject to U.S. jurisdiction from acquiring any such right, by attachment or otherwise, with respect to the property described.

5. Compliance with directives

New section 535.221 requires those banks under obligation to make transfers to make them as soon as reasonably practicable. This section explicitly states, however, that it will be U.S. policy not to seek sanctions for noncompliance with transfer provisions while challenges to U.S. authority to compel the transfers are pending in the courts. If, as is likely, such challenges proceed all the way to the Supreme Court, U.S. persons will not be penalized for failure to transfer until a final judicial determination is made.

6. Suspension of legal actions

Under new Section 535.222(a), all claims currently pending against Iran in U.S. courts which are eligible for settlement by the proposed U.S.-Iran Claims Tribunal, pursuant to Article II of the Declarations, are suspended pending decision by the Tribunal. Subsection (e) provides that, should the Tribunal determine that it does not have jurisdiction over a given case, the suspension as to that case will be terminated, and the case may proceed in court. The Tribunal's decision on the merits of each case is final and binding, and each case shall be finally discharged from the court upon payment of the full arbitral award. See subsection (f). Finally, under subsection (c), claimants are not precluded



from commencing new court actions in order to toll the statute of limitations.

7. Standby letters of credit

New section 535.438 provides that the amendments do not affect the provisions of existing section 535.568 relating to the payment of standby letters of credit into blocked accounts. This is a very important provision for those companies which have outstanding unconditional performance guarantees and bonds in favor of Iran. Those guarantees and bonds can continue to be protected against an arbitrary draw by Iran as they remain "frozen" assets, pending resolution of disputes by the Tribunal.

8. Authorization of new transactions

New section 535.579 allows transactions to take place involving property in which Iran has an interest which comes within the jurisdiction of the U.S. or into the control of any person subject to U.S. jurisdiction after January 19, 1981. The same section, however, prohibits attachments or injunctions with respect to any assets which are not blocked as of January 19, 1981, which come into the possession of persons subject to U.S. jurisdiction for the express purpose of settling or satisfying their claims against Iran.

9. Revocation of sanctions

A series of amendments revoke various sanctions and prohibitions against transactions involving Iran, including prohibitions against imports from Iran, financial transactions with Iran, exports to Iran, and travel-related transactions.



B. DISCUSSION

The most important amendments for private U.S. claimants are sections 535.218, nullifying attachments; 535.222, suspending legal actions; and 535.579, permitting new transactions and prohibiting attachment of newly-acquired assets.

As noted above, the provision suspending cases now before the U.S. courts pending arbitration does not terminate all such suits outright. It assumes that the Tribunal shall decide which suits are eligible for arbitral settlement in accordance with the Declarations. The Tribunal, therefore, shall be called upon to interpret the phrase excluding

claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts.... \*/

Any suits excluded from arbitration pursuant to this clause are free to proceed in the U.S. courts. Further, those suits which are settled by arbitration shall not be considered discharged from the courts until the arbitral award is paid in full.

The regulations permit the institution of new legal proceedings for the purpose of tolling the statute of limitations. Taken

---

\*/ Further negotiations with Iran and implementing regulations may be necessary to establish the Tribunal's authority to decide such jurisdictional issues. Under the Declarations, the Tribunal has authority "over any dispute as to the interpretation or performance of any provision" of the Declarations.



in context, this section seems to provide that new court actions may be filed, with the anticipation that the court proceedings will then be suspended pending a decision by the Tribunal.

A major concern for all claimants is the enforcement of any arbitral award or court judgment, and the availability of security pending an award. Various U.S. Government officials have indicated, in various forums, that in their view the Declarations create a scheme whereby the arbitral awards will be enforceable against Iranian assets in other countries, because Iran has waived sovereign immunity with respect to the enforcement of such awards. Moreover, it should be emphasized that if Iran fails to maintain the security account at the minimum required level of \$500 million or fails to pay awards, the United States would have an action against Iran for breach of the Declarations. Nevertheless, the Declarations provide only that enforcement of arbitral awards may be had "in the courts of any nation in accordance with its laws." Accordingly, the sovereign immunity provisions of each foreign jurisdiction would govern enforcement questions, and in many jurisdictions, such as England, attachments and execution may be available only upon a far more explicit waiver than is contained in this clause.

It is clear, however, that existing attachments and injunctions in U.S. courts, applying to previously blocked (but not "new") assets, are dissolved by the amendments. Future attachments are also barred with respect to formerly "frozen" Iranian



property. Thus, claimants will be forced to satisfy any judgments not honored by Iran, or indeed to obtain security pending judgment, by seizing assets not enumerated in sections 535.211-215, that is, assets in which Iran has an interest and which were not held by persons subject to U.S. jurisdiction as of January 19, 1981. This means that attachments abroad of assets held by foreigners (persons not subject to U.S. jurisdiction) are not precluded, although such remedies could be highly costly and inconvenient.

Section 535.579, which permits new U.S.-Iran transactions, is designed, in part, to insulate property acquired by U.S. persons as a result of judicial or arbitral awards from seizure by other claimants. Moreover, claimants are precluded from attaching "new" assets acquired by U.S. persons in payment or settlement of their claims against Iran. In this way, negotiated settlements are promoted and successful claimants receive a measure of protection against their fellow claimants.

The amendments to the Treasury regulations clarify many of the issues raised by the Declarations. However, they also indicate that the United States may need to negotiate further with Iran to establish procedures to be employed by the Tribunal to determine certain issues, particularly the jurisdiction of the Tribunal and the nature of the claims which may be brought before it. For example, a time-saving and logical procedure would be to empower the Tribunal to decide on a one-time basis what cases will be excluded because the contracts in question contain Iranian



governing law and forum clauses. The governments of Iran and of the United States may be able to argue this type of issue directly before the Tribunal, with the Tribunal's decision being binding on all parties. In contrast, if litigation of this issue is to proceed independently in each case, there is the risk of conflicting decisions in the various cases, not to mention greater overall costs and delays. Procedures also must be established regarding the priority or order in which claims are to be heard by the Tribunal, and, perhaps more important, payments made from the security account, to avoid a mad "race to the courthouse" and the possibility that earlier claimants would benefit at the expense of latecomers.

As a final note, it also must be remembered that there is every possibility that the validity of these regulations will be subjected to the scrutiny of the Supreme Court, either in the Electronic Data Systems case, presently on appeal in the U.S. Court of Appeals for the Fifth Circuit, or in one of many other pending cases. Until that time, there exists no final authority on the question of the President's power to promulgate these regulations, or on the constitutional and international law implications of the agreement with Iran.



# Presidential Documents

Title 3—

Executive Order 12294 of February 24, 1981

The President

Suspension of Litigation Against Iran

By the authority vested in me as President by the Constitution and statutes of the United States, including Section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), Section 301 of Title 3 of the United States Code, Section 1732 of Title 22 of the United States Code, and Section 301 of the National Emergencies Act (50 U.S.C. 1631), in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which were based the declarations of national emergency in Executive Order No. 12170, issued November 14, 1979, and in Executive Order No. 12211, issued April 17, 1980, in light of the agreement with the Government of Iran, as reflected in the Declarations of the Government of the Democratic and Popular Republic of Algeria dated January 19, 1981, relating to the release of United States diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, in order to implement Article II of the Declaration of Algeria concerning the settlement of claims and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

Section 1. All claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, and all claims for equitable or other judicial relief in connection with such claims, are hereby suspended, except as they may be presented to the Tribunal. During the period of this suspension, all such claims shall have no legal effect in any action now pending in any court of the United States, including the courts of any state or any locality thereof, the District of Columbia and Puerto Rico, or in any action commenced in any such court after the effective date of this Order. Nothing in this action precludes the commencement of an action after the effective date of this Order for the purpose of tolling the period of limitations for commencement of such action.

Section 2. Nothing in this Order shall require dismissal of any action for want of prosecution.

Section 3. Suspension under this Order of a claim or a portion thereof submitted to the Iran-United States Claims Tribunal for adjudication shall terminate upon a determination by the Tribunal that it does not have jurisdiction over such claim or such portion thereof.

Section 4. A determination by the Iran-United States Claims Tribunal on the merits that a claimant is not entitled to recover on a claim shall operate as a final resolution and discharge of the claim for all purposes. A determination by the Tribunal that a claimant shall have recovery on a claim in a specified amount shall operate as a final resolution and discharge of the claim for all purposes upon payment to the claimant of the full amount of the award, including any interest awarded by the Tribunal.

Section 5. Nothing in this Order shall apply to any claim concerning the validity or payment of a standby letter of credit, performance or payment bond or other similar instrument.



Section 6. Nothing in this Order shall prohibit the assertion of a counterclaim or set-off by a United States national in any judicial proceeding pending or hereafter commenced by the Government of Iran, any political subdivision of Iran, or any agency, instrumentality, or entity controlled by the Government of Iran or any political subdivision thereof.

Section 7. The Secretary of the Treasury is authorized to employ all powers granted to me by the International Emergency Economic Powers Act and by 22 U.S.C. § 1732 to carry out the purposes of this Order.

Section 8. Executive Order Nos. 12276 through 12285 of January 19, 1981, are ratified.

This Order shall be effective immediately and copies shall be transmitted to the Congress.

THE WHITE HOUSE,  
February 24, 1981.

*Ronald Reagan*

[FR Doc. 81-3777

Filed 2-24-81: 3:04 pm]

Billing code 3195-01-M

---

Editorial Note: The President's message to the Congress, dated Feb. 24, 1981, on Executive Order 12294, is printed in the Weekly Compilation of Presidential Documents (vol. 17, no. 9).

[FR Doc.  
Filed 2  
Billing



## DEPARTMENT OF THE TREASURY

## Office of Foreign Assets Control

## 31 CFR Part 535

Iranian Assets Control Regulations;  
Restrictions on Property of the Former  
Shah of Iran

**AGENCY:** Office of Foreign Assets Control.

**ACTION:** Final rule.

**SUMMARY:** The Office of Foreign Assets Control is amending the Iranian Assets Control Regulations. The purpose of the amendment is to prohibit transfers of all property and assets located in the United States within the control of the estate of the former Shah of Iran or any close relative of the former Shah served as a defendant in litigation in courts within the United States brought by Iran seeking the return of property alleged to belong to Iran. The need for the amendment is to implement the provisions of Executive Order No. 12284, signed by the President on January 19, 1981, requiring the blocking of such property and assets to protect the rights of litigants in courts within the United States, and directing the Secretary of the Treasury to require reports on such property and assets. The effect of the amendment is that all transfers of such property and assets will be prohibited when Iran proves to the Office of Foreign Assets Control (OFAC) that there has been service in such cases on such persons and OFAC publishes a notice to this effect in the Federal Register.

**EFFECTIVE DATE:** January 19, 1981.

**FOR FURTHER INFORMATION CONTACT:** Raymond W. Konan, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, Tel. (202-376-0236).

