

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

IBM WORLD TRADE CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. G-3080

Decision No. G-3162

Counsel for Claimant:

Robert M. Pennoyer, Esquire
Patterson, Belknap, Webb &
Tyler

Hearing on the Record held on APR 22 1981

FINAL DECISION

This claim in the amount of \$2,140,323.00 against the Government of the German Democratic Republic, under Title VI of the International Claims Settlement Act of 1949, as amended by Public Law 94-542 (90 Stat. 2509), is based upon the expropriation of the assets of claimant's subsidiary, IBM Deutschland G.m.b.H., in the German Democratic Republic.

By Proposed Decision issued February 11, 1981, the Commission made an award to claimant in the principal sum of \$1,454,563.00. Part of claimant's claim was for certain current assets which the Commission found existed in the amount of DM 2,485,728.22.

In considering this part of claimant's claim, however, the Commission deducted the amount of DM 986,060.82 shown on claimant's balance sheet to be offsetting current liabilities.

Claimant filed objection and requested an Oral Hearing.

Claimant has referred the Commission to certain schedules accompanying and explaining the balance sheet entries. The schedules indicate that certain amounts totalling DM 919,772, listed in the balance sheet as "current liabilities," are in fact estimated reserves for future taxes which might have been payable had claimant's business not been confiscated by the German Democratic Republic.

Claimant argues that these items should not be subtracted from the total of current assets in determining the companies working capital. Based upon a review of these documents the Commission agrees. Therefore, its previous determination that the total working capital of IBM Deutschland was in the dollar equivalent of \$358,074.00 is in error and the total value of the working capital was, in fact, in the amount of \$577,067.00 from which claimant suffered a loss based upon its ownership interest in IBM Deutschland in the amount of \$576,894.00. This redetermination by the Commission therefore results in an increase of the total award to claimant of \$218,927.00.

By letter dated March 19, 1981, claimant withdrew its request for an Oral Hearing and dropped any other objections to the Proposed Decision of the Commission.

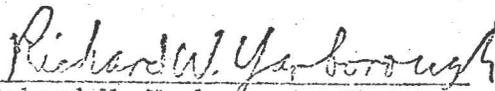
Therefore, the Commission withdraws its previous award and makes the following award as its final determination of this claim.

A W A R D

Claimant, IBM WORLD TRADE CORPORATION, is therefore entitled to an award in the amount of One Million Six Hundred Seventy-Three Thousand Four Hundred Ninety Dollars (\$1,673,490.00), plus interest at the rate of 6% simple interest per annum from August 4, 1953 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

Dated at Washington, D.C.
and entered as the Final
Decision of the Commission.

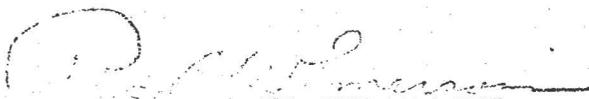
APR 22 1981


Richard W. Yarborough, Chairman

This is a true and correct copy of the decision
the Commission which was entered as the final
decision on APR 22 1981


Francis L. Jones, General Counsel


Executive Director


Robert L. ..., General Counsel

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PROPOSED DECISION

This claim in the amount of \$2,140,323.00 against the Government of the German Democratic Republic, under Title VI of the International Claims Settlement Act of 1949, as amended by Public Law 94-542 (90 Stat. 2509), is based upon the expropriation of the assets of claimant's subsidiary, IBM Deutschland G.m.b.H., in the German Democratic Republic.

The record indicates that at all times herein relevant IBM WORLD TRADE CORPORATION, a Delaware corporation organized in 1923, was wholly owned by International Business Machines Corporation, a New York corporation organized in 1911, more than 50 percent of whose outstanding shares were owned by United States nationals. IBM WORLD TRADE CORPORATION, on and after December 12, 1947, owned 99.97 percent of IBM Deutschland.

Under section 602, Title VI of the Act the Commission is given jurisdiction as follows:

"The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims by nationals of the United States against the German Democratic Republic for losses arising as a result of the nationalization, expropriation, or other taking of (or special measures directed against) property, including any rights or interests therein, owned wholly or partially, directly or indirectly, at the time by nationals of the United States whether such losses occurred in the German Democratic Republic or in East Berlin. . ."

Following the end of hostilities in World War II, IBM Deutschland was engaged in the business of renting electric accounting machines ("EAM's") and selling supplies therefor. The contracts under which these machines were leased required IBM Deutschland to provide maintenance service to insure efficient operation of the machines at all times. The company was also engaged in the business of providing data processing services for customers located in East Germany who did not require EAM installations on their own premises. In addition, IBM Deutschland had a plant in Greiz which printed EAM punch cards.

Although the business operations of IBM Deutschland were severely regulated by the Government, the company continued in business after World War II until 1953. Pursuant to the Decree on the Administration and Protection of Foreign Owned Property in the German Democratic Republic, dated September 6, 1951, the assets of IBM Deutschland became subject to Government control, however, pursuant to section 3 of that Decree, the Government allowed continued administration by officials of IBM Deutschland. Subsequently, by letter dated August 4, 1953, the self administration by IBM Deutschland of its assets was terminated and IBM Deutschland was informed that the legal provisions of article 2(2)a of the Decree became applicable and the administration of the assets was thereafter to be handled by the competent ministry of the German Democratic Republic.

