

ORIGINAL DOCUMENTS IN SAFE

Case No. B-16

Date of filing: 24-1-84

\*\* AWARD - Type of Award FINAL  
- Date of Award 18-1-84  
5 pages in English 4 pages in Farsi

\*\* DECISION - Date of Decision \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* CONCURRING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* SEPARATE OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* DISSENTING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* OTHER; Nature of document: \_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	۱۳۶۲ / ۱۱ / ۴
24 JAN 1984	
No. B-16	شماره ب ۱۶

DUPLICATE  
ORIGINAL  
دو نسخه برابر اصل

CASE NO. B-16

CHAMBER ONE

AWARD NO. 105-B-16-1

IRANIAN CUSTOMS ADMINISTRATION,  
Claimant,  
and  
UNITED STATES OF AMERICA,  
Respondent.

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۱۶ - ۴۰

AWARD

In a claim filed on 15 January 1982, the Iranian Customs Administration is seeking an award obligating the United States to pay Rials 1,967,318 for customs charges and expenses plus compensation pursuant to Customs Regulations amounting to three times the value of certain medical and hospital appliances at issue in this case. The Customs Administration asserts that these goods were temporarily imported into Iran by the United States Embassy in Tehran under import licences valid for specific periods of time and were to be re-exported. It is further alleged that the Embassy failed to take any action to re-export the goods in a timely manner or obtain permanent release of the goods from the customs.

Annexed to the Statement of Claim are copies of three internal memoranda of the Iranian customs authorities. The first memorandum refers to a "letter of undertaking" dated 8 October 1973 pursuant to which four palettes of medical and hospital appliances were temporarily imported under a licence dated 7 November 1973. The second memorandum refers to a "letter of undertaking" pursuant to which ten boxes of hospital accessories were temporarily imported under a licence that "matured" on 2 May 1974. The third refers to a "letter of undertaking" dated 29 October 1973 pursuant to which eight boxes of medical appliances were temporarily imported under a licence dated 2 December 1973. It is alleged that, except for two boxes of the hospital accessories, none of the foregoing goods were re-exported or permanently released from the customs.

The United States has asserted that the records relating to the transactions in question were located at the United States Embassy or elsewhere in Tehran and are no longer available to the United States authorities. Consequently, the United States has petitioned the Tribunal for an order directing the Government of Iran to produce all relevant records. The United States contends that, failing access to

such records, it is unable to determine whether any of the goods specified in the Statement of Claim were in fact imported into Iran and on that basis the United States denies that it imported any of the listed goods. The United States argues that, in any event, this is a claim by an agency of a Government against another Government and, therefore, is an "official claim" within the meaning of Article II, paragraph 2, of the Claims Settlement Declaration, but, that since a claim for customs duties does not involve a sale of goods or services, it does not fall within the Tribunal's jurisdiction under that Article.

The Iranian Customs Administration has maintained that the Tribunal has jurisdiction over the claims under the Algiers Declarations.

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It is a well established principle of international law that provisions conferring jurisdiction upon an arbitral tribunal shall be interpreted in a restrictive manner. The question as to whether the Tribunal has jurisdiction over the claims in this case must be decided on the basis of this principle.

The Iranian Customs Administration has failed to submit copies of the "letters of undertaking" referred to in the internal memoranda. However, the typical practice followed when there were such letters can be seen from information supplied by the Parties in other claims before the Tribunal. Such letters of guarantee were directed to the Iranian Customs Administration or an officer thereof, and covered particular designated consignments of goods to be exhibited at the United States Pavilion at the International Trade Fairs or at the United States Trade Center. They requested that the particular consignments be released from customs for temporary importation for a period of three months or 90 days. Each letter of guarantee typically specified the

obligations of the United States thereunder. For example, guarantees that refer to the 1976 and 1977 International Trade Fairs contain the following language:

"The Embassy will guarantee that if the goods in this consignment are not re-exported from Iran at the end of the period stipulated above, governing Customs Regulations will be followed".

Claims for customs duties and related charges in connection with import of goods are of such a character that they can be asserted only by a government or governmental agency. The claims at issue in this case therefore are included within the category of "official claims" as defined in Article II, paragraph 2, of the Claims Settlement Declaration. According to that paragraph, the Tribunal has jurisdiction over claims of the United States and Iran against each other "arising out of contractual arrangements between them for the purchase and sale of goods and services".

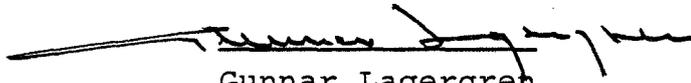
The provisions of Article II, paragraph 2 of the Claims Settlement Declaration give the Tribunal no jurisdiction to determine disputes between the two Governments regarding customs duties solely arising out of the application of customs regulations. While it can be argued that the claim in this case is based on letters of guarantee issued by the United States Embassy in Tehran and that such letters of guarantee constitute a contractual arrangement between the Governments, these letters of guarantee were not in accordance with the ordinary meaning of the words contractual arrangements for the purchase and sale of goods and services. There is no other provision in the Claims Settlement Declaration according to which the Tribunal can have jurisdiction over the claims in the instant case. The Tribunal therefore concludes that the letters of guarantee do not constitute contractual arrangements which may give rise to claims falling within the Tribunal's jurisdiction.

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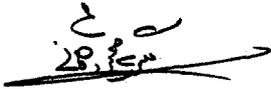
The claims by the Iranian Customs Administration are dismissed for lack of jurisdiction.

Each Party shall bear its own costs of arbitration.

Dated, The Hague,  
18 January 1984



Gunnar Lagergren  
Chairman  
Chamber One



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Mahmoud M. Kashani  
Dissenting Opinion



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Howard M. Holtzmann