**SUPPLEMENTARY INFORMATION:** Since the regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable.

Pursuant to Executive Order 12284 of January 19, 1981 the Office of Foreign Assets Control will conduct a census of property and assets within the control of the estate of the former Shah or close relatives of the former Shah served in litigation by Iran. Litigation has been filed naming numerous individuals. To avoid duplication, the census will be temporarily deferred to allow a period of time in which the Government of Iran

may provide proof of service of defendants to the Office of Foreign Assets Control.

31 CFR Part 535 is amended as follows:

1. Section 535.217 is added to read as follows:

**§ 535.217 Blocking of property of the former Shah of Iran and of certain other Iranian nationals.**

(a) For the purpose of protecting the rights of litigants in courts within the United States, all property and assets located in the United States in the control of the estate of Mohammad Reza Pahlavi, the former Shah of Iran, or any close relative of the former Shah served as a defendant in litigation in such courts brought by Iran seeking the return of property alleged to belong to Iran, is blocked as to each such estate or person, until all such litigation against such estate or person is finally terminated. This provision shall apply only to such persons as to which Iran has furnished proof of service to the Office of Foreign Assets Control and which the Office has identified in paragraph (b) of this section.

(b) [Reserved]

(c) The effective date of this section is January 19, 1981.

Section 535.580 is added to read as follows:

**§ 535.580 Necessary living expenses of relatives of the former Shah of Iran.**

The transfer, payment or withdrawal of property described in § 353.217 is authorized to the extent necessary to pay living expenses of any individual listed in that section. Living expenses for this purpose shall include food, housing, transportation, security and other personal expenses.

(Sec. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. No. 12170, 44 FR 65729; E.O. No. 12211, 45 FR 26685; E.O. No. 12284, 46 FR 7929)

Dated: February 24, 1981.

**Dennis M. O'Connell,**  
Director.

Approved:  
**John P. Simpson,**  
Acting Assistant Secretary (Enforcement and Operation).

Filed: February 25, 1981.

Publication date: February 26, 1981.

[FR Doc. 81-3811 Filed 2-25-81; 9:18 am]

**BILLING CODE 4810-25-M**

## 31 CFR Part 535

## Iranian Assets Control Regulations

**AGENCY:** Office of Foreign Assets Control.

**ACTION:** Final rule.

**SUMMARY:** The Office of Foreign Assets Control is amending the Iranian Assets Control Regulations. The purposes of the amendments are to add new directive provisions and related definitions and interpretations; and to revoke certain trade and financial sanctions against Iran, in order to implement the agreements reached between the United States and Iran on January 19, 1981, and related agreements (the "agreements"), which commit the United States and Iran to take certain steps to free the American hostages and to resolve certain claims between the United States and its nationals and Iran and its nationals.

**EFFECTIVE DATE:** January 19, 1981.

**FOR FURTHER INFORMATION CONTACT:** Raymond W. Konan, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, 202/376-0236.

**SUPPLEMENTARY INFORMATION:** The need for the amendments is (a) to implement Executive Order 12276, signed by the President on January 19, 1981, providing for the establishment of an Escrow Agreement and to implement Executive Orders 12277, 12278, 12279, 12280 and 12281 of the same date licensing, authorizing, directing and compelling: (1) the transfer by the Federal Reserve Bank of New York of all assets held by it for the Government of Iran and its entities ("Iran") to accounts held for the Federal Reserve Bank of New York at the Bank of England, (2) the transfer by overseas branches and offices of United States banks of all deposits and securities held by them for Iran to the account of the Federal Reserve Bank of New York at the Bank of England, (3) the transfer by domestic banks of all funds, securities and deposits held by them for Iran to the Federal Reserve Bank of New York, (4) the transfer by persons which are not banking institutions of funds or securities of Iran to the Federal Reserve Bank of New York and (5) the transfer by all persons subject to the jurisdiction of the United States of certain properties, not including funds and securities, owned by Iran, as directed by the Government of Iran acting through its authorized agent; (b) to implement Executive Order 12282 of January 19, 1981, revoking various sanctions and prohibitions against transactions involving Iran; and Executive Order 12283 of January 19, 1981, barring the prosecution of certain claims against Iran arising from specified occurrences and terminating any previously instituted judicial proceedings based upon such claims;



and (c) to revoke miscellaneous provisions rendered unnecessary by the above described amendments. Certain of the amendments are also needed for purposes of prohibiting and nullifying the acquisition, by litigation or otherwise, of any rights or interests in the assets subject to the transfer directives which would interfere with the transfer of those assets and with implementation of the agreements between the United States and Iran.

The effect of the amendments is that prohibitions in the Regulations on the transfer of the assets covered by the directives, as well as rights and interests in the assets other than those of the Government of Iran or its entities will be removed so that the agreements can be effectuated. The amendments also have the effect of revoking miscellaneous sanctions against Iran; and of providing for the non-prosecution of certain claims against Iran.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable.

The President has signed a series of executive orders implementing the agreements between the U.S. and Iran.

Executive Order 12276 of January 19, 1981, authorizes the Secretary of the Treasury to enter into and to license, authorize, direct and compel any appropriate official and/or the Federal Reserve Bank of New York, as fiscal agent of the United States, to enter into escrow or related agreements under which certain money and other assets shall be transferred in implementation of the agreements between the United States and Iran. This Executive Order also authorizes the Secretary of the Treasury to license, authorize, direct and compel the Federal Reserve Bank of New York to receive certain money and other assets of the Government of Iran.

Executive Order 12277 of January 19, 1981, licenses, authorizes, directs and compels transfers into accounts at the Bank of England, and then into the escrow account, of assets of the Government of Iran held by the Federal Reserve Bank of New York.

Executive Order 12278 of January 19, 1981, licenses, authorizes, directs and compels the transfer of funds, securities and deposits of Iran, including interest at commercially reasonable rates, held by overseas branches and offices of United States banks to the account of the Federal Reserve Bank of New York at the Bank of England, to be held or transferred as directed by the Secretary of the Treasury. The assets transferred

pursuant to this Executive Order are to be further transferred as provided for in the agreements.

Executive Order 12279 of January 19, 1981, licenses, authorizes, directs and compels the transfer of funds, securities and deposits of Iran, including interest at commercially reasonable rates, held by domestic branches or offices of banks which branches or offices are located within the United States to the Federal Reserve Bank of New York to be held or transferred as directed by the Secretary of the Treasury.

Executive Order 12280 of January 19, 1981, licenses, authorizes, directs and compels the transfer of funds and securities of Iran held by persons which are not banking institutions to the Federal Reserve Bank of New York to be held or transferred by the Secretary of the Treasury. This Executive Order applies to both overseas and domestically held assets.

Executive Order 12281 of January 19, 1981, licenses, authorizes, directs and compels the transfer by all persons subject to the jurisdiction of the United States of properties, not including funds and securities, owned by Iran, as directed by the Government of Iran acting through its authorized agent.

Executive Order 12282 of January 19, 1981 revokes various sanctions, and prohibitions against transactions involving Iran.

Executive Order 12283 of January 19, 1981, bars the prosecution of certain claims against Iran arising from specified occurrences and terminating any previously instituted judicial proceedings based upon such claims.

These amendments to the Iranian Assets Control Regulations implement the above-described executive orders and are summarized below.

*1. Direction to establish an escrow agreement.*

New § 535.210(a) licenses, authorizes, directs and compels the Federal Reserve Bank of New York as fiscal agent of the United States to enter into escrow or related agreements under which certain money and other assets will be transferred to the escrow account. In connection with the implementation of the escrow agreement, § 535.210(b) licenses, authorizes, directs and compels the Federal Reserve Bank of New York, as fiscal agent of the United States, to receive money and other assets in which Iran has an interest, and to hold or to transfer those assets in such a manner as the Secretary of the Treasury deems necessary to fulfill the rights and obligations of the United States under the agreements between the United States and Iran.

*2. Direction involving transfers of assets held by the Federal Reserve Bank of New York.*

New § 535.211 licenses, authorizes, directs and compels the Federal Reserve Bank of New York to transfer to its account at the Bank of England, and subsequently to transfer to the escrow account, all gold bullion and other assets held by it for Iran when and in the manner directed by the Secretary of the Treasury.

*3. Direction to transfer assets held by overseas branches and offices of United States banks.*

New § 535.212 licenses, authorizes, directs and compels any overseas branch or office of a United States bank which, on or after 8:10 a.m., e.s.t., on November 14, 1979, has been or is in possession of funds or securities owned by Iran, or has carried or is carrying on its books deposits standing to the credit of Iran, to transfer such assets, including interest at commercially reasonable rates, to the account of the Federal Reserve Bank of New York at the Bank of England, to be held or transferred as directed by the Secretary of the Treasury. The funds, securities and deposits described in this section shall be further transferred as provided for in the agreements between the United States and Iran.

Section 535.212(b) provides that any bank subject to the jurisdiction of the United States that executed set-offs against deposits or securities held by them for Iran are authorized and directed to cancel such set-offs and to include in the directed transfer all assets subject to the set-offs, including interest at commercially reasonable rates.

*4. Direction to transfer assets held by domestic banks.*

New § 535.213 licenses, authorizes, directs and compels the transfer by domestic banks of all funds, securities and deposits held by them for Iran, including interest from November 14, 1979, at commercially reasonable rates, to the Federal Reserve Bank of New York, to be held or transferred as directed by the Secretary of the Treasury.

*5. Direction to transfer other financial assets.*

New § 535.214 licenses, authorizes, directs and compels persons subject to the jurisdiction of the United States which are not banking institutions to transfer all funds or securities of Iran in their possession or control to the Federal Reserve Bank of New York, to be held or transferred as directed by the Secretary of the Treasury. However, such transfers are not required until certain disputes as to Iran's entitlement are resolved.



**6. Direction to transfer other properties.**

New § 535.215 licenses, authorizes, directs and compels all persons subject to the jurisdiction of the United States to transfer properties, not including funds and securities, which are owned by Iran and are in the possession or control of such persons as directed by the Government of Iran, acting through its authorized agent. (New § 535.333 defines the term "properties" as used in § 535.215.)

**7. Certain claims against Iran barred.**

New § 535.216 bars persons subject to the jurisdiction of the United States from prosecuting, in any court within the United States or elsewhere, any claim against the Government of Iran arising out of certain specified events. These events relate to the seizure and detention of the hostages, injury to United States property or property of United States nationals within the United States Embassy compound in Tehran and injury to United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran.

Section 535.216 also bars the prosecution of such claims in any court within the United States by persons who are not United States nationals.

Section 535.216 bars further action in any previously instituted judicial proceedings which are based upon any of the above-described claims and provides that all such proceedings shall be terminated. In addition, § 535.216 prohibits the enforcement of any judicial order issued in the course of such proceedings.

**8. Prohibitions with respect to assets subject to transfer directives; Nullification of attachments and similar remedies; Prohibitions on judicial action.**

New § 535.218(a) revokes and withdraws all licenses and authorizations for acquiring or exercising any right, power or privilege by court order, attachment or otherwise, with respect to any of the properties covered by the directives in §§ 535.211 to 535.215. New § 535.218(b) provides that all rights, powers and privileges relating to the assets described in §§ 535.211 to 535.215 which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m., e.s.t., including those derived from § 535.504 of the Regulations, whether acquired by court order or otherwise, are nullified. The nullification does not apply to rights, powers or privileges of Iran. New § 535.218(c) prohibits the acquisition or

exercise of any right, power or privilege with respect to any property (and any income earned thereon) referred to in the directives in §§ 535.211 to 535.215. New § 535.218(d) provides that the prohibition on the acquisition of rights contained in § 535.218(c) does not apply to the Government of Iran, its agencies, instrumentalities or controlled entities. New § 535.218(e) provides that § 535.218 does not revoke or withdraw certain specific licenses, issued prior to January 19, 1981, until April 15, 1981.