The Commission, therefore, holds that the assets of IBM Deutschland located in the German Democratic Republic were taken on August 4, 1953.

Claimant has submitted an audited balance sheet as of June 30, 1953 and a comparative balance sheet and related schedules prepared as of August 1953, the month in which the company received written notice regarding the expropriation of its assets. In determining the dollar losses as shown by the Deutsche mark balance sheets, the Commission has converted Deutsche marks into dollars at the rate of 4.2 Deutsche marks to one dollar.

Claimant makes claim for its current assets consisting of cash on hand and in banks; customers accounts receivable, less reserve for doubtful accounts; and inventories, less reserves, which are shown by the August 1953 balance sheet to have totaled DM 2,485,728.22, in addition to certain deferred items totaling DM 4,244.40. However, claimant does not take into consideration offsetting current liabilities shown by the balance sheet to total DM 986,060.82. The Commission, therefore, finds that IBM Deutschland suffered a loss of its working capital (current assets minus current liabilities) in the amount of DM 1,503,911.80 or the dollar equivalent of \$358,074.00 from which claimant suffered a loss based upon its ownership interest in IBM Deutschland in the amount of \$357,967.00 and claimant is entitled to an award in this amount. In addition, the balance sheet reflects a value for machinery and equipment, less reserves for depreciation, in the amount of DM 3,531, and for office furniture and fixtures, less reserves for depreciation, in the amount of DM 8,281. This constituted an additional loss of these capital assets in the amount of DM 11,812 or the dollar equivalent of \$2,812.00, and for its ownership share in IBM Deutschland, claimant is entitled to an award in the amount of \$2,811.00.

In addition, IBM Deutschland was the owner of 1,332 electronic accounting machines. These machines were confiscated by the German Democratic Republic along with the rest of the assets of IBM Deutschland on August 4, 1953. These machines and associated parts are listed on the balance sheets at a value of DM 4,593,895.92, offset by depreciation reserves in the amount of DM 4,566,142.92, leaving a "book value" in the amount of DM 27,753.

Claimant contends that in valuing these machines the depreciation reserves should be disregarded because each of the machines was leased pursuant to a maintenance agreement which required IBM Deutschland to maintain each machine in a condition equal to that of a new machine. Because of the nature of IBM Deutschland's leasing business, the Commission agrees with this contention and

determines that these electronic accounting machines had a value of \$1,093,785.00 on the date of loss for which claimant is entitled to an award in the amount of \$1,093,456.00.

The Commission notes the contention of IBM that it should determine the loss by using a figure of \$1,158,067.00 as the United States manufacturing cost of these machines. To this figure IBM argues the Commission should add an arbitrary 20 percent for the cost of shipment and duty. Admittedly, the machines which were lost were manufactured in Europe, however, IBM contends that United States manufacturing costs were, in fact, less than European manufacturing costs and that the figure they have suggested is in accord with IBM's actual accounting practice. At the time of this loss, IBM was the sole manufacturer of these machines which were not manufactured for public sale. In several previous programs involving the expropriation of property, the Commission has accepted claimant's theory in determining the value of such machines. In the General War Claims Program, the theory was rejected.

IBM has submitted a balance sheet as its proof of the value of its losses. The Commission is not convinced that it should accept this proof as to the value of all assets other than these machines, but should not accept the value of the machines as listed in these balance sheets. Under acceptable accounting procedures, the value listed of these assets, prior to depreciation, should reflect their actual costs. The amount listed very closely approximates the United States cost figures asserted by claimant. The slight difference between the two figures may well be accounted for by an acquisition date of the machine by IBM Deutschland prior to 1953, the date at which IBM has calculated its United States manufacturing cost. The Commission has, therefore, used the balance sheet figures to determine the value of the electronic accounting machines.

The Commission, therefore, finds that claimant is entitled to an award in the total amount of \$1,454,563.00.

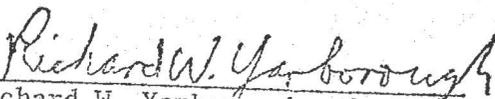
The Commission has concluded that in granting awards on claims under section 602 of Title VI of the Act, for the nationalization or other taking of property or interests therein, interest shall be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (Claim of GEORGE L. ROSENBLATT, Claim No. G-0030, Decision No. G-0100)).

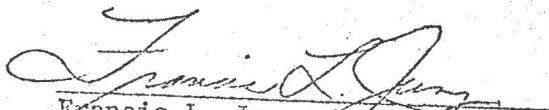
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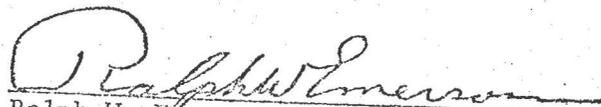
Claimant, IBM WORKD TRADE CORPORATION, is therefore entitled to an award in the amount of One Million Four Hundred Fifty-four Thousand Five Hundred Sixty-three Dollars (\$1,454,563.00), plus interest at the rate of 6% simple interest per annum from August 4, 1953 until the date of the conclusion of an agreement for payment of such claims by the German Democratic Republic.

Dated at Washington, D.C.
and entered as the Proposed
Decision of the Commission.

FEB 11 1981


Richard W. Yarborough, Chairman


Francis L. Jung, Commissioner


Ralph W. Emerson, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5 (e) and (g), as amended.)

G-3080