**9. Compliance with this part a legal acquittance and discharge of the obligation of any person.**

New § 535.219, pursuant to Section 203(a)(3) of the International Emergency Economic Powers Act, states that compliance in good faith with the directive provisions in §§ 535.210 to 535.215 or any other orders, regulations, instructions or directions which license, authorize, direct or compel the transfer of assets referred to in those sections shall, to the extent thereof, be a full acquittance and discharge for all purposes of the obligations of the person making the same. No person shall be held liable in any United States court for such good faith compliance.

**10. Timing of transactions.**

New § 535.220 provides that transfers of overseas bank assets required by § 535.212 shall be executed no later than 6:00 a.m., e.s.t., January 20, 1981.

**11. Compliance with other directive provisions.**

New § 535.221(a) provides that compliance with the directive provisions of §§ 535.213 and 535.214 pertaining to domestic bank assets and other financial assets requires that persons affected by these directives implement them as soon as reasonably practicable. New § 535.221(b) states the U.S. policy, until further notice, not to seek sanctions against any party who does not make any transfer required by §§ 535.213 to 535.215 while challenges to the authority of the United States to order the transfers are pending in U.S. courts.

**12. Suspension of claims eligible for Claims Tribunal.**

New § 535.222 provides (a) that all claims which may be presented to the Iran-United States Claims Tribunal provided for in the agreements between the United States and Iran and all claims for equitable or other relief in connection with such claims, are suspended, (b) that the section does not prohibit assertions of defense, set-off or counterclaim in any pending or future judicial proceeding commenced by Iran, (c) that the section does not preclude actions to toll periods of limitations for commencement of action, (d) that

dismissal for want of prosecution is not required, (e) that the suspension shall terminate if the Claims Tribunal determines it lacks jurisdiction, (f) that a determination on the merits by the Tribunal shall operate as a final resolution and discharge of the claim, provided that full payment of the award is paid, and (g) that the section does not apply to certain claims concerning standby letters of credit, performance or payment bonds or other similar instruments.

**13. Definition of "properties."**

New § 535.333 defines "properties" as used in § 535.215 to include only uncontested and non-contingent liabilities and property interests of Iran. Specifically excluded are (1) funds, (2) securities, (3) bank deposits, and (4) obligations under standby letters of credit or similar instruments. Properties are not Iranian properties owned by Iran unless necessary obligations, charges and fees are discharged.

**14. Definition of an act of the Government of Iran.**

New § 535.334 defines an act of the Government of Iran as including any acts ordered, authorized, allowed or ratified by Iran or its entities.

**15. Definition of "claim arising out of events in Iran."**

New § 535.335 states that a claim is one arising out of events in Iran of the type specified in § 535.216 only if such event is the specific act that is the basis of the claim.

**16. Definition of "funds."**

New § 535.337 defines "funds" as used in this part to mean currency and coin, trust, escrow and special funds held by non-banking institutions.

**17. Status of Central Bank of Iran.**

New § 535.433 provides that, for purposes of this part, the Central Bank of Iran (Bank Markazi Iran) is an agency, instrumentality and controlled entity of the Government of Iran.

**18. Effect on other authorities.**

New § 535.437 states that nothing in this part relieves any persons from the necessity of securing licenses or other authorizations as required by the Secretary of State, the Secretary of Commerce or other relevant agency prior to executing the transactions authorized or directed by this part.

**19. Standby letters of credit.**

New § 535.438 states that nothing contained in §§ 535.212, 535.213 and 535.214 or in any other provision, revocation or amendment affects the prohibition in § 535.568 on the payment under certain standby letters of credit, performance or payment bonds and similar obligations. Section 535.568(a) prohibits the payment under a standby letter of credit into a blocked account



provided that the account party avails itself of the specific licensing procedure to establish a blocked account on its books. The prohibition and the procedure remain in effect. The section also provides that the term "funds and securities" as used in this part excludes the substitute blocked accounts established under § 535.568 relating to standby letters of credit, performance or payment bonds and similar obligations.

**20. Commercially reasonable interest rates.**

New § 535.440 provides that the meaning of the term "commercially reasonable rates" depends on the particular circumstances of the deposit.

**21. Exclusion of pre-judgment attachments and similar proceedings from general license for judicial proceedings.**

The general license in § 535.504 for judicial proceedings is amended to exclude pre-judgment attachments and other proceedings of similar or analogous effect with respect to property subject to §§ 535.211 through 535.215 and reference is made to the claims suspension provisions of § 535.222.

**22. Authorization for new transactions.**

New § 535.579 authorizes new transactions involving property of Iran. Transactions involving standby letters of credit, performance or payment bonds and similar obligations remain subject to the provisions of § 535.568. The section also highlights that attachment, injunction and similar orders are prohibited with respect to property not blocked on January 19, 1981, which is or becomes subject to U.S. jurisdiction for the express purpose of settling claims against Iran.

**23. Reports on transfers of other assets.**

Section 535.618 provides that any person failing to transfer property as directed by Iran is required to submit a brief report to the Office of Foreign Assets Control explaining why the property was not transferred.

**24. Revocation of general license for overseas set-offs.**

Section 535.902 is amended to revoke the general license in paragraph (a) authorizing overseas set-offs and by adding paragraph (c) to provide that for purposes of this section, set-offs include combinations of accounts or any similar actions.

**25. Revocation of sanctions, prohibitions and obsolete provisions.**

These amendments revoke various sanctions and prohibitions against transactions involving Iran, including certain prohibitions against imports from Iran, financial transactions with

Iran, exports to Iran, and travel-related transactions. They also revoke miscellaneous definitions, interpretations and statements of licensing policy that are obsolete as the result of the above amendments.

Additional sections of the existing regulations may be revoked and additional provisions may be added, as appropriate.

31 CFR Part 535 is amended as follows:

**1. Section 535.210 is added as follows:**

**§ 535.210 Direction for establishing an escrow agreement.**

(a) The Federal Reserve Bank of New York, as fiscal agent of the United States, is licensed, authorized, directed and compelled to enter into escrow and related agreements under which certain money and other assets shall be credited by the Bank of England to escrow accounts.

(b) The Federal Reserve Bank of New York is licensed, authorized, directed and compelled, as fiscal agent of the United States, to receive certain money and other assets in which Iran or its agencies, instrumentalities or controlled entities have an interest and to hold or transfer such money and other assets, and any earnings or interest payable thereon, in such manner and at such times as the Secretary of the Treasury deems necessary to fulfill the rights and obligations of the United States under the Declaration of the government of the Democratic and Popular Republic of Algeria dated January 19, 1981, and the Undertakings of the Government of the United States of America and the Government of Islamic Republic of Iran with respect to the Declaration of the Government of the Democratic and Popular Republic of Algeria, and the escrow and related agreements described in paragraph (a) of this section. Such money and other assets may be invested, or not, at the discretion of the Federal Reserve Bank of New York, as fiscal agent of the United States.

**2. Section 535.211 is added as follows:**

**§ 535.211 Direction involving transfers by the Federal Reserve Bank concerning certain Iranian property.**

The Federal Reserve Bank of New York is licensed, authorized, directed and compelled to transfer to its account at the Bank of England, and subsequently to transfer to accounts in the name of the Central Bank of Algeria as Escrow Agent at the Bank of England that are established pursuant to an escrow and related agreements approved by the Secretary of the Treasury, all gold bullion, together with

all other assets in its custody (or the cash equivalent thereof), of Iran or its agencies, instrumentalities or controlled entities. Such transfers, and whatever further related transactions are deemed appropriate by the Secretary of the Treasury, shall be executed when and in the manner directed by the Secretary of the Treasury.

**3. Section 535.212 is added as follows:**

**§ 535.212 Direction to transfer property in which Iran or an Iranian entity has an interest by branches and offices of United States banks located outside the United States.**

(a) Any branch or office of a United States bank or subsidiary thereof, which branch, office or subsidiary is located outside the territory of the United States, and which, on or after 8:10 a.m., e.s.t., on November 14, 1979, (1) has been or is in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities, or controlled entities, or (2) has carried or is carrying on its books deposits standing to the credit of or beneficially owned by such government, its agencies, instrumentalities or controlled entities, is licensed, authorized, directed and compelled to transfer such funds, securities and deposits, held on January 19, 1981, including interest from November 14, 1979, at commercially reasonable rates, to the account of the Federal Reserve Bank of New York, as fiscal agent of the U.S., at the Bank of England, to be held or transferred as directed by the Secretary of the Treasury. The funds, securities and deposits described in this section shall be further transferred as provided for in the Declarations of the Government of the Democratic and Popular Republic of Algeria and the Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran with respect to the Declaration.

(b) Any banking institution subject to the jurisdiction of the United States that has executed a set-off on or after 8:10 a.m., e.s.t., November 14, 1979, against Iranian funds, securities or deposits referred to in paragraph (a) of this section is hereby licensed, authorized, directed and compelled to cancel such set-off and to transfer all funds, securities and deposits which have been subject to such set-off, including interest from November 14, 1979, at commercially reasonable rates, pursuant to the provisions of paragraph (a) of this section.

**4. Section 535.213 is added as follows:**



**§ 535.213** Direction involving property held by offices of banks in the U.S. in which Iran or an Iranian entity has an interest.

(a) Any branch or office of a bank, which branch or office is located within the United States and is, on the effective date of this section, either (1) in possession of funds or securities legally or beneficially owned by the Government of Iran or its agencies, instrumentalities or controlled entities, or (2) carrying on its books deposits standing to the credit of or beneficially owned by such government or its agencies, instrumentalities or controlled entities, is licensed, authorized, directed and compelled to transfer such funds, securities and deposits, held on January 19, 1981, including interest from November 14, 1979, at commercially reasonable rates, to the Federal Reserve Bank of New York, as fiscal agent of the U.S., to be held or transferred as directed by the Secretary of the Treasury.

(b) Transfers of funds, securities or deposits under paragraph (a) of this section shall be in accordance with the provisions of § 535.221 of this part.

5. Section 535.214 is added as follows:

**§ 535.214** Direction involving other financial assets in which Iran or an Iranian entity has an interest held by any person subject to the jurisdiction of the United States.

(a) Any person subject to the jurisdiction of the United States which is not a banking institution and is on January 19, 1981, in possession or control of funds or securities of Iran or its agencies, instrumentalities or controlled entities is licensed, authorized, directed and compelled to transfer such funds or securities to the Federal Reserve Bank of New York, as fiscal agent of the U.S., to be held or transferred as directed by the Secretary of the Treasury. However, such funds and securities need not be transferred until any disputes (not relating to any attachment, injunction or similar order), as to the entitlement of Iran and its entities to them are resolved.

(b) Transfers of funds, securities or deposits under paragraph (a) of this section shall be in accordance with the provisions of § 535.221 of this part.

(c) Any funds, securities or deposits subject to a valid attachment, injunction or other like proceeding or process not affected by § 535.218 need not be transferred as otherwise required by this section.

6. Section 535.215 is added as follows:

**§ 535.215** Direction involving other properties in which Iran or an Iranian entity has an interest held by any person subject to the jurisdiction of the United States.

All persons subject to the jurisdiction of the United States in possession or control of properties, as defined in § 535.333 of this part, not including funds and securities owned by Iran or its agencies, instrumentalities or controlled entities are licensed, authorized, directed and compelled to transfer such properties held on January 19, 1981 as directed after that date by the Government of Iran, acting through its authorized agent. Except where specifically stated, this license, authorization and direction does not relieve persons subject to the jurisdiction of the United States from existing legal requirements other than those based upon the International Emergency Economic Powers Act.

7. Section 535.216 is added as follows:

**§ 535.216** Prohibition against prosecution of certain claims.

(a) Persons subject to the jurisdiction of the United States are prohibited from prosecuting in any court within the United States or elsewhere, whether or not litigation was commenced before or after January 19, 1981, any claim against the Government of Iran arising out of events occurring before January 19, 1981 relating to:

(1) The seizure of the hostages on November 4, 1979;

(2) The subsequent detention of such hostages;

(3) Injury to United States property or property of United States nationals within the United States Embassy compound in Tehran after November 3, 1979; or

(4) Injury to United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran.

(b) Any persons who are not United States nationals are prohibited from prosecuting any claim described in paragraph (a) of this section in any court within the United States.

(c) No further action, measure or process shall be taken after the effective date of this section in any judicial proceeding instituted before the effective date of this section which is based upon any claim described in paragraph (a) of this section, and all such proceedings shall be terminated.

(d) No judicial order issued in the course of the proceedings described in paragraph (c) of this section shall be enforced in any way.

8. Section 535.218 is added as follows:

**§ 535.218** Prohibitions and nullifications with respect to property described in §§ 535.211, 535.212, 535.213, 535.214 and 535.215.

(a) All licenses and authorizations for acquiring or exercising any right, power or privilege, by court order, attachment, or otherwise, including the license contained in § 535.504, with respect to the property described in §§ 535.211, 535.212, 535.213, 535.214 and 535.215 are revoked and withdrawn.

(b) All rights, powers and privileges relating to the property described in §§ 535.211, 535.212, 535.213, 535.214 and 535.215 and which derive from any attachment, injunction, other like proceedings or process, or other action in any litigation after November 14, 1979, at 8:10 a.m., e.s.t., including those derived from § 535.504, other than rights, powers and privileges of the Government of Iran and its agencies, instrumentalities and controlled entities, whether acquired by court order or otherwise, are nullified, and all persons claiming any such right, power or privilege are hereafter barred from exercising the same.

(c) All persons subject to the jurisdiction of the United States are prohibited from acquiring or exercising any right, power or privilege, whether by court order or otherwise, with respect to property (and any income earned thereon) referred to in §§ 535.211, 535.212, 535.213, 535.214 and 535.215.

(d) The prohibitions contained in paragraph (c) of this section shall not apply to Iran, its agencies, instrumentalities or controlled entities.

(e) This section does not revoke or withdraw specific licenses authorizing the operation of blocked accounts which were issued prior to January 19, 1981 and which do not relate to litigation. Such licenses are revoked as of April 15, 1981, unless extended by further general or specific license.

9. Section 535.219 is added as follows:

**§ 535.219** Discharge of obligation by compliance with this part.

Compliance with §§ 535.210, 535.211, 535.212, 535.213, 535.214 and 535.215, or any other orders, regulations, instructions or directions issued pursuant to this part licensing, authorizing, directing or compelling the transfer of the assets described in those sections, shall, to the extent thereof, be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in



reliance on such orders, regulations, instructions or directions.

10. Section 535.220 is added as follows:

**§ 535.220 Timing of transfers required by § 535.212.**

Transfers required by § 535.212 to the account of the Federal Reserve Bank of New York, as fiscal agent of the U.S., at the Bank of England shall be executed no later than 6 a.m., e.s.t., January 20, 1981, when the banking institution had knowledge of the terms of Executive Order 12278 of January 19, 1981.

11. Section 535.221 is added as follows:

**§ 535.221 Compliance with directive provisions.**

(a) Compliance with the directive provisions of §§ 535.213 and 535.214 requires that persons affected by these sections shall implement the directives as soon as reasonably practicable.

(b) Until the Secretary of the Treasury determines that the authority of the United States to order these transfers has been the subject of a definitive legal ruling, the United States Government will not seek to impose civil or criminal sanctions on any party who does not make the transfers required by §§ 535.213, 535.214 and 535.215 and Executive Orders 12279-81 of January 19, 1981.

(c) Transfers of deposits or funds required by §§ 535.213 and 535.214 of this part shall be effected by means of wire transfer to the Federal Reserve Bank of New York for credit to the following account: Federal Reserve Bank of New York as fiscal agent of the United States, Special Deposit Account.

(d) Securities to be transferred as required by §§ 535.213 and 535.214 of this part must be delivered to the Federal Reserve Bank of New York in fully transferable form, accompanied by all necessary transfer documentation, e.g., stock or bond powers, powers of attorney, and also accompanied by instructions to deposit such securities to the following account: Federal Reserve Bank of New York, as fiscal agent of the United States, Special Custody Account.

(1) Securities which are in book-entry form shall be transferred by wire transfer to the Federal Reserve Bank of New York for credit to the account named in paragraph (d) of this section.

(2) Definitive securities which are in bearer or registered form shall be hand delivered or forwarded by registered mail, insured, to the Federal Reserve Bank of New York, Safekeeping Department.

(e) If a security in which Iran or an Iranian entity has an interest is

evidenced by a depositary receipt or other evidence of a security, the legal owner of such security shall arrange to have it placed in registered form in the name of Iran or the Iranian entity having an interest in such security, as appropriate, and transferred pursuant to paragraph (d)(2) of this section.

(f) Securities in which Iran or an Iranian entity has an interest that are held in the name of a nominee must be re-registered in the name of Iran or the Iranian entity having an interest in such security, as appropriate, and transferred pursuant to paragraph (d)(2) of this section.

(g) Any person delivering a security or securities to the Federal Reserve Bank of New York under paragraph (d) shall provide the Bank at least two business days prior written notice of such delivery, specifically identifying the sending person, the face or par amount and type of security, and whether the security is in bearer, registered or book entry form.

12. Section 535.222 is added as follows:

**§ 535.222 Suspension of claims eligible for Claims Tribunal.**

(a) All claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of the Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, dated January 19, 1981, and all claims for equitable or other judicial relief in connection with such claims, are hereby suspended, except as they may be presented to the Tribunal. During the period of this suspension, all such claims shall have no legal effect in any action now pending in any court in the United States, including the courts of any state and any locality thereof, the District of Columbia and Puerto Rico, or in any action commenced in any such court after the effective date of this section.

(b) Nothing in paragraph (a) of this section shall prohibit the assertion of a defense, set-off or counterclaim in any pending or subsequent judicial proceeding commenced by the Government of Iran, any political subdivision of Iran, or any agency, instrumentality or entity controlled by the Government of Iran or any political subdivision thereof.

(c) Nothing in this section precludes the commencement of an action after the effective date of this section for the purpose of tolling the period of

limitations for commencement of such action.

(d) Nothing in this section shall require dismissal of any action for want of prosecution.

(e) Suspension under this section of a claim or a portion thereof submitted to the Iran-United States Claims Tribunal for adjudication shall terminate upon a determination by the Tribunal that it does not have jurisdiction over such claim or portion thereof.

(f) A determination by the Iran-United States Claims Tribunal on the merits that a claimant is not entitled to recover on a claim or part thereof shall operate as a final resolution and discharge of such claim or part thereof for all purposes. A determination by the Tribunal that a claimant shall have recovery on a claim or part thereof in a specified amount shall operate as a final resolution and discharge of such claim or part thereof for all purposes upon payment to the claimant of the full amount of the award including any interest awarded by the Tribunal.

(g) Nothing in this section shall apply to any claim concerning the validity or payment of a standby letter of credit, performance or payment bond or other similar instrument.

(h) The effective date of this section is February 24, 1981.

13. Section 535.333 is added as follows:

**§ 535.333 Properties.**

(a) The term "properties" as used in § 535.215 includes all uncontested and non-contingent liabilities and property interests of the Government of Iran, its agencies, instrumentalities or controlled entities, including debts. It does not include bank deposits or funds and securities. It also does not include obligations under standby letters of credit or similar instruments in the nature of performance bonds, including accounts established pursuant to § 535.568.

(b) Properties are not Iranian properties or owned by Iran unless all necessary obligations, charges and fees relating to such properties are paid and liens against such properties (not including attachments, injunctions and similar orders) are discharged.

(c) Liabilities and property interests may be considered contested if the holder thereof reasonably believes that a court would not require the holder, under applicable law to transfer the asset by virtue of the existence of a defense, counterclaim, set-off or similar reason. For purposes of this paragraph, the term "holder" shall include any person who possesses the property, who, although not in physical



possession of the property, has, by contract or otherwise, control over a third party who does in fact have physical possession of the property. A person is not a "holder" by virtue of being the beneficiary of an attachment, injunction or similar order.

(d) Liabilities and property interests shall not be deemed to be contested solely because they are subject to an attachment, injunction or other similar order.

14. Section 535.334 is added as follows:

**§ 535.334 Act of the Government of Iran.**

For purposes of § 535.216, an act of the Government of Iran, includes any acts ordered, authorized, allowed, approved, or ratified by the Government of Iran, its agencies, instrumentalities or controlled entities.

15. Section 535.335 is added as follows:

**§ 535.335 Claim arising out of events in Iran.**

For purposes of § 535.216, a claim is one "arising out of events" of the type specified only if such event is the specific act that is the basis of the claim.

16. Section 535.337 is added as follows:

**§ 535.337 Funds.**

For purposes of this part, the term "funds" shall mean monies in trust, escrow and similar special funds held by non-banking institutions, currency and coins. It does not include accounts created under § 535.568.

17. Section 535.433 is added as follows:

**§ 535.433 Central Bank of Iran.**

The Central Bank of Iran (Bank Markazi Iran) is an agency, instrumentality and controlled entity of the Government of Iran for all purposes under this part.

18. Section 535.437 is added as follows:

**§ 535.437 Effect on other authorities.**

Nothing in this part in any way relieves any persons subject to the jurisdiction of the United States from securing licenses or other authorizations as required from the Secretary of State, the Secretary of Commerce or other relevant agency prior to executing the transactions authorized or directed by this part. This includes licenses for transactions involving military equipment.

19. Section 535.438 is added as follows:

**§ 535.438 Standby letters of credit, performance or payment bonds and similar obligations.**

Nothing contained in §§ 535.212, 535.213 and 535.214 or in any other provision or revocation or amendment of any provision in this part affects the prohibition in § 535.201 and the licensing procedure in § 535.568 relating to certain standby letters of credit, performance bonds and similar obligations. The term "funds and securities" as used in this part does not include substitute blocked accounts established under section 535.568 relating to standby letters of credit, performance or payment bonds and similar obligations.

20. Section 535.440 is added to read as follows:

**§ 535.440 Commercially reasonable interest rates.**

For purposes of §§ 535.212 and 535.213, what is meant by "commercially reasonable rates" depends on the particular circumstances of the deposit. Where, for example, a deposit has in fact operated as a demand account under Treasury license, it would be appropriate to treat the deposit for purposes of §§ 535.212 and 535.213 as a non-interest-bearing account.

21. Section 535.504 is revised to read as follows:

**§ 535.504 Certain judicial proceedings with respect to property of Iran or Iranian entities.**

(a) Subject to the limitations of paragraphs (b) and (c) of this section and § 535.222, judicial proceedings are authorized with respect to property in which on or after 8:10 a.m., e.s.t., November 14, 1979, there has existed an interest of Iran or an Iranian entity.

(b) This section does not authorize or license:

(1) Any pre-judgment attachment or any other proceeding of similar or analogous effect pertaining to any property (and any income earned thereon) subject to the provisions of § 535.211, 535.212, 535.213, 535.214 or 535.215 on January 19, 1981, including, but not limited to, a temporary restraining order or preliminary injunction, which operates as a restraint on property, for purposes of holding it within the jurisdiction of a court, or otherwise;

(2) Any payment or delivery out of a blocked account based upon a judicial proceeding, pertaining to any property subject to the provisions of § 535.211, 535.212, 535.213, 535.214 or 535.215 on January 19, 1981;

(c) A judicial proceeding is not authorized by this section if it is based

on transactions which violated the prohibitions of this part.

22. Section 535.579 is added as follows:

**§ 535.579 Authorization of new transactions concerning certain Iranian property.**

(a) Transactions involving property in which Iran or an Iranian entity has an interest are authorized where:

(1) The property comes within the jurisdiction of the United States or into the control or possession of any person subject to the jurisdiction of the United States after January 19, 1981, or

(2) The interest in the property of Iran or an Iranian entity (e.g. exports consigned to Iran or an Iranian entity) arises after January 19, 1981.

(b) Transactions involving standby letters of credit, performance or payment bonds and similar obligations, entered into prior to January 20, 1981, described in § 535.568 remain subject to the prohibitions and procedures contained in §§ 535.201 and 535.568.

(c) Property not blocked under § 535.201 as of January 19, 1981, in which the Government of Iran or an Iranian entity has an interest, which after that date is or becomes subject to the jurisdiction of the United States or comes within the control or possession of a person subject to the jurisdiction of the United States for the express purpose of settling claims against Iran or Iranian entities, is excluded from any authorization in this part for any attachment, injunction or other order of similar or analogous effect and any such attachment, injunction or order is prohibited by §§ 535.201 and 535.203.

23. Section 535.618 is added to read as follows:

**§ 535.618 Report of contested property.**

(a) *Requirement for reports.* Reports are required to be filed within 15 days of receipt of a direction from Iran to transfer any interests in property claimed or believed to be an interest of Iran which was blocked by the Iranian Assets Control Regulations if the party receiving the direction to transfer has not transferred such claimed interest in property.

(b) *Who must report.* Reports must be filed by every person subject to the jurisdiction of the United States who does not transfer any interest or claimed interest in property described in paragraph (a) of this section within 15 days of a direction from Iran to transfer it.

(c) *Contents of report.* Each report shall contain the following information.

(1) Name and address of entity making the report.



- (2) Name of person and entity directing the transfer. § 535.418 [Removed]
- (3) Date of the direction and date of its receipt. § 535.419 [Removed]
- (4) Description of the interest or claimed interest in property directed to be transferred. § 535.422-432 [Removed]
- (5) Statement or estimate of value of the interest or claimed interest in property. § 535.550 [Removed]
- (6) Explanation why property was not transferred as directed. § 535.562 [Removed]
- (7) Statement of any planned actions with respect to the interest or claimed interest in the property described. § 535.563 [Removed]

(d) *Filing.* Reports shall be prepared in triplicate. Two copies shall be sent in a set to Unit 617, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220. The third copy must be retained with the reporter's records. § 535.572 [Removed]

(e) *Confidentiality of reports.* Reports under this section are regarded as privileged and confidential. § 535.574 [Removed]

24. Section 535.902 is revised to read as follows: § 535.575 [Removed]

**§ 535.902 Set-offs by U.S. owned or controlled firms abroad.** § 535.577 [Removed]

(a) Branches and subsidiaries in foreign countries of persons subject to the jurisdiction of the United States are licensed to set-off their claims against Iran or Iranian entities by debit to blocked accounts held by them for Iran or Iranian entities. § 535.578 [Removed]

(b) The general license in paragraph (a) of this section is revoked as of January 19, 1981. § 535.603 [Removed]

(c) For purposes of this section, set-offs include combinations of accounts and any similar actions.

25. Part 535 is amended by the revocation and removal of sections 535.204, 535.206, 535.207, 535.209, 535.331, 535.332, 535.418, 535.419, 535.422, 535.423, 535.424, 535.425, 535.426, 535.427, 535.428, 535.429, 535.430, 535.431, 535.432, 535.550, 535.562, 535.563, 535.572, 535.574, 535.575, 535.577, 535.578, and 535.603.

§ 535.204 [Removed]

§ 535.206-207 [Removed]

§ 535.209 [Removed]

§ 535.331 [Removed]

§ 535.332 [Removed]

Dated: February 24, 1981.

Dennis M. O'Connell,  
Director.

Approved:

John P. Simpson,  
Acting Assistant Secretary, Enforcement and Operations.

(Sec. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. No. 12170, 44 FR 65729; E.O. No. 12205, 45 FR 24099; E.O. No. 12211, 45 FR 26605; E.O. No. 12276, 46 FR 7913; E.O. No. 12279, 46 FR 7919; E.O. No. 12280, 46 FR 7921; E.O. No. 12281, 46 FR 7923; E.O. No. 12282, 46 FR 7925; E.O. No. 12283, 46 FR 7927, and E.O. No. 12294, 46 FR ———.)

[FR Doc. 81-3812 Filed 2-25-81; 9:18 am]

BILLING CODE 4810-25-M







February 26, 1981

UPDATE ON THE STATUS OF THE ALGIERS DECLARATIONS  
BETWEEN THE UNITED STATES AND THE ISLAMIC REPUBLIC  
OF IRAN -- CLAIMS OF UNITED STATES NATIONALS  
AGAINST IRAN

---

On January 19, 1981, the United States and Iran signed two Declarations in Algiers ("Declarations") to resolve the hostage crisis and to return Iranian assets frozen by the President since November 14, 1979. On the same day, President Jimmy Carter signed a series of Executive Orders implementing these Declarations. The Orders were to take effect upon certification by the Government of Algeria that the 52 American hostages had safely departed from Iran. The hostages left Iran at 12:35 p.m. E.S.T. on January 20, 1981, after Ronald Reagan had assumed the Office of the President.

On February 24, 1981, Ronald Reagan signed Executive Order 12294, in which he ratified the Executive Orders previously signed by President Carter. Simultaneously, regulations were issued by the Department of Treasury Office of Foreign Assets Control, implementing the Carter and Reagan Executive Orders.

The Declarations and Implementing Regulations.

The Declarations call for a termination of all litigation between the Government of each party and the nationals of the other, and require the settlement and termination of all such claims through binding arbitration. The Declarations provide, as an alternative to litigation, for the establishment of a U.S.-Iran



Arbitral Tribunal (hereinafter "Tribunal"). The United States has agreed, in turn, to

terminate all legal proceedings in United States courts, . . . to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration.

The Declarations exclude from the arbitral process only claims

arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts....

The implementing regulations now make clear, however, to the substantial advantage of litigants, that cases now pending in U.S. Courts will not be dismissed entirely, but will merely be stayed pending resolution by the Tribunal. 31 C.F.R. §535.222. Tribunal awards will be final, but no case shall be permanently dismissed from the courts until the award is paid in full. Moreover, the regulations do not preclude the institution of new cases in the courts for the purpose of tolling any applicable statute of limitations, although new cases will be referred to the Tribunal.

The new Treasury regulations also nullify all existing attachments and injunctions obtained in U.S. Courts, applying to property in which Iran has an interest and which was held, as of January 19, 1981, by any person subject to U.S. jurisdiction, including foreign branches of U.S. banks. 31 C.F.R. §535.218.



Additionally, attachments in the U.S. of the enumerated property are forbidden in the future. Id. & §535.504.

Although the Declarations call for the establishment of a Security Account, to be initially funded at \$1 billion and to be maintained at a minimum level of \$500 million, out of which arbitral awards are to be satisfied, there is a possibility that some claimants will not obtain payment of awards. Any claimants in such a predicament, along with those whose claims have not been accepted by the Tribunal, may have to seek attachments abroad to satisfy awards or judgments they obtain. At least with respect to arbitral awards, however, it should be of comfort to claimants that Iran has waived any claim of sovereign immunity. These awards, then, should be enforceable in many nations, particularly in those which are parties to the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The process of attachment overseas is, nevertheless, both uncertain and costly for U.S. claimants.

Finally, the new regulations permit "new" transactions, e.g., transactions related to trade, to take place with respect to assets coming into the possession of persons subject to U.S. jurisdiction after January 19, 1981. 31 C.F.R. §535.579. This same provision, however, prohibits claimants from attaching assets which are acquired by other claimants in settlement or satisfaction of their claims against Iran.



Recent Court Actions

Since the signing of the Declarations, several courts have issued opinions interpreting the effects upon American claimants.\*/ On January 21, 1981, Judge Gesell of the United States District Court for the District of Columbia denied a temporary restraining order sought by an Iranian national and his American family who asked the court to prevent monies from being transmitted under the Declarations, in order to protect their claims against Iran. Judge Gesell unequivocally held that the President had the power to enter into the Declarations and create an arbitral tribunal to settle claims.\*\*/

Also on January 21, 1981, Judge Schnacke in San Francisco authorized an attachment of \$91.5 million of Iranian funds on behalf of the Bank of America National Trust and Savings Association. The bank claimed that amount as the difference between what the bank contended it owed Iran for interest on deposits in the bank's overseas branches and the amount the bank was forced to pay into a special escrow account under the Algiers Declarations.

On January 30, 1981, Judge Barefoot Sanders in Dallas issued an order of attachment on behalf of Dresser Industries, Inc. against several American banks holding Iranian assets. The Judge

---

\*/ These opinions predate the latest Treasury amendments and President Reagan's Executive Order, and may, therefore, be subject to some modification.

\*\*/ Transcript, Ebrahimi v. Iran, No. 80-3127 (D.D.C. Jan. 21, 1981).



granted the \$17.3 million attachment because "plaintiffs will probably lose their debts and have their contracted rights irreparably impaired unless the garnishment is issued."

The most important court decision commenting on the validity of the Declarations and Executive Orders promulgated pursuant to the Declarations is the Electronic Data Systems Corporation ("EDS") action in Dallas. On February 12, 1981, Judge Porter issued a preliminary injunction blocking the U.S. Government's transfer of approximately \$20 million in Iranian assets that represent a final judgment award previously obtained by EDS. \*/ Judge Porter held that "Executive Order 12279 raises serious constitutional issues with regard to the power of the Executive Branch to nullify or negate the constitutional and statutory authority of [the federal courts] with respect to pending cases." The court held specifically that

- (a) Executive Order 12279 was probably not validly promulgated during President Carter's term of office, because it did not go into effect until after President Carter had left office; \*\*/
- (b) there is no statutory authority for the President, either under the International Economic Emergency Powers Act or the so-

---

\*/ It is important to note here that EDS may be a special case because EDS had perfected its prejudgment attachment of funds prior to the implementation of the Iranian Assets Control Regulations of November 14, 1979.

\*\*/ President Reagan has ratified the Executive Orders signed by President Carter, so there is no longer an issue as to their validity.



called Hostage Act (an 1886 statute), to nullify or void valid exercises of the judicial power by Article III Courts; and

- (c) Executive Order 12279, if applicable and otherwise valid, is unconstitutional.

The court held that neither Congress nor the Executive has the authority to "by subsequent acts negate, disregard, or nullify the judgment of the Court already rendered, or the rights determined thereby." It concluded, moreover, that "Executive Order 12279, with or without the blessing of Congress, is constitutionally invalid insofar as it attempts or purports to countermand or nullify valid exercises of the judicial power" (emphasis added). The court determined, furthermore, that the International Economic Emergency Powers Act did not grant the President the power to invalidate judgments of the courts or to take control of foreign assets located in the United States.

The EDS case is now on appeal before the Fifth Circuit. It is almost certain that the constitutionality of the Executive Branch's action will be challenged before the U.S. Supreme Court, whether in this case or in one of the many other cases now pending.







IRAN-U.S. COMMERCIAL RELATIONS AND CLAIMS: A CONFERENCE

Jefferson Room  
International Inn  
Washington, D.C.

9:00 a.m. - 4:15 p.m.  
March 11, 1981

AGENDA

- 9:00 a.m. I. Registration
- 9:30 a.m. II. Introductions and Welcome  
Walter Sterling Surrey, Senior Partner, Surrey & Morse, and  
Chairman, U.S. Section, Iran-U.S. Business Council
- 9:35-10:30 a.m. III. Iran - The Hostage Crisis in Perspective  
Peter Constable, Senior Deputy Assistant Secretary,  
Near Eastern and South Asian Affairs, U.S. Department of  
State
- 10:30-10:45 a.m. Coffee
- 10:45-12:45 p.m. IV. Algiers Declaration/International Arbitral Tribunal  
Mark B. Feldman, Acting Legal Advisor, U.S. Department  
of State  
  
John Walker, Assistant Secretary Designate, Enforcement  
and Operations, U.S. Department of the Treasury  
  
Business Panel - Sabin Phelps  
Counsel  
Foremost-McKesson, Inc.  
  
Ernest Gambaro  
Corporate Counsel  
Computer Sciences Corporation  
  
Armen Der Marderosian  
Vice President  
GTE, Iran, Inc.
- 12:45-2:15 p.m. V. Luncheon - Washington Room
- 2:30-3:15 p.m. VI. Iran-U.S. Litigation  
David Anderson, Director, Federal Programs Branch,  
Civil Division, U.S. Department of Justice  
  
Business Panel - James M. Bolding  
Assistant General Counsel  
E-Systems, Inc.  
  
Ronald Fondiller  
Attorney  
American International Group



3:15-3:45 p.m.

VII. Current Status of Iran-U.S. Trade

Albert Planagan, Director, Commerce Action Group for the  
Near East, U.S. Department of Commerce

Business Panel - Douglas N. Upshaw  
Director - Washington, D.C.  
International Harvester Company

Carolyn E. Hansen  
Senior Counsel  
International Pharmaceutical Division  
Schering-Plough Corporation

3:45-4:10 p.m.

VIII. Future Iran-U.S. Business Relations

William W. Lehfeldt, Manager, Washington International  
Relations, General Electric Company

4:10-4:15 p.m.

IX. Closing Remarks

Walter Sterling Surrey



# IRAN-U.S. BUSINESS COUNCIL

IRAN-U.S. COMMERCIAL RELATIONS  
AND CLAIMS: A CONFERENCE

PARTICIPANTS LIST  
MARCH 11, 1981



0

0

0



PARTICIPANTS LIST

JORGE ABUD  
AMERICAN UNIVERSITY

GERALD BRESSLOUR  
BOEING COMMERCIAL AIRPLANE COMPANY

STANLEY APPLGATE  
UNIVERSAL FOODS CORPORATION

JANE BRIGHT  
UNITED TECHNOLOGIES

CLYDE L. ARRINGTON  
WILBROS ENERGY SERVICES

JOHN P. BRITTON  
WARNER-LAMBERT COMPANY

CHARLES W. AUER  
IRAN-IRAQ EXXON CORPORATION

BOBBE BROWN  
LOUIS DREYFUS CORPORATION

JIM BABB  
SENATOR STROM THURMOND'S OFFICE

T. B. BRUESWITZ  
DEERE & COMPANY

GRAEME BANNERMAN  
SENATE FOREIGN RELATIONS COMMITTEE

MICHAEL F. BUTLER  
ANDREWS, KURTH, CAMPBELL & JONES

BRADFORD L. BATES  
KIMBERLY-CLARK CORPORATION

F. O. BYRNE  
UOP, INC.

JOSEPH H. BATTIN  
BECHTEL POWER CORPORATION

WALTER CARDWELL  
SEDCO, INC.

ANDREW.BODNARUK  
STANWICK INTERNATIONAL

JOHN L. CARR, JR., ESQ.  
SHAW, PITTMAN, POTTS & TROWBRIDGE

JAMES M. BOLDING  
E-SYSTEMS, INC.

EDWARD J. CIECHON  
SUN COMPANY, INC.

GILBERT A. BOND  
ATLANTIC RICHFIELD COMPANY

ROGER A. CLARK  
ROGERS & WELLS

RICHARD L. BREault  
U.S. CHAMBER OF COMMERCE

COLONEL EDWARD D. COMM  
HOWARD NEEDLES TAMMEN & BERGENDOFF

NEAL BRENDEL  
KIRKPATRICK, LOCKHART, JOHNSON &  
HUTCHISON

GAIL L. CUDAK  
THE B.F. GOODRICH COMPANY



DAVID DANCZEK  
LITTON INDUSTRIES

LANE FORTINBERRY  
LINEN FORTINBERRY & ASSOCIATES

R. C. d'ANGELO  
GENERAL MOTORS CORPORATION

JAMES S. FRASER  
OLIN CORPORATION

GEORGE W. DEAN, III  
GULF OIL CORPORATION

WILLIAM FRIEDMAN  
CONTINENTAL TELEPHONE CORPORATION

R. DENOVAN  
MACK FINANCIAL CORPORATION

PETER R. GILBERT  
GARVEY, SCHUBERT, ADAMS & BARER

SAMUEL DE PALMA  
INTERNATIONAL TELEPHONE AND TELEGRAPH

JERRY GERWITZ  
OTIS ELEVATOR COMPANY

ANDREW B. DERMAN, ESQ.  
SUN COMPANY, INC.

DANIEL J. GREENWALD, III  
CHADBOURNE, PARKE, WHITESIDE &  
WOLFF

DAVID DOYNOW  
GIBBS & HILL, INC.

H. P. GUTTMAN  
KING-WILKINSON, INC.

RANDALL G. DRAIN  
AMERICAN INTERNATIONAL GROUP, INC.

FREDERICK HALLET  
WHITE CONSOLIDATED INDUSTRIES

H. C. DUESSEL  
COMBUSTION ENGINEERING, INC.

CAROLYN E. HANSEN  
SCHERING-PLOUGH CORPORATION

WILLIAM S. ECKLAND, ESQ.  
CLEARY, GOTTLIEB, STEEN & HAMILTON

ROBERT G. HARGROVE  
THE BADGER COMPANY, INC.

VAHAN EMINIAN  
AMERICAN EXPRESS INTERNATIONAL BANK

E. BLAKE HASTINGS  
BUTLER ASSOCIATES, INC.

CHARLES E. FAIRFAX, III  
GENERAL MOTORS CORPORATION

THOMAS E. HAVEN  
PILLSBURY, MADISON & SUTRO

ANTHONY L. FINLEY  
CONTINENTAL INSURANCE COMPANIES

RICHARD HELMS  
SAFEER COMPANY



ROBERT HICKS  
CATERPILLAR TRACTOR COMPANY

GEORGE KIMBALL  
LATHAM & WATKINS

WILLIAM B. HIRONS  
E. I. DU PONT DE NEMOURS & COMPANY

HERBERT W. KLOTZ  
QUEST RESEARCH CORPORATION

RICHARD HUMBERT  
FLUOR CORPORATION

JOHN J. KNOX  
WESTINGHOUSE ELECTRIC CORPORATION

JANET HUNTER  
WASHINGTON INTERNATIONAL BUSINESS REPORT

L. L. LAIR  
ATLANTIC RICHFIELD INTERNATIONAL  
OIL

GEORGE INGRAM  
HOUSE FOREIGN AFFAIRS COMMITTEE

DAVID LAYLIN  
MIDDLE EAST CONSULTING ASSOCIATES

GORDON INSLEY  
CITIBANK

WILLIAM W. LEHFELDT  
GENERAL ELECTRIC COMPANY

THOMAS S. JAMES  
STANDARD OIL COMPANY (INDIANA)

WILLIAM C. LEMMER  
SUN INTERNATIONAL, INC.

E. A. JAPNGIE  
INGERSOLL-RAND COMPANY

JAMES J. LENEHAN  
ROCKWELL INTERNATIONAL CORPORATION

ADOLF JOCHNICK  
HEUBLEIN, INC.

RICHARD L. LESHER  
U. S. CHAMBER OF COMMERCE

THOMAS W. JONES, JR.  
THE PROCTER & GAMBLE COMPANY

ANN ELIZABETH LEWIS  
BRISTOL-MEYERS COMPANY

JOSEPH F. KELLY, JR., ESQ.  
AMERADA HESS CORPORATION

MARGARET LIDDLE  
MILBANK, TWEED, HADLEY & McCLOY

EDWARD R. KESSLER  
C F BRAUN & COMPANY

ROBERT J. LINDSAY  
SPERRY MARINE SYSTEMS

NANCY KILSON  
PAUL WEISS, RIFKIND, WHARTON & GARRISON

TOM LINTON  
CHEVRON U.S.A. INC.



C. C. OLIVER  
GENERAL ELECTRIC COMPANY

CHARLES REVOILE  
STANWICK INTERNATIONAL

PETER D. ORR  
STROMBERG-CARLSON CORPORATION

DONALD RITCHIE  
CHEMICAL BANK

ALLAN PARKER  
COMMITTEE ON THE JUDICIARY

T. J. ROONEY  
ALLIS-CHALMERS CORPORATION

J. DONALD PARSONS  
SPERRY MARINE SYSTEMS

PETER J. ROSS, ESQ.  
Le BOEUF, LAMB, LEIBY, & MacRAE

MALCOLM PECK  
THE MIDDLE EAST INSTITUTE

DIPAK K. ROY  
MITSUBISHI INTERNATIONAL  
CORPORATION

NAD PETERSEN  
FLUOR CORPORATION

JOHN A. RUDY, ESQ.  
LeBOEUF, LAMB, LEIBY & MacRAE

SABIN PHELPS  
FOREMOST-McKESSON, INC.

ALAN A. SACHS  
PASKUS, GORDON & HYMAN

ROBERT J. PICKLE  
McDERMOTT INTERNATIONAL, INC.

FRANK SANDERS  
THE SIGNAL COMPANIES, INC.

FRANK M. POTTER, JR.  
HOUSE ENERGY AND COMMERCE COMMITTEE

JOHANN SCHEIDT  
INTERNATIONAL SHIPPING COMPANY

JOHN E. PRINTY  
COMPUTER SCIENCES CORPORATION

HENRY J. SCHIRESON, ESQ.  
ARA SERVICES, INC.

CHARLES F. RAEBURN  
UNION CARBIDE CORPORATION

R. PHILIP SCHULZE  
AMERICAN INDEPENDENT OIL COMPANY

THEODORE E. RAVAS  
THE GENERAL TIRE & RUBBER COMPANY

JUDITH JURIN SEMO  
SQUIRE, SANDERS & DEMPSEY

EARL A. REICHARD  
BOEING COMMERCIAL AIRPLANE COMPANY

DIANE SHELBY  
TRW, INC.



JOYCE R. SIERMINE  
RAY-O-VAC CORPORATION

WILLIAM H. TALMAGE  
NCR CORPORATION

MICHAEL SILVERMAN  
SURREY & MORSE

E. P. THURMAN  
EASTMAN WHIPSTOCK, INC.

KATHRYN J. SIMMONS  
INTERNATIONAL BUSINESS AFFAIRS CORPORATION

FUMIHIKO TSUKANO  
MITSUI & COMPANY (U.S.A.), INC.

C. RONALD SMITH  
DIAMOND SHAMROCK CORPORATION

DOUGLAS N. UPSHAW  
INTERNATIONAL HARVESTER

OWEN C. SMITH  
PHILIP MORRIS INCORPORATED

E. R. VOGEL  
WESTINGHOUSE ELECTRIC CORPORATION

SHERWOOD B. SMITH, JR.  
KALER, WORSLEY, DANIEL & HOLLMAN

JOSEPH VOLPE  
THE PARSONS CORPORATION

ARMAND SOKOLOWSKI  
GENERAL MOTORS CORPORATION

JOSEPH F. WARREN  
GULF OIL CORPORATION

PAUL F. SPENCER  
MERCK SHARP & DOHME INTERNATIONAL

CARL E. WASMUTH, JR.  
McDONNELL DOUGLAS CORPORATION

ANDREW ST. JOHNSTON  
ONAN CORPORATION

DONALD WEADON  
BRYAN, CAVE, McPHEETERS &  
McROBERTS

FRANK SULLIVAN  
GENERAL TELEPHONE AND ELECTRONICS  
CORPORATION

JOSEPH H. WEISS, ESQ.  
WEIL, GOTSHALT MANGES

WALTER S. SURREY  
SURREY & MORSE

CAROL R. WERNER  
DANA CORPORATION

TERRENCE P. SWEENEY  
SWISS BANK CORPORATION

JOHN A. WESTBERG  
LOUIS CABOT CORPORATION

KOSO TAKEMOTO  
MITSUI & COMPANY (U.S.A.), INC.

OLIN L. WETHINGTON  
STEPTOE & JOHNSON



ROBERT P. WILEY  
HUGHES AIRCRAFT COMPANY

BRUCE W. WILKINSON  
STROMBERG-CARLSON CORPORATION

FREDERICK WILLIAMSON  
THE FIRST NATIONAL BANK OF BOSTON

KARL E. WOLF  
FORD MOTOR COMPANY

CARY YOUNG  
SUNMARK EXPLORATION COMPANY

SPEAKERS

WALTER STERLING SURREY  
CHAIRMAN, U.S. SECTION  
IRAN-U.S. BUSINESS COUNCIL  
AND  
SENIOR PARTNER  
SURREY & MORSE

DAVID ANDERSON  
DIRECTOR, FEDERAL PROGRAMS BRANCH,  
CIVIL DIVISION  
U.S. DEPARTMENT OF JUSTICE

PETER CONSTABLE  
SENIOR DEPUTY ASSISTANT SECRETARY  
BUREAU OF NEAR EASTERN AND SOUTH  
ASIAN AFFAIRS  
U.S. DEPARTMENT OF STATE

MARK B. FELDMAN  
ACTING LEGAL ADVISOR  
U.S. DEPARTMENT OF STATE

WILLIAM W. LEHFELDT  
MANAGER, WASHINGTON INTERNATIONAL  
RELATIONS  
EXPORT SALES AND TRADING DIVISION  
GENERAL ELECTRIC COMPANY

ALBERT PLANAGAN  
DIRECTOR, COMMERCE ACTION GROUP  
FOR THE NEAR EAST  
U.S. DEPARTMENT OF COMMERCE

JOHN M. WALKER, JR.  
ASSISTANT SECRETARY DESIGNATE  
ENFORCEMENT AND OPERATIONS  
U.S. DEPARTMENT OF THE TREASURY

STAFF (U.S. CHAMBER OF COMMERCE)

JOHN G. SARPA  
EXECUTIVE SECRETARY  
IRAN-U.S. BUSINESS COUNCIL

KATHRYN YOUNG  
ASSISTANT EXECUTIVE SECRETARY  
IRAN-U.S. BUSINESS COUNCIL

CAROL COFIELD  
INTERNATIONAL DIVISION

SUSAN DANIEL  
DIRECTOR, PUBLICATIONS &  
SPECIAL PROJECTS

CAROLYN JAMAIL  
INTERNATIONAL AFFAIRS ASSISTANT

SUSAN KOUSEK  
SPECIAL ASSISTANT FOR  
ADMINISTRATION AND OPERATIONS

JUDY MERKEL  
INTERNATIONAL DIVISION

GREG MIGNANO  
DIRECTOR, LEGISLATIVE &  
PUBLIC AFFAIRS

DEBBIE MURPHY  
INTERNATIONAL DIVISION



VICKY NEILSON  
INTERNATIONAL AFFAIRS ASSISTANT

RACHEL THEUS  
INTERNATIONAL AFFAIRS ASSISTANT

DR. JOHN VOLPE  
DIRECTOR, INTERNATIONAL RESEARCH  
AND SPECIAL PROJECTS SECTION



0

0

0



ADDITIONAL PARTICIPANTS

JEAN ABINADOR  
U.S.-ARAB CHAMBER OF COMMERCE

JUSTIN KIMBALL  
OTIS ELEVATOR COMPANY

BILL ANAWATY  
U.S. DEPARTMENT OF TREASURY

GEORGE B. KNIGHT  
HARNISCHFEGER CORPORATION

GAIL FREY BORDON, ESQ.  
ATTORNEY

MICHAEL KURTZIG  
DEPARTMENT OF AGRICULTURE

YEOW MING CHOO  
STANDARD OIL COMPANY (INDIANA)

HERBERT C. MANNING  
GULF OIL CORPORATION

ADRIAN COLLEY  
GULF OIL CORPORATION

WAYNE MIELE  
U.S. DEPARTMENT OF STATE

LYNN CURRIE  
NEWHOUSE NEWS

PERI N. NASH  
SURREY & MORSE

R. G. CUTTER  
HARRIS CORPORATION

JOHN PARKER  
DEPARTMENT OF AGRICULTURE

ARMEN DER MARDEROSIAN  
GTE IRAN, INCORPORATED

TIM RAMISH  
U.S. DEPARTMENT OF STATE

SHIRON O. ENTEZARI  
ATTORNEY-AT-LAW

THOMAS C. ROANTREE, III  
GULF OIL CORPORATION

RONALD FONDILLER  
AMERICAN INTERNATIONAL GROUP

PROFESSOR ROSBERG

ERNEST GAMBARO  
COMPUTER SCIENCES CORPORATION

ANDREW SENS  
U.S. DEPARTMENT OF STATE

MICHAEL HERTZ  
U.S. DEPARTMENT OF JUSTICE

DIEGO J. SUAREZ  
INTER-AMERICAN TRANSPORT  
EQUIPMENT COMPANY

RUDOLPH HOUCK  
INTERNATIONAL LAW INSTITUTE

W. BURKS TERRY  
NORTHRUP CORPORATION



DAN W. TETERS  
MORRIS-KNUDSEN CORPORATION

JAMES WIELAND  
OBER, GRIMES & SHRIVER



## US-Iran Business Council

1. 500 cases for 10 panels to hear.
2. Problem with finding enough qualified panelists from Iran; other countries.
3. Can't settle beginning; need to resolve.
4. Rules on who goes first.  
| petty for settlements; then pro rata  
| settlement
5. Contingency plans
6. List of arbitrators
7. ICC arbitration; ? include

\*

8. Statement on trade with Iran.  
what is our attitude!

9. TFO on business use with Iran.

10. Interest where  
payment in advance  
no personal



U.S. Army Reserve (Continued)

1. 200 cases for 10 months to 1 year
2. 100 cases for 10 months to 1 year
3. 50 cases for 10 months to 1 year
4. 25 cases for 10 months to 1 year
5. 12.5 cases for 10 months to 1 year
6. 6.25 cases for 10 months to 1 year
7. 3.125 cases for 10 months to 1 year
8. 1.5625 cases for 10 months to 1 year
9. 0.78125 cases for 10 months to 1 year
10. 0.390625 cases for 10 months to 1 year

\*





485 MADISON AVENUE  
NEW YORK, NEW YORK 10022  
TELEPHONE: (212) 935-7700  
CABLE: SURREYHAM, NEW YORK  
TELEX: 237013 SKMS UR

53 AVENUE MONTAIGNE  
75008 PARIS, FRANCE  
TELEPHONE: 359-23-49  
CABLE: SURGOE, PARIS  
TELEX: 290156 SURGOE

## SURREY & MORSE

1156 15TH STREET, N. W.  
WASHINGTON, D. C. 20005

(202) 331-4000  
CABLE: SURMON  
TELEX: RCA 248446 SURM UR  
WU 892626 SURMON WSH

32 DAVIES STREET  
LONDON W1Y 1LG ENGLAND  
TELEPHONE: 01-493-9361  
CABLE: SURGOE LONDON WI  
TELEX: 298116 SURMON G

BAKHASHAB BUILDING  
P. O. BOX 1351  
JEDDAH, SAUDI ARABIA  
TELEPHONE: 29550  
TELEX: 401015 BASHIP SJ

WRITER'S DIRECT DIAL NUMBER

March 16, 1981

### U.S. SECTION, IRAN-U.S. BUSINESS COUNCIL ISSUE CHECKLIST--U.S.-IRAN CLAIMS SETTLEMENT

#### Background--U.S. Section of the Iran-U.S. Business Council.

The U.S. Section of the Iran-U.S. Business Council, organized to supplement the work of the Iran-U.S. Joint Commission, was established under the auspices of the U.S. Chamber of Commerce.

On March 10, 1981 the U.S. Section held a meeting to discuss current U.S.-Iran business relations and the settlement of claims of American companies against Iran in light of the recent Algiers Declarations. On March 11, the U.S. Section sponsored a "Conference on U.S.-Iran Commercial Relations and Claims", which was attended by over 200 persons, including representatives of all sectors of the American business community.

The principal purpose of both sessions was to foster an exchange of views between representatives of the U.S. Government and American business. In this regard, representatives of the Departments of State, Treasury, Justice and Commerce spoke "off-the-record" to Section members and conference participants, answered questions, and exchanged ideas with business representatives.

For its part, the U.S. Section sought to determine whether a broad consensus could be reached with respect to the most important issues affecting the settlement of U.S.-Iran claims, U.S.-Iran trade and other relations in general. As a result of these meetings and the exchange of ideas, a general consensus emerged among the business representatives as to some of the more critical issues which have been raised by the settlement agreements made with Iran. Many of these concerns have, of course, previously been discussed with various Administration officials by the representatives of U.S. litigants and potential claimants, and to that extent



they supplement many of the legitimate questions and concerns already brought to your attention by other organizations and individuals. We have undertaken to prepare, for your information, a checklist of issues of particular concern to American business, as to which a general consensus seems to exist, based upon the discussion and positions taken by U.S. Section members and conference participants.

CHECKLIST

Principal among these issues are:

I. The promotion of settlement of claims against Iran prior to arbitration

- A. Settlements to be paid with funds that are separate from the \$1 billion Security Account to be established. Encourage Iran to create separate pool of funds to pay settlements, preferably out of funds currently in U.S. and which pursuant to the Declarations ultimately are to be transferred, paid and delivered to Iran
- B. Continue to work through the Algerians for Iran's establishment of a claims office/clearinghouse outside of Iran
- C. Active U.S. Government role in promoting negotiations
  - 1. Support claimants in initiating contacts with authorized Iranian negotiators
  - 2. Logistical support
  - 3. Act as repository of information for claimants

II. Continue effort to clarify terms of the Declarations by negotiation with Iran, and unilaterally, as in the manner of the Treasury Regulations of February 24, 1981

- A. Seek Iran's agreement of a broad definition of "Iran" and "Iranian agencies, instrumentalities and entities"; narrow the scope of the Declaration's exclusion-from-Tribunal-jurisdiction provisions (particularly Article II, paragraph 1 of the Settlement of Claims Declaration re resort to Iranian courts)



- B. In the event that jurisdictional and other important issues cannot be agreed with Iran prior to initiation of arbitration, the Government should seek immediate legal determination from the Tribunal of these issues
- C. Government assistance to claimants before the Tribunal and, if necessary, before any third country courts where enforcement actions may be brought, by filing direct actions against Iran for Iran's breach of the Declarations and by filing briefs or taking other appropriate action

III. Develop a contingency plan for possible breach of the Declarations by Iran, at their various stages of implementation

- A. Reassess U.S. position in light of good faith shown by Iran over next several months, e.g., in seeking to promote negotiated settlements and to establish Tribunal, in order to determine whether to proceed with delivery and payment to Iran of all or part of Iranian assets still remaining in U.S.
- B. Ensure adequacy of security and establish method of payment\*

\* It is generally agreed that a rush by claimants to present their claims to the Tribunal and competition among claimants to secure the earliest award, in order to obtain first and presumably full payment from the Security Account before Iranian replenishment is required, should be avoided. On the other hand, the State Department has taken the position that it does not want to encourage Iran in the view that it is not really expected to replenish the Security Account, which might be the case if the U.S. were to structure payments to claimants. One possible solution to this serious problem might be to establish a mechanism where awards are made to claimants on a first-come first-serve basis, but payments are made directly to the U.S. Government which, as an internal matter with its own nationals (claimants), will hold such monies until all claims are decided or distribute awards in part. Thus, Iran would be obligated, probably at a fairly early date if as most observers believe claims against Iran exceed the \$1 billion to be deposited initially in the Security Account, to make good on its obligation to replenish the Security Account. If Iran did not do so, then the U.S. Government should immediately commence an action against Iran, wherever Iranian assets might be found, for breach of the Declarations.



IV. Expedite the formation of the Tribunal and encourage an increase in the number of arbitral panels\*

V. Identify and appoint as the U.S.-nominated arbitrators, and seek to have appointed as the neutral arbitrators, individuals of the highest distinction

- A. Criteria should include impartiality; knowledge and experience in international commercial transactions; demonstrated adherence to the established principles of private international law governing trade and the protection of private property, particularly in relation to the standards applicable to compensation for expropriations and takings of property; sensitivity to foreign legal systems, particularly civil law systems and, if possible, Islamic law; knowledge of and experience in international commercial arbitration, either as an arbitrator or counsel on behalf of claimants, or both; articulateness
- B. Compensation. The Government should commit to fixing appropriate remuneration for the arbitrators, which will be sufficient to attract arbitrators of the highest quality. Remuneration should be unrelated to generally prevailing pay scales in the United States, and should take into account the uniqueness and difficulty of the assignment to be undertaken by the Tribunal. Most business representatives have expressed the view that while the Declarations provide that the costs of arbitration are to be borne by the two governments, claimants would be willing to discuss cooperative arrangements to distribute certain costs in the event that proves necessary to secure the high quality of arbitrators that will be required

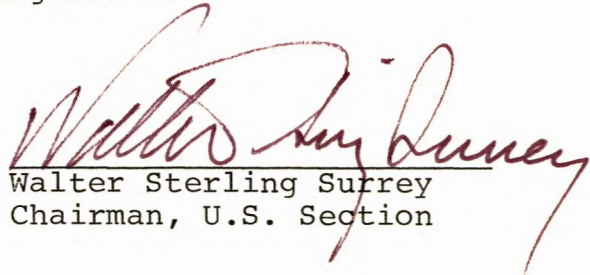
VI. Promotion of a clear trade policy. It is most important that the Government adopt a clear trade policy, within the context of overall U.S.-Iran relations. The choices are to encourage trade, to discourage trade (by, e.g., more restrictive export controls) or to take a neutral position and leave the question of trade up to individual business entities. If the last course is chosen, the Government should enunciate

---

\* We understand that the State Department has suggested to Iran that the number of three-man panels be increased to 10. Even this number may not be sufficient to treat with the large number of claims involved, especially the approximately 500 claims for amounts in excess of \$250 million.



its policy that trade with Iran does not run counter to U.S. policy, but that each U.S. company, on the basis of its individual trade transaction, will have to determine the adequacy of Iran meeting its obligations.



Walter Sterling Surrey  
Chairman, U.S. Section



John G. Sarpa  
Executive Secretary, U.S.  
Section



485 MADISON AVENUE  
NEW YORK, NEW YORK 10022  
TELEPHONE: (212) 935-7700  
CABLE: SURREYHAM, NEW YORK  
TELEX: 237013 SKMS UR

53 AVENUE MONTAIGNE  
75008 PARIS, FRANCE  
TELEPHONE: 359-23-49  
CABLE: SURGOE, PARIS  
TELEX: 290156 SURGOE

## SURREY & MORSE

1156 15TH STREET, N. W.  
WASHINGTON, D. C. 20005

(202) 331-4000  
CABLE: SURMON  
TELEX: RCA 248446 SURM UR  
WU 892626 SURMON WSH

32 DAVIES STREET  
LONDON W1Y 1LG ENGLAND  
TELEPHONE: 01-493-9361  
CABLE: SURGOE LONDON W1  
TELEX: 298116 SURMON G

BAKHASHAB BUILDING  
P. O. BOX 1351  
JEDDAH, SAUDI ARABIA  
TELEPHONE: 29550  
TELEX: 401015 BASHIP SJ

WRITER'S DIRECT DIAL NUMBER

### U.S. SECTION OF IRAN-U.S. BUSINESS COUNCIL

#### KEY ISSUES AFFECTING U.S.-IRAN COMMERCIAL RELATIONS--A SUMMARY

##### Background

The U.S. Section of the Iran-U.S. Business Council has followed closely recent events affecting Iranian-U.S. business relations.

On March 10, 1981 the U.S. Section held a meeting to discuss current U.S.-Iran business relations and the settlement of claims of American companies against Iran. On March 11, the U.S. Section sponsored a "Conference on U.S.-Iran Commercial Relations and Claims", which was attended by representatives of all sectors of the American business community.

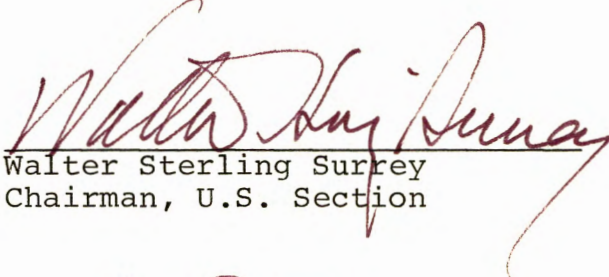
From these meetings, a general consensus appears to have emerged with respect to the U.S. Government's role in several major issues that are of particular interest to the business community. A summary of these issues follows:

##### SUMMARY OF GOVERNMENT ROLE IN KEY U.S.-IRAN ISSUES

1. PROMOTE SETTLEMENT OF CLAIMS AGAINST IRAN PRIOR TO ARBITRATION
  - Encourage Iran, through the Algerians, to create a separate pool of funds to pay settlements
  - Support claimants in initiating contacts with authorized Iranian negotiators
2. CLARIFY TERMS OF THE ALGIERS DECLARATIONS THROUGH COMMUNICATIONS WITH THE IRANIANS AND U.S. IMPLEMENTING REGULATIONS
  - Seek legal determination from the Tribunal where jurisdiction and other issues cannot be mutually agreed upon



- Assist claimants (before the Tribunal and in enforcement actions) by filing amicus briefs or taking other appropriate actions
3. DEVELOP A CONTINGENCY PLAN FOR POSSIBLE BREACH OF THE DECLARATIONS BY IRAN
    - Reassess U.S. position during implementation
    - Ensure adequacy of security and establish method of payment
  4. EXPEDITE FORMATION OF THE TRIBUNAL AND ENCOURAGE AN INCREASE IN THE NUMBER OF ARBITRAL PANELS
  5. IDENTIFY AND APPOINT INDIVIDUALS OF THE HIGHEST DISTINCTION FOR U.S.-NOMINATED AND NEUTRAL ARBITRATORS
    - Set compensation to attract high quality
  6. DEFINE CLEARLY CURRENT UNITED STATES POLICY TOWARD TRADE WITH IRAN

  
Walter Sterling Surrey  
Chairman, U.S. Section

  
John G. Sarpa  
Executive Secretary, U.S.  
Section

